WILLOWDALE BIA (WBIA)
PLACEMAKING & PUBLIC REALM STREETSCAPE MASTERPLAN
RFP

Closing Date: Extended to Friday, August 4th, 2023 12:00 Noon EST (local time Toronto)

1.0 INTRODUCTION

The Willowdale Business Improvement Area (BIA) was established in 2021 and is one of over 80 BIAs across the City of Toronto. Representing over 1600 business and commercial property members, with over 30,000 employees and 51,000 residents within our district, the Willowdale BIA is one of the largest BIA’s in Toronto. Located along the Yonge corridor between Hwy 401 and just North of Finch Avenue, our urban district is experiencing significant development (see Appendix A: Map).

Our district features 8.9 Million Sq Ft of Office and Retail Space (approximately 7 to 1 office space to retail). This district is a highly diverse area which acts as a regional destination and as a live-work-play area. Workers, visitors and residents enjoy robust hospitality and services sectors, amenities and greenspace, public transit, parking, and numerous conveniences or daily needs within the district.

The BIA was created in large part due to the economic pressures of COVID-19 and the upcoming investment in REimagining Yonge, a significant public works project planned for Yonge Street in 2027. Local businesses and property owners started to focus in on the potential for growth that this created and this potential led to the forming of a Steering Committee that established the BIA.

The WBIA’s vision is to be the preferred destination in North Toronto for businesses, residents, visitors and workers to live, work and play:

1. By promoting the area as an accessible, safe, urban, vibrant and alternative destination to downtown Toronto and the suburbs.
2. By creating economic growth and opportunity for members.
3. By improving the quality of life through business attraction, capacity building, events, marketing, public realm, retention and revitalization.

Public Realm is one of our 4 key pillars. Overall, our aim is to create a distinct downtown type of neighbourhood and collaborate to serve the interests of the business community in key public works projects. Further information about the WBIA is found at https://willowdalebia.com/strategic-plan/

The WBIA is currently finalizing its new name, branding and brand guidelines after a completing a detailed naming process. The Consultant will be provided with the finalized materials including the new name, Yonge North York BIA.
2.0 INVITATION

Qualified, creative and efficient multi-disciplinary Consulting Firms are welcome to submit a proposal.

The team must include one or more of the following: Landscape Architect, Architect, Urban Designer or Planner. An experienced facilitator for public meetings is also preferred.

Canadian and international firms are welcome to participate. International firms must have a team member/partner familiar with local project implementation of a similar scope.

3.0 BACKGROUND & GENERAL SCOPE OF WORK

Our BIA covers one of the longest sections of Canada’s iconic street, Yonge Street. The WBIA is looking to initiate its first capital project plan to begin a campaign to beautify the public realm in alignment with its upcoming new brand through a series of investments from the BIA and utilizing City of Toronto or partner resources where appropriate.

In consultation with City Divisions, the Councillor’s office and other stakeholder, the successful bidder will design a public realm plan that creates an overall vision and implementable action plan for the district streetscape that improves vibrancy greenspace, safety and function, and includes an exhaustive list of elements with which the design elements will be improved.

The project would be prohibitive if the attempt was to landscape the entirety of the area within the boundaries shown in the map in section 2.0. However, a targeted plan that is geared around Yonge Street and adjacent commercial streets, major intersections, unique segments and key amenities such as park and venue space while maximizing the utilization of City of Toronto street furniture and street improvements could provide significant long-term improvements at a reduced cost.

4.0 SCOPE OF WORK

The Consultant will be responsible for providing all the necessary resources to carry out, but not limited to, the following activities related to this project:

1. Creates a design vision for the Willowdale BIA for and working details on how this would be achieved in an executive style report for use by the WBIA in a format that is useful to our municipal and provincial stakeholders as we begin work to develop and construct the plans.

2. The successful applicant will engage with stakeholders in a number of different settings and will provide input in a number of ways, including, but not limited to, the following. Arranges and attend meetings with various City Divisions, stakeholders, the public, key developers and landlords, and BIA Members, to act on behalf of the BIA and represents the BIAs needs and requirements associated with the project, at no extra cost to the BIA for the duration of the planning stages. It is estimated that a minimum of ten (10) meetings will be required in addition to internal discussions with the BIA Team Staff and additional conversations with the City departments regarding implementation priorities to align with REimagining
Yonge, etc. Meetings formats will include a combination of virtual, in-person and site walks. Both draft and final plans will require presentation. All plans will be presented to BIA Staff first in draft form for feedback and may require further refinement by the Committee and Board. Consultant is to prepare all presentation materials and provide a copy to BIA Staff in advance. The Consultant may also consider adding a creative or fun placemaking method of stakeholder engagement to garner more data, member and audience participation, and positive PR.

3. Researches and ensures the integration and alignment of the plan with REimagining Yonge, the Metrolinx North Line Subway Extension, North York Secondary Plan Review, CPTED design principles, capital improvement processes, green infrastructure practices, AODA principles and requirements, TTC service planning, and other relevant City of Toronto, right-of-way and planning studies/policies.

