

ONTARIO NORTHLAND

TRANSPORTATION COMMISSION

Request for Proposals No. RFP 2024 003

For

Prepared Rock Ballast

REPLY BY DATE: 2:00:00 p.m. Tuesday, March 05, 2024

Primary Contact:

Brinda Ranpura
Procurement Contracts Specialist
Ontario Northland Transportation Commission
555 Oak Street East
North Bay, Ontario, P1B 8L3
Email: Brinda.ranpura@ontarionorthland.ca

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PART 1

REQUEST FOR PROPOSALS

SECTION 1 - INTRODUCTION

1.1 General

(1) Ontario Northland Transportation Commission (“ONTC”) is issuing this Request for Proposals (“**RFP**”) to obtain proposals from a vendor/service provider(s) for the provision of the goods and/or services described in the RFP Specifications (the “**Goods and/or Services**”).

(2) In this RFP:

“Applicable Laws” means the statutes, regulations, orders, by-laws and other laws of Ontario, Quebec, Manitoba, Canada and any municipal government relevant to the RFP and the subject matter of the RFP;

“Addendum” means the written supplementary information provided to potential Respondents prior to the Submission Deadline, which information becomes part of the RFP Documents;

“Business Day” means any day except Saturday, Sunday or a statutory holiday;

“Final Agreement” means the agreement for the supply of the Goods and/or Services entered into by ONTC and the Successful Respondent;

“Material” means a document or information that must be included in the Proposal including without limitation the information requested in the RFP Data Sheet, and is essential to allow ONTC to evaluate a Proposal and that if not included will result in the disqualification of the Proposal;

“Non-compliant” means the Proposal or the Respondent does not meet a requirement of the RFP Documents;

“Proposal” means the response to the RFP submitted by a Respondent to ONTC;

“Respondent(s)” means the entity submitting a Proposal and includes prospective respondents, whether or not that entity submits a Proposal. If the context requires it, “Respondent” includes any of the Respondent’s respective shareholders, owners, officers, agents, consultants, partners, contractors, subcontractors, advisors, employees, or representatives;

“RFP Data Sheet” means the information and requirements contained in Schedule 2-A of Part 2;

“RFP Documents” means the documents listed in RFP Section 2.1 (1) and any additional documents issued through Addenda;

“Short-listed Respondent” means a Respondent selected to proceed to the next step in the evaluation process pursuant to section 6.2 (2) of the RFP;

“Substantially Compliant” means Proposal does not meet the requirements of the RFP Documents; however, the Proposal includes all of the Material items, as identified in the RFP Data Sheet;

“Successful Respondent” means the Respondent selected by ONTC to enter into the Final Agreement.

- (3) The process to select the Short-listed Respondents for the supply of the Goods and/or Services (the “**RFP Process**”) will commence with the issuance of these RFP Documents and will terminate at the earlier of:
- (a) when ONTC and the Successful Respondent execute the Final Agreement; or,
 - (b) upon the termination of the RFP Process in accordance with the terms and conditions of this RFP.

1.2 Ontario Northland Transportation Commission

The Ontario Northland Transportation Commission (ONTC) is an agency of the Province of Ontario that provides reliable and efficient transportation services to northern and rural communities. For over 120 years, the company has provided integrated and impactful transportation services including rail freight, passenger rail, motor coach transportation, rail repair, and remanufacturing services.

ONTC’s rail services are vital in maintaining a reliable supply chain in Northern Ontario by connecting freight customers to global economies. The forestry industry, mining operations, farming communities, and manufacturers count on ONTC’s services to deliver large volumes across vast distances. The company’s 675 miles of mainline track span throughout northeastern Ontario and northwestern Quebec.

ONTC motor coaches connect rural Ontario to major centers providing access to education, medical appointments, shopping, and seamless connections to other transportation providers. The Polar Bear Express passenger train connects Moosonee and Cochrane, Ontario, providing an all-season land link for Indigenous communities on the James Bay Coast.

Improving and repairing transportation equipment is also a large part of ONTC’s service offering. We remanufacture and repair locomotives, passenger rail cars, freight cars, and more. ONTC’s unique mechanical skillset attracts new business and secures skilled trades jobs in Northern Ontario.

ONTC makes provincial dollars reach further by creating innovative solutions that help drive economic growth sustainably, responsibly, and with future generation’s top of mind. Throughout the agency, modernization is underway with many exciting projects that will improve how we operate. ONTC employs over 900 people including Locomotive Engineers, Motor Coach Operators, skilled tradespeople, and business professionals. Employees work together to improve and deliver services that provide value to the regions served.

SECTION 2 - THE RFP DOCUMENTS

2.1 Request for Proposals Documents

- (1) The Request for Proposals documents consist of:

Part 1 – Request for Proposals

Part 2 – Requests for Proposals Summary of Requirements

- (a) Schedule 2-A – RFP Data Sheet
- (b) Schedule 2-B – Participation Registration Form

Part 3 – RFP Specifications

- (a) Schedule 3-A – Scope of Work

Part 4 – Form of Proposal

- (a) Proposal Form 1 – Proposal Submission Form
- (b) Proposal Form 1-A – Proposal Submission Form
- (c) Proposal Form 2 – Respondent's General Information
- (d) Proposal Form 3 – Acknowledgment to Comply with Part 3 – Request for Proposals Specifications
- (e) Proposal Form 4 – References
- (f) Proposal Form 5 – Compliance with Contract Documents
- (g) Proposal Form 7 – Health, Safety and Environment
- (h) Proposal Form 8 – Supply Chain Security and Local Benefit

Part 5 – Draft Agreement

- (2) The RFP Documents shall be read as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference.
- (3) Each Respondent shall verify the RFP Documents for completeness upon receipt and shall inform the Contact Person (identified in RFP Section 3.2(7)), immediately:
- (a) should any documents be missing or incomplete; or,
 - (b) upon finding any discrepancies or omissions.
- (4) Complete sets of the RFP Documents are available at our company website at www.ontarionorthland.ca and MERX.
- (5) The RFP Documents are made available only for the purpose of Respondents submitting Proposals. Availability and/or use of the RFP Documents do not confer a license or grant for any other purpose.

2.2 Priority of Documents

- (1) If there are any inconsistencies between the terms, conditions or other provisions of the RFP Documents, the order of priority of RFP Documents, from highest to lowest, shall be:
 - (a) Any Addenda modifying the RFP Documents issued during the RFP Process;
 - (b) The RFP Data Sheet;
 - (c) Part 1 – Request for Proposals;
 - (d) Part 3 – Specifications; and,
 - (e) Any other RFP Documents.

2.3 Distribution of Documents – Electronic Distribution

- (1) ONTC will use an online electronic distribution system to distribute all RFP Documents.
- (2) Each Respondent is solely responsible for making appropriate arrangements to receive and access the RFP Documents through that electronic distribution system.

2.4 Information Provided by ONTC

- (1) Each Respondent is solely responsible for conducting its own independent research, due diligence, and any other work or investigations and seeking any other independent advice necessary for the preparation of its Proposal, negotiation or finalization of the Final Agreement and the subsequent delivery of all the Goods and/or Services to be provided by the Successful Respondent. Nothing in the RFP Documents is intended to relieve the Respondents from forming their own opinions and conclusions with respect to the matters addressed in this RFP.
- (2) No guarantee, representation or warranty, express or implied, is made and no responsibility of any kind is accepted by ONTC or its representatives for the completeness or accuracy of any information presented in the RFP Documents, if any, during the RFP Process or during the term of the Final Agreement. By submitting a Proposal, each Respondent agrees that ONTC and its representatives shall not be liable to any person or entity as a result of the use of any information contained in the RFP Documents or otherwise provided by ONTC or its representatives during the RFP Process or during the term of the Final Agreement.

SECTION 3 – THE RFP PROCESS

3.1 RFP Process

- (1) The deadline for the submission of Proposals (the “**Submission Deadline**”) is set out in the RFP Data Sheet.
- (2) ONTC may amend, extend or shorten any of the dates and/or times prescribed in this RFP, at any time, at its sole discretion, including without limitation the Submission

Deadline. If ONTC extends the Submission Deadline, all requirements applicable to Respondents will thereafter be subject to the new, extended Submission Deadline.

3.2 Questions and Communications Related to the RFP Documents

- (1) Respondents shall submit all questions, requests for clarifications, and other communications regarding the RFP Documents and the RFP Process by email to the Contact Person set out in section 3.2(7) no later than four (4) full Business Days before the Submission Deadline.
- (2) ONTC will endeavor to provide the Respondents with written responses to questions that are submitted in accordance with this RFP Section 3.2, by no later than two (2) full Business Days before the Submission Deadline. Responses to any questions or requests for clarifications, will be collected and distributed with answers to be delivered to all Respondents who have submitted the Participation Registration Form by way of emailed addenda from ONTC in accordance with the timeline set out in this Section 3.2(2).
- (3) The responses to questions form part of the RFP Documents.
- (4) ONTC may, in its sole discretion:
 - (a) answer questions that ONTC deems to be similar from various Respondents only once;
 - (b) edit any question(s) for the purpose of clarity;
 - (c) respond to questions submitted after the deadline for submission of questions if ONTC believes that such responses would be of assistance to the Respondents generally; and,
 - (d) exclude any questions that, in the sole opinion of ONTC, are ambiguous, incomprehensible, or are deemed by ONTC to be immaterial to the RFP Process, the RFP Documents, or the Goods and/or Services.
- (5) If Respondents find discrepancies, omissions, errors, departures from laws, by-laws, codes or good practice, or information considered to be ambiguous or conflicting, they shall bring them to the attention of the Contact Person in writing, and not less than four (4) full Business Days before the Submission Deadline, so that ONTC may, if ONTC deems it necessary, issue instructions, clarifications or amendments by addendum to all Respondents prior to the Submission Deadline. ONTC will endeavor to, but is not required to, issue such Addenda at least two (2) full Business Days prior to the Submission Deadline. It is each Respondent's responsibility to seek clarification from ONTC of any matter it considers to be unclear in the RFP Documents or the description of the Goods and/or Services and the Respondent may seek clarification in accordance with this Section 3.2. Neither ONTC nor the Government of Ontario shall be responsible for any

misunderstanding by a Respondent of the RFP Documents, the RFP Process or the Goods and/or Services.

- (6) If ONTC gives oral answers to questions at any meeting (Section 3.4), these answers will not be considered final, and may not be relied upon by any of the Respondents, unless and until such answers are provided by way of an addendum in accordance with this Section 3.2.
- (7) The Contact Person designated by ONTC for this RFP is **Brinda Ranpura, Procurement Contracts Specialist, 555 Oak Street East, North Bay, Ontario P1B 8L3 (705) 472-4500 ext. 548, brinda.ranpura@ontarionorthland.ca** (the “Contact Person”). The above Contact Person is the sole contact for this RFP. A Respondent may be disqualified where contact is made with any person other than the Contact Person.
- (8) ONTC will not be responsible for statements, instructions, clarifications, notices or amendments communicated orally by ONTC to one or more of the Respondents. Statements, instructions, clarifications, notices or amendments by ONTC, which affect the RFP Documents, may only be made by addendum.

3.3 Addenda/Changes to the RFP Documents

- (1) ONTC may, in its sole discretion, amend, supplement, or change the RFP Documents prior to the Submission Deadline. ONTC shall issue amendments, supplements, or changes to the RFP Documents by Addendum only. No other statement or response(s) to questions, whether oral or written, made by ONTC or any ONTC advisors, employees or representatives, including, for clarity, the Contact Person, or any other person, shall amend, supplement or change the RFP Documents. Addenda will be distributed in the same manner as the RFP and shall become part of the RFP Documents.
- (2) Each Respondent is solely responsible for ensuring that it has received all Addenda issued by ONTC. Respondents may, in writing by email to the Contact Person, seek confirmation of the number of Addenda, issued under this RFP.

3.4 Respondents’ Meeting

- (1) To assist Respondents in understanding the RFP Documents, and the RFP Process, ONTC may conduct an information meeting (the “**Respondents’ Meeting**”) for all Respondents. Whether or not ONTC will conduct a Respondents’ Meeting is set out in the RFP Data Sheet. If ONTC is conducting a Respondents’ Meeting, the meeting will be held on the date and at the time and location set out in the RFP Data Sheet.
- (2) Attendance by Respondents at a Respondents’ Meeting may not be mandatory but, if one is held, Respondents are strongly encouraged to attend. Whether or not the Respondents’ Meeting is mandatory will be identified on the RFP Data Sheet. When a Respondents’ meeting is mandatory, all attending persons or entities will be required to sign the “Site

Meeting Log” to confirm their attendance and provide a valid email address for purpose of receiving information.

- (3) If ONTC gives oral answers to questions at the Respondents’ Meeting, these answers will not be considered final, and may not be relied upon by any of the Respondents, unless and until such answers are provided by way of an Addendum in accordance with Section 3.2.
- (4) If pre-registration for the Respondents’ Meeting is necessary, the deadline for registration will be set out in the RFP Data Sheet and details regarding the registration process will be set out in the RFP Data Sheet.

3.5 Prohibited Contacts

- (1) Respondents and their respective advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFP Process.
- (2) Without limiting the generality of Section 3.5(1) above, neither Respondents nor any of their respective advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents, or their Proposals:
 - (a) any member of the Evaluation Team (as defined in Section 6.1), except the Contact Person;
 - (b) any advisor to ONTC or the Evaluation Team, except the Contact Person; or,
 - (c) any directors, officers, employees, agents, representatives or consultants of:
 - (i) ONTC, except the Contact Person;
 - (ii) Ontario Ministry of Transportation;
 - (iii) The Premier of Ontario’s office or the Ontario Cabinet office;
 - (iv) A Member of Provincial Parliament (including the Premier); or,
 - (v) Any other person or entity listed in the RFP Data Sheet.
- (3) If a Respondent or any of their respective shareholders, owners, officers, agents, consultants, partners, contractors, subcontractors, advisors, employees, representatives, or other third parties acting on behalf or with the knowledge of the Respondent; in the opinion of ONTC, contravenes RFP Section 3.5(1) or 3.5(2), ONTC may, but is not obliged to, in its sole discretion:
 - (a) take any action in accordance with RFP Section 7.2; or
 - (b) impose conditions on the Respondent’s continued participation in the RFP Process that ONTC considers, in its sole discretion, to be appropriate.

