

**ONTARIO NORTHLAND
TRANSPORTATION COMMISSION**

Request for Quotations No. RFQ 2024 011

For

**MSR Plates -
11.7 Temagami Subdivision**

REPLY BY DATE: Friday, April 5, 2024 at 2:00:00 P.M.

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 QUOTATIONS

SECTION 1 - INTRODUCTION

1.1 General

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

(2) In this RFQ:

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

“Addendum” means the written supplementary information provided to potential Respondents prior to the Submission Deadline, which information becomes part of the RFQ 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 Quotation including without limitation the information requested in the RFQ Data Sheet, and is essential to allow ONTC to evaluate a Quotation and that if not included will result in the disqualification of the Quotation;

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

“Quotation” means the response to the RFQ submitted by a Respondent to ONTC;

“Respondent(s)” means the entity submitting a Quotation and includes prospective respondents, whether or not that entity submits a Quotation. 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;

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

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

“Substantially Compliant” means Quotation does not meet the requirements of the RFQ Documents; however, the Quotation includes all of the Material items, as identified in the RFQ 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 “**RFQ Process**”) will commence with the issuance of these RFQ 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 RFQ Process in accordance with the terms and conditions of this RFQ.

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 centres 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 generations 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 RFQ DOCUMENTS

2.1 Request for Quotations Documents

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

Part 1 – Request for Quotations

Part 2 – Request for Quotations Summary of Requirements

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

Part 3 – Request for Quotations Specifications

- (a) Schedule 3-A – Scope of Work

Part 4 – Form of Quotation

- (a) Quotation Form 1 – Quotation Submission Form
- (b) Quotation Form 2 – Vendor's General Information
- (c) Quotation Form 3 – Acknowledgment to Comply with Part 3 – Request for Quotations Specifications
- (d) Quotation Form 4 – References
- (e) Quotation Form 5 – Compliance with Contract Documents

Part 5 – Request for Quotations Draft Agreement

- (2) The RFQ Documents shall be read as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFQ and are incorporated by reference.
- (3) Each Respondent shall verify the RFQ Documents for completeness upon receipt and shall inform the Contact Person (identified in RFQ Section 3.2(7)), immediately:
- (a) should any documents be missing or incomplete; or,
 - (b) upon finding any discrepancies or omissions.
- (4) The RFQ Documents are made available only for the purpose of Respondents submitting Quotations. Availability and/or use of the RFQ 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 RFQ Documents, the order of priority of RFQ Documents, from highest to lowest, shall be:
- (a) Any Addenda modifying the RFQ Documents issued during the RFQ Process;
 - (b) The RFQ Data Sheet;
 - (c) Part 1– Request for Quotations;
 - (d) Part 3– Specifications; and,
 - (e) Any other RFQ Documents.

2.3 Distribution of Documents – Electronic Distribution

- (1) ONTC will use MERX and the ONTC website to distribute all RFQ Documents.

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 Quotation, 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 RFQ Documents is intended to relieve the Respondents from forming their own opinions and conclusions with respect to the matters addressed in this RFQ.
- (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 RFQ Documents, if any, during the RFQ Process or during the term of the Final Agreement. By submitting a Quotation, 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 RFQ Documents or otherwise provided by ONTC or its representatives during the RFQ Process or during the term of the Final Agreement.

SECTION 3 – THE RFQ PROCESS

3.1 RFQ Process

- (1) The deadline for the submission of Quotations (the “**Submission Deadline**”) is set out in the RFQ Data Sheet.
- (2) ONTC may amend, extend or shorten any of the dates and/or times prescribed in this RFQ, 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 RFQ Documents

- (1) Respondents shall submit all questions, requests for clarifications, and other communications regarding the RFQ Documents and the RFQ 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 RFQ 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 RFQ 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 RFQ Process, the RFQ 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 RFQ 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 RFQ Documents, the RFQ 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 RFQ is **Brinda Ranpura, 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 RFQ. 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 RFQ Documents, may only be made by addendum.

3.3 Addenda/Changes to the RFQ Documents

- (1) ONTC may, in its sole discretion, amend, supplement, or change the RFQ Documents prior to the Submission Deadline. ONTC shall issue amendments, supplements, or changes to the RFQ 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 RFQ Documents. Addenda will be distributed in the same manner as the RFQ and shall become part of the RFQ 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 RFQ.

3.4 Respondents' Meeting

- (1) To assist Respondents in understanding the RFQ Documents, and the RFQ 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 RFQ 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 RFQ 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 RFQ 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 RFQ Data Sheet and details regarding the registration process will be set out in the RFQ 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 RFQ 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 RFQ Process, any of the following persons or organizations on matters related to the RFQ Process, the RFQ Documents, or their Quotations:

- (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 RFQ 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 RFQ 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 RFQ Section 7.2; or,
 - (b) impose conditions on the Respondent's continued participation in the RFQ 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 RFQ Process, the RFQ 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 Quotation or to publicly promote or advertise their own qualifications, interest in or participation in the RFQ 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 RFQ 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 RFQ 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 RFQ Documents, any other documentation related to the RFQ Process and a part or parts of any Quotation 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 Quotations. 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 Quotations, and all information submitted in or related to the Quotations, to the Government of Ontario.
- (3) ONTC may provide the Quotations to any person involved in the review and/or evaluation of the Quotations on behalf of ONTC and ONTC may:
 - (a) make copies of the Quotation; and/or,
 - (b) retain the Quotation.
- (4) ONTC may disclose any information with respect to the Respondents, the Quotations and the RFQ 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 RFQ Process, provided that if the nature of the subject matter of the RFQ 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 RFQ, “**RFQ 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 RFQ Process, from ONTC or any Ministry or Agency of the Government of Ontario, in connection with the RFQ 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 RFQ 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) RFQ 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 Quotation 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 Quotation 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 RFQ Section 3.8 by any person to whom it discloses the RFQ Information.