5.0 STRATEGY

Additional detailed requirements will include but are not limited to:

- The plan enhances office and retail business areas, making it more usable to works, residents and visitors, and attractive for existing businesses and for new businesses to locate here.
- Develop a modern and lasting plan that would bring benefits to the breadth and length of the entire commercial areas of our district, and promote local economic development.
- Arriving at solutions in consultation with stakeholders to ensure the vision is implementable and appropriate for the business district and community.
- Create a consistent aesthetic vision for the identity of the BIA distinct from other districts.
- Designs should be in line with, reflect and promote the BIA’s upcoming new brand.
- Employ creative and fresh elements and “twists” to common streetscape features.
- Identify specific short-term (1-2 years), medium-term (3-5 years), and long-term; (5+ years) improvements to the streetscape. Cost estimates for all streetscape improvement projects should be provided.
- Develop plan concepts that are actionable, low-maintenance and cost-effective with materials that are readily available, affordable, and repairable / replaceable.
- The improvements should be of a scale that can be realised by either the BIA annual budget, City of Toronto Financing programs, proposed identified sponsors, or by property developers that are building in the neighbourhood.
- Use of non-city standard details, i.e. city standard pavers, tree planting details, etc. should be minimal and strategically selected for high impact in order to reduce potential future BIA maintenance costs.
- Ensure design elements are complementary to private property and public realm improvements implemented or planned in concert with redevelopment projects within the BIA with an eye for identifying common design elements that may be carried throughout the BIA.
- Identify a number of potential locations and public art, culture and activation/event guidelines for strategies to integrate them into wayfinding, parks, intersections, lighting and other elements. Provide conceptual drawings.
- Identify opportunities and provide conceptual designs for significant ‘gateway’ or ‘landmark’ projects.
- Analyze and recommend lighting solutions to improve visibility, shoulder season & safety.
• Analyze and recommend additional pedestrian safety features for Yonge Street beyond those already being considered in REimagining Yonge and by the city.
• Provide specific options for the inclusion of seasonal décor in the streetscape, which can be refreshed quarterly on broad themes that will appeal to our diverse community.
• Identify opportunities to create and enhance green spaces, parks and or greening and watering practices in the public realm. Create plans safe, functional and iconic open spaces.
• Identify opportunities to make engaging public spaces to facilitate live-work-play uses such as event venues and outdoor patios.
• Consider the civic square, Mel Lastman Square and its potential for local economic development.
• Support a range of spill out activities and amenities along the public right of way that support a vibrant streetscape for businesses and properties.
• The plan vision will consider: the limited public seating, lower sunlight as development increases, the wind tunnel effect on Yonge, the disjointed consumer and pedestrian experience, the increased need for temporary stopping of delivery vehicles, POPs and noise impacts.
• Analyse and recommend other features such as surfacing, signage, wayfinding, trees, curbs, street furnishings, etc. Both above and underground pathways should be considered in regard to wayfinding.
• Identify and integrate the potential for the BIA to include now or in the future smart city technologies, amenities, pedestrian counters, etc.

6.0 IMPLEMENTATION PLAN

Action Plan Requirements, will include but are not limited to:
• Implementation plan should take high consideration into cost-saving opportunities and priorities for conduits and other required infrastructure/utilities planning, budgeting and placement in conjunction with the REimagining Yonge project.
• Identify needs or opportunities to liaise, consult and partner with other interests or agencies to achieve BIA streetscape objectives.
• Identify streetscape improvements which can be implemented by the BIA, in partnership with the City of Toronto BIA office, over the short, mid and long term, as well as pilot opportunities to create immediate immersive experiences in different locations or that rotate venues.
• Present the plan to City Staff in conjunction with WBIA and secure support from all city divisions.
• Provide BIA Staff with a second summary spreadsheet version of the action plan with a breakdown of estimated costs (purchase & maintenance), high level timelines (i.e. years), and funding sources.
• Be adaptable and agile where needed for optimal implementation and resourcing in our complex district.
• A preferred option would be for the Consultant to create a short-term and long-term funding model/sponsorship package aligned with stakeholder, developer, municipal, corporate, etc. interests and values.
7.0 AVAILABLE RESOURCES

The Consultant will be provided with the following:

- The City BIA Office will provide the following information to the consultant, at no cost, subject to the consultant completing a waiver to protect confidential or proprietary information:
  - DMOG drawings; and
  - Tree inventory, in consultation with Urban Forestry (preferred), or arborist report at BIA’s cost.
- A City Staff Working Group will be established by the City BIA Office to provide advice and feedback to the chosen consultant. Membership will be determined by the BIA Office and will include representatives from the local Councillor’s office(s), Transportation (Operations, Public Realm and Pedestrian Projects), City Planning (Urban Design), Urban Forestry and other City Divisions.
- The WBIA’s upcoming new branding guide (anticipated to be provided Q4 2023).
- The WBIA’s 2022 Strategic Audit Summary Report by 360 Collective is a priority consideration.
- Any other available research or resources provided by the WBIA or the City to the selected firm.

