

ONTARIO NORTHLAND**TRANSPORTATION COMMISSION****Request for Proposals No. RFP 2024 048****For****Weed Spraying****REPLY BY DATE: 2:00:00 p.m. Thursday, January 09, 2025****Primary Contact:**

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PART 1

REQUEST FOR PROPOSALS

SECTION 1 - INTRODUCTION

1.1 General

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

(2) In this RFP:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Ontario Northland Transportation Commission

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

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

ONTC motor coaches connect rural Ontario to major 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 RFP DOCUMENTS

2.1 Request for Proposals Documents

(1) The Request for Proposals documents consist of:

Part 1 – Request for Proposals

Part 2 – Requests for Proposals Summary of Requirements

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

Part 3 – RFP Specifications

- (a) Schedule 3-A – Scope of Work

Part 4 – Form of Proposal

- (a) Proposal Form 1 – Proposal Submission Form
- (b) Proposal Form 1A - Proposal Submission Form - Schedule of Prices
- (c) Proposal Form 2 – Respondent’s General Information
- (d) Proposal Form 3 – Acknowledgment to Comply with Part 3 – Request for Proposals Specifications
- (e) Proposal Form 4 – References
- (f) Proposal Form 5 - Compliance with Contract Documents
- (g) Proposal Form 6 – Health, Safety and Environment
- (h) Proposal Form 7 – Contractor’s Qualification Statement
- (i) Proposal Form 8 – Claims

Part 5 – Ontario Northland’s Draft Agreement

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

2.2 Priority of Documents

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

2.3 Distribution of Documents – Electronic Distribution

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

2.4 Information Provided by ONTC

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

SECTION 3 – THE RFP PROCESS

3.1 RFP Process

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

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

3.2 Questions and Communications Related to the RFP Documents

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

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

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

3.3 Addenda/Changes to the RFP Documents

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

3.4 Respondents’ Meeting

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

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

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

3.5 Prohibited Contacts

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

3.6 Media Releases, Public Disclosures, Public Announcements and Copyright

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

3.7 Confidentiality and Disclosure Issues – Respondent Information

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

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

3.8 Confidential Information

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

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

3.9 Governing Laws and Attornment

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

3.10 Licenses and Permits

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

3.11 Respondents' Costs

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

3.12 Delay and Costs of Delay

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

3.13 Clarification and Verification of Respondent's Proposal

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

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

3.14 Two-Envelope Process

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

SECTION 4 - PROPOSAL CONTENT AND FORMAT

4.1 Format and Content of Proposal

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

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

(8) Listing of Subcontractors

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

4.2 Proposal Submission Form

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

4.3 References and Past Performance Issues

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

- (3) ONTC may take into account in the evaluation process reliable information received from the Government of Ontario or its Agencies regarding past performance of a Respondent, provided information evidencing past poor performance by a Respondent is provided to the Respondent (subject to any restrictions 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.

4.4 Conflict of Interest

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

SECTION 5 - PROPOSAL SUBMISSION, WITHDRAWAL, MODIFICATION

5.1 Submission of Proposals and Late Proposals

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

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

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

Questions concerning submitting through MERX should be addressed to:

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

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

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

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

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

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

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

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

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

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

5.2 Late Proposals

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

5.3 Withdrawal of Proposals

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

5.4 Amendment of Proposals

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

5.5 Proposal Irrevocability

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

5.6 One Proposal per Person or Entity

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

SECTION 6 - PROPOSAL EVALUATION

6.1 Evaluation Team

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

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

6.2 Evaluation of Proposals

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

6.3 Short-Listing

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

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

6.4 Interviews, Site Visits, Demonstrations and Presentations

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

SECTION 7 - GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

7.1 ONTC's Discretion

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

7.2 Disqualification

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

- (d) The Proposal contains false or misleading information, or the Respondent provides false or misleading information in any part of the RFP Process;
 - (e) The Proposal, in the sole discretion of ONTC, reveals a Conflict of Interest that cannot be managed, mitigated or minimized;
 - (f) There is evidence that the Respondent colluded with one or more other Respondents in the preparation or submission of Proposals;
 - (g) The Respondent has previously breached or been in default of compliance with any term of any agreement with ONTC and such breach or default has not been waived by ONTC or the Respondent has not cured the default;
 - (h) The Respondent has been convicted of an offence in connection with any services rendered by the Respondent to ONTC, or to any Ministry, Agency, Board or Commission of the Government of Ontario or the Government of Canada;
 - (i) The Respondent, at the time of issuance of this RFP or any time during the RFP Process, has an outstanding claim or is engaged in an ongoing legal dispute with ONTC, other than an adjudication under the Construction Act;
 - (j) The Proposal is not Substantially Compliant;
 - (k) The Respondent has failed to notify ONTC of, or ONTC has not approved, a post-submission change in the control of the Respondent or in the circumstances of the Respondent that may materially negatively impact the Respondent's ability to perform its obligations if selected as the Successful Respondent; or,
 - (l) The Respondent has received a Vendor Performance Evaluation as part of ONTC's Vendor Performance Policy, and received a total rating on the Final Performance Form that disqualifies the Respondent from participating in the RFP Process.
- (2) Notwithstanding Section 7.2 (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 Proposal(s).

7.3 General Rights of ONTC

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

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

SECTION 8 – AGREEMENT FINALIZATION AND DEBRIEFING AND SUCCESSFUL RESPONDENT

8.1 Finalization of the Agreement

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

- (5) The Successful Respondent is expected to enter into the relevant for of draft agreement in Part 5. Proposal 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 proposal; 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 (7) 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 Proposal Form 5, it will be deemed to have accepted and will be required to execute the Final Agreement in the form attached to this RFP. If a Respondent has submitted proposed amendments to the Final Agreement, negotiations respecting those amendments shall be conducted within the timeframe set out in Section 8.1(6).

- (6) If a Successful Respondent fails or refuses to enter into and execute the Final Agreement within ten (10) 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:
- (b) Certificates of insurance as specified in the draft agreement;
 - (c) Executed Contractors Health and Safety Responsibility Agreement;

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

8.2 Notification If Successful or Not

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

8.3 Debriefing

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

SECTION 9 - LEGAL MATTERS AND RIGHTS OF ONTC

9.1 Limit on Liability

The total liability of the Respondent to ONTC for loss and damage arising from the Respondent who is selected as the Successful Respondent but then fails to deliver the evidence of insurance or other documents required under Section 8.1(7) within the time period specified in Section 8.1(6) or fails to execute the Final Agreement shall be limited to the value of the Bid Performance Security provided by the Respondent pursuant to Section 4.3. The liability of the Respondents for any other loss or damage suffered by ONTC as part of this RFP Process shall be without limit.

- (1) By submitting a Proposal,
 - (a) each Respondent acknowledges ONTC's rights as stated herein and absolutely waives any right of action against ONTC for ONTC's failure to accept the Respondent's Proposal whether such right of action arises in contract, negligence, bad faith, or any other cause of action;
 - (b) each Respondent covenants and agrees that, under no circumstances, shall ONTC, or any of its employees, officers, representatives, agents or advisors, be liable to any Respondent, whether in contract, tort, restitution, or pursuant to any other legal theory, for any claim, action, loss, damage, cost, expense or liability whatsoever and howsoever arising from this RFP Process, a Respondent's Proposal in response to this RFP Process, or due to the acceptance or non-acceptance of any Proposal, or as a result of any act or omission by ONTC and/or its employees, officers, representatives, agents or advisors, including any information or advice or any errors or omissions that may be contained in the RFP Documents, or any other documents or information provided to a Respondent, or

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

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

9.2 Power of Legislative Assembly

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

9.3 RFP Not a “Bidding Contract” or a Tender

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

SECTION 10 – VENDOR PERFORMANCE

10.1 General

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

10.2 Vendor Performance Evaluation

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

10.3 Vendor Ratings for Proposal Evaluation Purposes

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

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

SECTION 11 – TRANSPARENCY AND FAIRNESS

11.1 General

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

SECTION 12 – INTERPRETATION

12.1 General

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



PART 2

**REQUEST FOR PROPOSALS
SUMMARY OF REQUIREMENTS**

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

RFP 2024 048 Weed Spraying	
Contact Details	
Contact Person	Brinda Ranpura, Procurement Contracts Specialist
Contact Information	555 Oak Street East North Bay, Ontario, P1B 8L3 brinda.ranpura@ontarionorthland.ca (705) 472-4500 ext. 548
Proposal Detail	
Respondents' Meeting	There will not be a Respondent's Meeting. Respondents shall seek any clarifications upto 4 Business Days prior to the Submission Deadline Date and Time.
Validity of Proposals	90 days following the Submission Deadline
Format of Submission	Respondents shall submit their Proposal through MERX Electronic Bid Submissions (EBS). Refer to Part 1, Request for Proposals, Section 5.1 (1) (a). MERX EBS does not allow Proposals to be uploaded after the Submission Deadline; therefore, Respondents shall ensure they allow sufficient time to upload the documents. Proposals which are submitted by facsimile transmission, by email or by electronic means other than MERX <u>will NOT</u> be considered.
Two-Envelope Process	This procurement will not be a two-envelope process.
Distribution Method	The RFP Documents will be posted on the ONTC website and MERX. Any addenda to the RFP will be posted in these locations.

