

General Terms and Conditions

In consideration of the Province accepting and assessing the Participant's Unsolicited Proposal, the Participant acknowledges that it has read, understood and agrees to the following terms and conditions related to the USP Process.

All capitalized terms used herein are defined in the Definitions section of these "General Terms and Conditions".

1. Not a Binding Procurement Process nor a Formal Competitive Bidding Process

- (a) The USP Process is governed by the terms and conditions set out herein. It is not a legally-binding procurement process.
- (b) For greater certainty and without limiting anything else set out herein:
 - (i) this USP Process is not a procurement or tender process and shall not be construed as such;
 - (ii) this USP Process shall not give rise to any tendering law duties or any other legal obligations arising out of any process contract or collateral contract;
 - (iii) the Province has no contractual or other legal obligations to the Participant with respect to the consideration, assessment, acceptance or rejection of any Unsolicited Proposal or the failure to consider, assess or accept any Unsolicited Proposal; and
 - (iv) the Participant shall have no right to make any claims (in contract, tort, or otherwise) against the Province with respect to the award of a contract, failure to award a contract, or failure by the Province to honour any provision of the USP Process or any response thereto.
- (c) All rights and obligations of either the Participant or the Province related to this USP Process are solely contained in these terms and conditions. For greater clarity, and without limiting the preceding, no directives, policies or guidelines of the Province may be read into these terms and conditions unless they expressly so state.

2. General Rights of the Province

- (a) The Province is under no obligation to accept, consider, review or assess an Unsolicited Proposal or respond to a Participant with regards to an Unsolicited Proposal or provide any response to this USP Process at any stage of the process,

including, without limitation, for any of the reasons set out in these terms and conditions.

- (b) The Province may refuse to consider or discontinue consideration of any Participant if such Participant's Unsolicited Proposal or any other information or response to this USP Process contains misrepresentations or any other inaccurate, misleading or incomplete information, as determined by the Province in its sole and absolute discretion.
- (c) The Province's assessment of an Unsolicited Proposal or any other information or response to this USP Process may take into consideration information obtained through the due diligence efforts of the Province, including, but not limited to, information provided by the Participant's references, and may also consider the Participant's past performance on previous dealings with the Province. The Province may also, as part of its assessment, take into account any other outside information it deems necessary in its sole and absolute discretion.
- (d) The Participant consents, by submission of its Unsolicited Proposal, to the unlimited use of all information contained within the Unsolicited Proposal, including all Intellectual Property contained therein, by the Province without liability in order to assess the Unsolicited Proposal for acceptance or as part of future procurement opportunities or program development. Without limiting the preceding, such use may include, but is not limited to, dissemination to internal and external government advisors, distribution publicly for verification, development of subsequent procurement documents and competition of an opportunity based upon the information or use internally or externally by the government with or without the involvement of the Participant. In accordance with the preceding, therefore, the Participant grants the Province an unconditional, perpetual, non-exclusive, irrevocable, worldwide, royalty-free and transferable license to copy, incorporate into, modify, adapt and otherwise use the Unsolicited Proposal, in whole or part, and derivatives thereof and, additionally, waives any Moral Rights in the Unsolicited Proposal.
- (e) Subject only to section 16 of these terms and conditions, the Province reserves the right to modify the terms of the USP Process contemplated herein at any time.
- (f) The Province can subsequently initiate any other information gathering, planning, market research or other process, including but not limited to, any non-competitive, invitational or directly negotiated procurement, for the same or similar requirements using the Unsolicited Proposal or any part of the Unsolicited Proposal alone or in combination with other materials, information or proposals.

- (g) The Province can discontinue interaction with any Participant with regards to its Participant's Unsolicited Proposal and/or the USP Process at any time without any notice.
- (h) The Province reserves the right to request additional information from any Participant regarding its Unsolicited Proposal and to allow a Participant to supplement or correct elements of its Unsolicited Proposal.
- (i) All rights of the Province under this USP Process may be exercised in its sole and absolute discretion.

3. No Representations

- (a) The Province does not make any representations or warranties, either express or implied, in fact or in law, with respect to the accuracy, reliability or completeness of any data, materials or other documents and information that it has provided or will provide to any Participant in writing or orally in connection with this USP Process. Further, the Province does not make any representations or warranties, either express or implied, in fact or in law, with respect to the accuracy, reliability or completeness of any data, materials or information in connection with any unsolicited proposals process contained in any government or third-party website, documents, guidelines, media coverage, announcements or publications.
- (b) If a Participant believes that any element of the USP Process is unclear or ambiguous, the Participant is responsible for requesting clarification from the Province. The Province shall not be responsible for any misunderstanding on the part of any Participant concerning the USP Process.