3.6 Media Releases, Public Disclosures, Public Announcements and Copyright

- (1) A Respondent shall not, and shall ensure that its shareholders, owners, officers, agents, consultants, partners, contractors, subcontractors, advisors, employees, representatives, or other third parties acting on behalf or with the knowledge of the Respondent do not, issue or disseminate any media release, social media or Internet post, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) that relates to the RFP Process, the RFP Documents or the Goods and/or Services or any matters related thereto, without the prior written consent of ONTC.
- (2) Neither the Respondents or any of their respective shareholders, owners, officers, agents, consultants, partners, contractors, subcontractors, advisors, employees, representatives, or other third parties acting on behalf or with the knowledge of the Respondent shall make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Respondent or Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without ONTC's prior written consent, which consent may be withheld, conditioned or delayed in ONTC's sole discretion. Respondents, and their respective advisors, employees and representatives are permitted to state publicly that they are participating in the RFP Process but shall not publicly identify other Respondents without the prior written consent of ONTC.
- (3) Respondents shall not use the name of ONTC or any of ONTC's logos, designs, colours or registered trademarks and names used, owned or registered by ONTC, during the RFP Process, if selected as the Successful Respondent, or at any time prior to, during, or following the supply of the Goods and/or Services, except with the prior written consent of ONTC.

3.7 Confidentiality and Disclosure Issues – Respondent Information

- (1) Respondents are advised that ONTC may be required to disclose the RFP Documents, any other documentation related to the RFP Process and a part or parts of any Proposal pursuant to the *Freedom of Information and Protection of Privacy Act* (Ontario) ("FIPPA"). Respondents are also advised that FIPPA does provide protection for confidential and proprietary business information. Respondents are strongly advised to consult their own legal advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Proposals. Subject to the provisions of FIPPA, ONTC will use reasonable commercial efforts to safeguard the confidentiality of any information identified by the Respondent as confidential but shall not be liable in any way whatsoever to any Respondent if such information is disclosed based on an order or decision of the Information and Privacy Commissioner or otherwise as required under the Applicable Laws.
- (2) The Respondent agrees that ONTC may disclose Proposals, and all information submitted in or related to the Proposals, to the Government of Ontario.

- (3) ONTC may provide the Proposals to any person involved in the review and/or evaluation of the Proposals on behalf of ONTC and ONTC may:
 - (a) make copies of the Proposal; and/or,
 - (b) retain the Proposal.
- (4) ONTC may disclose any information with respect to the Respondents, the Proposals and the RFP Process as required by the Applicable Laws.
- (5) The Respondent shall not require ONTC or any of its representatives to sign a non-disclosure agreement in respect of any step taken or information provided as part of this RFP Process, provided that if the nature of the subject matter of the RFP is such that, in the opinion of ONTC, it would be appropriate to enter into a non-disclosure agreement with a Respondent or Respondents, ONTC and/or the Respondent shall enter into such agreement in a form and with the content satisfactory to ONTC.

3.8 Confidential Information

- (1) In this RFP, “**RFP Information**” shall mean all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise procured in any way, whether before or after the RFP Process, from ONTC or any Ministry or Agency of the Government of Ontario, in connection with the RFP Documents or the Goods and/or Services excluding any item which:
 - (a) is or becomes generally available to the public other than as a result of a disclosure resulting from a breach of this RFP Section 3.8;
 - (b) becomes available to the Respondent on a non-confidential basis from a source other than ONTC, so long as that source is not bound by a non-disclosure agreement with respect to the information or otherwise prohibited from transmitting the information to the Respondent by a contractual, legal or fiduciary obligation; or,
 - (c) The Respondent is able to demonstrate was known to it on a non-confidential basis before it was disclosed to the Respondent by ONTC.
- (2) RFP Information:
 - (a) shall remain the sole property of ONTC or the Government of Ontario, as applicable, and the Respondent shall maintain the confidentiality of such information except as required by law;

- (b) shall not be used by the Respondent for any other purpose other than submitting a Proposal or performing obligations under any subsequent agreement with ONTC relating to the Goods and/or Services;
 - (c) shall not be disclosed by the Respondent to any person who is not involved in the Respondent's preparation of its Proposal or in the performance of any subsequent agreement relating to ONTC, or the Government of Ontario, as applicable, without prior written authorization from ONTC;
 - (d) shall not be used in any way detrimental to ONTC or the Government of Ontario; and,
 - (e) if requested by ONTC, shall be returned to the Contact Person or destroyed by the Respondent no later than ten (10) calendar days after such request is received in writing by the Respondent.
- (3) Each Respondent shall be responsible for any breach of the provisions of this RFP Section 3.8 by any person to whom it discloses the RFP Information.
- (4) Each Respondent or Short-listed Respondent acknowledges and agrees that a breach of the provisions of this RFP Section 3.8 would cause ONTC, the Government of Ontario and/or their related entities to suffer loss which could not be adequately compensated by damages, and that ONTC, the Government of Ontario and/or any related entity may, in addition to any other remedy or relief, enforce any of the provisions of this RFP Section 3.8 upon application to a court of competent jurisdiction without proof of actual damage to ONTC, the Government of Ontario or any related entity.
- (5) Notwithstanding RFP Section 9.3, the provisions of this RFP Section 3.8 shall be binding and shall survive any cancellation or termination of this RFP and the conclusion of the RFP Process.
- (6) ONTC may, in its sole discretion, require that Respondents execute a legally binding non-disclosure agreement in a form and substance satisfactory to ONTC prior to receiving the RFP Information.

3.9 Governing Laws and Attornment

- (1) This RFP Process and the Final Agreement entered into pursuant to this RFP Process shall be governed and construed in accordance with the laws of Ontario, the laws of Quebec, the laws of Manitoba, if relevant to the subject matter of this RFP, and the applicable laws of Canada, excluding any conflict of laws principles.
- (2) Each Respondent agrees that the courts of the Province of Ontario shall have exclusive jurisdiction to entertain any action or proceeding based on, relating to or arising from this RFP process.

3.10 Licenses and Permits

- (1) If a Respondent is required by the Applicable Laws to hold or obtain a license, permit, consent or authorization to carry on an activity contemplated in its Proposal, neither acceptance of the Proposal nor execution of the Final Agreement shall be considered to be approval by ONTC of carrying on such activity without the requisite license, permit, consent or authorization.

3.11 Respondents' Costs

- (1) The Respondent shall bear all costs and expenses incurred by the Respondent relating to any aspect of its participation in this RFP Process, including, without limitation, all costs and expenses related to the Respondent's involvement in:
 - (a) the preparation, presentation and submission of its Proposal;
 - (b) due diligence and information gathering processes;
 - (c) attendance at any Respondents' Meeting(s) or presentations;
 - (d) preparation of responses to questions or requests for clarification from ONTC;
 - (e) preparation of the Respondent's own questions during the clarification process;
 - (f) preparation of prototypes, proof of concept and/or demonstrations; and,
 - (g) any discussions or negotiations with ONTC regarding the Final Agreement.
- (2) Without limiting the generality of Section 9.1(2) of this RFP, in no event shall ONTC or the Government of Ontario be liable to pay any costs or expenses or to reimburse or compensate a Respondent under any circumstances for the costs or expenses set out in Section 3.11(1), regardless of the conduct or outcome of the RFP Process.

3.12 Delay and Costs of Delay

- (1) By submitting a Proposal, the Respondent waives all claims against ONTC and the Government of Ontario including any claims arising from any error or omission in any part of the RFP Documents or RFP Information or any delay, or costs associated with delays, in the RFP Process.

3.13 Clarification and Verification of Respondent's Proposal

- (1) Following submission of a Proposal, ONTC may:
 - (a) request a Respondent to clarify or verify the contents of its Proposal, including by submitting supplementary documents; and/or,

- (b) request a Respondent to confirm an ONTC interpretation of the Respondent's Proposal.
- (2) Any information received by ONTC from a Respondent pursuant to a request for clarification or verification from ONTC as part of the RFP Process may, in ONTC's discretion, be considered as an integral part of the Proposal even if such information should have been submitted as part of the Respondent's Proposal and may, in ONTC's discretion, be considered in the evaluation of the Respondent's Proposal.
- (3) ONTC may, in its sole discretion, verify or clarify any statement or claim contained in any Proposal or made subsequently in any interview, presentation, or discussion. That verification or clarification may be made by whatever means that ONTC deems appropriate which may include contacting the persons identified in the contact information provided by the Respondent and contacting persons or entities other than those identified by any Respondent.
- (4) By submitting a Proposal, the Respondent is deemed to consent to ONTC verifying or clarifying any information and requesting additional information from third parties regarding the Respondent) and its directors, officers, shareholders or owners and any other person associated with the Respondent as ONTC may determine is appropriate.
- (5) ONTC is not obliged to seek clarification or verification of any aspect of a Proposal, or any statement or claim made by a Respondent.
- (6) Requests for clarifications shall not be construed as acceptance by ONTC of a Proposal.

3.14 Two-Envelope Process

- (1) ONTC may elect to complete a Two-Envelope Process. Whether Respondents will be required to submit their Proposals using a Two-Envelope Process will be identified on the RFP Data Sheet.
- (2) If ONTC elects to complete a Two-Envelope Process, the Proposal shall be broken down into two components; a technical submission and a financial submission.
- (3) If ONTC elects to complete a Two-Envelope Process, ONTC will identify a minimum score that must be attained on the technical submission on the RFP Data Sheet. Proposals that do not meet the minimum score for the technical submission following evaluation of the technical submission, will not proceed further in the evaluation process, provided that ONTC may, in its sole discretion, based on the overall scores of all the technical submissions, revise the minimum score required to proceed further in the evaluation process. Financial submissions will only be opened and evaluated for the Proposals that meet the minimum score for the technical submission.

SECTION 4 - PROPOSAL CONTENT AND FORMAT

4.1 Format and Content of Proposal

- (1) Respondents shall submit their Proposal in one envelope or, if submitting electronically, one electronic folder. Where required by the RFP Data Sheet to follow the two-envelope process, Respondents shall submit the technical submission and the financial submission in two separate envelopes or, if submitting electronically, two separate electronic folders.
- (2) Unless otherwise specified in the RFP Data Sheet, Respondents shall not submit pre-printed literature with their Proposals. Any unsolicited pre-printed literature submitted as part of a Proposal will not be reviewed by the Evaluation Team.
- (3) Each Respondent will:
 - (a) in a clear, concise and legible manner, complete and submit all documentation and information required by Part 2, Part 3, and Part 4 to the RFP;
 - (b) for a hard copy submission, complete any handwritten portions of the proposal forms in ink;
 - (c) provide all information requested and ensure that an authorized person or persons sign all forms where indicated. Failure to provide all requested information on the proposal forms and failure to fill in all blank spaces may result in a Proposal being determined to be non-compliant; and,
 - (d) use only the proposal forms issued as part of the RFP documents unless otherwise indicated.
- (4) Information provided by Respondents on hard copy proposal forms may be amended prior to the Proposal submission, provided the amendments are initialed by an authorized representative of the Respondent. Un-initialed pre-submission amendments may result in the Proposal being declared non-compliant.
- (5) Proposals that are not originals (if hard copy), are unsigned, improperly signed, incomplete, conditional or illegible, may be declared non-compliant.
- (6) The Harmonized Sales Tax (HST) shall not be included in the price. Any taxes or increases to taxes announced prior to the date of the issuance of the RFP Documents and scheduled to come into effect subsequent to it shall be taken into consideration at time of invoicing.
- (7) Price:
 - (a) Price shall be an all-inclusive lump sum price (excluding HST), unless otherwise indicated in the RFP Documents; and,

- (b) Where the RFP requires the Respondent to provide a breakdown of the price in Proposal Form 1-A, the price as stated in Proposal Form 1 shall govern in the case of conflict or ambiguity between the price and the sum of the breakdown of the price.

(8) Listing of Subcontractors

Each Respondent shall complete the “Subcontractors” section of Proposal Form 2 – Respondent’s General Information, naming the Subcontractors which the Respondent will employ to perform an item of the work called for by the RFP Documents. Failure of the Respondent to list Subcontractors where required, may result in the Proposal being declared non-compliant.

4.2 Proposal Submission Form

- (1) Each Respondent will complete and submit the forms included in Part 4 – Form of Proposal. Failure of the Respondent to complete and submit one or more of the forms included in Part 4 – Form of Proposal, may result in the Proposal being declared non-compliant.
- (2) Respondents shall execute the Proposal Submission Form as follows:
 - (a) in the case of a sole proprietorship, the sole proprietor will sign the Proposal Submission Form and have the signature witnessed;
 - (b) in the case of a corporation, an authorized signing officer will sign the Proposal Submission Form; or,
 - (c) in the case of a partnership, a partner or partners authorized to bind the partnership will sign the Proposal Submission Form and have their signatures witnessed.

4.3 References and Past Performance Issues

- (1) If specified in the RFP Data Sheet, Respondents shall provide reference information. Unless otherwise set out in the RFP Data Sheet, all references shall be, where possible, with respect to similar goods and/or services, as applicable, during the five (5) years immediately prior to the Submission Deadline. Unless otherwise set out in the RFP Data Sheet, the Respondent shall provide a minimum of three (3) references.
- (2) ONTC may, in its sole discretion, confirm the Respondent’s experience and ability to provide the Goods and/or Services by contacting the Respondent’s references. However, ONTC is under no obligation to contact references submitted by any Respondent. References and information received from references, if contacted, will be taken into account in the evaluation process as identified in the RFP Data Sheet.