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

**RFP 2024 048
 Weed Spraying**

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

Submission Requirements	Respondents are required to submit all of the material documents listed below as part of their Proposal. Respondents shall confirm they have included the documents listed below with their Proposal by placing a checkmark in the column “Included in Proposal”. If the Respondent fails to include a document listed below as being “Material”, the respondent may be disqualified in accordance with section 6.2 (3) of the RFP.		
	Item	Included in Proposal (indicate with ✓)	Item is classified as Material
	This checklist		
	Proposal Form 1 - Proposal Submission Form		Material
	Proposal Form 1A – Proposal Submission Form – Schedule of Prices		Material
	Proposal Form 2 - Respondent’s General Information		Material
	Proposal Form 3 – Acknowledgement to Comply with Part 3 – Request for Proposal Specifications		Material
	Proposal Form 4 – References		Material
	Proposal Form 5 - Compliance with Contract Documents		
	Proposal Form 6 – Health, Safety and Environment		Material
Proposal Form 7 – Contractor’s Qualification Statement		Material	
Proposal Form 8 - Claims			

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

RFP 2024 048 Weed Spraying			
Important Dates			
Publication Date	Tuesday, December 10, 2024		
Participation Registration Form	Complete and submit to the Contact Person as soon as possible		
Deadline for Additional Information Request	Four (4) full Business Days prior to the Submission Deadline		
Submission Deadline Date and Time	Thursday, January 09, 2025 at 2:00:00 p.m. (EST)		
Target Contract Start Date	May 1, 2025		
Procedure of Selection			
Mandatory Requirements	Respondents must first satisfy that all of the Mandatory Requirements listed below have been met. Respondents will receive a pass/fail for each Mandatory Requirement. Respondents who fail any of the Mandatory Requirements will be disqualified from the RFP Process.		
	Mandatory Requirement	Pass	Fail
	Respondent has submitted all of the material documents as specified in the Submission Requirements listed in Part 2, Request for Proposals, RFP Data Sheet		
	Respondent must be a Canadian Business or domiciled in an international trade partner.		

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

RFP 2024 048 Weed Spraying		
Procedure of Selection <i>continued</i>		
Evaluation General Procedure	Respondents must score a <u>minimum of 60%</u> in Experience and Qualifications to qualify for shortlist consideration. Respondents who fail to score a minimum of 60% in this category will be disqualified from the RFP Process.	
	Description	Weight
	<p>Price ONTC will use the following to calculate the initial score for price: Lowest price of all Proposals / price of Respondent x 50 = Score</p> <p><u><i>The following information should be provided under Proposal Form 01 – Proposal Submission Form</i></u></p> <p><i>ONTC reserves the right in its sole discretion to consider the best overall value when evaluating price and adjust the score accordingly. If ONTC, in its sole discretion, is of the opinion that the Respondent has submitted a price that is too low to adequately complete the scope of work, then ONTC reserves the right not to use that price as the “Lowest price of all Proposals”.</i></p>	50
Evaluation Criteria	<p>Experience and Qualifications ONTC will assess Respondents’ experience and qualifications using the information supplied as part 4 of this RFP.</p> <p>The following sub-weights will apply:</p> <p>Company Profile – 2 Points (Include Subcontractor’s Company Profile if any) Resume of Key Personnel – 3 Points (Include Subcontract’s Resumes if any) Project Profile 1 – 5 Points Project Profile 2 – 5 Points Project Profile 3 – 5 Points Overall review of Respondent based on entire submission – 5 Points</p> <p>(ONTC may or may not contact references as part of the evaluation and may use this information as part of this score)</p>	50

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

RFP 2024 048 Weed Spraying		
Procedure of Selection <i>continued</i>		
	Description	Weight
Evaluation Criteria	<p>Experience and Qualifications (<i>continued</i>)</p> <ul style="list-style-type: none"> • Describe your ability to ensure that all spraying will be completed by July 31st of each year– 10 Points <p><u><i>The Successful Respondent must provide a copy of the following documents –</i></u></p> <ul style="list-style-type: none"> • Copy of their Registration Number for spraying in both Quebec and Ontario, along with the relevant permits issued by the provinces of Quebec and/or Ontario – 5 Points • Copy of the MSDS Sheets for the Products to be used – 5 Points • Copy of the Qualification Certificates for the employee completing the Spraying – 5 Points <p><i>*Proposals will be evaluated based on the completeness and validity of these documents, ensuring that the contractor is properly registered and authorized to perform spraying services within these jurisdiction.</i></p> <p><u><i>The following information should be provided under Proposal Form 07 – Contractor’s Qualification Statement</i></u></p>	
	Total	100

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

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

Date: _____
Reference Number: RFP 2024 048
Description of Requirement: Weed Spraying

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: 705-472-4500 Ext. 548
Email: brinda.ranpura@ontarionorthland.ca
Website: www.ontarionorthland.ca



PART 3
REQUEST FOR PROPOSALS
SPECIFICATIONS

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

Summary:

Ontario Northland Transportation Commission (ONTC) is seeking proposals from qualified service providers for the 2025 to 2029 Vegetation Management Program Herbicide Application.

The program will involve a three-year agreement (2025 - 2027) with two optional one-year terms (2028 and 2029), which will be subject to approval each year. If ONTC chooses to continue with the two optional one-year terms 2028 and 2029, a written notice will be issued, and the pricing will be negotiated and mutually agreed upon by both parties.

The purpose of the program is to spray herbicides in order to reduce vegetation, improve drainage, reduce the risk of fire hazard and maintain a clear line of sight along ONTC's rail system.

Scope of Work

The following outlines the scope of work associated with the Vegetation Management Program Herbicide Application.

The chart below represents the total mileage by subdivision requiring spraying.

Subdivision	Main	Yards & Sidings	Total
Temagami	61.70	22.70	84.40
Ramore	76.45	14.49	90.94
Kirkland Lake	32.87	4.85	37.72
Devonshire	26.65	5.00	31.65
Kapuskasing	99.28	19.81	119.09
Island Falls	56.54	7.31	63.85
Total	353.49	74.16	427.65
Grand Total			427.65

Note: The above is an estimate of treatment required. This list may be added to or subtracted from prior to the contract starting.

Ballast Herbicide Treatment

A total spray width of 16 ft.* of the track will be applied, unless otherwise indicated. Herbicides to be applied and rates of spraying are as follows:

- Year #1 - Torpedo (pre-emergent) 580g/ha + Clearview 200g/ha + VP480 4L/ha or an

appropriate alternative.

- Year #2 - Arsenal (post)3L/ha + VP480 4L/ha + Clearview 200g/ha **or** Arsenal (post)3L/ha + VP480 4L/ha + Truvist 168g/ha or an appropriate alternative.