4. Conflict of Interest

- (a) Each Participant must disclose in its Unsolicited Proposal, and on an ongoing basis thereafter, any Conflict of Interest, real or perceived, that exists now or may exist in the future, with respect to its Unsolicited Proposal and the USP Process, any resulting agreement that may be entered into with the Province or its representatives.
- (b) For the purposes of these terms and conditions, "Conflict of Interest" includes, but is not limited to, any situation or circumstance where the Participant has:
 - (i) current contractual or other obligations to the Province that could or could be seen to have been compromised or otherwise impaired as a result of its participation in the USP Process;

- (ii) in relation to the performance of any future contractual obligations that may arise under any resulting agreement with the Province, the Participant's other commitments, relationships or financial interests (A) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (B) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations; or
 - (iii) other commitments, relationships, financial interests or involvement in any litigation or proceeding that could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of the Province's independent judgment.
- (c) The Province may disqualify a Participant for any conduct, situation or circumstances that constitutes a Conflict of Interest, as determined by the Province, in its sole and absolute discretion. The final determination of whether a perceived, potential or actual Conflict of Interest exists shall be made by the Province, in its sole and absolute discretion.
- (d) Without limiting the foregoing, the Province may, at its sole and absolute discretion, waive any and all perceived, potential or actual Conflicts of Interest.

5. Confidentiality and Non-Disclosure

All information provided by or obtained from the Province in any form in connection with USP Process:

- (i) is the sole property of the Province and must be treated as confidential;
- (ii) is not to be used for any purpose other than to respond to this USP Process and to perform obligations under any resulting agreement with the Province; and
- (iii) must not be disclosed without prior written authorization from the Province.

6. No Public Communications

- (a) No Participant shall make any public comment, respond to questions in a public forum, or carry out any activities to publicly promote or advertise its qualifications, interest in or participation in the USP Process, or an Unsolicited Proposal, without the Province's prior written consent, which consent may be arbitrarily withheld or delayed in the sole and absolute discretion of the Province.
- (b) All questions or communications from the Participant shall be directed solely to the named contact under the USP Process. Any other communication outside of the

named contact may result in discontinuation of consideration the Participant's Unsolicited Proposal.

7. Submissions Property of the Province

All Unsolicited Proposals and any accompanying documentation provided by a Participant shall become the property of the Province and shall not be returned.

8. Participant to Bear Own Costs

The Province shall not be liable for any costs or expenses incurred by the Participant in connection with the USP Process. All costs and expenses incurred by a Participant at any time during the USP Process, including all costs arising out of or incurred in the preparation and submission of an Unsolicited Proposal, providing any additional information necessary for the assessment of its Unsolicited Proposal, or any other activities related to the USP Process, shall be borne solely by the Participant.

9. Restricted Persons

- (a) The Province may, in its sole and absolute discretion, disqualify a Participant if the Participant, or where applicable, any of its officers, directors, partners or employees, is a Restricted Person.

For the purposes of these terms and conditions, "Restricted Person" shall mean:

- (i) a person or entity that has, as its primary business, the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
- (ii) an individual who, or in the in the case of a person other than an individual, it or any of its officers, directors, partners or employees who:
 - a. has or have been convicted of any indictable offence less than five years prior to the date of the submission of the Unsolicited Proposal;
or
 - b. has or have been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the Highway Traffic Act (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date of the submission of the Unsolicited Proposal;
- (iii) a person or entity that has, as its primary business, the acquisition of distressed assets or investments in companies or organizations which are or

are believed to be insolvent or in a financial standstill situation or potentially insolvent;

- (iv) a person or entity that is involved in litigation or contemplated litigation (including regulatory proceedings) which have been concluded or are pending at the time of the date of the submission of the Unsolicited Proposal, involving the Province; and
- (v) any person or entity who is prohibited from doing business with the federal government pursuant to the Integrity Regime administered by Public Services and Procurement Canada.

(b) Each Participant is required to disclose in its Unsolicited Proposal, and on an ongoing basis, if the Participant, or where applicable, any of its officers, directors, partners or employees, is or are now or may become in the future, a Restricted Person. Failure to make such disclosure may result in immediate disqualification from the USP Process, in the sole and absolute discretion of the Province.

10. Power of Legislative Assembly

No provision of this USP Process (including a provision stating the intention of the Province) is intended to operate, nor shall any such provision have the effect of operating, in any way, so as to interfere with or otherwise fetter the discretion of the Legislative Assembly of Ontario in the exercise of its legislative powers.