- (4) Each Respondent or Short-listed Respondent acknowledges and agrees that a breach of the provisions of this RFQ 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 RFQ 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 RFQ Section 9.3, the provisions of this RFQ Section 3.8 shall be binding and shall survive any cancellation or termination of this RFQ and the conclusion of the RFQ 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 RFQ Information.

3.9 Governing Laws and Attornment

- (1) This RFQ Process and the Final Agreement entered into pursuant to this RFQ 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 RFQ, 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 RFQ 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 Quotation, neither acceptance of the Quotation 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 RFQ Process, including, without limitation, all costs and expenses related to the Respondent's involvement in:
 - (a) the preparation, presentation and submission of its Quotation;
 - (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 RFQ, 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 RFQ Process.

3.12 Delay and Costs of Delay

- (1) By submitting a Quotation, 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 RFQ Documents or RFQ Information or any delay, or costs associated with delays, in the RFQ Process.

3.13 Clarification and Verification of Respondent's Quotation

- (1) Following submission of a Quotation, ONTC may:
- (a) request a Respondent to clarify or verify the contents of its Quotation, including by submitting supplementary documents; and/or,
 - (b) request a Respondent to confirm an ONTC interpretation of the Respondent's Quotation.
- (2) Any information received by ONTC from a Respondent pursuant to a request for clarification or verification from ONTC as part of the RFQ Process may, in ONTC's discretion, be considered as an integral part of the Quotation even if such information should have been submitted as part of the Respondent's Quotation and may, in ONTC's discretion, be considered in the evaluation of the Respondent's Quotation.
- (3) ONTC may, in its sole discretion, verify or clarify any statement or claim contained in any Quotation 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 Quotation, 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 Quotation or any statement or claim made by a Respondent.
- (6) Requests for clarifications shall not be construed as acceptance by ONTC of a Quotation.

SECTION 4 - QUOTATION CONTENT AND FORMAT

4.1 Format and Content of Quotation

- (1) Respondents shall submit their Quotation in one envelope or, if submitting electronically, one electronic folder.
- (2) Unless otherwise specified in the RFQ Data Sheet, Respondents shall not submit pre-printed literature with their Quotations. Any unsolicited pre-printed literature submitted as part of a Quotation 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 RFQ;
 - (b) for a hard copy submission, complete any handwritten portions of the Quotation 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 Quotation forms and failure to fill in all blank spaces may result in a Quotation being determined to be non-compliant; and,
 - (d) use only the Quotation forms issued as part of the RFQ documents unless otherwise indicated.
- (4) Information provided by Respondents on hard copy Quotation forms may be amended prior to the Quotation submission, provided the amendments are initialed by an authorized representative of the Respondent. Un-initialed pre-submission amendments may result in the Quotation being declared non-compliant.
- (5) Quotations 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 RFQ 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 RFQ Documents; and,
- (b) Where the RFQ requires the Respondent to provide a breakdown of the price, the price as stated in Quotation 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 Quotation 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 RFQ Documents. Failure of the Respondent to list Subcontractors where required, may result in the Quotation being declared non-compliant.

4.2 Quotation Submission Form

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

4.3 References and Past Performance Issues

- (1) If specified in the RFQ Data Sheet, Respondents shall provide reference information. Unless otherwise set out in the RFQ 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 RFQ 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 RFQ 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 on 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.

4.5 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 RFQ Process, the subject matter of the RFQ 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 RFQ Process if, in the sole and absolute opinion of ONTC, the Conflict of Interest cannot be managed, mitigated or minimized.

SECTION 5 - QUOTATION SUBMISSION, WITHDRAWAL, MODIFICATION

5.1 Submission of Quotations and Late Quotations

- (1) Each Respondent shall submit their quotation in the format prescribed in the RFQ Data Sheet. ONTC will not accept any quotation that is not submitted in the format prescribed in the RFQ 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 Quotations in the manner and time prescribed in the RFQ Data Sheet.

Questions concerning submitting through MERX should be addressed to:

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

Any Quotation 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 Quotation 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 RFQ 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 use Physical Bid Submissions, Respondents shall submit one original and the number of copies of its Quotation (in hard copy) specified in the RFQ Data Sheet and the number of electronic copies of its Quotation (on a properly labelled CD or USB key in PDF format) specified in the RFQ 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 Quotation and the original hard copy, the original hard copy of the Quotation, as submitted, will govern. The electronic copy of the Quotation is solely for the convenience of ONTC.

Respondents shall submit their Quotations 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 Quotation Submission in a sealed envelope or package with the Respondent's full legal name and return address, the RFQ Number, the Submission Deadline and the label "Quotation Submission" clearly displayed on the outside of the envelope.