8.0 PROPOSAL SUBMISSION REQUIREMENTS

Please include in your submission for the BIA’s evaluation:

- Proposed multi-disciplinary team members, collaborators and their experience and qualifications including projects of a similar nature and clientele such as municipalities, non-profits or BIAs/BIDs.
- Description of proposed approach, schedule and workplan (final presentation of completed plan to be delivered at the WBIA’s November 2024 Annual General Meeting)
- Deliverables, including everything in the RFP
- Portfolio including dates, client and responsibilities
- A detailed breakdown (research, design, meetings, public meeting facilitator, reports, etc.) of the total cost of services, which is inclusive of all costs in CAD.
- Costs for meetings outside of SOW or after contract is complete including hourly rates.
- Any potential conflicts of interest
- 3 References of similar clients and scope of work are preferred

Must be delivered no later than the Closing Deadline by email in PDF format to the BIA Contact:

Laura Burnham, Executive Director, Willowdale BIA:
purchasing@willowdalebia.com

The WBIA reserves the right to seek clarification, contact references, or conduct interviews of all, some or none of the Proponents, as required.

The WBIA reserves the right to award this Contract in whole or in part, and/or remove and/or reduce any items, as required.

No additional restricting or qualify statements, or exceptions to the RFP will be accepted aside from items that are indicated as “preferred.”
APPENDICES

APPENDIX A: MAP
APPENDIX B: CITY OF TORONTO REQUIREMENTS

The consultant must include the following in addition to the above WBIA requirements:

- The development of an aesthetic vision for the BIA;
- The development of strategies for the BIA to enable future implementation of street redesign/reconstruction/reprogramming;
- Inventory of existing and planned street elements, including bike rings, waste receptacles, transit shelters, trees, etc.;
- Mapping of existing conditions with associated written text identifying opportunities and constraints;
- Develop action plan and itemize action items required to realize the vision and strategies;
- Prioritization and timing of proposed improvements;
- Identify preferred implementation mechanisms and parties responsible for each action item;
- Estimate approximate cost to achieve each action item;
- Identify potential funding sources, strategies for securing funds and opportunities to undertake work in partnership with City Divisions, Agencies or others;
- Organize action item in multi-year plan, specifying target time horizon (i.e. short, medium, and long-term capital improvements)
- Prepare preliminary design concepts;
- Review of preliminary design concepts and subsequent revisions with BIA sub-committees;
- Presentation drawings and other visual materials shall be provided for meetings with the BIA sub-committee, BIA Board of Management, Annual General Meeting, and community consultation meetings;
- Identify scheduled road or sidewalk reconstruction, road resurfacing or other planned City works that may provide an opportunity implement proposed improvements;
- Identify potential or approved development sites;
- Maintenance cost implications of proposed improvements;
- Identify which proposed improvements are City standard treatments and which are non-standard treatments;
- A minimum of two meetings with the City Staff Working Group;
- A community consultation process, including one public meeting, to seek input from BIA members, local associations, residents, and others;
- Electronic copy (PDF) that meets AODA compliance of Streetscape Master Plan and ten (10) printed bound colour copies.
- Provision that BIA shall have ownership of designs and plans contained in the Streetscape Master Plan.
APPENDIX C: RFP PROCESS TERMS AND CONDITIONS

1. Proponent’s Responsibility

It shall be the responsibility of each Proponent:

(a) to examine all the components of this RFP, including all appendices, forms and addenda;

(b) to acquire a clear and comprehensive knowledge of the required services before submitting a Proposal;

(c) to become familiar, and (if it becomes a Vendor) comply, with all of the BIA’s Policies and Legislation. The failure of any Proponent to receive or examine any document, form, addendum, Agreement or policy shall not relieve the Proponent of any obligation with respect to its Proposal or any Agreement entered into or Purchase Order issued based on the Proponent’s Proposal.

2. Prime Proponent

A Proposal by a consortium of two or more entities may be submitted, but one person or company must be shown as the prime Proponent and be prepared to represent the consortium to the BIA by executing the Agreement, acting as the primary contact, and taking overall responsibility for performance of the Agreement.

Where a Proposal is made by a prime Proponent with associate firms working with or under the prime Proponent in either a sub-contracting or consortium relationship, it is required that those associate firms be named in the Proposal.

3. BIA Contacts and Questions

All contact and questions concerning this RFP should be directed in writing to the BIA employee(s) designated as “BIA Contact” in the Notice to Potential Proponents.

No BIA representative, whether an official, agent or employee, other than those identified “BIA Contacts” are authorized to speak for the BIA with respect to this RFP, and any Proponent who uses any information, clarification or interpretation from any other representative does so entirely at the Proponent’s own risk. Not only shall the BIA not be bound by any representation made by an unauthorized person, but any attempt by a Proponent to bypass the RFP process may be grounds for rejection of its Proposal.

From and after the date of this RFP until the time of any ensuing contract award, no communication with respect to this matter shall be made by any potential Proponent, or its representatives, including a third-party representative employed or retained by it (or any unpaid representatives acting on behalf of either), to promote its Proposal or oppose any competing Proposal, nor shall any potential Proponent, or its representatives, including a third party representative employed or retained by it (or any unpaid representatives acting on behalf of either), discuss the RFP or its Proposal with any BIA staff, BIA officials or Council member(s), other than a communication with the “BIA Contact” identified on page 5 on this RFP.