- (3) ONTC may take into account in the evaluation process reliable information received from the Government of Ontario or its Agencies regarding past performance of a Respondent, provided information evidencing past poor performance by a Respondent is provided to the Respondent (subject to any restrictions or disclosure imposed by applicable law) and the Respondent is afforded an opportunity to respond to the information.
- (4) If ONTC receives information from referees of a Respondent's past poor performance, ONTC shall advise the Respondent (subject to any restrictions on disclosure imposed by applicable law) and afford the Respondent an opportunity to respond to the information prior to considering this information as part of the evaluation process.

4.4 Conflict of Interest

- (1) For the purposes of this Section 4.5, the term "**Conflict of Interest**" includes, but is not limited to, any situation or circumstance where the interests, conduct, other commitments or relationships of a Respondent, a Respondent's family member or an officer, director or employee of the Respondent could or could be perceived to, directly or indirectly, compromise, impair or be in conflict with the integrity of the RFP Process, the subject matter of the RFP or ONTC.
- (2) Each Respondent shall promptly disclose any potential, perceived or actual Conflict of Interest of the Respondent to the Contact Person in writing. If ONTC discovers a Respondent's failure to disclose a Conflict of Interest, ONTC may, in its sole and absolute discretion disqualify the Respondent or terminate the Final Agreement if such Respondent is the Successful Respondent.
- (3) ONTC may, in its sole discretion, and in addition to any other remedy available at law or in equity:
 - (a) waive any Conflict of Interest;
 - (b) impose conditions on a Respondent that require the management, mitigation and/or minimization of the Conflict of Interest; or,
 - (c) disqualify the Respondent from the RFP Process if, in the sole and absolute opinion of ONTC, the Conflict of Interest cannot be managed, mitigated or minimized.

SECTION 5 - PROPOSAL SUBMISSION, WITHDRAWAL, MODIFICATION

5.1 Submission of Proposals and Late Proposals

- (1) Each Respondent shall submit their proposal in the format prescribed in the RFP Data Sheet. ONTC will not accept any proposal submission that is not submitted in the format prescribed in the RFP Data Sheet.

ONTC may elect to accept Electronic Bid Submissions, Physical Bid Submissions or a combination of both.

- (a) If ONTC elects to use Electronic Bid Submissions, submissions shall be submitted on, and in accordance with, forms supplied by ONTC. **All responses are to be submitted to ONTC through the use of MERX Electronic Bid Submission (EBS).** Respondents shall be solely responsible for the delivery of their Proposals in the manner and time prescribed in the RFP Data Sheet.

Questions concerning submitting through MERX should be addressed to:

- MERX Customer Support
- Phone 1-800-964-6379
- Email merx@merx.com

Any Proposal from a Respondent whose name does not appear on the official MERX document request list (i.e., who has not downloaded the documents themselves) will be declared invalid, and the Proposal will not be considered.

MERX EBS does not allow submissions to be uploaded after the bid submission deadline; therefore, the Respondent should ensure they allow plenty of time to upload the documents.

Where required by the RFP Data Sheet to use a two-envelope process, Respondents shall include two separate and clearly identifiable attachments: 1) Technical and, 2) Financial. The file names for the technical and financial attachments should be sufficiently distinguishable such that ONTC does not need to open the attachments to differentiate between them.

- (b) If ONTC elects to use Physical Bid Submissions, Respondents shall submit one original and the number of copies of its Proposal (in hard copy) specified in the RFP Data Sheet and the number of electronic copies of its Proposal (on a properly labelled CD or USB key in PDF format) specified in the RFP Data Sheet, at the correct location for submission and on or before the Submission Deadline. If there is any difference whatsoever between the electronic copy of the Proposal and the original hard copy, the original hard copy of the Proposal, as submitted, will govern. The electronic copy of the Proposal is solely for the convenience of ONTC.

Respondents shall submit their Proposals to the attention of the Senior Manager of Strategic Procurement by prepaid courier or personal delivery at the following address:

Jason Baker
Senior Manager, Strategic Procurement
Ontario Northland Transportation Commission
555 Oak Street East
North Bay, Ontario P1B 8E3

The Respondent shall place their Proposal Submission in a sealed envelope or package with the Respondent's full legal name and return address, the RFP Number, the Submission Deadline and the label "Proposal Submission" clearly displayed on the outside of the envelope.

Where required by the RFP Data Sheet to use a two-envelope process, Respondents shall have one sealed envelope as prescribed above that contains two individual sealed envelopes inside that are clearly marked "Technical Submission" and "Financial Submission".

- (c) For the convenience of the Respondents, and only when identified in the RFP Data Sheet, ONTC may allow either an Electronic Bid Submission through MERX or a Physical Bid Submission. The Respondent shall only use one method and follow the same procedure prescribed above.
- (2) Proposals must be received before the time noted in the RFP Data Sheet.
- (3) Proposals will be date and time stamped at the place receiving the Proposals. Late Proposals will be returned unopened.
- (4) Proposals which are submitted by facsimile transmission, email, or by electronic means other than MERX will NOT be considered.
- (5) Respondents are solely responsible for the method and timing of delivery of their Proposals.
- (6) ONTC reserves the right to make copies of the Respondent's Proposals as it may be required for the purpose of conducting a full evaluation of the Proposal submitted.
- (7) The Respondent should identify and mark any trade secret or proprietary intellectual property in its Proposal.

5.2 Late Proposals

- (1) ONTC will reject Proposals that are received after the Submission Deadline.

5.3 Withdrawal of Proposals

- (1) When submitting a Physical Bid Submission, a Respondent may withdraw its Proposal at any time before the Submission Deadline by notifying the Contact Person in writing. ONTC shall return, unopened, a Proposal that has been withdrawn.
- (2) When submitting an Electronic Bid Submission, MERX will allow withdrawal of Proposals up to the Submission Deadline.

5.4 Amendment of Proposals

- (1) When submitting a Physical Bid Submission, Respondents may amend their Proposals after submission but only if the original Proposal is withdrawn and the amended Proposal is submitted before the Submission Deadline.
- (2) Electronic Bid Submissions through MERX will allow amendments up to the closing date and time; however, **Respondents are responsible for ensuring they allow sufficient time to upload the amended documents.**
- (3) If more than one Proposal is received from the same Respondent before the Submission Deadline, only the last Proposal received before the Submission Deadline will be considered.

5.5 Proposal Irrevocability

- (1) Subject to the Respondent's right to withdraw or amend the Proposal before the Submission Deadline, the Respondent's Proposal is irrevocable and shall remain in effect and open for acceptance for ninety (90) days after the Submission Deadline.

5.6 One Proposal per Person or Entity

- (1) Except as set out in the RFP Data Sheet or with ONTC's approval:
 - (a) a person or entity shall submit or participate in only one Proposal either individually or as a Respondent team member; and,
 - (b) a person or entity shall not be a subcontractor of a Respondent and also submit a Proposal individually or as a Respondent team member in the same RFP Process.
- (2) If a person or entity submits or participates in more than one Proposal in contravention of RFP Section 5.6(1), ONTC may, in its sole discretion, disqualify any or all of the Proposals submitted by that person or entity or in which that person or entity is a participant.

SECTION 6 - PROPOSAL EVALUATION

6.1 Evaluation Team

- (1) ONTC will establish an evaluation team for the purpose of evaluating Proposals (the "**Evaluation Team**").
- (2) The Evaluation Team may, in its sole discretion, delegate certain administrative functions related to the evaluation of Proposals to a separate team of individuals who are not members of the Evaluation Team, who will be supervised by the Evaluation Team. Without limiting the generality of the foregoing, but for greater particularity, the Evaluation Team may seek the advice and assistance of third-party consultants and the Government of

Ontario. Each Respondent acknowledges that the RFP documents may have been prepared with the assistance of a third-party consultant and that the consultant may participate in the evaluation of the Proposals.

6.2 Evaluation of Proposals

- (1) The Respondents' Proposals will be reviewed and evaluated by the Evaluation Team on the basis of the evaluation criteria set out in the RFP Data Sheet (the "**Evaluation Criteria**").
- (2) After selection of the Short-listed Respondent(s), ONTC may, in its sole discretion, negotiate changes, amendments or modifications to the Short-listed Respondent's Proposal or the Final Agreement.
- (3) If ONTC is of the opinion that any of the following apply, then ONTC may, in ONTC's sole discretion, decline to select that Respondent to be a Short-listed Respondent:
 - (a) a Respondent has submitted a price that is clearly insufficient to perform the supply of Goods and/or Services;
 - (b) a Respondent has previously provided poor performance to ONTC or a subsidiary of ONTC;
 - (c) a Respondent is disqualified from participating in the RFP Process per RFP Section 7.2 (1)(i);
 - (d) ONTC cannot, to ONTC's satisfaction, prior to the conclusion of the RFP Process, verify independently or through a third party or parties any and/or all information, statements, representations and/or warranties contained in the Proposal;
 - (e) a Respondent or any subcontractor of the Respondent is not financially sound, or ONTC is unable to obtain from the Respondent or third-party sources reasonable assurances of the financial position of the Respondent or any of its subcontractors;
 - (f) the overall cost to ONTC would be significantly increased with that Respondent;
 - (g) the Respondent failed to meet the mandatory requirements specified in the RFP Data Sheet; or,
 - (h) the Respondent failed to attain the minimum score required for the Technical Submission, where the RFP Data Sheet called for a two-envelope process.

6.3 Short-Listing

- (1) The Evaluation Team will establish the list of Short-listed Respondents based on the Evaluation Criteria.

- (2) The number of Respondents short-listed is in the sole discretion of ONTC.

6.4 Interviews, Site Visits, Demonstrations and Presentations

- (1) ONTC may, in its sole discretion, conduct interviews, demonstrations, site visits or presentations as part of the evaluation process if set out in the RFP Data Sheet.
- (2) The evaluation of any interviews, demonstrations, site visits or presentations will be conducted in accordance with the process set out in the RFP Data Sheet.
- (3) ONTC may conduct interviews, demonstrations, site visits or presentations with some or all Respondents, or may restrict participation to only the Short-listed Respondent(s).

SECTION 7 - GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

7.1 ONTC's Discretion

- (1) ONTC may determine, in its sole discretion:
 - (a) the membership of the Evaluation Team;
 - (b) if a Proposal is compliant with the RFP Documents;
 - (c) if a failure to comply is material;
 - (d) if a Proposal or a Respondent is disqualified;
 - (e) the evaluation results and ranking for each Respondent; and,
 - (f) which Respondent, if any, and how many Respondents, based on the evaluation process, will be Short-listed Respondents.

7.2 Disqualification

- (1) ONTC may, in its sole discretion, disqualify a Respondent or a Respondent's Proposal or cancel its decision to identify a Respondent as a Short-listed Respondent or a Successful Respondent, at any time prior to the execution of the Final Agreement by ONTC, if:
 - (a) The Respondent fails to cooperate in any attempt by ONTC to clarify or verify any information provided by the Respondent in its Proposal;
 - (b) The Respondent contravenes RFP Section 3.5, RFP Section 3.6 or RFP Section 5.6(2);
 - (c) The Respondent fails to comply with the Applicable Laws;

- (d) The Proposal contains false or misleading information, or the Respondent provides false or misleading information in any part of the RFP Process;
 - (e) The Proposal, in the sole discretion of ONTC, reveals a Conflict of Interest that cannot be managed, mitigated or minimized;
 - (f) There is evidence that the Respondent colluded with one or more other Respondents in the preparation or submission of Proposals;
 - (g) The Respondent has previously breached or been in default of compliance with any term of any agreement with ONTC and such breach or default has not been waived by ONTC or the Respondent has not cured the default;
 - (h) The Respondent has been convicted of an offence in connection with any services rendered by the Respondent to ONTC, or to any Ministry, Agency, Board or Commission of the Government of Ontario or the Government of Canada;
 - (i) The Respondent, at the time of issuance of this RFP or any time during the RFP Process, has an outstanding claim or is engaged in an ongoing legal dispute with ONTC, other than an adjudication under the Construction Act;
 - (j) The Proposal is not Substantially Compliant;
 - (k) The Respondent has failed to notify ONTC of, or ONTC has not approved, a post-submission change in the control of the Respondent or in the circumstances of the Respondent that may materially negatively impact the Respondent's ability to perform its obligations if selected as the Successful Respondent; or,
 - (l) The Respondent has received a Vendor Performance Evaluation as part of ONTC's Vendor Performance Policy, and received a total rating on the Final Performance Form that disqualifies the Respondent from participating in the RFP Process.
- (2) Notwithstanding Section 7.1(1), ONTC shall retain the right to select as the Successful Respondent, any Respondent(s) which, in ONTC's sole and absolute discretion, has submitted a substantially compliant Proposal(s).

7.3 General Rights of ONTC

- (1) ONTC may, in its sole discretion and at any time during the RFP process:
- (a) reject any or all of the Proposals;
 - (b) accept any Proposal or any portions of any Proposals for any reason whatsoever;

- (c) reject any Proposals or any portions of Proposals for any reason whatsoever,
 - (d) if only one Proposal is received, elect to either accept it, reject it, or enter into negotiations with the applicable Respondent;
 - (e) elect not to proceed with, cancel, or terminate the RFP;
 - (f) alter the Submission Deadline or any other deadlines associated with the RFP Process;
 - (g) change the RFP Process or any other aspect of the RFP Documents; or,
 - (h) cancel this RFP Process and subsequently conduct another competitive process for the same Goods and/or Services that are the subject matter of this RFP or subsequently enter into negotiations with any person or persons with respect to the Goods and/or Services that are the subject matter of this RFP.
- (2) If ONTC, in its sole discretion, is of the opinion that all of Proposals submitted are not substantially compliant, ONTC may:
- (a) take any action in accordance with Section 7.3. (1);
 - (b) carry out a process whereby all Respondents are directed to correct the deficiencies in their Proposals for re-submission; or,
 - (c) negotiate an agreement for the whole or any part of the Goods and/or Services with a Respondent which has submitted a Non-compliant Proposal.