Where required by the RFQ 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 RFQ 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) Quotations must be received before the time noted in the RFQ Data Sheet.
- (3) Quotations will be date and time stamped at the place receiving the Quotations. Late Quotations will be returned unopened.
- (4) Quotations 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 Quotations.
- (6) ONTC reserves the right to make copies of the Respondent's Quotations as it may be required for the purpose of conducting a full evaluation of the Quotation submitted.
- (7) The Respondent should identify and mark any trade secret or proprietary intellectual property in its Quotation.

5.2 Late Quotations

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

5.3 Withdrawal of Quotations

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

5.4 Amendment of Quotations

- (1) When submitting a Physical Bid Submission, Respondents may amend their Quotations after submission but only if the original Quotation is withdrawn and the amended Quotation 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 Quotation is received from the same Respondent before the Submission Deadline, only the last Quotation received before the Submission Deadline will be considered.

5.5 Quotation Irrevocability

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

5.6 One Quotation per Person or Entity

- (1) Except as set out in the RFQ Data Sheet or with ONTC's approval:
 - (a) a person or entity shall submit or participate in only one Quotation 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 Quotation individually or as a Respondent team member in the same RFQ Process.
- (2) If a person or entity submits or participates in more than one Quotation in contravention of RFQ Section 5.6(1), ONTC may, in its sole discretion, disqualify any or all of the Quotations submitted by that person or entity or in which that person or entity is a participant.

SECTION 6 - QUOTATION EVALUATION

6.1 Evaluation Team

- (1) ONTC will establish an evaluation team for the purpose of evaluating Quotations (the “**Evaluation Team**”).
- (2) The Evaluation Team may, in its sole discretion, delegate certain administrative functions related to the evaluation of Quotations 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 RFQ documents may have been prepared with the assistance of a third-party consultant and that the consultant may participate in the evaluation of the Quotations.

6.2 Evaluation of Quotations

- (1) The Respondents’ Quotations will be reviewed and evaluated by the Evaluation Team on the basis of the evaluation criteria set out in the RFQ 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 Quotation 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 RFQ Process per RFQ Section 7.2 (1)(i).
 - (d) ONTC cannot, to ONTC’s satisfaction, prior to the conclusion of the RFQ Process, verify independently or through a third party or parties any and/or all information, statements, representations and/or warranties contained in the Quotation;
 - (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;
or,
- (g) the Respondent failed to meet the mandatory requirements specified in the RFQ Data Sheet.

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 RFQ 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 RFQ 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 Quotation is compliant with the RFQ Documents;
 - (c) if a failure to comply is material;
 - (d) if a Quotation 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 Quotation 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 Quotation;
 - (b) The Respondent contravenes RFQ Section 3.5, RFQ Section 3.6 or RFQ Section 5.6(2);
 - (c) The Respondent fails to comply with the Applicable Laws;
 - (d) The Quotation contains false or misleading information, or the Respondent provides false or misleading information in any part of the RFQ Process;
 - (e) The Quotation, 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 Quotations;
 - (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 RFQ or any time during the RFQ 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 Quotation 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 RFQ Process.
- (2) Notwithstanding Section 7.2(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 Quotation(s).

7.3 General Rights of ONTC

- (1) ONTC may, in its sole discretion and at any time during the RFQ process:
 - (a) reject any or all of the Quotations;
 - (b) accept any Quotation or any portions of any Quotations for any reason whatsoever;
 - (c) reject any Quotations or any portions of Quotations for any reason whatsoever;
 - (d) if only one Quotation 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 RFQ;
 - (f) alter the Submission Deadline or any other deadlines associated with the RFQ Process;
 - (g) change the RFQ Process or any other aspect of the RFQ Documents; or,
 - (h) cancel this RFQ Process and subsequently conduct another competitive process for the same Goods and/or Services that are the subject matter of this RFQ 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 RFQ.
- (2) If ONTC, in its sole discretion, is of the opinion that all of Quotations 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 Quotations 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 Quotation.

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 RFQ 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 draft form of agreement in Part 5. Quotation Form 5 – Compliance with Contract Documents allows a Respondent to submit suggested changes to the draft agreement. ONTC does not have any obligation to accept any proposed changes to the draft agreement 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 draft agreement; (ii) consider significant material proposed changes to negatively impact the evaluation of the Respondent's quotation; or (ii) disqualify any Respondent where the changes or the number of changes made by the Respondent to the draft agreement would be, in ONTC's sole discretion, too onerous to successfully negotiate within the timeframe set out in Section 8.1 (6) below or are unacceptable to ONTC. **In any event, ONTC will not accept any material changes to the clauses in the draft agreement 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 Quotation Form 5, it will be deemed to have accepted and will be required to execute the Final Agreement in the form attached to this RFQ. 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(6).

- (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) 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 RFQ Process.

8.3 Debriefing

- (1) Respondents may request a debriefing after receipt of a notification pursuant to RFQ 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 execute the Final Agreement shall be limited to ten (10) percent of the value of the Quotation provided by the Respondent. The liability of the Respondents for any other loss or damage suffered by ONTC as part of this RFQ Process shall be without limit.
- (2) By submitting a Quotation,
 - (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 Quotation 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 RFQ Process, a Respondent's Quotation in response to this RFQ Process, or due to the acceptance or non-acceptance of any Quotation, or as a result of any act or omission by ONTC and/or its representatives, employees, officers, agents or advisors, including any information or advice or any errors or omissions that may be contained in the RFQ 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 Quotations, 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 representatives, employees, officers, 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 RFQ Process.