4. Addenda

If it becomes necessary to revise any part of this RFP, the revisions will be by Addendum electronically sent to the contact provided by the proponent for communication regarding this RFP. Only answers to issues of substance will be posted. The BIA reserves the right to revise this RFP up to the Closing Deadline. When an Addendum is issued the date for submitting Proposals may be revised by the BIA if, in its opinion, the BIA determines more time is necessary to enable Proponents to revise their Proposals.

All Proponents must acknowledge receipt of all Addenda in their proposal submission.
The BIA’s will make reasonable efforts to issue any final Addendum (if any) no later than two (2) days prior to the Deadline.

5. Exceptions to Mandatory Requirements, Terms and Conditions

If a Proponent wishes to suggest a change to any mandatory requirement, term or condition set forth in any part of this RFP, it should notify the BIA in writing not later than the deadline for questions. The Proponent must clearly identify any such requirement, term or condition, the proposed change and the reason for it. If the BIA wishes to accept the proposed change, the BIA will issue an Addendum as described in the article above titled Addenda. The decision of the BIA shall be final and binding, from which there is no appeal. Changes to mandatory requirements, terms and conditions that have not been accepted by the BIA by the issuance of an Addendum are not permitted and any Proposal that takes exception to or does not comply with the mandatory requirements, terms and conditions of this RFP will be rejected.

6. Omissions, Discrepancies and Interpretations

A Proponent who finds omissions, discrepancies, ambiguities or conflicts in any of the RFP documentation or who is in doubt as to the meaning of any part of the RFP should notify the BIA in writing not later than the deadline for questions. If the BIA considers that a correction, explanation or interpretation is necessary or desirable, the BIA will issue an Addendum as described in the article above titled Addenda. The decision and interpretation of the BIA shall be final and binding, from which there is no appeal. No oral explanation or interpretation shall modify any of the requirements or provisions of the RFP documents.

7. Incurred Costs

The BIA will not be liable for, nor reimburse, any potential Proponent or Proponent, as the case may be, for costs incurred in the preparation, submission or presentation of any Proposal, for interviews or any other activity that may be requested as part of the evaluation process or the process for the negotiation or execution of an Agreement with the BIA, as the case may be.

The rejection or non-acceptance of any or all Proposals shall not render the BIA liable for any costs or damages to any firm that submits a Proposal.

8. Post-Submission Adjustments and Withdrawal of Proposals

No unilateral adjustments by Proponents to submitted Proposals will be permitted.

A Proponent may withdraw its Proposal at any time prior to the Deadline by notifying the BIA contact designated in this RFP in writing on company letterhead or in person, with appropriate identification. Telephone and e-mail requests will not be considered.

A Proponent who has withdrawn a Proposal may submit a new Proposal, but only in accordance with the terms of this RFP.

After the Deadline each submitted Proposal shall be irrevocable and binding on Proponents for a period of 120 days.

If the BIA makes a request to a Proponent for clarification of its Proposal, the Proponent will provide a written response accordingly, which shall then form part of the Proposal.

9. No Collusion

No Proponent may discuss or communicate about, directly or indirectly, the preparation or content of its Proposal with any other Proponent or the agent or representative of any other Proponent or prospective
Proponent. If the BIA discovers there has been a breach at any time, the BIA reserves the right to disqualify the Proposal or terminate any ensuing Agreement.

10. Prohibition against Gratuities

No Proponent and no employee, agent or representative of the Proponent, may offer or give any gratuity in the form of entertainment, participation in social events, gifts or otherwise to any officer, director, agent, appointee or employee of the BIA in connection with or arising from this RFP, whether for the purpose of securing an Agreement or seeking favourable treatment in respect to the award or amendment of the Agreement or influencing the performance of the Agreement, including without restriction enforcement of performance standards, or expressing appreciation, or providing compensation, for the award of an Agreement or for performance of the BIA's obligations thereunder or for conferring favours or being lenient, or in any other manner whatsoever.

If the BIA determines that this article has been breached by or with respect to a Proponent, the BIA may exclude its Proposal from consideration, or if an Agreement has already been entered into, may terminate it without incurring any liability.

11. Acceptance of Proposals

The BIA shall not be obliged to accept any Proposal in response to this RFP.

The BIA may, without incurring any liability or cost to any Proponent:

a) accept or reject any or all Proposal(s) at any time;
b) waive immaterial defects and minor irregularities in any Proposals;
c) modify and/or cancel this RFP prior to accepting any Proposal;
d) award a contract in whole or in part.

The BIA is relying on the experience and expertise of the Proponent. The BIA reserves the right to disqualify any Proponent who has given inaccurate, incomplete, false or misleading information in the sole opinion of the BIA.

12. Verification

The BIA reserves the right to verify with any Proponent or with any other person any information provided in its Proposal but shall be under no obligation to receive further information.

If, in the opinion of the BIA, any Proponent has clearly misinterpreted the services or underestimated the hours or value of the services to be performed as reflected in its Proposal content and submitted price/fees, or all or any or any combination of them, then the BIA may reject its Proposal as not representative of the scope of the services.

13. Unbalanced Bids (In this paragraph “Bid” refers to the Proposal)

The BIA may reject a bid if it determines, in its sole discretion, that the bid is materially imbalanced.