***Please note that these listed chemicals should only be used as guide and the prescription should change each year as per the requirement.**

Contractor's Responsibilities

- (a) Spraying of these subdivisions will take place as soon as possible after vegetation starts to appear or when the chemical manufacturer recommends its product be sprayed, so that maximum effectiveness is achieved.
- (b) The Contractor guarantees that there will not be any re-growth for 24 months in any areas sprayed with the chemicals. The Contractor undertakes to re-spray at no cost to ONTC any areas where re-growth occurs.
- (c) The Contractor will maintain a "skip list" to record those areas of rail right-of-way and track that are not sprayed due to extenuating circumstances.
- (d) Any consultations on vegetation control issues including but not limited to weed resistance identification and herbicide mix changes will be at no extra cost to ONTC.
- (e) All spraying will be completed by July 31 of each year or as otherwise indicated by the Contractor in its response.
- (f) Without limiting the intent of the scope of work to be performed, the successful Contractor will be responsible for;
 - Obtaining all permits required by municipalities (including permits to obtain water), Provincial and Federal regulations.
 - Placing notices, and proper signage at all locations where the general public could be affected.
 - Notifying ONTC of any safety precautions that should be posted with the railway to ensure safety to their employees, as well as the medical treatments / processes required in the event of an accident.
 - Perform all other functions necessary to ensure the safe and effective application and completion of the work.
 - ONTC requires that Contractors work within the standards of our Company Safety policies and rules.

- (g) Contractor must comply with all pertinent regulations for herbicide use including but not limited to:
- Ontario Regulation 63/09, Section 24 - Health or Safety, Public Works
 - Ontario Regulation 63/09, Section 25 - Health or Safety, Public Works, Annual Report
 - Ontario Regulation 63/09, Section 74 through 79 - Requirements for posting signs.
- (h) ONTC will contact the Contractor prior to March 31st of each year to determine the start date of the weed spraying season, areas to be sprayed, flag protection etc. The contractor will provide ONTC with;
- A copy of the Contractor's Certificates of Insurance as specified in the Contract Documents. In addition, ONTC must be listed as additional insured on the certificates;
 - A copy of the Contractors WSIB for each province where work will be performed;
 - A copy of the Contractor's Registration Number for spraying in Quebec and Ontario as well as copies of applicable Permits issued by the province of Quebec and / or Ontario;
 - Copies of the MSDS sheets for the products to be used;
 - A copy of Qualification Certificates for the employees doing the spraying.

Operational Requirements

- (a) The Contractor agrees that before any work is performed in connection with the Agreement, the Contractor shall give to ONTC at least seven (7) days prior notice thereof in writing and ONTC shall be entitled to appoint an inspector to see that the work is performed in such a manner as shall in all respects comply with the Agreement.
- (b) No work shall at any time be done in such a manner as to obstruct or delay or in any way interfere with the operation of the trains, traffic or business of the ONTC or any company using the works of ONTC.
- (c) Any material, equipment and service herein specified for the purpose of applying a weed killing chemical solution shall first meet the requirements and approval of

ONTC.

- (d) The Contractor agrees that the spraying width required shall be made up of 8 feet from the center line of track on each side for a 16 foot spraying width.
- (e) The Contractor agrees to provide all spray equipment required for proper and workmanlike application.
- (f) Work days shall be ten hours in duration not including lost track time. There will be no overtime charges should there be lost track time.
- (g) Dates for weed spraying shall be mutually agreed upon. Work is anticipated to begin during the month of June, weather depending.
- (h) The Contractor shall render to ONTC complete statements showing quantities of chemical used and the location of treatment. The quantities of solution to be applied shall be those best calculated in the Contractor's judgment to secure economical and effective results subject to the approval of ONTC.
- (i) The Contractor will provide the signs and apply, for public notification of spraying.

ONTC Obligations

- (a) ONTC shall furnish free transportation over its lines for the Contractor's spray equipment as may be required in connection with the performance of work under the Agreement. This transportation is to include both transportation from point of origin on ONTC line to the point of work and return to the point of origin, or such other point mutually agreed upon by the parties.
- (b) ONTC shall furnish maintenance of way and/or operating supervisory personnel as required by ONTC for movement of the Contractor's equipment while operating on the track.
- (c) Should ONTC employees be available at the request of the Contractor and then not be required by the Contractor at a particular location on a day specified by the Contractor, and ONTC was not given prior notice by the Contractor, then the Contractor shall be responsible to pay all expenses incurred by ONTC which shall be deducted from the final payment to the Contractor.



PART 4

REQUEST FOR PROPOSALS

FORM OF PROPOSAL

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

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

RFP Number: RFP 2024 048

Description: Weed Spraying

Submitted To: ONTARIO NORTHLAND TRANSPORTATION COMMISSION

We, _____
(Name of Respondent)

having carefully examined, understood, and completed the Request For Proposals Documents as described in Section 2 – The RFP Documents, and Addenda No. ___ to No. ___, inclusive, and having familiarized ourselves thoroughly with local conditions, hereby agree to supply the services associated with Weed Spraying as outlined on the following Proposal Form 1-A.

Purchase is subject to budgetary approval of expenditures.

Please note that hourly rates, schedule of fees and expenses shall also be provided and will be used by ONTC for additional services if needed.

Proposal Forms:

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

Declarations:

We hereby declare that:

- (a) We will execute the Agreement within ten (10) Working Days of receipt of the Final Agreement;
- (b) We agree to perform and fully complete the Work on or before the agreed upon schedule;
- (c) The Work is to start no later than the agreed upon start date in the schedule;
- (d) Work is deemed to be complete when Work is substantially complete as defined in the *Construction Act* and the Contractor is demobilized from the site;
- (e) We will provide the required evidence of insurance, as specified in the Ontario Northland –Draft Agreement included in Part 5 of the RFP Documents, with our execution of the Agreement;
- (f) For the General Liability Insurance, Ontario Northland Transportation Commission is to be included as an additional insured;
- (g) Coverages and limits of insurances will be provided and maintained by all Subcontractors in accordance with subsection (e) above;
- (h) No person, corporation or other legal entity other than the undersigned has any interest in this Proposal or in the proposed Contract for which this Proposal is made;

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

- (i) This Proposal is irrevocable for a period of ninety (90) days from the Submission Deadline;
- (j) It is understood and agreed that if this Proposal is accepted, we will not commence the Work until we have executed the Final Agreement and delivered it to ONTC and/or we are advised in writing by ONTC to proceed with the Work;
- (k) All copies of plans and specifications and other said RFP Documents furnished to us for the purpose of this Proposal are the property of ONTC and shall be kept confidential and not divulged in any manner by us. They will not be used on other work by us and will be returned to the issuing office when requested or promptly when not bidding; and
- (l) We have no right to reimbursement by ONTC for expenses, both direct and indirect, which may have been incurred by us in preparing this Proposal or otherwise participating in the RFP Process.

Signed and submitted for and on behalf of:

Contractor:

(Company Name)

(Street Address or Postal Box Number)

(City, Province and Postal Code)

Signature:

I have authority to bind the corporation.

Name and Title:

Email:

Date at _____ this _____ day of _____, 2025

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

Please refer to the separate Schedule A – Schedule of Prices excel worksheet. This form must be completed as part of the Proposal.

QUOTATION REQUIREMENTS

The Contractor shall submit a quote for a fixed three-year service term, starting in 2025 and ending in 2027.

A separate quote for subsequent years (2028 and 2029) will be provided following the initial three-year term, subject to satisfactory performance and mutual agreement. If ONTC chooses, to continue into 2028 and 2029, a written notice will be issued, and the pricing will be negotiated and mutually agreed upon by both parties.

Contractor must state with their quote any guarantee that is available and the conditions that come with it.