9.2 Power of Legislative Assembly

- (1) No provision of the RFQ 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 RFQ Not a “Bidding Contract” or a Tender

- (1) Notwithstanding any other provision of this RFQ, this RFQ 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 RFQ, and this RFQ is not an offer to enter into a contract (often referred to as “Contract A”). Except as provided in RFQ Section 3.8 and 9.1, neither this RFQ nor the submission of a Quotation 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 Quotation 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 RFQ 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 Quotation submission to be considered.

SECTION 12 – INTERPRETATION

12.1 General

- (1) In this RFQ, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.
- (2) All references in this RFQ 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 RFQ, it includes all Ministries and Agencies of the Government of Ontario.



PART 2

**REQUEST FOR QUOTATIONS
SUMMARY OF REQUIREMENTS**

**PART 2 – REQUEST FOR QUOTATIONS
 SUMMARY OF REQUIREMENTS
 SCHEDULE 2-A
 RFQ DATA SHEET**

RFQ 2024 011 MSR Plates – 11.7 Temagami Subdivision	
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
Important Dates	
Publication Date	Tuesday, March 19, 2024
Participation Registration Form	Complete and submit to the Contact Person as soon as possible
Deadline for Additional Information Request	Four (4) Business Days prior to closing date and time
Closing Date and Time	Friday, April 5, 2024 at 2:00:00 p.m. local time (North Bay, ON)
Target Implementation Date	May 31, 2024
Quotation Detail	
Respondents' Meeting	There will not be a Respondents' Meeting. Respondents shall seek any clarifications up to 4 Business Days prior to the Submission Deadline Date and Time.
Validity of Quotations	90 days following the Submission Deadline
Format of Submission	Respondents shall submit their Quotation through the following format: MERX Electronic Bid Submissions (EBS). Refer to Part 1, Request for Quotations, Section 5.1 (1) (a). MERX EBS does not allow submissions to be uploaded after the bid submission deadline; therefore, Respondents shall ensure they allow plenty of time to upload the documents. Quotations which are submitted by facsimile transmission, by email or by electronic means other than MERX <u>will NOT</u> be considered.
Distribution Method	The RFQ Documents will be posted on the ONTC website and MERX. Any addenda to the RFQ will be posted in these locations.
Two-Envelope Process	This Request for Quotations <u>will not</u> be a two-envelope process.

**PART 2 – REQUEST FOR QUOTATIONS
 SUMMARY OF REQUIREMENTS
 SCHEDULE 2-A
 RFQ DATA SHEET *continued***

**RFQ 2024 011
 06580DW/HV –
 11.7 Temagami Subdivision**

Quotation Detail *continued* – Note the requirements below are new to ONTC

Submission Requirements	<p>Respondents are required to submit all of the documents listed below as part of their Quotation. Respondents shall confirm they have included the documents listed below with their Quotations by placing a checkmark in the column “Included in Quotation”. 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 RFQ.</p>		
	Item	Included in Quotation (indicate with ✓)	Item is classified as Material
	This checklist		
	Quotation Form 1 Quotation Submission Form and associated attachments		Material
	Quotation Form 2 Vendor’s General Information		Material
	Quotation Form 3 Acknowledgment to Comply with Part 3 – Request for Quotations Specifications		Material
	Quotation Form 4 References		Material
	Quotation Form 5 Compliance with Contract Documents		Material

**PART 2 – REQUEST FOR QUOTATIONS
 SUMMARY OF REQUIREMENTS
 SCHEDULE 2-A *continued*
 RFQ DATA SHEET**

RFQ 2024 011 MSR Plates – 11.7 Temagami Subdivision		
Procedure of Selection		
General Procedure	<p>ONTC will proceed with an evaluation of the Proposals. The evaluation will be based on the following criteria:</p>	
Evaluation Criteria	Description	Weight
	<p>Price</p> <p><i>Lowest price / price of Respondent x 75 = Score</i></p> <p>ONTC reserves the right in its sole discretion to consider the best overall value when evaluating price and adjust the score accordingly, for example discounts offered.</p> <p>ONTC may evaluate items separately and award separately.</p> <p>If the Respondent submits a price in US funds, ONTC will convert that price using the rate posted on XE.com at the RFQ Closing Date and Time for the purpose of evaluating price.</p>	75
	<p>Delivery</p> <p>Full points will be awarded to vendors who can deliver by May 31, 2024. 10 points will be awarded to vendors who can deliver by June 14, 2024. 05 points will be awarded to vendors who can deliver by June 28, 2024. Vendors who cannot deliver by June 28, 2024, will receive zero. ONTC may evaluate items separately and award separately.</p>	25
	Total:	100

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

RFQ 2024 011 MSR Plates – 11.7 Temagami Subdivision		
Procedure of Selection <i>continued</i>		
Point Advantage	Building Ontario Businesses Initiative Where the value of a procurement is below international trade agreement thresholds, and an open competitive procurement process is issued Ontario Northland is required to procure goods and services from Canadian Businesses. There will be a point advantage provided to all Respondents who identify as a Canadian Business in Proposal Form 2.	10

**PART 2 – REQUEST FOR QUOTATIONS
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: RFQ 2024 011
Description of Requirement: MSR Plates –
11.7 Temagami Subdivision

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
Email: brinda.ranpura@ontarionorthland.ca
Website: www.ontarionorthland.ca



PART 3
REQUEST FOR QUOTATIONS
SPECIFICATIONS

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

Introduction

Each year, Ontario Northland Transportation Commission (ONTC), undertakes a rail infrastructure upgrade program in order to provide safe and reliable train services across northeastern Ontario and northwestern Quebec. For the year 2024, ONTC's objective is to install a new type of tie cast plates, new screw spikes and pandrol clips at 11.7 Temagami Sub.