A bid is materially imbalanced when:

(1) it is based on prices which are significantly less than cost for some items of work and prices which are significantly overstated in relation to cost for other items of work; and
(2) the BIA had determined that the proposal may not result in the lowest overall cost to the BIA even though it may be the lowest submitted bid; or

(3) it is so unbalanced as to be tantamount to allowing an advance payment.

14. Conflicts of Interest

In its Proposal, the Proponent must disclose to the BIA any potential conflict of interest that might compromise the performance of the Work. If such a conflict of interest does exist, the BIA may, at its discretion, refuse to consider the Proposal.

The Proponent must also disclose whether it is aware of any BIA employee, Council member or member of a BIA agency, board or commission or employee thereof having a financial interest in the Proponent and the nature of that interest. If such an interest exists or arises during the evaluation process or the negotiation of the Agreement, the BIA may, at its discretion, refuse to consider the Proposal or withhold the awarding of any Agreement to the Proponent until the matter is resolved to the BIA’s sole satisfaction.

If, during the Proposal evaluation process or the negotiation of the Agreement, the Proponent is retained by another client giving rise to a potential conflict of interest, then the Proponent will so inform the BIA. If the BIA requests, then the Proponent will refuse the new assignment or will take such steps as are necessary to remove the conflict of interest concerned.

Proponents are cautioned that the acceptance of their Proposal may preclude them from participating as a Proponent in subsequent projects where a conflict of interest may arise. The Vendor for this project may participate in subsequent/other BIA projects provided the Vendor has satisfied prequalification requirements of the BIA, if any, and in the opinion of the BIA, no conflict of interest would adversely affect the performance and successful completion of an Agreement by the Vendor.

15. Ownership and Confidentiality of BIA-Provided Data

All correspondence, documentation and information provided by BIA staff to any Proponent or prospective Proponent in connection with, or arising out of this RFP, the Services or the acceptance of any Proposal:

a) is and shall remain the property of the BIA;

b) must be treated by Proponents and prospective Proponents as confidential;

c) must not be used for any purpose other than for replying to this RFP, and for fulfillment of any related subsequent Agreement.

16. Ownership and Disclosure of Proposal Documentation

The documentation comprising any Proposal submitted in response to this RFP, along with all correspondence, documentation and information provided to the BIA by any Proponent in connection with, or arising out of this RFP, once received by the BIA:

a) shall become the property of the BIA and may be appended to the Agreement and/or Purchase Order with the Vendor;

b) shall become subject to the Municipal Freedom of Information and Protection of Privacy Act ("MFIPPA"), and may be released, pursuant to that Act.

Because of MFIPPA, prospective Proponents are advised to identify in their Proposal material any scientific, technical, commercial, proprietary or similar confidential information, the disclosure of which could cause them injury.
Each Proponent’s name at a minimum shall be made public. Proposals will be made available to members of BIA provided that their requests have been made in accordance with the BIA’s procedure.

17. Intellectual Property Rights

Each Proponent warrants that the information contained in its Proposal does not infringe any intellectual property right of any third party and agrees to indemnify and save harmless the BIA, its staff and its consultants, if any, against all claims, actions, suits and proceedings, including all costs incurred by the BIA brought by any person in respect of the infringement or alleged infringement of any patent, copyright, trademark, or other intellectual property right in connection with their Proposal.

18. Failure or Default of Proponent

If the Proponent, for any reason, fails or defaults in respect of any matter or thing which is an obligation of the Proponent under the terms of the RFP, the BIA may disqualify the Proponent from the RFP and/or from competing for future tenders or RFP issued by the BIA for a period of one year. In addition, the BIA may at its option either:

a) Consider that the Proponent has withdrawn any offer made, or abandoned the Agreement if the offer has been accepted, whereupon the acceptance, if any, of the BIA shall be null and void; or

b) Require the Proponent to pay the BIA the difference between its Proposal and any other Proposal which the BIA accepts, if the latter is for a greater amount and, in addition, to pay the BIA any cost which the BIA may incur by reason of the Proponent’s failure or default, and further the Proponent will indemnify and save harmless the BIA, its officers, employees and agents from all loss, damage, liability, cost, charge and expense whatever which it, they or any of them may suffer, incur or be put to by reason of such default or failure of the Proponent.

19. Quasi-Criminal/Criminal Activity of a Proponent: The BIA may reject a Proposal or Proponent if the BIA:

a) Confirms that the Proponent or any individual that owns, directs, or controls the Proponent has been charged with or convicted of an offence under the Criminal Code, an offence as defined in the Provincial Offences Act, or an offence pursuant to similar laws outside of Ontario;

b) Determines that this charge or conviction is material to the given procurement; and

c) Determines that, in light of this charge or conviction, awarding to that Bidder could compromise the delivery of the goods or services or would otherwise undermine the business reputation of the BIA or the public's confidence in the integrity of the call process.

20. Publicity

The Proponent and its affiliates, associates, third-party service providers, and subcontractors shall not release for publication any information in connection with this RFP or any Agreement without prior written permission of the BIA.

21. Governing Law

This RFP and any Proposal submitted in response to it and the process contemplated by this RFP including any ensuing Agreement shall be governed by the laws of the Province of Ontario. Any dispute arising out of this RFP or this RFP process will be determined by a court of competent jurisdiction in the Province of Ontario.
APPENDIX D: AGREEMENT TERMS AND CONDITIONS

Note to Appendix:

The terms set out in this Appendix shall be incorporated in any Agreement entered into with the recommended Proponent substantially in the form as presented in the Appendix. These terms are mandatory and are not negotiable.