SECTION 8 – AGREEMENT FINALIZATION AND DEBRIEFING AND SUCCESSFUL RESPONDENT

8.1 Finalization of the Agreement

- (1) ONTC may, in its sole discretion, retain more than one Respondent to provide the Goods and/or Services.
- (2) ONTC reserves the right in its sole discretion to sub-divide and/or bundle the Goods and/or Services which are the subject of this RFP and award one or any number of separate contracts for the Goods and/or Services.
- (3) ONTC may, in its sole discretion, enter into negotiations with one or more Respondent(s) for the purpose of selecting a Successful Respondent(s) and finalizing an agreement.
- (4) Either ONTC or a Respondent may withdraw from negotiations at any time prior to the Successful Respondent(s) being identified.

- (5) The Successful Respondent is expected to enter into the relevant CCDC form of agreement which shall include the Supplementary Conditions in Part 5. Proposal Form 5 – Compliance with Contract Documents allows a Respondent to submit suggested changes to the Supplementary Conditions. ONTC does not have any obligation to accept any proposed changes to the Supplementary Conditions and will do so in its sole discretion. ONTC may, in ONTC's sole discretion; (i) consider only a minimal number of changes to the Supplementary Conditions; (ii) consider significant material proposed changes to negatively impact the evaluation of the Respondent's proposal; or (iii) disqualify any Respondent where the changes or the number of changes made by the Respondent to the Supplementary Conditions would be, in ONTC's sole discretion, too onerous to successfully negotiate within the timeframe set out in Section 8.1 (7) below or are unacceptable to ONTC. **In any event, ONTC will not accept any material changes to the clauses in the Supplementary Conditions relating to the Confidentiality, Personal Information, Intellectual Property ownership and infringement, Indemnification, Limitation of Liability or rights of ONTC on termination. ONTC, as an Ontario Crown corporation, is unable to provide indemnities pursuant to s.28 of the *Financial Administration Act* (Ontario)**

If a Respondent does not submit any proposed amendments in Proposal Form 5, it will be deemed to have accepted and will be required to execute the Final Agreement in the form attached to this RFP. If a Respondent has submitted proposed amendments to the Final Agreement, negotiations respecting those amendments shall be conducted within the timeframe set out in Section 8.1(7).

- (6) If a Successful Respondent fails or refuses to enter into and execute the Final Agreement within five (5) Business Days of being notified they are the Successful Respondent (ONTC may extend such period of time in ONTC's sole discretion), or a Successful Respondent fails or refuses to provide the documentation in accordance with Section 8.1(7), ONTC may, in its sole discretion, take any one of the following actions:
- (a) terminate all negotiations and cancel its identification of that Respondent as a Successful Respondent;
 - (b) select another Respondent or Short-Listed Respondent as the Successful Respondent;
 - (c) take any other action in accordance with Section 7.3; or,
 - (d) pursue any other remedy available to ONTC at law.
- (7) Prior to supplying any Goods and/or Services pursuant to the Contract, the Successful Respondent shall deliver to ONTC:
- (a) certificates of insurance as specified in the draft Agreement;
 - (b) executed Contractors Health and Safety Responsibility Agreement;

- (c) Respondent's Health and Safety, and Environmental Policies; and,
- (d) a current Clearance Certificate issued by the Workplace Safety and Insurance Board, if applicable.

8.2 Notification If Successful or Not

- (1) The Successful Respondent and unsuccessful Respondents will be notified by ONTC in writing regarding their success or failure in the RFP Process.

8.3 Debriefing

- (1) Respondents may request a debriefing after receipt of a notification pursuant to RFP Section 8.2. All Respondent requests should be in writing to the Contact Person no later than 60 calendar days after receipt of the notification. ONTC will conduct debriefings in the format prescribed by the OPS Procurement Directive.

SECTION 9 - LEGAL MATTERS AND RIGHTS OF ONTC

9.1 Limit on Liability

- (1) The total liability of the Respondent to ONTC for loss and damage arising from the Respondent who is selected as the Successful Respondent but then fails to deliver the evidence of insurance or other documents required under Section 8.1(8) within the time period specified in Section 8.1 or fails to execute the Final Agreement shall be limited to ten (10) percent of the value of the proposal. The liability of the Respondents for any other loss or damage suffered by ONTC as part of this RFP Process shall be without limit.
- (2) By submitting a Proposal,
 - (a) each Respondent acknowledges ONTC's rights as stated herein and absolutely waives any right of action against ONTC for ONTC's failure to accept the Respondent's Proposal whether such right of action arises in contract, negligence, bad faith, or any other cause of action;
 - (b) each Respondent covenants and agrees that, under no circumstances, shall ONTC, or any of its employees, officers, representatives, agents or advisors, be liable to any Respondent, whether in contract, tort, restitution, or pursuant to any other legal theory, for any claim, action, loss, damage, cost, expense or liability whatsoever and howsoever arising from this RFP Process, a Respondent's Proposal in response to this RFP Process, or due to the acceptance or non-acceptance of any Proposal, or as a result of any act or omission by ONTC and/or its employees, officers, representatives, agents or advisors, including any information or advice or any errors or omissions that may be contained in the RFP Documents, or any other documents or information provided to a Respondent, or

arising with respect to the rejection or evaluation of any or all of the Proposals, any negotiations with any of the Respondents, or the selection of any Respondent as a Short-listed Respondent or the Successful Respondent; and,

- (c) each Respondent shall indemnify and hold harmless ONTC, its employees, officers, representatives, agents and advisors, from and against any and all claims, demands, actions or proceedings brought by third parties, including but not limited to the Respondent's subcontractors or suppliers, in relation to this RFP Process.

9.2 Power of Legislative Assembly

- (1) No provision of the RFP Documents (including a provision stating the intention of ONTC) is intended to operate, nor shall any such provision have the effect of operating, in any way, that would interfere with or otherwise fetter the discretion of the Legislative Assembly of Ontario in the exercise of its legislative powers.

9.3 RFP Not a “Bidding Contract” or a Tender

- (1) Notwithstanding any other provision of this RFP, this RFP is not a tender call, ONTC does not intend to create any contractual relations or obligations with any of the Respondents by virtue of issuing this RFP, and this RFP is not an offer to enter into a contract (often referred to as “Contract A”). Except as provided in RFP Section 3.8, and 9.1, neither this RFP nor the submission of a Proposal by a Respondent shall create any legal or contractual rights or obligations whatsoever on any of the Respondent, ONTC, the Government of Ontario or any Ministry of the Government of Ontario.

SECTION 10 – VENDOR PERFORMANCE

10.1 General

- (1) ONTC has established a Vendor Performance Policy, which provides a framework for ONTC to maximize the value for money of its Vendors by:
 - (a) proactively managing the performance of Vendors in accordance with ONTC's Purchasing Policy; and,
 - (b) creating a record of past performance for use by ONTC when selecting Vendors for the supply of goods and services.

10.2 Vendor Performance Evaluation

- (1) Successful Respondents who enter into a Final Agreement with ONTC may be required to participate in the Vendor Performance Evaluation process.

10.3 Vendor Ratings for Proposal Evaluation Purposes

- (1) ONTC may access a Respondent's Vendor Performance Evaluations for previous contracts as part of the Evaluation Process. The manner in which the Respondent's

ratings will be used will be identified in the Evaluation Criteria of the RFP Data Sheet.

SECTION 11 – TRANSPARENCY AND FAIRNESS

11.1 General

- (1) ONTC is committed to procuring goods and services through a process that is conducted in a fair and transparent manner, providing equal opportunity to vendors.
- (2) ONTC endeavors to provide specifications that meet the requirements of the procurement without naming specific brands. However, there may be instances where a third-party consultant prepares a specification on behalf of ONTC, and a specific brand is named. In these instances, alternate materials or products may be used if ONTC determines the proposed materials or products are equivalent to the materials or products in the specifications. Respondents shall submit proposed alternate materials or products with their Proposal submission to be considered.

SECTION 12 – INTERPRETATION

12.1 General

- (1) In this RFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.
- (2) All references in this RFP to “discretion” or “sole discretion” means in the sole and absolute discretion of the party exercising the discretion.
- (3) For clarity, where the expression “Government of Ontario” is used in this RFP, it includes all Ministries and Agencies of the Government of Ontario.



PART 2

**REQUEST FOR PROPOSALS
SUMMARY OF REQUIREMENTS**

**PART 2 – REQUEST FOR PROPOSALS
 SUMMARY OF REQUIREMENTS
 SCHEDULE 2-A
 RFP DATA SHEET**

RFP 2024 003 Prepared Rock Ballast	
Contact Details	
Contact Person	Brinda Ranpura, Procurement Contracts Specialist
Contact Information	555 Oak Street East North Bay, Ontario, P1B 8L3 Brinda.ranpura@ontarionorthland.ca (705) 472-4500 ext. 548
Proposal Detail	
Respondents' Meeting	There will not be a Respondents' Meeting. Respondents shall seek any clarifications up to four (4) Business Days prior to the Submission Deadline Date and Time.
Validity of Proposals	90 days following the Submission Deadline
Format of Submission	Respondents shall submit their Proposal through MERX Electronic Bid Submissions (EBS). Refer to Part 1, Request for Proposals, Section 5.1 (1) (a). MERX EBS does not allow Proposals to be uploaded after the Submission Deadline; therefore, Respondents shall ensure they allow sufficient time to upload the documents. Proposals which are submitted by facsimile transmission, email or by electronic means other than MERX <u>will NOT</u> be considered.
Two-Envelope Process	This procurement will not be a two-envelope process.
Distribution Method	The RFP Documents will be posted on the ONTC website and MERX. Any addenda to the RFP will be posted in these locations.

**PART 2 – REQUEST FOR PROPOSALS
 SUMMARY OF REQUIREMENTS
 SCHEDULE 2-A
 RFP DATA SHEET *continued***

RFP 2024 003 Prepared Rock Ballast			
Proposal Detail <i>continued</i> – <u>Note the requirements below are new to ONTC</u>			
Submission Requirements	Respondents are required to submit all of the documents listed below as part of their Proposal. Respondents shall confirm they have included the documents listed below with their Proposal by placing a checkmark in the column “Included in Proposal”. If the Respondent fails to include a document listed below as being “Material”, the respondent may be disqualified in accordance with section 6.2 (3) of the RFP.		
	Item	Included in Proposal (indicate with ✓)	Item is classified as Material
	This checklist		
	Proposal Form 1 - Proposal Submission Form		Material
	Proposal Form 1-A – Proposal Submission Form		Material
	Proposal Form 2 - Respondent’s General Information		Material
	Proposal Form 3 Acknowledgment to Comply with Part 3 – Request for Proposals Specifications		Material
	Proposal Form 4 - References		Material
	Proposal Form 5 - Compliance with Contract Documents		
	Proposal Form 6 Health, Safety and Environment		Material
Proposal Form 7 – Supply Chain Security and Local Benefit		Material	

PART 2 – REQUEST FOR PROPOSALS

**SUMMARY OF REQUIREMENTS
 SCHEDULE 2-A *continued*
 RFP DATA SHEET**

RFP 2024 003 Prepared Rock Ballast			
Important Dates			
Publication Date	Friday, February 2, 2024		
Participation Registration Form	Complete and submit to the Contact Person as soon as possible		
Deadline for Additional Information Request	Four (4) full Business Days prior to the Submission Deadline		
Submission Deadline Date and Time	Tuesday, March 5, 2024 at 2:00:00 p.m. local time (North Bay, ON)		
Target Completion Date	April to June 14, 2024		
Procedure of Selection			
Mandatory Requirements	Respondents must first satisfy that all of the Mandatory Requirements listed below have been met. Respondents will receive a pass/fail for each Mandatory Requirement. Respondents who fail any of the Mandatory Requirements will be disqualified from the RFP Process.		
	Mandatory Requirement	Pass	Fail
	Respondent has submitted all of the documents as specified in the Submission Requirements listed in Part 2, Request for Proposals, Summary of Requirements, RFP Data Sheet		
	Respondent has provided sufficient evidence to pass the Contractor Safety Pre-Qualification (Part 4 – Form of Proposal, Proposal Form 7, Health, Safety and Environment)		

**PART 2 – REQUEST FOR PROPOSALS
 SUMMARY OF REQUIREMENTS
 SCHEDULE 2-A *continued*
 RFP DATA SHEET**

**RFP 2024 003
 Prepared Rock Ballast**

Procedure of Selection *continued*

Evaluation General Procedure	ONTC will proceed with an evaluation of the Proposals. The evaluation will be based on the following criteria:	
Evaluation Criteria	Description	Weight
	<p>Price ONTC will use the following to calculate the initial score for price:</p> <p>Lowest price of all Proposals / price of Respondent x 50 = Score</p> <p><i>ONTC reserves the right in its sole discretion to consider the best overall value when evaluating price and adjust the score accordingly. If ONTC, in its sole discretion, is the opinion that the Respondent has submitted a price that is too low to adequately complete the scope of work, then ONTC reserves the right not to use that price as the “Lowers price of all Proposals”.</i></p>	50
	<p>Specifications Acknowledgement to comply with the specifications of prepared rock ballast</p>	25
	<p>Supply Chain Security and Local Benefit Are you able to deliver the required prepared rock ballast as per the critical delivery schedule specified in the RFP? If so, provide details on how you plan to deliver the prepared rock ballast as per the critical delivery date of June 14th, 2024. – 15 points Please advise if you will be utilizing local resources for the delivery of prepared rock ballast – 10 points</p>	25
	Total	100

**PART 2 – REQUEST FOR PROPOSALS
SUMMARY OF REQUIREMENTS
SCHEDULE 2-B
PARTICIPATION REGISTRATION FORM**

Required in order to register and receive any communications in relation to the requirement referenced below.