11. Freedom of Information, Protection of Privacy & Other Disclosure Requirements

- (a) The Province may be required to disclose certain documents and/or all or parts of any Unsolicited Proposal or any response to the USP Process either pursuant to the Freedom of Information and Protection of Privacy Act (Ontario) ("FIPPA"), under the Province's audit legislation or pursuant to other requirements of law.
- (b) FIPPA may provide protection for confidential and proprietary business information. Solely for the purpose of applicable privacy legislation and not to derogate from the license provided in section 2(d) herein, the Participant is strongly advised to consult its own legal advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in its Unsolicited Proposal and any other responses to the USP Process. The Participant should be aware that a claim of commercial sensitivity or confidentiality does not of itself exempt information from disclosure under the provisions of FIPPA.

12. Changes to Proposals

The Participant shall inform the Province promptly in writing of any material change to any of the information contained in its Unsolicited Proposal or any response to the USP Process, and of any material change in circumstance that may affect the truth, completeness or accuracy of any information provided in, or in connection with, the Unsolicited Proposal or any response to the USP Process.

13. Participant's Representations and Warranties

The Participant represents and warrants that:

- (a) the information contained in its Unsolicited Proposal or any response to the USP Process is true, accurate and complete;
- (b) it is a corporation duly incorporated or a partnership or sole proprietorship duly registered and validly existing under the laws of the jurisdiction under which it is governed, has all necessary corporate power and authority to own its properties and assets and carry on its business and to agree to these terms and conditions;
- (c) the Participant has the right to grant the rights, licenses, permission and consents set out in these terms and conditions;
- (d) the submission of the Unsolicited Proposal and the exercise of the permissions granted herein shall not infringe or induce the infringement or misappropriation of the intellectual property rights of any third party nor breach, infringe, violate or contravene any third-party rights or licences; and
- (e) the Participant has all the requisite power and authority to perform and fulfil its obligations under this USP Process.

14. Indemnity

The Participant agrees to indemnify and save the Indemnified Parties harmless from any and all claims, damages and losses arising out of or relating to: (i) any breach of the terms and conditions of this USP Process; and (ii) any breach of a representation or warranty by the Participant in this USP Process.

In addition to the general indemnity above, the Participant warrants that the information contained in the Unsolicited Proposal does not infringe any intellectual property of any third party and agrees to indemnify and hold harmless the Indemnified Parties if any, against all claims, actions, suits and proceedings, including all costs incurred by the Province brought by any person in respect of the alleged infringement of any patent, copyright, trademark, or other intellectual property right in connection with the Unsolicited Proposal.

15. Governing Law and Jurisdiction

These terms and conditions and the USP Process shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and any dispute arising out of or in relation to these terms and conditions shall be determined in Ontario.

16. Application and Amendment

These terms and conditions shall apply to all stages of the USP Process unless the Province expressly amends them, in writing, as follows. The Province may propose amendments to these terms during later stages of the USP Process. Where that occurs, the Participant may be asked to further agree to the amended terms as a condition for participation in later stages.

17. Language

The English language version of these terms and conditions shall be controlling in all respects and shall prevail in case of any inconsistencies with translated versions, if any.

Definitions

The following definitions are applicable to these terms and conditions.

“**Conflict of Interest**” has the meaning set out in section 4(b) of these terms and conditions.

“**FIPPA**” has the meaning set out in section 11(a) of these terms and conditions.

“**Guidelines**” mean the document entitled *Unsolicited Proposals Submission and Assessment Guidelines*, a copy of which can be found at the Ministry website for Unsolicited Proposals.

“**Infrastructure Ontario**” means the Ontario Infrastructure and Lands Corporation.

“**Indemnified Parties**” means (i) Her Majesty the Queen in right of Ontario, her Ministers, directors, officers, agents, appointees, and employees; (ii) the members of the Executive Council of Ontario; and (iii) Infrastructure Ontario.

“**Intellectual Property**” means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity.

“Moral Rights” has the same meaning as in the Copyright Act (Canada) and applies to comparable rights in applicable jurisdictions.

“Participant” means the legal entity that submits an Unsolicited Proposal.

“Province” means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure.

“Restricted Person” has the meaning set out in section 9(a) of these terms and conditions.

“Unsolicited Proposal” means all documentation, including all information, responses, communications submitted by a Participant via the Ministry website for Unsolicited Proposals or as otherwise directed in writing by the Province at any stage of the USP Process.

“USP Process” means the unsolicited proposal process set out in the Guidelines and or other information found at the Ministry website for Unsolicited Proposals and governed by the terms and conditions set out herein