1. Compliance with Laws

The Vendor will be required to comply, at its sole expense, with all federal, provincial and municipal laws, rules and regulations (including, without limitation, the BIA's Fair Wage and other policies or by-laws applicable to the BIA's vendors, the Ontario Fire Code, the Ontario Employment Standards Act, the Ontario Human Rights Code, the Ontario Labour Relations Act, the Workplace Safety and Insurance Act, the Income Tax Act and Occupational Health and Safety requirements) in relation to the provision of any Services, including the obtaining of all necessary permits and licences, and shall submit proof of such compliance to the BIA, upon request, and the Vendor shall indemnify and save the BIA harmless from any liability or cost suffered by it as a result of the vendor's failure to comply with this provision.

2. Non-Exclusivity

The awarding of an Agreement to a Vendor shall not be a guarantee of exclusivity.

3. Confidentiality and Conflict of Interest

The Vendor shall treat as confidential all information of any kind which comes to the attention of the Vendor in the course of carrying out the Services and shall not disseminate such information for any reason without the express written permission of the BIA or otherwise in accordance with MFIPPA or other applicable privacy law. The Vendor may be required to enter into a detailed confidentiality and conflict of interest agreement in a form satisfactory to the BIA Solicitor.

4. Indemnities

The Vendor shall indemnify and save harmless the BIA, its employees, and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgements (including legal fees and costs) arising from or related to the Vendor's performance or non-performance of its obligations, including payment obligations to its approved subcontractors and suppliers and others, and including breach of any confidentiality obligations under this Agreement.

Upon assuming the defence of any action covered under this section the Vendor shall keep BIA reasonably informed of the status of the matter, and the Vendor shall make no admission of liability or fault on BIA part without BIA’S written permission.

5. Intellectual Property Indemnity

The Vendor shall indemnify and save harmless the BIA, its employees, and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgements (including legal fees and costs) arising from infringement, actual or alleged, by the Proposal, its use or misuse, or by any of the deliverables developed or provided or supplied under or used in connection with the Services (including the provision of the Services themselves), of any Canadian, American or other copyright, moral right, trade-mark, patent, trade secret or other thing with respect to which a right in the nature of intellectual/industrial property exists.
6. Employment & WSIB Indemnity

Nothing under this Agreement shall render the BIA responsible for any employment, benefit or termination liability (including those under or in connection with the Workplace Safety and Insurance Act, 1997 or any successor legislation (“WSIA”), whether statutorily required, at common law or otherwise, resulting from Services supplied under this Agreement by persons employed or otherwise engaged by the Vendor. In the event that employment related costs, or other related responsibility falls to the BIA for any reason whatsoever, the Vendor agrees to indemnify the BIA for such costs.

7. No Assignment

The Vendor shall not assign any part of the project that may be awarded to it under the Agreement without the prior written consent of the BIA, which consent shall not be unreasonably withheld. However, such written consent shall not under any circumstances relieve the Vendor of its liabilities and obligations under this RFP and the Agreement.

8. Subcontractors

The Vendor shall be solely responsible for the payment of every subcontractor employed, engaged, or retained by it for the purpose of assisting it in the performance of its obligations under the Agreement. The Vendor shall coordinate the services of its subcontractors in a manner acceptable to the BIA, and ensure that they comply with all the relevant requirements of the Agreement.

The Vendor shall be liable to the BIA for all costs or damages arising from acts, omissions, negligence or wilful misconduct of its subcontractors.

9. Personnel and Performance

The Vendor shall make available appropriately skilled workers, consultants or subcontractors, as appropriate, and must be able to provide the necessary materials, tools, machinery and supplies to carry out the project.

The Vendor shall be responsible for its own staff resources and for the staff resources of any subcontractors and third-party service providers.

The Vendor shall ensure that its personnel (including those of approved sub-contractors), when using any BIA buildings, premises, equipment, hardware or software shall comply with all security policies, regulations or directives relating to those buildings, premises, equipment, hardware or software.

Personnel assigned by the Vendor to perform or produce the Services or any part of it, (including those of approved subcontractors) may, in the sole discretion of the BIA, be required to sign non-disclosure Agreement(s) satisfactory to the BIA before being permitted to perform such services.

10. Independent Contractor

The Vendor and the BIA agree and acknowledge that the relationship between the BIA and the Vendor is one of owner and independent contractor and not one of employer-employee. Neither is there any intention to create a partnership, joint venture or joint enterprise between the Vendor and the BIA.

11. Insurance

The successful Vendor agrees to purchase and maintain in force, at its own expense and for the duration of the services, the following policies of insurance, which policies shall be in a form and with an insurer acceptable to
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Request for Proposals

the BIA. A certificate evidencing these policies signed by the insurer or an authorized agent of the insurer must be delivered to the BIA prior to the commencement of services:

1. Commercial General Liability provided that the policy:
   (i) is in the amount of not less than Two Million Dollars ($2,000,000.00), per occurrence;
   (ii) adds the WBIA as an additional insured;
   (iii) includes Non Owned Automobile Liability, Employer’s Liability and/or Contingent Employer’s Liability, and any other provision relevant to the services;
   (iv) includes a clause which will provide the BIA with thirty (30) days' prior written notice of cancellation or material change in coverage.