Date: _____
Reference Number: RFP 2024 003
Description of Requirement: Prepared Rock Ballast

I, the undersigned, am registering to participate in the above referenced requirement and will be the primary contact for any communications in relation to this process and project until further advised.

Company Name: _____
Address: _____

Name of person registering to represent
company referenced above (please print): _____
Email Address: _____
Phone Number: (Main Office Number) _____
Cell Number: _____

Signature of Primary Contact: _____

Return form to the Contact Person as referenced below via email as an attachment:

Thank you.

Brinda Ranpura
Procurement Contracts Specialist
Ontario Northland Transportation Commission
Phone: 1-800-363-7512 or 705-472-4500 Ext. 548
Fax: 1-705-475-5003
Email: brinda.ranpura@ontarionorthland.ca
Website: www.ontarionorthland.ca



PART 3
REQUEST FOR PROPOSALS
SPECIFICATIONS

**PART 3 – RFP SPECIFICATIONS
SCHEDULE 3-A
SCOPE OF WORK**

Prepared Rock Ballast – Specifications

1. Scope

This specification covers the requirements for grading and other significant physical properties of mineral aggregates for prepared ballast.

2. General Requirements

Prepared ballast shall be crushed stone comprised of angular, hard, strong, and durable particles free from injurious amounts of deleterious substances and conforming to the requirements of these specifications.

The Suppliers/Contractor shall, at their own expense, furnish all and every kind of labour, tools, machinery and other plant, services and material whatsoever necessary for the preparation and delivery to the Ontario Northland Transportation Commission (ONTC) of:

- **9,000 tonnes on the Ramore Subdivision at Jardine.**
- **20,000 tonnes on the Temagami subdivision at Rabbit Creek Pit.**
- **46,000 tonnes on the Devonshire Subdivision between Porquis and Cochrane.**

The stone ballast shall be prepared in every respect to the satisfaction of the Rail Infrastructure Department in the manner and upon the terms herein specified and according to specifications below and shall deliver to ONTC in stockpile locations as specified in the RFP Documents and at such time as required by the Rail Infrastructure Department to suit the aforesaid proposals which will form part of the contract.

Please note that crushed rock for the various locations is required as follows:

- **The total order must be completed and delivered by June 14, 2024.**

Ability to deliver as per the above schedule is of critical importance in the evaluation of the Proposals. In their responses, Respondents must stipulate in writing that they have the material, equipment, and manpower to deliver as required above.

3. Quality Requirements

a) Deleterious substances shall not be present in prepared ballast in excess of the following amounts:

- Soft and pliable pieces 5%
- Material finer than 200 sieve 1%

b) The percentage of wear of prepared ballast as tested in the Los Angeles machine shall not be greater than 40% except otherwise specified by the Director, Rail Infrastructure.

c) The soundness of prepared ballast shall be such that when tested in the sodium sulphate or magnesium sulphate soundness tests, the weighted average loss shall not exceed 10% after 5 cycles.

4. Gradation Requirements

a) The grading of prepared ballast shall be determined by test with laboratory sieves having square openings and conforming to current ASTM specification designated E-11.

b) Crushed stone prepared ballast shall conform to the following requirements for grading:

Sieve Size	Normal Size Square Opening	Amounts Finer than Each Sieve (Square Opening Laboratory Sieves) % by Weight						
		2"	1 1/2"	1"	3/4"	1/2"	3/8"	No.4
% passing by Weight	1 1/2" – 3/4"	100	90-100	20-55	0-15		0-5	

5. Washing Ballast

The Supplier/Contractor shall use adequate washing procedures of the crushed stone or suitable dust-control methods to ensure that dust from crushing operation is not carried in the direction of the scales or the stockpile of the prepared stone from where it is loaded in railway hopper cars. If washing and dust control is not included in the unit price (tonne), it must be identified and shown as a separate unit cost on Proposal Form 1 A.

All Rock ballast crushed for Ontario Northland must be washed with high-pressure water nozzles in conjunction with a screening plant. Washing of any ballast will be in the final stage of the crushing operation prior to ballast being dumped into a hopper or waiting trucks.

The washed ballast must meet the acceptance of the Director Rail Infrastructure or his representative. Any ballast which fails to comply with this requirement will be rejected.

6. Handling

Prepared ballast shall be handled at the producing plant in such a manner that is kept clean and free from segregation. It shall be loaded only into trucks which are in good order, tight enough to prevent leakage and waste of material, and which are clean and free from rubbish or any substance which would foul or damage ballast.

7. Scaling and Inspection

The Successful Respondent(s) will be responsible for weighing and inspecting the crushed rock ballast to ensure total compliance with quantity ordered and with all specifications. Successful contractors will be required to provide gradation charts and, from time to time, samples of the crushed rock ballast. ONTC reserves the right of random inspections at the crushing site(s) and to shut down the crushing operation at any time if the crushed rock is not found to meet any and all specifications.

8. Testing

Samples of the finished product for gradation and other required tests shall be taken from each 500 tonnes of prepared ballast, unless otherwise ordered by the Rail Infrastructure Department. The samples shall be representative and shall weigh not less than 50 pounds. The gradation of the samples is plotted on Ontario Northland Drawing No. A-4222 (A).

9. Methods of Test

- a) Samples shall be secured in accordance with the current ASTM Method of Test, designation D75.
- b) Sieve analysis shall be made in accordance with the current ASTM Method of Test, designation C136.
- c) Material finer than the No.200 sieve shall be determined in accordance with the current ASTM Method of Test, designation C117-61T.
- d) The percentage of soft particles shall be determined in accordance with the current ASTM Method of Test, designation C235-57T.
- e) The resistance to abrasion shall be determined in accordance with the current ASTM Method of Test, designation C131-55, using the standard grading most nearly representative of the size of ballast specified.
- f) Soundness tests shall be made in accordance with the current ASTM Method of Test, designation C88-61T.
- g) The weight per cubic foot shall be determined in accordance with the current ASTM Method of Test, designation C29-60.

10. Measurement and Payment

All ballast will be paid for by the tonne, and the Supplier/Contractor shall, at his own expense, provide, install, maintain, and remove scales of sufficient capacity for the measurement of such material. Such scales shall meet the approval of the Rail Infrastructure Department and shall be located at the site where material is produced as directed by a representative of the Rail Infrastructure Department. The Supplier/Contractor shall employ adequate washing of the crushed stone or dust control methods to ensure that the dust from the crushing operation is not carried in the direction of the scales or the stockpile of the prepared stone.

The approach roadway shall be constructed on a flat grade, level with the scale platform for at least one truck length on either side of the platform.

Before commencing to crush, the scales must measure within service limits of error according to Weights and Measures Acts and Regulations. The certification issue by the testing authority of the Government of Canada shall be on view at the scale at all times. Two copies of weight tickets shall be submitted to the Rail Infrastructure Department for every load delivered in this contract with tickets to be provided by the Supplier/Contractor in form required.

An inspector and/or Scaleman may be provided at ONTC's discretion when crushing is in progress.

All trucks used or delivery or finished product from crushing plant to stockpile shall be numbered with tare weight of each truck to be checked daily and shown on weight ticket with truck number. These tickets must be submitted to the Rail Infrastructure Department along with a daily summary of crushing production and stockpiled amounts.

Unit price per tonne of material shall be quoted as follows:

Prepared Stone: To be stockpiled adjacent to the railway at sidings or spurs adjacent to main line track on the Railway System as may be proposed by the Respondent(s) and acceptable to the ONTC.

11. Sources of Raw Material & Storage Sites

Crushed Stone Ballast

The materials for railway ballast can be waste mine rock or other suitable quarry rock, some of which has been primary crushed and should conform with present environmental regulations regarding the mineral content and its suitability for railway ballast. The Supplier/Contractor of the rock will provide ONTC with a certificate of compliance respecting any and all governing environmental regulations by the Ministry of the Environment of Ontario or any other governing agency. The Supplier/Contractor is to accept full responsibility for size, condition, and location of the raw material relative to the designated location of the proposed stone pile of such material.

Also, once the contract has been completed the Supplier/Contractor shall ensure that the angle of repose of the stockpile is acceptable to the Ministry of Labour standards.

All material produced under this contract shall be delivered to storage site and stockpiled as directed above by ONTC.

Construction and maintenance of the access road and storage area during the term of the contract shall be the responsibility of the Supplier/Contractor.

All the fine material produced under this contract shall remain the property of ONTC and if necessary, shall be stockpiled at a mutually acceptable location away from the crushed rock stockpiled. **If Respondents are interested in retaining the fines, they must**

indicate in their Proposal and state whether the unit price for the crushed rock is net of the retention of the fines or identify unit credit for the fines.



PART 4

REQUEST FOR PROPOSALS

FORM OF PROPOSAL

Note: Respondent is required to complete Part 4 in its entirety in order to be considered as having submitted a complete Proposal. Part 4 will be provided in Word format to Respondents who return Schedule 2-B – Participation Registration Form.

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 1
PROPOSAL SUBMISSION FORM**

RFP Number: RFP 2024 003
Description: Prepared Rock Ballast

Submitted To: ONTARIO NORTHLAND TRANSPORTATION COMMISSION

We, _____
(Name of Respondent)

having carefully examined, understood, and completed the Request For Proposals Documents as described in Section 2 – The RFP Documents, and Addendum No. _____ to No. _____ inclusive, hereby agree to supply the services associated with Prepared Rock Ballast as follows on the attached quotation.

Respondents shall include the attached Proposal Form 1A and note that ONTC reserves the right in its sole discretion to sub-divide and/or bundle the Goods and/or Services which are the subject of this RFP and award one or any numbers of separate contracts for the Goods and/or Services.

Purchase is subject to budgetary approval of expenditures (expected April 2024)

Proposal Forms:

The information contained in the Proposal Forms, as listed in the Request for Proposals and attached hereto, forms an integral part of this Proposal.

Declarations:

We hereby declare that:

- (a) We will execute the Agreement within five (5) Working Days of receipt of the Contract Documents;
- (b) We agree to supply the Good and/or Services on or before the agreed upon schedule;
- (c) We will provide the required evidence of insurance with our execution of the Agreement. The minimum limits of insurance shall be as specified in the draft Agreement;
- (d) For the General Liability Insurance, Ontario Northland Transportation Commission is to be included as an additional insured;
- (e) Coverages and limits of insurances will be provided and maintained by all Subcontractors in accordance with subsection (c) above;
- (f) No person, corporation or other legal entity other than the undersigned has any interest in this Proposal or in the proposed Contract for which this Proposal is made; and,
- (g) This Proposal is open to acceptance for a period of ninety (90) days from the date of submission;

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 1 *cont'd*
PROPOSAL SUBMISSION FORM**

Signed and submitted for and on behalf of:

Contractor:

(Company Name)

(Street Address or Postal Box Number)

(City, Province and Postal Code)

Signature:

I have authority to bind the corporation.

Name and Title:

Email:

Date at _____ this _____ day of _____, 2024

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 1-A
PROPOSAL SUBMISSION FORM**

- Respondents shall use the table below to prepare their quotation.
- All ballast will be paid for by the tonne, and the Supplier/Contractor shall, at his own expense, provide, install, maintain, and remove scales of sufficient capacity for the measurement of such material.
- All the fine material produced under this contract shall remain the property of ONTC, and if necessary, shall be stock piled at a mutually acceptable location away from the crushed rock stock pile. **If Respondents are interested in retaining the fines, they must indicate this in their quotation below. State the unit price for the crushed rock net of the retention of the fines or identify crushing price per tonne, including the credit applied for the Respondent to retain the fines.**

Location	Quantity (No. of tonnes)	Price per tonne for prepared rock ballast - Respondent retains fines. Price is net of the retention of fines
Ramore Subdivision Jardine	9,000	
Temagami Subdivision at Rabbit Creek Pit	20,000	
Devonshire Subdivision between Porquis and Cochrane	46,000	

Quantities ordered may vary.

ONTC reserves the right in its sole discretion to sub-divide and/or bundle the Goods and/or Services which are the subject of this RFP and award one or any number of separate contracts for the Goods and/or Services.

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 2
RESPONDENT’S GENERAL INFORMATION**

The Respondent must complete this document and submit it as part of his Proposal.

Name <i>Please indicate the complete legal name of the firm</i>	
Tax Registration # (HST)	
Tax Registration # (GST)	
Tax Registration # (QST)	
Address	
Telephone Number	
Fax Number	
Web Address	
Please indicate any other name(s) under which the firm operates <i>(if applicable)</i>	

Owner Partnership Corporation

Relationship *(if applicable)*

Parent Company	
Subsidiaries	
Affiliates	

Ontario Business Yes No

“Ontario Business”: A supplier or manufacturer that has headquarters or a main office in Ontario, and that regularly conduct its activities (i.e., produces manufactured goods, intangible goods, or services) on a permanent basis in Ontario, is clearly identified by name and is accessible during normal business hours.

Canadian Business Yes No

“Canadian Business”: A commercial enterprise that is incorporated pursuant to the laws of Canada and which has ongoing business activities in Canada.

Main Contact Person *(for the purposes of this Proposal)*

Name	
Title	
Telephone #	Fax #
E-mail address	

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 2 *cont'd*
RESPONDENT'S GENERAL INFORMATION**

Indicate below your company/business' invoice terms:

Does your company/business have the capability to handle Electronic Funds Transfers?
YES _____ NO _____

If yes, please provide the necessary banking information as part of your submission.