**Proposal Form 1-A
Schedule A - Schedule of Prices**

Submission by _____
(Full Legal Nme of Company or Individual)

H.S.T. Number _____
(H.S.T Number of Company or Individual)

Year 1 - 2025

Prescription of Chemical -

Subdivison	Main Line	Yard and Siding	Total	Labour/per mile	Chemical/per mile	Mobilization Cost	Total Cost
Temagami	61.7	22.7	84.4				
Ramore	76.45	14.49	90.94				
Kirkland Lake	32.87	4.85	37.72				
Devonshire	26.65	5	31.65				
Kapuskasing	99.28	19.81	119.09				
Island Falls	56.54	7.31	63.85				
Sub total	353.49	74.16	427.65				

Year 2 - 2026

Prescription of Chemical -

Subdivison	Main Line	Yard and Siding	Total	Labour/per mile	Chemical/per mile	Mobilization Cost	Total Cost
Temagami	61.7	22.7	84.4				
Ramore	76.45	14.49	90.94				
Kirkland Lake	32.87	4.85	37.72				
Devonshire	26.65	5	31.65				
Kapuskasing	99.28	19.81	119.09				
Island Falls	56.54	7.31	63.85				
Sub total	353.49	74.16	427.65				

Year 3 - 2027

Prescription of Chemical -

Subdivison	Main Line	Yard and Siding	Total	Labour/per mile	Chemical/per mile	Mobilization Cost	Total Cost
Temagami	61.7	22.7	84.4				
Ramore	76.45	14.49	90.94				
Kirkland Lake	32.87	4.85	37.72				
Devonshire	26.65	5	31.65				
Kapuskasing	99.28	19.81	119.09				
Island Falls	56.54	7.31	63.85				
Sub total	353.49	74.16	427.65				

Total Cost Three (3) Years | \$

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

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

Name <i>Please indicate the complete legal name of the firm</i>	
Tax Registration # (HST)	
Tax Registration # (GST)	
Tax Registration # (QST)	
Address	
Telephone Number	
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, manufacturer or distributor of any business structure that conducts its activities on a permanent basis in Ontario. The business either has a headquarters or a main office in Ontario or has at least 250 full-time employees in Ontario at the time of this RFP.

Canadian Business Yes No

“Canadian Business”: A corporation or limited partnership existing pursuant to the Laws of Canada or any of the provinces or territories thereof, and which has ongoing commercial activities in Canada; or an individual (including sole proprietors) or a general partnership which has a business in Canada, and which has ongoing commercial activities in Canada.

Canadian Trade Partner Country: Yes No

“Canadian Trade Partner Country”: A country that is signatory to one or more of the following trade agreements:

- Comprehensive Economic and Trade Agreement (CETA);
- World Trade Organization's Agreement on Government Procurement (WTO-GPA);
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP); or,
- Canada-UK Trade Continuity Agreement (Canada-UK TCA)

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

Main Contact Person (for the purposes of this Proposal)

Name	
Title	
Telephone #	
E-mail address	

Indicate below your company/business' invoice terms:

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

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

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

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

Subcontractors

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

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

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

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

(Check one) YES _____; NO _____

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

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 4
REFERENCES**

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

Reference #1

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

Reference #2

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

Reference #3

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

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

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

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

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

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

1. Submit a copy of the most recent version of your Health, Safety, and Environmental Protection Policy.
2. Submit the attached Contractor Health and Safety Responsibility Agreement.

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

POLICY STATEMENT

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

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

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

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



Chad Evans
President and CEO

CONTRACTOR HEALTH AND SAFETY RESPONSIBILITY AGREEMENT

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

(legal name of company)

certify the following:

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

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

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

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

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

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

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

Dated at _____ this _____ day of _____, 202__

An Authorized Signing Officer

(Key Contact)

(Title)

(Telephone Number)

(Firm's Name)

(Firm's Address)

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 7
CONTRACTOR'S QUALIFICATION STATEMENT**

1. The Respondent shall include a company profile and list of key personnel with resumes that will be assigned to the work along with a brief description of their experience.

In the event that the Respondent is using a sub-contractor(s) for a portion(s) of the scope of work associated with this RFP, they shall also include with this Proposal Form 7, a company profile and resume for each sub-contractor.

2. The Respondent shall supply a minimum of three (3) project descriptions for projects of a similar nature and scope. The project descriptions shall include:
 - a) Company/Client
 - b) Name of contact and contact details
 - c) Project Name
 - d) The scheduled project start and end date
 - e) Detailed description of the Respondent's scope of work for the project. The description should detail if sub-contractors were used to complete part of the scope.
 - f) Outcomes of the project (i.e., completed on schedule and on budget etc.)

ONTC may, in its sole discretion, confirm the Respondent's experience in the projects identified by contacting the named contacts above, in addition to the references provided as part of Proposal Form 4.

3. The Respondent are required to provide the following documents:
 - a) A copy of the Contractors WSIB for each province where work will be performed
 - b) A copy of the Contractor's Registration Number for spraying in Quebec and Ontario as well as copies of applicable Permits issued by the province of Quebec and / or Ontario
 - c) Copies of the MSDS sheets for the products to be used
 - d) A copy of Qualification Certificates for the employees doing the spraying
4. Describe your ability to ensure that all spraying will be completed by July 31st of each year? Please include any potential challenges and how you would address them.

**Please be advised that ONTC requires all spraying to be completed by the strict deadline of July 31 each year.*

ONTC will consider all information submitted in the Respondent's Proposal when evaluating the Respondent's experience.

**PART 4 – FORM OF PROPOSAL
PROPOSAL FORM 8
CLAIMS**

Submit an up to date list of outstanding, pending or anticipated claims, proceedings, liens or other legal claims, actions or proceedings.



PART 5
REQUEST FOR PROPOSALS
DRAFT AGREEMENT

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

BETWEEN:

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

(“ONTC”)

and

XXX

(“Service Provider”)

THE PARTIES AGREE AS FOLLOWS:

INTERPRETATION

1. **Definitions.** In this Agreement,

“Agreement” means this agreement and all attached schedules;

“Applicable Laws” means means all requirements under or prescribed by the common law, and all applicable federal, provincial, regional, local or municipal laws, statutes, codes, acts, permits, licenses, ordinances, orders, by-laws, rules and regulations, which may now, or at any time hereafter be applicable to and enforceable in relation to the matters to which this Agreement relates;

“Change Order” has the meaning set out in Section 19;

“Confidential Information” means all information of ONTC that is of a confidential nature, including all confidential information in the custody or control of ONTC, regardless of whether it is identified as confidential or not, and whether recorded or not, and however fixed, stored, expressed or embodied, which comes into the knowledge, possession or control of the Service Provider in connection with the Agreement. For greater certainty, Confidential Information shall:

- (a) include: (i) all new information derived at any time from any such information whether created by ONTC, the Service Provider or any third-party; (ii) all information (including Personal Information) that ONTC is obliged, or has the discretion, not to disclose under provincial or federal legislation or otherwise at law; but
- (b) not include information that: (i) is or becomes generally available to the public without fault or breach on the part of the Service Provider of any duty of confidentiality owed by the Service Provider to ONTC or to any third-party; (ii) the Service Provider can demonstrate to have been rightfully obtained by the Service Provider, without any obligation of confidence, from a third-party who had the right to transfer or disclose it to the Service Provider free of any obligation of confidence; (iii) the Service Provider can demonstrate to have been rightfully known to or in the possession of the Service Provider at the time of disclosure, free of any obligation of confidence when disclosed; or (iv) is independently developed by the Service Provider; but the exclusions in this subparagraph shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Agreement or at law;

“Conflict of Interest” means any actual or potential conflict of interest including, but not limited to:

- (a) situations or circumstances that could compromise the ability of the Service Provider to perform its obligations under the Agreement; and,
- (b) the offer or giving of a benefit of any kind by or on behalf of the Service Provider to anyone employed by or otherwise connected with ONTC.

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

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

“Equipment” means all machinery and equipment, either operated or not operated, that is required for performing the Services but is not incorporated into the Work Product;

“FIPPA” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, as amended, or any successor or replacement thereof;

“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 Services.

“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;

“Loss” or “Losses” means loss, liability, damage, cost, legal cost and disbursement whatsoever arising out of or related to the Services or this Agreement, whether in contract, tort or otherwise;

“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;

“Original Term” has the meaning set out in Section 9;

“Personal Information” means information that relates to an identifiable individual or that identifies or may identify an individual as defined in section 2 of FIPPA and specifically includes Personal Information about ONTC Parties and ONTC’s customers or third parties who interact with ONTC;

“Privacy Laws” means any Applicable Law related to privacy or protection of Personal Information, including without limitation FIPPA;

“Renewal Term” has the meaning set out in Section 9;

“**Service Provider Parties**” includes the Service Provider and its officers, directors, employees, contractors and agents for whom it is at law responsible;

“**Services**” has the meaning set out in Section 5;

“**Standard of Care**” has the meaning set out in Section 12;

“**Term**” means the Original Term and the Renewal Term, if any;

“**Work Product**” includes the deliverables and all information in any form prepared by or for the Service Provider as part of the Services;

2. **Construing this Agreement.** This Agreement is to be construed and interpreted with all changes in number and gender as may be required by the context. The obligations of the parties contained in this Agreement have, where applicable, the status of representations, warranties and covenants by the respective obligated party. Time is of the essence of this Agreement, including if any extension of time is permitted.
3. **Precedence.** Subject to any contrary intention elsewhere in this Agreement, in case of any inconsistency or conflict among the Schedules and the body of this Agreement, the documents shall prevail in the following order, but only to the extent necessary to resolve the conflict or inconsistency:
 - (a) the body of this Agreement;
 - (b) Schedule A (Scope of Work);
 - (c) Schedule B (Service Provider’s Submission); and
 - (e) any other documents incorporated by reference in any of the foregoing.