2. Professional Liability (errors and omissions) coverage provided that the policy:
   (i) is in the amount of not less than One Million Dollars ($1,000,000);
   (ii) will extend to infringement of copyright and other intellectual property, including misuse of trade secrets, if appropriate.

3. Notwithstanding anything to the contrary contained in this Agreement, kept in full force and effect for a period of time ending no sooner than TWO YEARS after the termination or expiry of this Agreement, as the case may be. Automobile Liability insurance with a minimum limit of $1,000,000 for all owned or leased licensed motorized vehicles used in the performance of services (if applicable).

It is understood and agreed that the coverage and limits of liability noted above are not to be construed as the limit of liability of the vendor in the performance of services. It is also agreed that the above insurance policies may be subject to reasonable deductible amounts, which deductible amounts shall be borne by the vendor. At the expiry of the policies of insurance, original signed Certificates evidencing renewal will be provided to the BIA without notice or demand.

The successful Vendor is responsible for any loss or damage whatsoever to any of the its materials, goods, equipment or supplies and will maintain appropriate all-risk coverage as any prudent owner of such materials, goods, supplies and equipment. The successful vendor shall have no claim against the BIA or the BIA’s insurers for any damage or loss to its property and shall require its property insurers to waive any right of subrogation against the BIA.

12. Warranties and Covenants
The Vendor represents, warrants and covenants to the BIA (and acknowledges that the BIA is relying thereon) that any deliverable resulting from or to be supplied or developed under the Agreement will be in accordance with the BIA’s functional and technical requirements (as set out in the RFP) and, if applicable, will function or otherwise perform in accordance with such requirements.

13. Third Party Software
Where the BIA is in possession of software containing or constituting confidential proprietary information belonging to third parties, the Vendor shall not, except in the usual incidental manner genuinely necessary for the intended use of such software on the equipment of the BIA,

(a) analyze, copy, decompile, disassemble, translate, convert, reverse engineer or duplicate any physical embodiment or part thereof, or permit any person to do so; or
(b) divulge to any unauthorized person the ideas, concepts or techniques, or make any other improper use, of such software.
The Vendor shall fully defend, save harmless and indemnify the BIA from and against any loss or damages suffered by the BIA as a result of any failure by the Vendor, its officers, directors, partners, contract personnel, agents and employees or any of them to comply with the provisions hereof.

Should the Vendor include third party components within the Solution, the Vendor must secure the rights to use and repackage third party components and pass on those rights to the BIA without additional charges.

The BIA will own all intellectual property rights, including (without limitation) copyright, in and to all deliverables provided by the Vendor and its subcontractors.

14. Ownership of Project Documentation

All information, data, plans, specifications, reports, estimates, summaries, photographs and all other documentation prepared by the Vendor in the performance of the Services under the Agreement, whether they be in draft or final format, shall be the exclusive property of the BIA.

15. Payment Schedule

A payment schedule satisfactory to the BIA shall form part of the Agreement.

No fees or reimbursable expenses shall become payable to the Vendor pursuant to the Agreement other than pursuant to one or more signed schedules.

The Vendor shall submit invoices in such detail as may be required by the BIA, and the BIA reserves the right to require further proof or documentation from the Vendor in respect of services performed or expenses incurred by the Vendor and the Vendor shall provide, without delay, such further proof or documentation.

If the BIA does not approve of the Services which are the subject of the invoice, the BIA shall advise the Vendor in writing of the reasons for non-approval and the Vendor shall remedy the problem at no additional cost to the BIA before the BIA shall be obliged to pay the invoice or any part of it, as the case may be.

The Vendor shall be solely responsible for the payment of all personnel costs including statutory and otherwise (including without limitation subcontractors and suppliers and their respective personnel) made available by it and used for performance of any of the Services.


Upon giving the Vendor not less than thirty (30) days’ prior written notice, the BIA may, at any time and without cause, cancel the Agreement, in whole or in part. In the event of such cancellation, the BIA shall not incur any liability to the Vendor apart from the payment for the goods, material, articles, equipment, work or services that have been satisfactorily delivered or performed by the Vendor at the time of cancellation.

Failure of the Vendor to perform its obligations under the Agreement shall entitle the BIA to terminate the Agreement upon ten (10) calendar days’ written notice to the Vendor if a breach which is remediable is not rectified in that time. In the event of such termination, the BIA shall not incur any liability to the Vendor apart from the payment for the goods, material, articles, equipment, work or services that have been satisfactorily delivered or performed by the Vendor at the time of termination.

All rights and remedies of the BIA for any breach of the Vendor’s obligations under the Agreement shall be cumulative and not exclusive or mutually exclusive alternatives and may be exercised singularly, jointly or in combination and shall not be deemed to be in exclusion of any other rights or remedies available to the BIA under the Agreement or otherwise at law.
No delay or omission by the BIA in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy.