ONTC is seeking quotations for the supply of tie cast plates, screw spikes, and pandrol clip E2055 for the 2024 season.

Requirements

Refer to the following documents for product requirements, quantities* and delivery requirements associated with the materials:

1. Part 4 – Form of Proposal, Proposal Form 1, Proposal Submission Form and associated attachments.
2. Part 4 – Form of Proposal, Proposal Form 3, Acknowledgment to Comply with the RFP Documents.

*Quantities may vary.

ONTC may, in its sole discretion, award purchase orders to any, one or more Respondents. Respondents shall include in their Proposal any discounts available to ONTC.



PART 4

REQUEST FOR QUOTATIONS

FORM OF QUOTATION

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

PART 2 – QUOTATION FORMS
QUOTATION FORM 1
QUOTATION SUBMISSION FORM

Description: RFQ 2024 011 – MSR Plates – 11.7 Temagami Subdivision

Submitted To: ONTARIO NORTHLAND TRANSPORTATION COMMISSION

We, _____
(Name of Vendor)

having carefully examined, understood, and completed the Request For Quotation Documents as described in Part 1 – Requests for Quotations, RFQ Documents, and Addenda No. _____ to No. _____ inclusive, submit our quotation for MSR Plates – 11.7 Temagami Subdivision as follows on the following pages.

- *Procurement is subject to budgetary approval of expenditures, expected April 1, 2024.*
- *Quantities may vary.*
- *ONTC reserves the right to proceed or not proceed with any or all of the items listed on the following pages.*
- *ONTC may, in its sole discretion, retain more than one Respondent to provide with any of the items listed on the following pages.*
- *Prices excluding HST and are valid for 90 days.*
- *ONTC reserves the right in its sole discretion to subdivide and/or bundle the Goods and/or Services which are the subject of this RFP and award one or any number of separate purchase orders for the Goods and/or Services.*

Vendor:

(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

Item No. 1 - Supply of New Tie Cast Plate

Description/Dwg/Specification	Qty Required	Unit of Measure	Price per Unit	Total Extended Price
NEW TIE CAST PLATES MSR 541021, 15.5" PLATE, 5.5" BASE FOR 115RE Drawings must be supplied by Respondent and verified and accepted by ONTC.	2,800	EACH	_____	_____

NOTE: Prefer materials to be shipped in gons

TOTAL PRICE (F.O.B. Ontario Northland Gateway trackage, destination
NORTH BAY, ON) _____

Indicate whether price quoted is in U.S. or Canadian Funds: _____

Requested delivery May 31, 2024. State required order date to receive materials by this time:

_____.

If unable to meet this delivery, state best possible delivery from receipt of firm order:

_____.

Terms and Conditions of Payment:

_____.

Respondent to indicate below any discounts available to ONTC:

Item No. 2 - Supply of New Screw Spike

Description/Dwg/Specification	Qty Required	Unit of Measure	Price per Unit	Total Extended Price
SCREW SPIKE	11,200	EACH	_____	_____

15/16" x 6.5", rectangular HD AREMA
High Strength Heat Treated

Drawings **must be** supplied by
Respondent and verified and accepted
by ONTC.

NOTE: Spikes to be shipped in open top gon rail cars

TOTAL PRICE (F.O.B. Ontario Northland Gateway trackage, destination
North Bay, ON) _____

Indicate whether price quoted is in U.S. or Canadian Funds: _____

Requested delivery by May 31, 2024. State required order date to receive materials by this time:

_____.

If unable to meet this delivery, state best possible delivery from receipt of firm order:

_____.

Terms and Conditions of Payment:

_____.

Respondent to indicate below any discounts available to ONTC:

Item No. 3 – New Pandrol Clip
E2055

Description/Dwg/Specification	Qty Required	Unit of Measure	Price per Unit	Total Extended Price
NEW PANDROL CLIP E2055	5,600	EACH	_____	

Drawings **must be** supplied
by Respondent and verified
and accepted by ONTC.

NOTE: Prefer materials to be shipped in gons

TOTAL PRICE (F.O.B. Ontario Northland Gateway trackage, destination
NORTH BAY, ON) _____

Indicate whether price quoted is in U.S. or Canadian Funds:

Requested delivery May 31, 2024. State required order date to receive materials by this time:

_____.

If unable to meet this delivery, state best possible delivery from receipt of firm order:

_____.

Terms and Conditions of Payment:

_____.

Respondent to indicate below any discounts available to ONTC:

PART 2 – QUOTATIONS FORMS
QUOTATION FORM 2
VENDOR'S GENERAL INFORMATION

The vendor must complete this document and submit it as part of their Quotation.