If the Service Provider’s terms and conditions are supplied to ONTC in respect of the Services (including without limitation in any submission in response to a request for proposal or quote) those terms and conditions will be of no legal effect and will not constitute part of this Agreement (even if any representative of ONTC signs those terms and conditions or annexes them to the Agreement) unless ONTC expressly agrees in writing to be bound by all or any of the terms and conditions.

PARTICULARS OF THIS AGREEMENT

4. **Retainer.** ONTC hereby retains the Service Provider to provide the Services, and the Service Provider shall provide those Services to ONTC under the general direction and

control of ONTC and subject to the provisions of this Agreement. This retainer is non-exclusive and ONTC may retain other service providers to provide similar services.

5. **Services.** The Services which are the subject of this Agreement are Vegetation Management Program Herbicide Application, as more particularly described in Schedule A (the “**Services**”). The parties may amend the Services by agreement in writing. The Services shall be provided as required by ONTC. ONTC is not guaranteeing any minimum level of use of the Services.
6. **Fees.** The fees which are the subject of this Agreement are described in Schedule B. The parties may amend the fees by agreement in writing. The fees during the Renewal Term, if any, shall be as agreed between the parties and set forth in an amendment to the Agreement.
7. **Disbursements.** The fees in Schedule C include all costs, expenses and disbursements required to perform the Services. ONTC will not pay any additional amount for disbursements unless the disbursements are approved in writing in advance by ONTC. The Service Provider acknowledges that travel expenses will only be approved in accordance with the Management Board of Cabinet Travel, Meal & Hospitality Expenses Directive, January 2020 (<https://www.ontario.ca/page/travel-meal-and-hospitality-expenses-directive-2020>).
8. **Maximum.** The maximum amount payable by ONTC to the Service Provider under this Agreement during the Original Term, excluding Harmonized Sales Tax, is: **\$XXX** CAN.
9. **Term.** This Agreement shall commence on the Effective Date and shall continue for a period of three (3) years unless terminated early in accordance with this Agreement (the “**Original Term**”). ONTC shall have the option, exercisable in its sole discretion, to extend the Term of the Agreement for one period of two (2) years (the “**Renewal Term**”) by providing notice to the Service Provider at least 30 days prior to the end of the Term.

PROVISION OF THE SERVICES

10. **Equipment.** The Contractor will supply Equipment that is in good repair and meets all safety standards and regulations. The Contractor shall be responsible for all costs and expenses for the Equipment including, but not limited to, repair, maintenance, replacement, insurance and fuel. In the event the Equipment fails to operate correctly during provision of the Services, the Contractor shall be responsible for all costs relating to any delay in the work of the Personnel, including compensation for the Personnel. In no event will ONTC be charged for any costs relating to the Personnel or the Equipment if the Personnel are unable to work due to Equipment failure or breakdown.

11. **Personnel.** The Service Provider shall provide the Services using the Service Provider Parties proposed in their submission attached as Schedule B. The Service Provider shall not change the personnel providing the Services without ONTC's prior written approval. The Service Provider shall coordinate the activities of their personnel and be solely responsible for payment of all costs associated with the personnel. The Service Provider shall be responsible for every act or omission of the personnel providing Services to ONTC.
12. **Standard of Care.** The Service Provider shall carry out the Services in conformity with the standard of care, skill and diligence normally provided by a well-qualified and experienced professional person in the performance of similar services for a similar project at the time and place the Services are being provided. The Service Provider shall give ONTC the full benefit of its skills, qualification, experience, knowledge and professional expertise (the "**Standard of Care**"). Any Services provided by Service Provider Parties shall meet or exceed the Standard of Care and the Service Provider shall be fully responsible therefor.
13. **Vendor Performance Policy.** ONTC has a Vendor Performance Policy which requires ONTC to complete an evaluation of the Service Provider's performance of its obligations under this Agreement. The performance evaluation of the Service Provider for the supply of these Services will be used in the assessment of the Service Provider's proposals in response to future procurements. The performance evaluation may also result in the Service Provider being disqualified from submitting proposals in response to future procurements in accordance with the terms of the policy. The policy can be found at <http://ontarionorthland.ca/en/requests-tenders>.
14. **Inadequate Services.** ONTC shall be the sole judge of the adequacy of the Services received and their value. If ONTC determines that any Services are not in conformity with the terms and conditions of this Agreement, including the Standard of Care and Environmental Laws, ONTC shall advise the Service Provider who shall, except as other provided in this Agreement, immediately correct at its own cost and expense the inadequate Services, except to the extent such non-conforming Services were caused by a person who is not a Service Provider Party. Provided that if the quality of the Services is such that ONTC determines that the Service Provider is not able to provide the Services in accordance with the Standard of Care or within the terms of this Agreement, ONTC may terminate this Agreement in accordance with the early termination provisions of this Agreement.

15. **Progress Reports.** The Service Provider shall, upon request by ONTC, provide reports to ONTC on the Services, including opinions regarding the progress and resolution of the Services.

16. **Discontinuance of Services.** Despite anything to the contrary contained in this Agreement, ONTC may at any time, for any reason, discontinue part of the Services. ONTC shall pay the Service Provider for the chargeable amounts for the discontinued part of the Services up to the date that ONTC gives the Service Provider Notice of its decision to discontinue the Services, or a later date if work, already commenced by the Service Provider, cannot reasonably be discontinued until such later date. This shall be the only remedy of the Service Provider for discontinuance of part of the Services. The Service Provider shall not be entitled to make any claim for loss of profit on the discontinued Services.

17. **Obligations of the Service Provider.** The Service Provider shall:

- (a) provide the Services in compliance with all Applicable Laws, as amended from time to time;
- (b) obtain all permits required to provide the Services and provide them to ONTC upon request;
- (c) ensure that it and its personnel have all certifications required to provide the Services, keep such certifications in good standing, and provide evidence of the requisite certifications to ONTC upon request.
- (d) while being on ONTC's property, comply with ONTC's policies, including its Fit for Duty Policy;
- (e) perform and cause the Service Provider Parties to perform the Services with diligence and in a courteous and business-like manner;
- (f) not subcontract the provision of any of the Services without the written consent of ONTC;
- (g) avoid any Conflict of Interest during the performance of the Services; and
- (h) disclose to ONTC any Conflict of Interest the Service Provider has or potentially has that arises during the performance of the Services.

18. **Conflict of Interest.** If a potential or actual Conflict of Interest of the Service Provider arises during the Service Provider's performance of the Services,

- (a) ONTC has the sole right to determine whether any situation or circumstance constitutes a Conflict of Interest;
- (b) ONTC has the right to prescribe the manner in which the Service Provider should resolve the Conflict of Interest; and
- (c) ONTC may terminate the Agreement immediately upon Notice to the Service Provider if the Service Provider fails to disclose any actual or potential Conflict of Interest, if the Service Provider fails to resolve its Conflict of Interest as directed by ONTC or if ONTC determines that the Conflict of Interest cannot be resolved.