Upon termination, all originals and copies of data, plans, specifications, reports, estimates, summaries, photographs, and other documents that have been accumulated and/or prepared by the Vendor in performance of the Agreement shall be delivered to the BIA in a clean and readable format.

17. Right to Audit

The BIA may audit all financial and related records associated with the terms of the Agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Vendor. The Vendor shall at all times during the term of the contract, and for a period of 7 years following completion of the Agreement, keep and maintain records of the Work performed pursuant to this Agreement. This shall include proper records of invoices, vouchers, timesheets, and other documents that support actions taken by the Vendor. The Vendor shall at his own expense make such records available for inspection and audit by the BIA at all reasonable times.

18. Occupational Health and Safety

a. The Vendor shall comply with all federal, provincial or municipal occupational health and safety legislative requirements, including, and without limitation, the Occupational Health and Safety Act, R.S.O., 1990 c.0.1 and all regulations thereunder, as amended from time to time (collectively the "OHSA").

b. Nothing in this section shall be construed as making the BIA the "employer" (as defined in the OHSA) of any workers employed or engaged by the Vendor for the Services, either instead of or jointly with the Vendor.

c. The Vendor agrees that it will ensure that all subcontractors engaged by it are qualified to perform the Services and that the employees of subcontractors are trained in the health and safety hazards expected to be encountered in the Services.

d. The Vendor acknowledges and represents that:
   i. The workers employed to carry out the Services have been provided with training in the hazards of the Services to be performed and possess the knowledge and skills to allow them to work safely;
   ii. The Vendor has provided, and will provide during the course of the agreement, all necessary personal protective equipment for the protection of workers;
   iii. The Vendor’s supervisory employees are competent, as defined in the OHSA, and will carry out their duties in a diligent and responsible manner with due consideration for the health and safety of workers;
   iv. The Vendor has in place an occupational health and safety, workplace violence and workplace harassment policies in accordance with the OHS;
   v. The Vendor has a process in place to ensure that health and safety issues are identified and addressed and a process in place for reporting work-related injuries and illnesses.

e. The Vendor shall provide, at the request of the General Manager or their designate, the following as proof of the representations made in paragraph d(i) and d(iv):
   i. documentation regarding the training programs provided or to be provided during the Services (i.e. types of training, frequency of training and re-training); and
   ii. the occupational health and safety policy.

f. The Vendor shall immediately advise the General Manager or their designate in the event of any of the following:
   i. A critical injury that arises out of Services that is the subject of this agreement;
ii. An order(s) is issued to the Vendor by the Ministry of Labour arising out of the Services that is the subject of this agreement;

iii. A charge is laid or a conviction is entered arising out of the Services that is the subject of this agreement, including but not limited to a charge or conviction under the OHSA, the Criminal Code, R.S.C 1985, c.


g. The Vendor shall be responsible for any delay in the progress of the Services as a result of any violation or alleged violation of any federal, provincial or municipal health and safety requirement by the Vendor, it being understood that no such delay shall be a force majeure or uncontrollable circumstance for the purposes of extending the time for performance of the Services or entitling the Vendor to additional compensation, and the Vendor shall take all necessary steps to avoid delay in the final completion of the Services without additional cost to the BIA.

h. The parties acknowledge and agree that employees of the BIA, including senior officers, have no authority to direct, and will not direct, how employees, workers or other persons employed or engaged by the Vendor do work or perform a task that is the subject of this agreement.

19. Workplace Safety and Insurance Act

The Vendor shall secure, maintain and pay all costs for Workplace Safety and Insurance Board ("WSIB") workers’ compensation coverage for its employees providing Services under this agreement, whether required statutorily or not under the Workplace Safety and Insurance Act, 1997.

The Vendor represents and warrants that it shall be in good standing with the WSIB throughout the term of this agreement. Prior to supplying the Services and prior to receiving payment, the Vendor shall produce a Clearance Certificate issued by the WSIB confirming that the Vendor has paid its assessment based on a true statement of the amount of its current payroll in respect of the Services and that the BIA is relieved of financial liability. Thereafter, throughout the period of Services being supplied, a new Clearance Certificate will be obtained from the WSIB by the Vendor and provided to the BIA every 90 days or upon expiry of the Certificate's validity period whichever comes first.

The Vendor shall ensure that any and all persons, including but not limited to volunteers, students, subcontractors and independent contractors, providing services under this agreement, have secured WSIB coverage, whether required statutorily or not, for the term of this agreement.

20. Pricing

For your quotation to be considered, pricing must be provide all costs.

Pricing shall be held firm for the full duration of the contract and no increases will be accepted.

Any changes to the scope of work will be approved in writing via a change order from the WBIA. Price shall include the supply of all labour, administrative costs, travel, printing, materials, equipment, products, tools, services, overhead, supervision, profit, incidentals, delivery, assembly, installation, removal of all debris and all other charges, excluding harmonized sales tax.
21. Payment Terms and Discount Schedule
The WBIA’s standard payment terms are 30 (thirty) days from the receipt of the invoice. The BIA may opt to make payment via cheque or EFT at their discretion. Payment schedules shall be aligned with the successful completion of project milestones. The final payment shall be released upon the successful completion of the project requirements. All invoices must clearly show HST as a separate value and HST "registrant" number.