If available, please provide your Dunn & Bradstreet Reference Number:

How many years of experience does your company have in the provision of goods or services proposed herein?

Subcontractors

The Respondent must indicate where they will use subcontractors for specific services.

Description of Services	Subcontractor's Name	% Contract Value	Telephone Number

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 3
ACKNOWLEDGMENT TO COMPLY WITH PART 3 - REQUEST FOR PROPOSALS
SPECIFICATIONS**

Respondent acknowledges that they can fully comply with Part 3 – Request for Proposals Specifications.

(Check one) YES _____; NO _____

Respondent to provide details below or include as an attachment to this Proposal Form 3. In particular, if the Respondent will deviate in any way from the requirements identified in Part 3 – Requests for Proposals – Specifications, the Respondent shall provide complete details of how they will deviate, this shall include proposed equivalent alternatives.

**PART 4 - FORM OF PROPOSAL
PROPOSAL FORM 4
REFERENCES**

The Respondent must supply here the reference information of three (3) customers for which they have provided similar services within the last five (5) years. ONTC is **NOT** to be listed as a Reference.

Reference #1

Company name		
Location		
Description of services provided		
Start and end dates		
Value of the contract		
Contact person name and title		
Phone	Fax	E-mail

Reference #2

Company name		
Location		
Description of services provided		
Start and end dates		
Value of the contract		
Contact person name and title		
Phone	Fax	E-mail

Reference #3

Company name		
Location		
Description of services provided		
Start and end dates		
Value of the contract		
Contact person name and title		
Phone	Fax	E-mail

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 5
COMPLIANCE WITH CONTRACT DOCUMENTS**

The Respondent may suggest changes to the Agreement included in Part 5 of this RFP using the table below. ONTC does not have any obligation to accept any proposed changes to the Agreement and will do so in its sole discretion. Significant material proposed changes to the Agreement may impact the evaluation of the Respondent’s proposal. ONTC will not accept any material changes to the clauses in the Agreement relating to Confidentiality, Personal Information, Intellectual Property ownership and infringement, Indemnification, Limitation of Liability or rights of ONTC on termination. ONTC, as an Ontario Crown corporation, is unable to provide indemnities pursuant to s.28 of the *Financial Administration Act* (Ontario).

Exception	Contract, Schedule, Article, or Sub-Clause	Existing Wording	Respondent’s Proposed Wording	Reason for Proposed Change
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 6
HEALTH, SAFETY AND ENVIRONMENT**

Respondents shall review the attached Health and Safety Policy Statement and include the following with their Proposal:

1. Submit a copy of the most recent version of your Health, Safety, and Environmental Protection Policy.
2. Submit the attached Contractor Health and Safety Responsibility Agreement.
3. Submit the attached Contractor Safety Pre-Qualification Form and associated supporting documents.

Respondents must pass the Contractor Safety Pre-Qualification. Failure to pass will result in disqualification from the procurement process.

DATE FORMALIZED April 2016 REVISED February 2023	Health and Safety Policy
---	---------------------------------

POLICY STATEMENT

In keeping with our value of *Safety. Full Stop.* Ontario Northland Transportation Commission (ONTC) / Nipissing Central Railway (NCR) is committed to providing a safe and healthy work environment. Safety is core to everything we do. We don't settle for less, for our people or our customers, even when operating pressures make it difficult to do so.

As part of developing a safety culture, we will collectively strive to prevent accidents and incidents through a risk-based approach with the goal to continuously improve. Employees are required to report safety concerns immediately and can do so without fear of reprisal, while management ensures all employees receive quick follow-up.

We will adopt the latest in systems to improve the reporting, investigation, and implementation of corrective actions, close-out, and trend analysis of accidents and incidents. We will communicate safety and encourage engagement at all levels of the organization, such as during tailgates, briefings, and meetings.

The success of ONTC/NCR safety programs will be ensured through the collective and cooperative efforts of all, including management, employees, unions, and Workplace Health and Safety Committees. All ONTC/NCR members will jointly participate in safety, health and loss prevention initiatives to ensure a safe and healthy workplace for all employees.



Chad Evans
President and CEO

CONTRACTOR HEALTH AND SAFETY RESPONSIBILITY AGREEMENT

In submitting this Proposal, I/We, on behalf of, _____

(legal name of company)

certify the following:

- (a) I/We have a health and safety policy and will maintain a program to implement such policy as required by clause 25(2) (j) of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1, as amended, (the "OHSA").

The requirements in (a) do not apply to employers with five (5) or less employees.

- (b) With respect to the Services being offered in this Proposal, I/We and on behalf of our proposed sub-consultants, acknowledge the responsibility to, and shall:

(i) fulfill all of the obligations under the OHSA and ensure that all work is carried out in accordance with the OHSA and its regulations;

(ii) ensure that adequate and competent supervision is provided as required under the OHSA to protect the health and safety of workers; and

(iii) provide information and instruction to all employees to ensure they are informed of the hazards inherent in the work and understand the procedures for minimizing the risk of injury or illness.

- (c) I/We agree to take precautions reasonable in the circumstances for the protection of worker health and safety, as required under the OHSA.

Dated at _____ this _____ day of _____, 202__

An Authorized Signing Officer

(Key Contact)

(Title)

(Telephone Number)

(Firm's Name)

(Firm's Address)

1. Company Identification:			ONTC Use
Company Name:	_____	Telephone:	_____
Mailing Address:	_____	Fax:	_____
	_____	E-mail:	_____
2. Form of Business:			
<input type="checkbox"/> Sole Proprietor	<input type="checkbox"/> Partnership:	<input type="checkbox"/> Corporation	
3. Officers:			Years with the Company
President / CEO	_____	_____	_____
Vice President	_____	_____	_____
Treasurer			_____
Who is the manager most responsible for health and safety?			
Name:	_____	Title:	_____
4. How many years has your business operated under its current name?			_____
5. Under Current Management Since (Date)			_____
6. Parent Company Information			
Parent Name:	_____		_____
City:	Province / State:	Postal / Zip Code:	_____
Subsidiaries:			_____
7. Insurance Contact Information			
Title:	Telephone:	Fax:	_____
Insurance			
8. Carriers: Type of Coverage: Telephone			
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
9. Organization:			
Describe the nature of the work your company specialized in:			_____
<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
<input type="checkbox"/>	_____	<input type="checkbox"/>	_____

10. Health and Safety Performance

- | | | | |
|---|------------------------------|-----------------------------|--|
| a) Are any of the above services that you perform normally subcontracted to others? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| b) Can you provide a Workplace Safety & Insurance Clearance Certificate? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| c) Is your company experience rated (CAD-7, NEER)? If yes attach CAD-7 reports for the last 3 years and go to item e). If no, complete item d). | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| d) Has an employee of your company suffered a fatal accident or "critical injury" as defined by the <u>Ontario Occupational Health & Safety Act</u> ? Please provide for the last 3 years: i) total number of lost time accidents by rate group, ii) total number medical aid accidents, iii) total number of hours worked by each rate group | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| e) Has your company ever been subjected to a Workwell Audit? If yes, what was your final score? ____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| f) Are there judgements, claims or suits pending or outstanding against your company? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| g) Have you received any regulatory (MOL, MOE, etc.) orders and/or prosecutions in the last 3 years? If yes, provide details of all prosecution and fines for the past 3 years on a separate sheet. | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| h) Do you have involvement in provincial safety associations such as the Infrastructure Health & Safety Association (IHSA) and/or Workplace Safety & Prevention Services (WSPS)? If yes, please name: | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |

11. Health and Safety Program and Procedures:

- | | | | |
|---|------------------------------|-----------------------------|--|
| a) Do you have a written health and safety policy? If yes, include a copy. | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| b) Do you have a written health and safety program? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| c) If so, are the following elements addressed? | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| i. Participation by all levels in the organization | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| ii. Accountabilities & responsibilities for managers, supervisors and employees | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| iii. Adequate resourcing for meeting health and safety requirements | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| iv. Hazard identification and control | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| v. Health and safety performance measurement and evaluation | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| vi. Corrective actions implementation | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |

12. Health and Safety Program: Does the health and safety program include procedures and practice documents such as:

- | | | | |
|---|------------------------------|------------------------------|--|
| a) Hazardous Energy Control, Lock-out – Tag-out | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| b) Confined Space Entry | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| c) Working at Heights, Fall Protection | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| d) Personal Protective Equipment (PPE) | <input type="checkbox"/> Yes | <input type="checkbox"/> No | |
| e) Portable / Electric Power Tools | <input type="checkbox"/> Yes | <input type="checkbox"/> Yes | |

Contractor Safety Pre-Qualification Form

f) Vehicle Safety	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
g) Compressed Gas Cylinders	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
h) Electrical Equipment Grounding Assurance	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
i) Powered Industrial Vehicles (forklifts, cranes, etc.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
j) Heavy Construction Equipment (excavators, backhoes, bulldozers, etc.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
k) Excavation and Trenching	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
l) Housekeeping	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
m) Accident / Incident Reporting and Investigation	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
n) Hazard / Unsafe Condition Identification, Reporting and Communication	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
o) Workplace Hazardous Materials information System (WHMIS)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
p) Emergency Action Plan / Evacuation Plan	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
q) Spill Response / Reporting	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
r) Respiratory Protection	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
s) Designated Substances Management	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
t) Waste Staging / Disposal	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
u) Traffic Control	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
v) Hearing Conservation	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
13. Do you have a policy/procedure for terminating contracts of subcontractors who do not comply with the requirements of the <u>Occupational Health & Safety Act</u> , associated regulations and / or company safety rules?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
14. Do your employees read, write and understand English to the degree that they can safely perform their tasks without the aid of an interpreter? (<i>If no, provide a description of your plan to assure that they can safety perform their tasks</i>)	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
15. Do you have personnel certified in Emergency First Aid and CPR on site? If yes, provide copies of certificates of training for site personnel proposed for the project?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
16. Do you have First Aid kits available to your staff?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
17. Does your company use a formalized Health and Safety Plan for conducting large projects?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
18. Does the company conduct pre-placement medical examinations?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
19. Is task-adequate PPE provided to workers?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
20. Are employees trained in PPE care, use and maintenance?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>
21. Do you have a corrective actions process for addressing individual health and safety performance deficiencies	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="text"/>

22. Equipment and Manuals:

- a. Do you conduct inspections on operating equipment (e.g. excavators, cranes, forklifts, vehicles, etc.) as per regulatory requirements? Yes No
- b. Do you maintain operating equipment in compliance with regulatory requirements? Yes No
- c. Do you maintain applicable pre-use inspection and maintenance certification records for operating equipment? Yes No
- d. Are records available upon request Yes No

23. Subcontractors

- a. Do you use health and safety performance criteria in the selection of contractors? Yes No
- b. Do you require your subcontractor to have a written health and safety program? Yes No
- c. Are your subcontractors included in
 - health and safety orientation Yes No
 - health and safety meetings Yes No
 - workplace inspections Yes No
 - health and safety audits Yes No
- d. Does the company have a policy for the termination of contracts of subcontractors who do not comply with the Occupation Health and Safety Act, regulations under the Act, contractor rules, programs, protocols policies or procedures? Yes No
- e. Does the company have a progressive discipline policy for employees and subcontractors? Yes No

24. Health and Safety Training

- a. Are you aware for the regulatory training requirements for your employees? Yes No
- b. Have your employees received the required health and safety training? Yes No
- c. Do you have specific health and safety training for supervisors? Yes No
- d. Do you keep records of health and safety training for employees? Yes No
- e. Are records of health and safety training available on request? Yes No

25. Job Skills

- a. Have employees been trained in appropriate job skills? Yes No
- b. Are employee job skills certified where required by regulation or industry standard? Yes No
- c. Are certificates available upon request? Yes No

26. Health and Safety Supervision

- a. Does the company have a health & safety coordinator? Yes No
- b. Who is the highest ranking safety professional in the company

I agree that the above information is true and correct to the best of my knowledge. I also agree to follow all terms and conditions of the Contractor Safety Program at all times while performing work for ONTC. I understand that supporting documentation may be requested for due diligence verification purposes.

Name: (Please print) _____
 Signature: _____

Title: _____
 Date: _____

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 7
SUPPLY CHAIN SECURITY AND LOCAL BENEFIT**

Supply Chain Security

1. Are you able to deliver the Prepared Rock Ballast per the critical delivery schedule specified in the RFP? If so, provide details on how you plan to deliver the Prepared Rock Ballast as per the critical delivery date of June 14th, 2024.

Local Benefit

1. Please advise if you will be utilizing local resources for the delivery of the Prepared Rock Ballast.



PART 5

REQUEST FOR PROPOSALS

DRAFT AGREEMENT

THIS PURCHASE AGREEMENT made effective **XXX** (the “Effective Date”)

BETWEEN:

ONTARIO NORTHLAND TRANSPORTATION COMMISSION (“**ONTC**”)

- and-

(the “**Supplier**”).

THE PARTIES AGREE AS FOLLOWS:

INTERPRETATION AND CONTRACT DOCUMENTS

Definitions

1. In this agreement, the following terms have the corresponding meanings:

“**Confidential Information**” includes information, whether oral, written, visual, electronic, or in any other form, relating in any way to this agreement, which is identified as confidential or that would reasonably be considered as being confidential;

“**Crushing Site**” shall mean the Supplier’s own Crushing Site;

“**Defect**” or “**Defective**” means non-conformity to the quantity, quality, specifications, and/or other requirements set out in the Contract Documents;

“**Delivery Date**” means the date for the delivery of the Goods as set out in the Contract Documents;

“**Disclosing Party**” means the party disclosing Confidential Information;

“**Environmental Laws**” means all applicable federal, provincial, territorial, municipal and local laws, statutes, ordinances, by-laws and regulations, judgments, decrees, common laws and principles thereof, and orders, directives and decisions rendered or issued by any governmental authority relating to Environmental Contaminants or the protection of human health, natural resources or the environment;

“**Environmental Contaminants**” means any substance, material or waste defined, regulated, listed or prohibited by Environmental Laws.