CHANGES

19. **Changes.** Changes of any kind to the scope of the Services shall only be made by the Service Provider upon receipt of a written change order signed by an authorized member of each Party (each, a “Change Order”) or a Change Directive (as defined below). ONTC may at any time by issuing a Change Order or Change Directive make any change in the Services to be provided by the Service Provider. The Change Order shall specify the details of the change in scope of the Services, any agreed adjustment to the Price in respect of the change in scope of the Services and any agreed adjustment to the time for performance of the Services, whether an increase or reduction. Any changes to the Price shall be determined by using the hourly rates in Schedule C. A Change Order shall represent full payment for all costs and any adjustment to the workplan associated with the change or changes for which it was issued.
20. **Change Directive.** Prior to finalization of a Change Order, ONTC may instruct the Service Provider to proceed with additional or changed work by issuing a directive signed by an authorized member of ONTC (each, a “Change Directive”). Upon receipt of a Change Directive, the Service Provider shall immediately proceed with the changes to the Services as identified therein. The Parties shall then seek to finalize a Change Order as soon as commercially reasonable. Prior to the finalization of the relevant Change Order, the Service Provider shall be entitled to payment for pre-approved, reasonable documented costs incurred in respect of a Change Directive, determined by using the hourly rates in Schedule C with any additional pre-approved proven reasonable expenses incurred pursuant to a Change Directive charged at cost.
21. **Unauthorized Changes.** ONTC shall have no liability whatsoever for any claim for payment for additional services provided or costs incurred by the Service Provider which have not been authorized in advance by ONTC by way of a Change Order or a Change Directive.

ENVIRONMENTAL OBLIGATIONS

22. **Environmental.** The Service Provider shall comply with all Environmental Laws in the provision of the Services. If the Service Provider fails to comply with Environmental Laws relating to the provision of the Services, the Service Provider shall be solely responsible for all costs, claims, fines, fees or other expenses arising from the failure by the Service Provider to comply with the Environmental Laws in the provision of the Services.
23. **Unknown Impacts.** The Service Provider shall be responsible for identifying any previously unknown impacts relating to fish, navigable waters, species at risk, vegetation, wildlife, socio-economic and heritage that arise prior to commencing the Services and during performance of the Services. The Service Provider shall immediately report the circumstances to ONTC and shall take reasonable steps, including stopping the work if necessary to ensure that any potential impacts are mitigated.
24. If the Service Provider fails to comply with the requirements in section 24, the Service Provider shall:
- (a) be responsible for all costs incurred by ONTC and the Service Provider to mitigate the damage caused due to the failure; and
 - (b) not be entitled to request a Change Order relating to the failure to comply.
25. **Environmental Contaminants.** The Service Provider shall not cause or permit any Environmental Contaminants to be located, stored, disposed of, produced, processed, deposited, released, discharged or incorporated in, on or under any part of ONTC's land except as required to provide the Services. The Service Provider shall remove from ONTC's land, immediately upon demand, at its cost, any Environmental Contaminants introduced thereto by the Service Provider that are not required to provide the Services. If there is remediation work required on ONTC's land or adjacent land or watercourse due to environmental contamination that occurred as a result of the Service Provider's entry onto ONTC's land to provide the Services, the Service Provider shall be responsible for all costs incurred to complete remediation work on ONTC's land and adjacent land or watercourse and shall reimburse ONTC or any public authority or any third party for any reasonable costs incurred as a result of the requirement to complete the remediation work.
26. **Ownership of Environmental Contaminants.** Notwithstanding any provision of law to the contrary, any Environmental Contaminants placed or permitted on or under ONTC's land by the Service Provider shall remain the property of the Service Provider.
27. **Spills and Releases.** All spills and releases of Environmental Contaminants in the course of the work must be immediately reported by the Service Provider to ONTC and

the Ministry of the Environment, Conservation & Parks (“MOECP”) Spills Action Centre (“SAC”). If the ONTC Representative is not available, the Service Provider shall report the incident to the MOECP SAC and the ONTC RTC at 800-558-4129 X 141.

28. **Mitigation of Spills.** The Service Provider shall take immediate steps to mitigate the damage to the environment and contain the spill or release. If the Service Provider does not take timely action or, if the Service Provider is not available, ONTC may direct others to remedy the situation.
29. **Expenses for Spills.** If the spill or release was the fault of the Service Provider, the remedial work shall be completed at the cost of the Service Provider and with no additional cost to ONTC and ONTC shall be entitled to seek reimbursements for all costs associated with the remedial work including the cost of work done by third parties. If the spill or release was not the fault of the Service provider, ONTC shall pay for the remedial work.
30. **DFO Notification.** Pursuant to section 38(4) of the *Fisheries Act*, the Service Provider has an obligation to notify the Department of Fisheries & Oceans (“DFO”) when the Work results in the unauthorized death of fish or a harmful alteration, disruption or destruction (“HADD”) of fish habitat or where there is imminent danger that the death of fish or HADD of fish habitat could occur. The Service provider shall also notify ONTC of any such incidents. In accordance with the *Fisheries Act*, notification must be made without delay to DFO after the Service Provider ensures the immediate health and safety risks are managed at the work site. Updates to DFO may be provided at a later time, if required.

PAYMENT FOR THE SERVICES

31. **Invoices.** The Service Provider shall provide invoices to ONTC [monthly/annually]. Invoices shall be sent to the ONTC contact person for the Services and to pay.inv@ontarionorthland.ca. ONTC shall pay the Service Provider the properly charged amounts incurred by the Service Provider in providing the Services within 30 days of receipt of the invoice, subject to any dispute or right of set off by ONTC.

CONFIDENTIAL INFORMATION

32. **General Confidentiality Requirements.** The Service Provider shall:
- (a) ensure that all Service Provider Parties comply with all the provisions of this Agreement relating to Confidential Information and the Service Provider shall be responsible for any failure by any Service Provider Party to do so;
 - (b) use Confidential Information only for the purposes of providing the Services;

- (c) not copy or transcribe into another form, any Confidential Information received from ONTC except as reasonably necessary; and,
- (d) upon the termination of this Agreement, or earlier upon the request of ONTC, promptly destroy or return (as directed by ONTC) all Confidential Information disclosed to the Service Provider.

33. **Keeping Confidential Information Confidential.** Except as provided in this Agreement, the Service Provider shall keep confidential all Confidential Information collected on behalf of ONTC or disclosed to it by ONTC and shall protect the Confidential Information disclosed to it by ONTC, in the same manner and to the same extent that it protects its own Confidential Information. This obligation shall survive the termination of this Agreement.

34. **Disclosing Confidential Information.** The Service Provider may disclose Confidential Information if:

- (a) ONTC approves the disclosure in writing;
- (b) the Service Provider is required by law to disclose it, in which case it shall promptly notify ONTC to allow ONTC the opportunity to intervene to prevent the disclosure;
- (c) the Confidential Information is generally and publicly available; or
- (d) the Confidential Information was disclosed to the Service Provider on a non-confidential basis from a source other than ONTC which the Service Provider believes is not prohibited from disclosing such information as a result of an obligation in favour of ONTC;
- (e) is developed by the Service Provider independently of, or was known by the Service Provider prior to, any disclosure of such information made by ONTC; or
- (f) to the extent required by an order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, summons or other administrative or legal process, or by applicable regulatory or professional standards or in connection with any judicial or other proceeding relating to Service Provider's Services to ONTC or this Agreement.

35. **FIPPA.** The Service Provider specifically acknowledges that ONTC is subject to FIPPA, and that ONTC may be compelled by law to disclose certain information provided by the Service Provider. Where the Service Provider is collecting Personal Information on behalf of

ONTC, the Service Provider must comply with the provisions in FIPPA regarding the collection, retention, use, disclosure and disposal of Personal Information.

36. **Breach of Confidentiality.** The Service Provider acknowledges and expressly agrees that any breach by it of this Agreement which does or may result in loss of confidentiality of the Confidential Information or an unauthorized release of Personal Information would cause ONTC irreparable harm for which damages would not be an adequate remedy. If the Service Provider breaches the confidentiality provisions of this Agreement, ONTC shall have the right to seek injunctive relief against the continuing or further breach by the Service Provider, without the necessity of proof of actual damages. The right to seek injunctive relief without the necessity of proof of damages shall be in addition to any other right which ONTC may have under this Agreement or otherwise in law or in equity. This section shall continue to bind the Service Provider after the expiry or termination of this Agreement.