Name <i>Please indicate the complete legal name of the company</i>	
Tax Registration # (HST)	
Tax Registration # (GST)	
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 Quotation*)

Name	
Title	
Telephone #	Fax #
E-mail address	

PART 2 – QUOTATIONS FORMS
QUOTATION FORM 2 *cont'd*
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:

Subcontractors

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

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

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

**PART 2 – QUOTATIONS FORMS
QUOTATION FORM 3
ACKNOWLEDGMENT TO COMPLY WITH PART 3 – REQUEST FOR
QUOTATIONS SPECIFICATIONS**

Respondent acknowledges that they can 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 Quotations – Specifications, the Respondent shall provide complete details of how they will deviate, this shall include proposed equivalent alternatives.

PART 2 – QUOTATIONS FORMS
QUOTATION FORM 4
REFERENCES

The vendor must supply here the reference information of three (3) customers for which they have provided similar goods and/or services that may be contacted. ONTC is **NOT** to be listed as a reference. ONTC may contact references. The information provided below or provided by references may or may not be included in the evaluation of the vendor.

Reference #1

Company name		
Location		
Description of goods and/or services provided		
Contact person name and title		
Phone	Website	E-mail

Reference #2

Company name		
Location		
Description of goods and/or services provided		
Contact person name and title		
Phone	Website	E-mail

Reference #3

Company name		
Location		
Description of goods and/or services provided		
Contact person name and title		
Phone	Website	E-mail

**PART 4 – FORM FOR QUOTATIONS
 QUOTATION FORM 5
 COMPLIANCE WITH CONTRACT DOCUMENTS**

The Respondent may suggest changes to the Agreement included in Part 5 of this RFQ 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 5
REQUEST FOR QUOTATIONS
DRAFT AGREEMENT

THIS AGREEMENT FOR SERVICES MADE EFFECTIVE XXX (the “Effective Date”)

BETWEEN:

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

(“ONTC”)

- and-

XX

(the “Supplier”)

THE PARTIES AGREE AS FOLLOWS:

INTERPRETATION

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

“**Agreement Date**” means the date this agreement is signed by the last party to sign it, as determined by the dates indicated with the parties’ signatures;

“**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;

“**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;

“**Force Majeure**” means an event or a cause beyond the control of a party, which may include war, interference by civil or military authorities, civil insurrection, local or national emergency, blockade, seizure, riot, sabotage, vandalism, terrorism, earthquake, flood, act of God, accident, fire, nuclear or other explosion, disease, epidemic, pandemic, quarantine restriction, strike, lockout or other labour disturbance, supply chain disruptions, governmental embargo, or changes to any acts, orders, legislation, regulations, directives, or priorities of any government or other public authority; provided such event is not caused by the affected party’s negligence or failure to exercise reasonable diligence. A Force Majeure event or cause does not include an inability to pay or a lack of financial resources unless it is due to a

failure of the province to approve the appropriation from the Consolidated Revenue Fund for the Goods;

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

“Intellectual Property” means any improvement, invention or discovery, whether or not patented or patentable, any technical data, know-how or trade secret, any design, any computer software or any work subject to copyright, whether or not such design or copyright is registered or registrable and all Intellectual Property Rights contained, embedded or disclosed in the Services;

“Intellectual Property Rights” means domestic and foreign intellectual property rights including: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications, (ii) copyrights, copyright registrations and applications for copyright registration, (iii) mask works, mask work registrations and applications for mask work registrations, (iv) designs, design registrations, design registration applications and integrated circuit topographies, (v) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, and the goodwill associated with any of the foregoing, (vi) trade secrets, proprietary information, know-how, technology, business ideas, drawings, and specifications relating to the business, and (vii) the right to commence legal proceedings with respect to the past or present infringement of the foregoing, including the right to recover all damages and profits, as provided for herein;

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

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

“ONTC Parties” includes ONTC and its officers, directors, employees, contractors and agents and those for whom ONTC is in law responsible;

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

“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; and,

“Supplier Parties” includes the Supplier and its officers, directors, employees, contractors and agents and those for whom the Supplier is in law responsible.

SPECIFICS OF THIS PARTICULAR AGREEMENT

2. **Retainer.** ONTC hereby retains the Supplier to provide the Goods subject to the provisions of this Agreement. This is a non-exclusive retainer and ONTC may retain additional suppliers to supply the same or similar Goods.

3. **Description of the Goods.** The Goods to be supplied under this agreement are described in Schedule A (Specifications) as modified by Schedule B (Supplier's Proposal).
4. **Contract Price.** ONTC shall pay the Supplier for the Goods to be supplied under this agreement the amount of **XX** (the "**Contract Price**"), more particularly set out in Schedule C (Price).
5. **Duration of this Agreement.** This agreement becomes effective on the Effective Date, and, unless terminated earlier in accordance with this agreement, lasts until later of final completion or expiry of the Supplier's obligations under this Agreement.
6. **Contract Documents.** The contract documents include the following:
 - (a) This agreement;
 - (b) Any Change Orders;
 - (c) Specifications (Schedule A);
 - (d) Supplier's Proposal (Schedule B);
 - (e) Price (Schedule C); and,
 - (f) Any other documents incorporated by reference in any of the foregoing (the "**Contract Documents**").
7. **Precedence.** 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) The body of this agreement;
 - (c) Schedule A (Specifications);
 - (d) Schedule B (Supplier's Proposal);
 - (e) Schedule C (Price); and,
 - (f) Any other documents incorporated by reference in any of the foregoing.