“**Goods**” means the supplies, materials or other things required to be furnished or delivered as specified in Schedule A (Specifications) and Schedule B (Supplier’s Proposal);

“**Loss**” includes loss, liability, damage, cost, expense, legal cost and disbursement;

“**Notice**” means the written notification or communication required or permitted to be given by one party to the other party under this agreement;

“**ONTC Parties**” and “**Supplier Parties**” includes every partner, associate, officer, director, employee, consultant, supplier, Subcontractor and agent of the party;

“**Receiving Party**” means the party receiving Confidential Information, and includes all Insiders of that party;

“**Stockpile Site**” means the ONTC location where ONTC has directed the Supplier to stockpile the ballast after crushing and delivery; and

“**Subcontractor**” means a person who contracts with the Supplier or another Subcontractor for the performance of any part of the Supplier’s obligations under the agreement.

Contract Documents

2. The contract documents consist of the following:
 - (a) This agreement;
 - (b) Any Change Orders;
 - (c) Specifications for Goods (Schedule A);
 - (d) Supplier’s Proposal (Schedule B); and,
 - (e) Any other documents incorporated by reference in any of the foregoing.(the “**Contract Documents**”).

Precedence

3. Subject to any contrary intention elsewhere in this agreement, in case of any inconsistency or conflict between the parts of the Contract Documents, such parts shall prevail in the following order, but only to the extent necessary to resolve the conflict or inconsistency:
 - (a) Change Orders;
 - (b) Schedule A (Specifications for Goods);
 - (c) This agreement;
 - (d) Schedule B (Supplier’s Proposal); and,
 - (e) Any other documents incorporated by reference in any of the foregoing.

SPECIFICS OF THIS PARTICULAR AGREEMENT

Description of the Goods

4. The Goods to be supplied under this agreement are Prepared Rock Ballast more particularly described in Schedule A (Specifications for Goods). The ballast shall be supplied from the Supplier’s quarry and crushed and supplied to ONTC’s Stockpile Site in Schedule A (Specification for Goods). The Supplier shall be responsible for stockpiling the Goods at the Stockpile Site.

Contract Price

5. ONTC shall pay the Supplier for the Goods to be supplied under this agreement the following amounts: XXX (the “**Contract Price**”).

Term

6. This agreement becomes effective on the Effective Date, and, unless terminated earlier in accordance with this agreement, lasts until final completion of the Supplier's obligations under this agreement.

PROVISION OF THE GOODS BY THE SUPPLIER

Prior to Provision of the Goods

7. Immediately after the Effective Date, and prior to production of any of the Goods, the Supplier shall provide to ONTC any proofs of compliance required under this agreement or in the procurement documents.

Standard of Care

8. The Supplier shall:
 - (f) provide the Goods in accordance with all Environmental Laws and other applicable laws and the Contract Documents;
 - (g) in performing its obligations under the Contract Documents, exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent Supplier providing Goods of a similar nature to the Goods; and,
 - (h) ensure any equipment used by the Supplier or by its Subcontractors at ONTC's premises will be in safe working condition, will comply with all laws applicable to such equipment and will be operated by suitably qualified and competent Supplier Parties,(collectively, the "**Standard of Care**").
9. The Supplier acknowledges and agrees that throughout the performance of its obligations under the Contract Documents, its performance of shall be judged against the Standard of Care. The Supplier shall exercise such Standard of Care in respect of any products, personnel or procedures which it may provide to ONTC.

ONTC has a Vendor Performance Policy which requires ONTC to complete an evaluation of the Supplier's performance of its obligations under this agreement. The performance evaluation of the Supplier for the supply of this Equipment will be used in the assessment of the Supplier's proposals in response to future procurements. The performance evaluation may also result in the Supplier being disqualified from submitting proposals in response to future procurements in accordance with the terms of the policy. The policy can be found at <http://ontarionorthland.ca/en/requests-tenders>.

Changes

10. Changes of any kind to the specifications for the Goods shall only be made by the Supplier, upon receipt of a written change order signed by an authorised member of each Party (each, a "Change Order"). The Change Order shall provide details of the change in design or specifications and specify any agreed adjustment to the Contract Price in respect of the change and any agreed adjustment to the delivery date. A Change Order shall represent the full amount payable for all costs and any adjustment to the delivery date associated with the change or changes for which it was issued.

11. ONTC shall have no liability whatsoever for any claim for payment for additional costs incurred by the Supplier which have not been authorised in advance by ONTC by way of a Change Order.

Defective Goods

12. The Supplier shall promptly correct Defects at its expense in the Goods identified by ONTC as having a Defect.
13. All or part of any payment under an invoice or any holdback may be withheld by ONTC or set-off against the payments owing to the Supplier until the Supplier has remedied any Defects at the Supplier's sole expense.

Delivery and Acceptance

14. The Supplier shall be responsible for delivery of the Goods to the Stockpile Sites specified by ONTC on the Delivery Dates. The Delivery Dates for the Goods, the quantities of the deliveries and the locations of the deliveries shall be as described in the Schedule A (Specifications for Goods). The Goods must be delivered in full prior to **XX**. The Supplier shall pay all costs incurred in connection with the shipping and delivery of the Goods including all duties, excise taxes and brokerage fees. The risk of loss or damage to the Goods during delivery and prior to the delivery to the Stockpile Site shall be with the Supplier.
15. The Supplier shall be responsible for weighing and inspecting the Goods to ensure compliance with the quantity ordered and with the Specifications. The Supplier shall provide ONTC with the weight tickets for each Delivery in accordance with the Specifications. The Supplier shall provide ONTC with gradation charts and samples of the Goods for each 500 tonnes of ballast upon request by ONTC.
16. ONTC may undertake random inspections at the Crushing Site. If Ontario Northland's inspection determines that the crushed rock at a Crushing Site does not meet the Specifications, the Supplier shall stop the crushing operation until the process is adjusted to produce the Goods in accordance with the Specifications.
17. ONTC shall undertake a preliminary inspection and receive the Goods upon delivery to a Stockpile Site. ONTC may retain a third party surveyor to inspect the Goods delivered to the Stockpile Site to verify the quantities delivered and compliance of the Goods with Schedule A (Specifications for Goods).
18. If ONTC determines that any Goods provided by the Supplier, even if ONTC has already received them, do not comply with the Specifications or are Defective, then ONTC may:
 - (a) keep the Goods and adjust the Contract Price to reflect the diminished value of the Goods, as determined by ONTC; or
 - (b) reject the Goods and require the Supplier to remove the Defective Goods from the Stockpile Site at the Supplier's expense, in which case, ONTC may either require the Supplier to replace them at the Supplier's cost or terminate that quantity of the Goods and adjust the Contract Price accordingly.

19. If the Goods are rejected by ONTC, the Supplier shall be responsible for all costs incurred by ONTC as a result of any delay in ONTC completing the work related to the use of the Goods as if the Goods had not been delivered on the Delivery Date as described in section 14.

Title and Risk

20. Subject to any contrary intention in the Contract Documents, title to all Goods and all risk of damage or loss thereof shall pass to ONTC upon the Goods being delivered to ONTC's Stockpile Site, undergoing a preliminary inspection by ONTC and being received by ONTC.

Time of the Essence

21. The parties agree that time is of the essence in this agreement and the Goods must be delivered to ONTC on the Delivery Dates and in the quantities specified in Schedule A prior to **XX**.
22. The Supplier acknowledges that ONTC will suffer damages if the Goods are not delivered to ONTC on the Delivery Dates or if the Goods have Defects that delay the use of the Goods. The Supplier shall be responsible for all damages suffered by ONTC as a result of failure to deliver the specified quantity of Goods on the Delivery Dates or a delay in the use of the Goods due to Defects. Notwithstanding any other provision of the Contract Documents, these damages shall include, but not be limited to, the cost to ONTC, including the cost of internal resources, to obtain alternate Goods, any losses to ONTC due to a delay in obtaining alternate Goods, additional labour costs, additional costs requested by ONTC Suppliers using the Goods and any other incidental, consequential or other indirect damages.

Warranty

23. The Supplier warrants that the Goods will: (i) be of good quality; (ii) conform to the Specifications and/or standards in the Contract Documents; (iii) be free from Defects; and (iv) be fit for the intended purpose.
24. ONTC shall benefit from all legal and manufacturer's warranties available in connection with the Goods and the Supplier shall assign all such warranties to ONTC on the same terms in which these warranties have been provided to the Supplier, to the extent such warranties permit assignment. The Supplier shall cooperate with ONTC in the enforcement of the assignment and the warranties against the manufacturers.

ONTC STOCKPILE SITES

Access to the ONTC Stockpile Sites

25. ONTC shall give the Supplier non-exclusive access to the ONTC Stockpile Sites to enable the Supplier to carry out its obligations under the Contract Documents, subject to the restrictions set out in the Contract Documents.

Conditions

26. The Supplier represents to ONTC that it has familiarized itself with local conditions at and in the vicinity of the ONTC Stockpile Sites, the constraints of the location, weather conditions and ground conditions and the applicable laws and has examined all reasonably available

information relevant to the risks, contingencies and other circumstances having an effect on the Goods, the Delivery Dates and the Contract Price.

Health and Safety

27. The Supplier shall fulfill all obligations and requirements during the work at the ONTC Stockpile Sites for the purposes of the Ontario *Occupational Health and Safety Act* and any orders, recommendations and restrictions made by the federal, provincial or municipal governments and the advice, recommendations and instructions of public health officials. The Supplier shall have complete and sole responsibility for all health and safety matters relating to its employees at the Crushing Site and Stockpile Sites. While on ONTC property, the Supplier shall ensure that it and its employees and Subcontractors are aware of and comply with ONTC's policies, including its Fit for Duty Policy, and with the Ontario Northland Operating Manual, including the Current Summary Bulletin, current Ontario Northland Time Table, C.R.O.R. 2015, Infrastructure Special Instructions, Dangerous Goods and Ontario Northland Operating Instructions, as applicable.
28. The Supplier shall comply and shall ensure that it, its subcontractors and their respective employees, consultants, representatives and agents comply with safe work practice.

Environmental Liability

29. The Supplier shall comply with all applicable laws, including Environmental Laws, in the provision of the Goods. If the Supplier fails to comply with Environmental Laws, the Supplier shall be solely responsible for all costs, claims, fines, fees or other expenses arising from such failure to comply.
30. The Supplier shall not cause or permit any Environmental Contaminants to be located, disposed of, released, discharged or incorporated in, on or under any part of ONTC's land except as required to perform the Work. The Supplier shall remove from ONTC's land, immediately upon demand, at its cost, any Environmental Contaminants introduced thereto by the Supplier that are not required to provide the Goods. If there is remediation work required on ONTC's land or adjacent land or watercourse due to environmental contamination that occurred as a result of the Supplier's entry onto ONTC's land to perform the Work, the Supplier shall be responsible for all costs incurred to complete remediation work on ONTC's land and adjacent land or watercourse and shall reimburse ONTC or any public authority or any third party for any reasonable costs incurred as a result of the requirement to complete the remediation work.
31. Notwithstanding any provision of law to the contrary, any Environmental Contaminants placed or permitted on or under ONTC's land by the Supplier shall remain the property of the Supplier.
32. All spills and releases of Environmental Contaminants in the course of supplying the Goods must immediately be reported by the Supplier to ONTC who will report the spill or release to the Ministry of Environment, Conservation & Parks Spills Action Centre ("MECP SAC"). If an ONTC representative is not available, the Supplier shall report the incident to the MOECP SAC and the ONTC RTC at 800-558-4129 X141.
33. The sections under this Part – Environmental Liability shall survive the expiration or termination of this agreement.

Concealed or Unknown Conditions

34. If ONTC or the Supplier observes or reasonably suspects the presence of any previously unknown impacts relating to fish, navigable waters, species at risk, vegetation, wildlife, socio-economic or heritage:
- (a) the observing party shall immediately report the circumstances to the other party; and
 - (b) the Supplier shall immediately take reasonable steps, including stopping work if necessary, to ensure any potential impacts are mitigated.
35. If the Supplier fails to comply with the requirements in section 34, the Supplier shall:
- (a) be responsible for all costs incurred by ONTC or the Supplier to mitigate the damage caused by the failure; and
 - (b) not be entitled to request a Change Order relating to the failure to comply.

Damage to ONTC Stockpile Sites

36. The Supplier shall be responsible for the remediation, at its expense, of any damage, including by Environmental Contaminants, to the ONTC Stockpile Sites, ONTC's property or third parties' property caused by the Supplier in the supply of the Goods.

PAYMENT BY ONTC

Amounts Chargeable in Respect of the Goods

37. The Supplier may charge ONTC, for the provision of the Goods amounts not greater than the Contract Price and any Change Orders.

Payment

38. ONTC shall pay the Supplier for the Goods within 30 days of receipt of an invoice and required backup materials from the Supplier.
39. Whenever any amount is recoverable from or payable by the Supplier to ONTC pursuant to the Contract Documents, ONTC may deduct this amount from any amount due to the Supplier.

Final Invoice

40. As of the date of submission of the final invoice, the Supplier expressly waives and releases ONTC from any further claims against ONTC, related to the Contract Documents, except those claims stated in the final invoice and those claims made in writing prior to the date of submission of the Supplier's final invoice and still unsettled.