PERSONAL INFORMATION

37. **FIPPA.** The Service Provider specifically acknowledges that ONTC is subject to FIPPA, and that ONTC may be compelled by law to disclose certain information provided by the Service Provider. All information, data, records and materials, however recorded, which has been provided by ONTC to the Service Provider in relation to this agreement and which are in the custody or control of ONTC, including Confidential Information and Personal Information are subject to FIPPA (collectively, "FIPPA Records"). For the purposes of this definition, ONTC documents held by the Service Provider in connection with this Agreement are considered to be in the control of ONTC. The Service Provider shall provide to ONTC any and all FIPPA records within seven (7) business days from the date of ONTC's notice to the Service Provider to provide them for the purposes of responding to an access request under FIPPA. ONTC shall in its sole discretion determine what FIPPA records will be disclosed in connection with an access request, in accordance with the requirements of FIPPA. Where the Service Provider is collecting Personal Information on behalf of ONTC, the Service Provider must comply with the provisions in FIPPA regarding the collection, retention, use, disclosure and disposal of Personal Information.
38. **Purpose.** Personal Information may be received by, created, collected, processed, used, maintained, disclosed, or disposed of by the Service Provider only for the purpose of providing the Services under the Agreement, and in strict compliance with Privacy Laws and ONTC policies related to the protection of Personal Information.

39. **Security.** The Service Provider will implement appropriate technical and organizational measures designed to keep Personal Information secure and to prevent any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Information. The Service Provider shall advise ONTC promptly of any anticipated or actual loss of Personal Information.
40. **Third Party.** The Service Provider shall not disclose or transfer any records containing Personal Information to a third party except with the informed prior written consent of ONTC.
41. **Return.** The Service Provider shall return all of ONTC's Personal Information when this Agreement ends or earlier if requested by ONTC.

INTELLECTUAL PROPERTY

42. **Intellectual Property.** The Service Provider has developed and uses certain Intellectual Property in respect of the provision of the Services (the "**Background Intellectual Property**"). ONTC acknowledges that the Background Intellectual Property is the sole and exclusive property of the Service Provider and ONTC shall not acquire any right, title or interest therein other than the right to use and access the Background Intellectual Property during the Term. For greater certainty, ONTC is specifically prohibited from reproducing or recreating any such Background Intellectual Property either during the Term or at any time thereafter.
43. **Work Product.** All information in any form prepared by or for the Service Provider as part of the Work Product is, unless approved by ONTC in writing to the contrary, the sole property of ONTC and ONTC shall own all Intellectual Property rights in it. If the Service Provider or any Service Provider Parties owns any Intellectual Property rights in any Work Product, it shall promptly transfer and assign such Intellectual Property rights to ONTC. The Service Provider shall sign all documents and take all actions that may be necessary to ensure that ONTC owns the Work Product and the Intellectual Property rights in the Work Product.

INDEMNITY AND LIMITATION OF LIABILITY

44. **General Indemnity.** The Service Provider 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 Service Provider or as a result of any breach of the terms of this Agreement by the Service Provider or by any act or omission of the Service Provider or Service Provider 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 Service Provider 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. **Specific Indemnities.** The Service Provider shall indemnify and hold harmless ONTC and ONTC Parties from and against all Losses incurred by ONTC arising from:

- (a) any decision or interpretation by any court or governmental authority that: (i) any of the Service Provider Parties is an employee of ONTC; or (ii) ONTC is liable to pay statutory contributions or deductions in respect of any of the Service Provider Parties under any Laws, including employment insurance, provincial health insurance, income tax or other employment matters;
- (b) any health, medical disability or similar claims which the Service Provider or Service Provider Parties may have during or after the Term of this Agreement;
- (c) any claim by any third party against ONTC alleging that the Work Product and its use by ONTC infringes any Intellectual Property rights;
- (d) any claim against ONTC arising from the failure of the Service Provider to protect the confidentiality of Confidential Information;
- (e) any claim against ONTC arising from the failure of the Service Provider to protect Personal Information or to comply with any of its obligations with respect thereto; and
- (f) safety infractions committed by the Service Provider under health and safety legislation, regulations, guidelines or orders, including the *Occupational Health and Safety Act*.

45. **Bodily Injury and Property Damage.** The Service Provider shall make full and complete compensation for any bodily injury or death to any person while providing the Services and for any damage caused to ONTC's physical property by an act or omission of the Service Provider or a Service Provider Party.

46. **Service Provider Losses.** The Service Provider shall be liable for any claims arising from any personal injuries to or death of any of the Service Provider Parties or from any loss of or damage to any property belonging to the Service Provider or Service Provider Parties during the provision of the Services unless caused by the negligent act or omission of ONTC or ONTC Parties.

47. **Waiver.** The Service Provider 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 Service Provider or Service Provider Parties and for any loss or damage of the Service Provider unless caused by the negligent act or omission of ONTC or ONTC Parties.

48. **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 Agreement (including fundamental breach), statute, tort (including negligence), or otherwise, and regardless of whether ONTC has been advised of the possibility of such damages; and,

(b) any express or implied reference to ONTC providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of ONTC, whether at the time of execution of this Agreement or at any time during the 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.

49. **Survival.** The sections in this part “Indemnity and Limitation of Liability” shall survive the expiry or termination of this Agreement.

INSURANCE

50. **Insurance.** The Service Provider shall obtain, and for as long as this Agreement is in effect, maintain, pay for and, upon request by ONTC from time to time, provide evidence, satisfactory to ONTC, of the following insurance coverages, all taken out with insurers licensed to transact insurance business in Ontario, bearing original signatures of authorized insurance representatives and satisfactory to ONTC:

(a) Commercial General Liability Insurance to a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence, including “Ontario Northland Transportation Commission” as an additional insured, with no limitations on or exclusions from coverage arising from working on or around railway property, covering bodily injury, personal injury, death and damage to property, including loss of use of such property,

containing cross liability coverage and preclude subrogation claims by the insurer against ONTC and endorsed to provide ONTC with not less than thirty (30) days' notice, in advance, of any cancellation, change or amendment restricting coverage;

- (b) Automobile Liability Insurance with a limit of not less than five million dollars (\$5,000,000) inclusive per occurrence, including bodily injury, death and damage to property, endorsed to provide "Ontario Northland Transportation Commission" with not less than thirty (30) days' notice, in advance, of any cancellation, change or amendment restricting coverage and in the following forms: standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by or on behalf of the Service Provider, and standard non-owned automobile form policy including standard contractual liability endorsement; and
- (c) if the Services involve any professional services, Professional Liability Insurance to a limit of not less than five million dollars (\$5,000,000) inclusive per claim and subject to an annual aggregate of five million dollars (\$5,000,000).

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

FORCE MAJEURE

52. **Force Majeure.** Whenever and to the extent either party is unable to fulfil, or is delayed or restricted in fulfilling, any of its obligations under this Agreement by reason of a Force Majeure event, the time for fulfilling such obligation is extended for such reasonable time as may be required by that party to fulfil such obligation, provided that any such inability, delay or restriction does not relate to any extent to any act or omission by that party. No extension of time will be given unless the party seeking the extension submits to the other party within five business days after the date on which the party ought reasonably to have been aware of the Force Majeure event a Notice requesting the extension of time, the cause of the Force Majeure event, the expected duration of the extension and mitigation efforts being undertaken by the party.

TERMINATION

53. **Early Termination.** This Agreement may be terminated early as follows:

- (a) by the mutual written agreement of the parties;

- (b) by ONTC immediately upon written notice to the Service Provider if the Service Provider is in default or breach in respect of any condition or provision of this Agreement;
- (c) by ONTC, for any reason, upon not less than ten (10) days' prior written Notice; or,
- (d) by the Service Provider upon written Notice to ONTC, where ONTC has failed to observe or perform any of its obligations under this Agreement, and such failure has not been remedied to the reasonable satisfaction of the Service Provider within thirty (30) days of providing written Notice to ONTC detailing the nature of such failure and requiring that such failure be remedied.

54. **Immediate Termination.** This Agreement will terminate immediately upon:

- (a) the winding up or dissolution of the Service Provider; or
- (b) subject to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, the Service Provider 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.

55. If this Agreement is terminated early for any reason other than those described in section 53 (a) or (d), then:

- (a) ONTC is excused from further performance under this Agreement;
- (b) any money payable by the Service Provider 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, or a later date if work, already commenced by the Service Provider, cannot reasonably be discontinued until such later date;
- (d) ONTC shall retain any rights, powers and remedies it has or may have against the Service Provider; and
- (e) ONTC may enter an agreement with another person to provide the balance of the Services. The Service Provider shall be liable for all costs incurred by ONTC in having the Services completed by another person(s).