PROVISION OF THE GOODS BY THE SUPPLIER

8. **Goods to be Purchased.** The Supplier shall provide the following Goods in accordance with the Specifications in Schedule A and as further described in Schedule B:

New Tie Cast Plates, MSR 541021, 15.5" Plate, 5.5" Base For 115RE and,

Screw Spike, 15/16" x 6.5", rectangular HD AREMA High Strength Heat Treated.

9. **Prior to Provision of the Goods.** Immediately after the Effective Date, the Supplier shall provide to ONTC proofs of compliance required under this agreement or in the procurement documents.
10. **Standard of Care.** The Supplier shall:
 - (a) provide the Goods in accordance with all Environmental Laws and other applicable laws and the Contract Documents;
 - (b) 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,
 - (c) 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**").
11. The Supplier acknowledges and agrees that throughout the performance of its obligations under the Contract Documents, the performance of the Supplier's obligations, duties and responsibilities 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.
12. **Changes.** Changes of any kind to the design or 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. 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.
13. **Defective Goods.** The Supplier shall promptly correct Defects in the Goods at its expense whether or not the Defect is the result of poor workmanship, use of Defective products or damage through carelessness or other act or omission of the Supplier.
14. 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

15. The Delivery Date for the Goods and the quantities of the deliveries shall be on or before October 31, 2024. The Supplier shall be responsible for delivery of the Goods to the location specified by ONTC on the Delivery Date. 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 ONTC's location shall be with the Supplier.

16. ONTC shall do a preliminary inspection and receive the Goods upon delivery to the ONTC location. The Supplier acknowledges that:
 - (a) ONTC may only be able to visually inspect the Goods upon delivery and receipt;
 - (b) any Defects in the Goods may not be discoverable until installation work or the use of the Goods has commenced;
 - (c) ONTC shall not be deemed by receiving the Goods to have accepted Defects, if any, in the Goods or to have waived its rights for remedies for Defective Goods; and,
 - (d) the remedies of ONTC relating to Defective Goods under this agreement or under applicable laws will be available to ONTC until the Goods are installed.
17. If ONTC determines, acting reasonably, that any Goods provided by the Supplier, even if ONTC has already received them, do not comply with ONTC's 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, acting reasonably; or
 - (b) reject the Goods and return them (or require the Supplier to retrieve or undo them) at the Supplier's expense and 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. If ONTC rejects the Goods, it shall not be responsible for any re-stocking charge.
18. 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 installation of the Goods as if the Goods had not been delivered on the Delivery Date as described in section 15. Provided that the Supplier shall not be responsible for any delays caused by a failure by ONTC to complete the inspections, referenced in section 15, in a timely manner.
19. While on ONTC premises, the Supplier shall comply with ONTC's health and safety policies and procedures, as amended from time to time, including its Fit for Duty Policy.

Title and Risk

20. Subject to any contrary intention in the Contract Documents, title to all Goods and all risk of damage or loss thereto shall pass to ONTC on the date the Goods are delivered to ONTC's location and received by ONTC.

Time is 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, as amended by a Change Order, if any.
22. The Supplier acknowledges that ONTC will suffer damages if the Goods are not delivered to ONTC on the Delivery Date or if the Goods have Defects that delay the installation of the Goods. The Supplier shall be responsible for all damages suffered by ONTC as a result of the failure to deliver the specified quantity of Goods on the Delivery Date or a delay in the installation 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, and additional costs requested by ONTC contractors installing the Goods.

Intellectual Property

23. The Supplier is responsible for obtaining all approvals and licenses with regarding to any Intellectual Property associated with the Goods.
24. The Supplier shall be liable for and fully indemnify and hold harmless ONTC against any liability, whether direct or indirect, arising out of a claim by any third party against ONTC alleging that the Goods and their use by ONTC, infringes any Intellectual Property Rights. In the event that an injunction is obtained against ONTC's use of the Goods because of infringement of a third party's Intellectual Property Rights, in addition to any other remedy available to ONTC, the Supplier shall replace the Goods to the satisfaction of ONTC so that they become non-infringing.

Warranty

25. The Supplier warrants that the Goods will: (i) be of good quality and workmanship; (ii) conform to the specifications and/or standards in the Contract Documents; (iii) comply with all Environmental Laws and applicable local, provincial and federal laws and regulations; (iv) be free from Defects in design, materials and workmanship; and (v) be fit for the intended purpose.
26. 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.

Deliverables

27. The Supplier shall, at the time of delivery of the Goods, provide to ONTC, the following:
 - (a) warranty information; and,
 - (b) maintenance kit, if applicable.

PAYMENT BY ONTC

Amounts Chargeable in Respect of the Goods

28. The Supplier may charge ONTC, for the provision of the Goods amounts not greater than the Contract Price and any Change Orders. The Supplier shall submit an invoice to its ONTC Contact Person and to pay.inv@ontarionorthland.ca.

Payment

29. ONTC shall pay the Supplier for the Goods within 30 days of receipt of an invoice and required backup materials from the Supplier, subject to any dispute or right of set off by ONTC.

30. 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

31. 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

32. 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. 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, written 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.
33. 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 removed;
 - (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.
34. For each full day of Force Majeure, the Delivery Date shall be extended by a full day.
35. If the failure to perform an obligation hereunder is due to an event of Force Majeure which continues for a period in excess of 60 continuous days, either party may terminate this agreement effective upon Notice to the other party and 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

36. 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 by providing written notice to the Supplier of the particulars of the default. If the Supplier fails to remedy the default within ten 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 written Notice to the Supplier.