EXTENSION AND EARLY TERMINATION OF THIS AGREEMENT

Force Majeure

41. Neither party shall be liable to the other for any delay in or failure to perform its obligation under this agreement (other than non-payment of money by ONTC to the Supplier) if any such delay or failure is due to Force Majeure. “**Force Majeure**” shall include but not be limited to acts of God, acts or policies of any federal, provincial, civil or military authority, governmental priorities and mandates, civil commotion, natural disasters including but not limited to fires, floods, earthquake, storm, pandemic, epidemic and acts of war, labour slowdown, strikes, lockouts, and other labour disputes but does not include lack of funds. If a party becomes aware of an event of Force Majeure affecting its ability to perform its obligations under this agreement, it shall give the other party oral notice within two business days of the event of Force Majeure, and, in addition, Notice, together with a proposed plan of corrective action to resolve or minimize the effect of the event of Force Majeure, within five (5) Working Days of the event of Force Majeure.
42. If there is an event of Force Majeure, the party claiming such event shall:
- (a) complete the performance of its obligations as soon as possible after the event of Force Majeure is resolved;
 - (b) make all reasonable efforts to mitigate the effect of the event of Force Majeure on the other party; and
 - (c) not treat other parties with whom it contracts more favourably where its obligations to such other parties are affected by the same event of Force Majeure.
43. For each full day of Force Majeure, the Delivery Date shall be extended by a full day.
44. If an event of Force Majeure continues for a period in excess of 60 continuous days, either party may terminate this agreement effective upon Notice to the other party, in which case ONTC shall pay the Supplier for the prorated value of the Goods supplied to the date of termination. This amount shall be the sole remedy of the Supplier for the termination of the agreement pursuant to this section.

Early Termination

45. ONTC may, for cause, terminate this agreement if the Supplier defaults in the performance of any of the terms and conditions of this agreement or with any proper order or request of ONTC, upon providing written notice to the Supplier of the particulars of the default. If the Supplier fails to remedy the default within seven days from the date of delivery of the Notice, ONTC shall have the right, at its sole option, to terminate this agreement forthwith by providing Notice to the Supplier.
46. The Supplier may terminate this agreement upon at least seven days' Notice if ONTC fails to make payment that is due and payable within the payment period in accordance with the agreement and ONTC failing to remedy such breach within seven days of receiving Notice of the breach.
47. The parties may, by agreement, terminate this agreement at any time.

48. This agreement will terminate immediately upon:

- (a) The dissolution of the Supplier; or
- (b) Subject to the provisions of the Bankruptcy and Insolvency Act, RSC 1985, c. B-3, the Supplier making an assignment for the benefit of its creditors, becoming bankrupt or insolvent, undergoing reorganization, making a proposal to its creditors, or otherwise becoming financially unable to perform its obligations under this agreement.

49. If this agreement is terminated early in accordance with sections 45 or 48, then:

- (a) ONTC is excused from further performance under this agreement;
- (b) any money payable by the Supplier to ONTC is immediately due and payable;
- (c) ONTC shall not be responsible for paying any amount over and above the chargeable amounts, including payment on a pro-rated basis if applicable, incurred up to the effective date of such termination; and,
- (d) ONTC shall retain any rights, powers and remedies it has or may have against the Supplier.

CONFIDENTIAL INFORMATION

General Confidentiality Requirements

50. The Receiving Party shall ensure that all Insiders of the Receiving Party comply with all the provisions of this agreement relating to Confidential Information and the Receiving Party shall be responsible for any failure by any Insider of the Receiving Party to do so.

51. The Receiving Party shall use Confidential Information only for the purposes of this agreement.

52. The Receiving Party shall not copy or transcribe into another form, any Confidential Information received from the Disclosing Party except as reasonably necessary.

53. Upon the termination of this agreement, or earlier upon the request of the Disclosing Party, the Receiving Party shall promptly destroy or return (as directed by the Disclosing Party) all copies of the Confidential Information disclosed to the Receiving Party.

Keeping Confidential Information Confidential

54. Except as provided in this agreement, the Receiving Party shall keep confidential all Confidential Information disclosed to it by the Disclosing Party.

55. The Receiving Party shall protect the Confidential Information disclosed to it by the Disclosing Party, in the same manner and to the same extent that it protects its own Confidential Information.

56. The provisions of this agreement relating to Confidential Information will remain in effect for five years after the termination of this agreement.

Disclosing Confidential Information

57. The Receiving Party may disclose Confidential Information if:

- (a) The Disclosing Party approves;
- (b) The Receiving Party is required by law to disclose it; or
- (c) The Confidential Information is generally and publicly available.

58. If the Receiving Party is required by law to disclose Confidential Information, it shall promptly notify the Disclosing Party so that the Disclosing Party may intervene to prevent the disclosure.
59. The Supplier specifically acknowledges that ONTC is subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, and that ONTC may be compelled by law to disclose certain Confidential Information.

Breach of Confidentiality

60. If either party breaches any provision of this agreement relating to Confidential Information, it shall immediately give Notice of such breach to the other party and take all necessary steps to limit the extent and impact of the breach.
61. If a party were to breach the provisions of this agreement relating to Confidential Information, the harm that would be suffered by the other party would not be compensable by monetary damages alone. Therefore, either party may, in addition to any other remedies, seek an injunction against any breach or threatened breach by the other party of any provision relating to Confidential Information.

INDEMNIFICATION, INSURANCE and SECURITY

Representations, Waiver and Indemnification

62. The Supplier shall indemnify and hold harmless ONTC and ONTC Parties from and against all loss, liability, damage, fines, cost, legal cost and disbursement whatsoever arising out of or related to the supply of the Goods or the Contract Documents (“Loss”), by whomever made, sustained, incurred, brought or prosecuted, arising out of, or in connection with, anything done or omitted to be done by the Supplier in the course of the performance of the Supplier’s obligations under the Contract Documents or otherwise in connection with the supply of the Goods. The Supplier shall, at ONTC’s election, either assume the defence of every proceeding brought in respect of such Loss, or cooperate with ONTC in the defence, including providing ONTC with prompt Notice of any possible Loss and providing ONTC with all information and material relevant to the possible Loss.
63. The Supplier shall make full and complete compensation for any bodily injury or death to any person and for any damage caused to ONTC’s or a third party’s physical property by the Supplier’s act or omission.
64. The Supplier shall be liable for any claims arising from any personal injuries to or death of any of the Supplier Parties or from any loss of or damage to any property belonging to the Supplier or Supplier Parties during the supply of the Goods unless caused by the negligent act or omission of ONTC.
65. Notwithstanding any other provision of the Contract Documents:

- (a) ONTC shall not be responsible for indirect, consequential, special, incidental or contingent damages of any nature whatsoever, including loss or revenue or profit or damages resulting from interruption of service. This limitation shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in contract (including fundamental breach), statute, tort (including negligence), or otherwise, and regardless of whether ONTC has been advised of the possibility of such damages; and,
- (b) Any express or implied reference to ONTC providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of ONTC or the Province of Ontario, whether at the time of execution of this agreement or at any time during the performance of the Work and the Warranty Period, shall be void and of no legal effect in accordance with s.28 of the *Financial Administration Act*, R.S.O. 1990, c. F.12.

66. The Supplier shall indemnify ONTC and ONTC Parties and save them harmless from and against all Loss incurred by ONTC arising from:

- (a) any decision or interpretation by any court or governmental authority that: (i) any of the Supplier's employees are an employee of ONTC; or (ii) ONTC is liable to pay statutory contributions or deductions in respect of any of the Supplier's employees under any laws, including employment insurance, provincial health insurance, income tax or other employment matters;
- (b) any health, medical disability or similar claims which the Supplier or Supplier's employees may have during or after the term of this agreement;
- (d) safety infractions committed by the Supplier under the Occupational Health and Safety Act or any other laws, guidelines or public health orders regulating health and safety at the Stockpile Site or Crushing Site;
- (e) any claims against ONTC for the failure of the Supplier to protect the confidentiality of Confidential Information;
- (f) exposure to, or the presence of, Environmental Contaminants which were either brought on to the Crushing Site or Stockpile Site by the Supplier or as a result of the Supplier mishandling or negligently or improperly handling the substances or materials;
- (g) a claim from adjacent landowners or other third parties regarding damage to their property due to the supply of the Goods; and
- (h) the release into the environment of materials resulting from the supply of the Goods that contain Environmental Contaminants during the transportation of such materials from the Crushing Site to the Stockpile Sites.

Insurance

67. The Supplier shall obtain, and for as long as this agreement is in effect, maintain, pay for and, upon request by ONTC from time to time, provide evidence, satisfactory to ONTC, of the following insurance coverages, all taken out with insurers licensed to transact insurance business in Ontario and satisfactory to ONTC:

(a) Commercial General Liability Insurance:

- (i) With no limitations on or exclusions from coverage arising from working on or around railway property,
- (ii) Including “Ontario Northland Transportation Commission” as an additional insured,
- (iii) With a coverage limit of not less than five million dollars (\$5,000,000) inclusive per occurrence,
- (iv) Including bodily injury, personal injury, death and damage to property, including loss of use thereof,
- (v) In a form satisfactory to ONTC, and
- (vi) Endorsed to endeavour to provide ONTC with not less than thirty (30) days’ notice, in advance, of any cancellation, change or amendment restricting coverage;

(b) Automobile Liability Insurance:

- (i) In respect of licensed vehicles,
- (ii) To a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence,
- (iii) Including bodily injury, death and damage to property,
- (iv) Endorsed to endeavour to provide ONTC with not less than thirty (30) days’ notice, in advance, of any cancellation, change or amendment restricting coverage, and
- (v) In the following forms: standard owner’s form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by or on behalf of the Supplier, and standard non-owned automobile form policy including standard contractual liability endorsement.

68. If any of the Supplier’s insurance policies expire during the term of this agreement, the Supplier shall renew or replace them and, within sixty (60) days after such expiry, provide to ONTC certificates (originals, signed by authorized insurance representatives) of the renewed/replaced insurance.

69. The Supplier shall ensure that all the insurance is primary and does not call into contribution any other insurance coverage available to ONTC. The Supplier shall not do or omit to do anything which would impair or invalidate the insurance policies.

70. If the Supplier fails to take out or maintain the above-described insurance, ONTC may, in its discretion, terminate this agreement immediately or take over and maintain such insurance, whereupon the Supplier shall immediately pay to ONTC any premium paid by ONTC for such insurance.

GENERAL

71. **Notices:** A party giving Notice shall give it in writing and shall send it by personal delivery, email, facsimile, courier or prepaid regular mail to the other party at the following address:

Ontario Northland Transportation Commission	Supplier
Attention:	Attention:
555 Oak Street East	

North Bay, ON P1B 8L3
T: 705-472-4500 ext.
E: @ontarionorthland.ca
F:

T :
E :
F:

72. A Notice sent by:

- (a) Personal delivery is deemed to be delivered on the date it is personally delivered;
- (b) Email is deemed to be delivered on the date it is sent;
- (c) Facsimile is deemed to be delivered one day after the date it is sent;
- (d) Courier is deemed to be delivered two days after the date it is sent; and
- (e) Prepaid regular mail is deemed to be delivered three days after the date it is sent.

73. **No Waiver:** No waiver by a party of any breach by the other party of any of its covenants, agreements or obligations in this agreement shall be a waiver of any subsequent breach or the breach of any other covenants, agreements or obligations, nor shall any forbearance by a party to seek a remedy for any breach by the other party be a waiver by the party of its rights and remedies with respect to such breach or any subsequent breach.

74. **Relationship:** The Supplier is an independent Supplier of ONTC. The Supplier shall not, except as ONTC may specifically authorize in writing, enter into any contracts or commitments in the name of or on behalf of ONTC, or bind ONTC in any respect whatsoever. The Supplier is not a partner, joint venturer, agent or employee of ONTC.

75. **Governing Law:** This agreement shall be governed by and constituted in accordance with the laws in force in the Province of Ontario excluding any conflict of laws principles. The Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario for any legal proceedings arising out of this agreement or the performance of the obligations hereunder.

76. **Severability:** Should any section or part or parts of a section in this agreement be illegal or unenforceable, it or they shall be considered separate and severable from the agreement and the remaining provisions of this agreement shall remain in full force and effect and shall be binding upon ONTC and the Supplier as though such section or part or parts thereof had never been included in this agreement.

77. **Survival:** In addition to those provisions which are expressly stated to survive the termination or expiration of this agreement, the provisions of this agreement that are by their nature intended to survive termination or expiration of this agreement shall continue in full force and effect subsequent to and notwithstanding termination or expiration until or unless they are satisfied.

78. **Entire Agreement:** The Contract Documents constitute the entire contract between the parties with respect to its subject matter and supersedes all prior or contemporaneous commitments, representations, warranties, arrangements, understandings agreements, and negotiations, whether written or oral, or collateral or other, with respect to its subject matter, existing between the parties at the Effective Date.

79. **Counterparts, Electronic Signatures and Electronic Delivery:** This agreement may be executed by electronic signatures and delivered by electronic transmission and the parties may rely upon all such electronic signatures as though such electronic signatures were original

signatures. This Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement binding on the parties.

80. **Language:** The parties hereto agree that this agreement and all agreements and documents entered into in connection herewith or pursuant hereto shall be drawn up in English only. *Les parties confirment qu'elles ont convenu que la présente convention ainsi que tous les autres documents ou contrats s'y rattachant soient rédigés en anglais seulement.*

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have duly executed this agreement.

**ONTARIO NORTHLAND
TRANSPORTATION COMMISSION**

Per: _____
Jonathan Corley
VP Rail Operations

Date: _____

I have authority to bind the corporation.

XXX

Per: _____
Name:
Title:

Date: _____

Per: _____
Name:
Title:

Date: _____

I/We have authority to bind the corporation.

Schedule A
Specifications for the Goods

Schedule B – Supplier’s Submission