GENERAL

56. **Assignment.** Neither party may assign their respective rights and obligations under this Agreement without first obtaining the written consent of other party, provided, however, that either party may assign this Agreement to an affiliate or the successor of its business upon written notice to the other party. This Agreement shall enure to the benefit of, and be binding upon, the parties and their respective successors (including any successor by reason of amalgamation, merger or statutory arrangement of any party) and permitted assigns.

57. **Notice.** Any Notice under this Agreement shall be given in writing and delivered personally or by email or prepaid courier addressed as follows:

To ONTC at:
Ontario Northland Transportation Commission
555 Oak Street
North Bay ON P1B 8L3

Attention:

T:

E:

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

To the Service Provider at:

Attention:

T:

E:

or at such other address or addresses as ONTC and the Service Provider may designate from time to time. The date of receipt of a Notice if sent by email or personal delivery shall be the date of delivery and if sent by prepaid courier shall be the second day after pick-up by the courier.

58. **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.

59. **Relationship.** Nothing contained in this Agreement shall be deemed or construed by the parties nor by any third party as creating the relationship of principal and agent, landlord and tenant, or of partnership or of joint venture between the parties.
60. **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.
61. **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 Service Provider as though such section or part or parts thereof had never been included in this Agreement.
62. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties and supersedes all prior understandings, discussions, negotiations, commitments, representations, warranties, and agreements, written or oral, express or implied between them with respect to the subject of this Agreement. No amendment, variation or change to this Agreement shall be binding unless the same shall be in writing and signed by the parties.
63. **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.
64. **Counterparts and Electronic Delivery.** This Agreement may be executed and delivered by electronic transmission of a .pdf of the executed Agreement and the parties may rely upon the .pdf document as though the .pdf document was an original hard copy of the Agreement. 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:

Title:

Date _____

I have authority to bind the corporation.

XXXX

Per _____

Name:

Title:

Date _____

I have authority to bind the corporation.

Schedule "A"

Scope of the Work / Services to be Provided

Summary

Ontario Northland Transportation Commission (ONTC) is seeking proposals from qualified service providers for the 2025 to 2029 Vegetation Management Program Herbicide Application.

The program will involve a three-year agreement (2025 - 2027) with two optional one-year terms (2028 and 2029), which will be subject to approval each year. If ONTC chooses to continue with the two optional one-year terms 2028 and 2029, a written notice will be issued, and the pricing will be negotiated and mutually agreed upon by both parties.

The purpose of ONTC's Vegetation Management Program Herbicide Application is to spray herbicides in order to reduce vegetation, improve drainage, reduce the risk of fire hazard and maintain a clear line of sight along ONTC's rail system.

The following outlines the scope of work associated with the Vegetation Management Program Herbicide Application.

The chart below represents the total mileage by subdivision requiring spraying.

Subdivision	Main	Yards & Sidings	Total
Temagami	61.70	22.70	84.40
Ramore	76.45	14.49	90.94
Kirkland Lake	32.87	4.85	37.72
Devonshire	26.65	5.00	31.65
Kapuskasing	99.28	19.81	119.09
Island Falls	56.54	7.31	63.85
Total	353.49	74.16	427.65
Grand Total			427.65

Note: The above is an estimate of treatment required. This list may be added to or subtracted from prior to the contract starting.

Ballast Herbicide Treatment

A total spray width of 16 ft.* of the track will be applied, unless otherwise indicated. Herbicides to be applied and rates of spraying are as follows:

- Year #1 - Torpedo (pre-emergent) 580g/ha + Clearview 200g/ha + VP480 4L/ha or an

appropriate equivalent.

- Year #2 - Arsenal (post)3L/ha + VP480 4L/ha + Clearview 200g/ha **or** Arsenal (post)3L/ha + VP480 4L/ha + Truvist 168g/ha or an appropriate equivalent.

The herbicides to be applied shall be changed yearly as per the requirement.

Service Provider's Responsibilities

- (a) Spraying of these subdivisions will take place as soon as possible after vegetation starts to appear or when the chemical manufacturer recommends its product be sprayed, so that maximum effectiveness is achieved.
- (b) The Service Provider guarantees that there will not be any re-growth for any areas sprayed with the chemicals for a period of 24 months after spraying. The Service Provider undertakes to re-spray at no cost to ONTC any areas where re-growth occurs.
- (c) The Service Provider will maintain a "skip list" to record those areas of rail right-of-way and track that are not sprayed due to extenuating circumstances.
- (d) Any consultations on vegetation control issues including but not limited to weed resistance identification and herbicide mix changes will be at no extra cost to ONTC.
- (e) All spraying will be completed by July 31 of each year or as otherwise agreed by the parties.
- (f) Without limiting the intent of the scope of work to be performed, the successful Service Provider will be responsible for:
 - Obtaining all permits (including without limitation permits to obtain water) required by Applicable Laws;
 - Placing notices, and proper signage at all locations where the general public could be affected;
 - Notifying ONTC of any safety precautions that should be posted with the railway to ensure safety to their employees, as well as the medical treatments / processes required in the event of an accident;
 - Performing all other functions necessary to ensure the safe and effective application and completion of the work; and
 - complying with ONTC's safety policies and rules.
- (g) Service Provider must comply with all Applicable Laws for herbicide use including

but not limited to:

- Ontario Regulation 63/09, Section 24 - Health or Safety, Public Works
 - Ontario Regulation 63/09, Section 25 - Health or Safety, Public Works, Annual Report
 - Ontario Regulation 63/09, Section 74 through 79 - Requirements for posting signs.
- (h) ONTC will contact the Service Provider prior to March 31st of each year to determine the start date of the weed spraying season, areas to be sprayed, flag protection etc. The Service Provider will provide ONTC with:
- A copy of the Service Provider's Certificates of Insurance as specified in the Contract Documents. In addition, ONTC must be listed as additional insured on the certificates;
 - A copy of the Service Provider's WSIB for each province where work will be performed;
 - A copy of the Service Provider's Registration Number for spraying in Quebec and Ontario as well as copies of applicable Permits issued by the province of Quebec and / or Ontario;
 - Copies of the MSDS sheets for the products to be used; and
 - A copy of Qualification Certificates for the employees doing the spraying.

Operational Requirements

- (a) The Service Provider agrees that before any work is performed in connection with the Agreement, the Service Provider shall give to ONTC at least seven (7) days prior notice thereof in writing and ONTC shall be entitled to appoint an inspector to see that the work is performed in such a manner as shall in all respects comply with the Agreement.
- (b) No work shall at any time be done in such a manner as to obstruct or delay or in any way interfere with the operation of the trains, traffic or business of the ONTC or any company using the works of ONTC.

- (c) Any material, equipment and service herein specified for the purpose of applying a weed killing chemical solution shall first meet the requirements and approval of ONTC.
- (d) The Service Provider agrees that the spraying width required shall be made up of 8 feet from the center line of track on each side for a 16-foot spraying width.
- (e) The Service Provider agrees to provide all spray equipment required for proper and workmanlike application.
- (f) Work days shall be ten hours in duration not including lost track time. There will be no overtime charges should there be lost track time.
- (g) Dates for weed spraying shall be mutually agreed upon. Work is anticipated to begin during the month of June, weather depending.
- (h) The Service Provider shall render to ONTC complete statements showing quantities of chemical used and the location of treatment. The quantities of solution to be applied shall be those best calculated in the Service Provider's judgment to secure economical and effective results subject to the approval of ONTC.
- (i) The Service Provider will provide the signs and apply, for public notification of spraying.

ONTC Obligations

- (a) ONTC shall furnish free transportation over its lines for the Service Provider's spray equipment as may be required in connection with the performance of work under the Agreement. This transportation is to include both transportation from point of origin on ONTC line to the point of work and return to the point of origin, or such other point mutually agreed upon by the parties.
- (b) ONTC shall furnish maintenance of way and/or operating supervisory personnel as required by ONTC for movement of the Service Provider's equipment while operating on the track.
- (c) Should ONTC employees be available at the request of the Service Provider and then not be required by the Service Provider at a particular location on a day

specified by the Service Provider, and ONTC was not given prior notice by the Service Provider, then the Service Provider shall be responsible to pay all expenses incurred by ONTC which shall be deducted from the final payment to the Service Provider.

Schedule B
Service Providers Submission