37. The Supplier may terminate this agreement upon at least ten 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 written Notice of the breach.
38. The parties may, by mutual written agreement, terminate this agreement at any time.
39. 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.
40. If this agreement is terminated early in accordance with sections 36 or 39, 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

41. The Receiving Party shall ensure that all of the Receiving Party's Parties comply with all the provisions of this agreement relating to Confidential Information and the Receiving Party shall be responsible for any failure by any of the Receiving Party's Parties to do so.
42. The Receiving Party shall use Confidential Information only for the purposes of this agreement.
43. The Receiving Party shall not copy or transcribe into another form, any Confidential Information received from the Disclosing Party except as reasonably necessary.
44. 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

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

46. 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.
47. 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

48. The Receiving Party may disclose Confidential Information if:
 - (a) the Disclosing Party approves in writing;
 - (b) the Receiving Party is required by law to disclose it; or,
 - (c) the Confidential Information is generally and publicly available.
49. 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.
50. 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

51. If either party breaches any provision of this agreement relating to Confidential Information, it shall immediately give written Notice of such breach to the other party and take all necessary steps to limit the extent and impact of the breach.
52. 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.

INDEMNITY AND LIMITATION OF LIABILITY

53. **General Indemnity.** The Supplier shall indemnify and hold harmless ONTC and ONTC Parties from and against all Losses which may arise by reason of the exercise of the responsibilities and obligations contained herein by the Supplier or as a result of any breach of the terms of this Agreement by the Supplier or by any act or omission of the Supplier or Supplier Parties, including all legal costs and expenses reasonably incurred by ONTC in connection with the defence or settlement of any such Loss, unless such Loss is caused by the negligent act or omission of ONTC or ONTC Parties. 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. For the purpose of enforcement of this indemnity, ONTC is acting as agent and trustee for the ONTC Parties.

54. **Specific Indemnities.** The Supplier shall indemnify ONTC and ONTC Parties and save them harmless from and against all Losses incurred by ONTC arising from:
- (a) any claim by any third party against ONTC alleging that the Goods and their use by ONTC infringes any Intellectual Property Rights;
 - (b) any claim against ONTC arising from the failure of the Supplier to protect the confidentiality of Confidential Information; and,
 - (c) safety infractions committed by the Supplier under health and safety legislation, regulations, guidelines or orders, including the *Occupational Health and Safety Act*.
55. **Bodily Injury and Property Damage.** The Supplier shall make full and complete compensation for any bodily injury or death to any person while delivering the Goods and for any damage caused to ONTC's physical property by an act or omission of the Supplier or a Supplier Party.
56. **Supplier Losses.** 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 delivery of the Goods unless caused by the negligent act or omission of ONTC or ONTC Parties.
57. **Waiver.** The Supplier waives against ONTC and ONTC Parties any claims of any kind whether directly or indirectly arising out of or connected with the existence of this Agreement or for any injury to or death of any person or for any loss of or damage to any property belonging to the Supplier or Supplier Parties and for any loss or damage of the Supplier unless caused by the negligent act or omission of ONTC or ONTC Parties.
58. **Limitation of Liability.** Notwithstanding any other provision of this Agreement,
- (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 or transmission. 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;
 - (b) ONTC shall not be liable for any amounts in excess of the amount paid by ONTC to the Supplier in the 12 months preceding the claim; and,
 - (c) 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, whether at the time of execution of this Agreement or at any time during the Term or Renewal Term, 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.
59. **Survival.** The sections in this part "Indemnity and Limitation of Liability" shall survive the expiry or termination of this Agreement.

GENERAL

60. **Notices:** A party giving Notice shall give it in writing and shall send it by personal delivery, email or prepaid courier to the other party's contact person at an address of the other party provided for in this agreement.

61. The initial contact person and contact address for the parties are:

Ontario Northland Transportation Commission
Attention: Mérick Létourneau
555 Oak Street East
North Bay, ON P1B 8L3
T: 705-544-2292 ext. 128
E: merick.letourneau@ontarionorthland.ca.

And to: Legal Services & Corporate Governance
Legal@ontarionorthland.ca

XX

Attention: XX

XX

XX

T:

E:

62. 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 upon the sender receiving from the recipient a written acknowledgment of receipt; and
- (c) Prepaid Courier is deemed to be delivered two days after the date it is consigned to the courier.

63. **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.

64. **Relationship:** The Supplier is an independent contractor 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.

65. **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 hereby 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.

66. **Severability:** Should any section or part or parts of any 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.
67. **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.
68. **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 Agreement Date.
69. **Counterparts, Electronic Signatures and Electronic Delivery.** This Agreement may be executed with 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.

[SIGNATURE PAGE FOLLOWS]

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

**ONTARIO NORTHLAND
TRANSPORTATION COMMISSION**

Per: _____
Name: Jonathan Corley
Title: VP Rail Operations

Date: _____

I have authority to bind the corporation.

XXX

Per: _____
Name:
Title:

Date: _____

I have authority to bind the corporation.

Schedule A Specifications

**Schedule B
Supplier’s Proposal**

**Schedule C
Price**