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**NATURAL GAS MANAGEMENT AND ADVISORY SERVICES**

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**REQUEST FOR PROPOSALS NUMBER #2018-330**

**(Final with Amendment)**

**Request for Proposals Issued On:** May 9, 2019

**Proponent's Information & OTP Demonstration Session:** 1:00 pm on May 22, 2019

**Proponent's Deadline to Submit Questions:** 5:00 pm on May 22, 2019

**Proponent's Deadline to Submit Questions Related to  
Addenda & Question and Answer Documents:** 5:00 pm on May 29, 2019

**Closing Date:** 2:00:00 pm on June 14, 2019 local time in Toronto, Ontario, Canada

All times specified in this RFP timetable are local times in Toronto, Ontario, Canada.  
Please refer to Section 6.1.1 for the complete RFP timetable.

OECEM shall not be obligated in any manner to any Proponent whatsoever until a written Master Agreement has been duly executed with a Successful Proponent.

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## PART 1 – INTRODUCTION

This non-binding, Request for Proposal (RFP) is an invitation to obtain Proposals from prospective Proponents for the provision of Natural Gas Management and Advisory Services (“Services”) on an as-and-when-required basis to support OECM Customers (“Customers”) as further described in Part 3 – the Deliverables. OECM intends to award up to five (5) Master Agreements, with an initial term of three (3) years. Refer to the details contained within the Request for Proposals (“RFP”) for a full description of the requirements.

### Overview of OECM

OECM is a trusted not-for-profit partner for Ontario’s education sector, Broader Public Sector (“BPS”) entities, Provincially Funded Organizations (“PFO”), Crown Corporations, and other not-for-profit organizations. OECM offers a comprehensive choice of collaboratively sourced and competitively priced products and services through its Marketplace, the goal of which is to generate savings, choice and service for its customers.

Recognizing the power of collaboration, OECM is committed to fostering strong relationships with both customers and suppliers by:

- Actively sourcing products and services in an open, fair, transparent and competitive manner, compliant with BPS Procurement Directive and applicable trade agreements;
- Establishing, promoting and managing product and service agreements used throughout its customer community;
- Supporting customers’ access and use of OECM agreements through analysis, reporting and the development of tools, guides, and other materials;
- Effectively managing supplier contract performance while harnessing expertise and innovative ideas, to drive continuous improvements through a Supplier Relationship Management program; and,
- Promoting OECM’s Supplier Code of Conduct, based on its core values, to ensure that all supplier partners adhere to a set standard when conducting business with OECM and its customers resulting in continuous, long-term success.

### Use of OECM Agreements

Currently six hundred eighty-seven (687) Customers are using one (1) or more OECM agreements with a cumulative spend of more than one billion dollars over twelve (12) years. The annual spend for 2018 increased by approximately thirty-seven percent (37%) when compared to 2017.

More information about OECM is available on our website - <http://www.oecm.ca/>.

### The Ontario Broader Public Sector Procurement Directive

OECM, and the Customers they service, follow the BPS Procurement Directive. The directive sets out rules for designated BPS entities on the purchase of goods and services using public funds.

The purpose of the directive is:

- To ensure that goods and services, including construction, consulting services, and information technology are acquired by BPS entities through a process that is open, fair, and transparent;
- To outline responsibilities of BPS entities throughout each stage of the procurement process; and,
- To ensure that all BPS entities in Ontario are consistently managing their procurement processes.

### Trade Agreements

OECM procurements are undertaken within the scope of Chapter 5 of the Canadian Free Trade Agreement (“CFTA”), Chapter 19 of the Comprehensive Economic and Trade Agreement (“CETA”), and within the scope of the Trade and Cooperation Agreement between Quebec and Ontario and are subject to such agreements, although the rights and obligations of the parties shall be governed by the specific terms of this RFP. For more information, refer to the Section 6.6.11.

## PART 2 – RFP RULES OF INTERPRETATION AND DEFINITIONS

### 2.1 Rules of Interpretation

This RFP shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine and feminine includes the other gender;
- (b) Words in the RFP shall bear their natural meaning;
- (c) References containing terms such as “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”;
- (d) In construing the RFP, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- (e) Unless otherwise indicated, time periods will be strictly applied; and,
- (f) The following terminology applies in the RFP:
  - i. The terms “must” and “shall” relates to a requirement the Successful Proponent is obligated to fulfil. Whenever the terms “must” or “shall” are used in relation to OECM or the Successful Proponent, such terms shall be construed and interpreted as synonymous and shall be construed to read “OECM shall” or the “Successful Proponent shall”, as the case may be;
  - ii. The term “should” relates to a requirement that OECM would like the Proponent to fulfil ; and,
  - iii. The term “will” describes a procedure that is intended to be followed.

### 2.2 Definitions

Unless otherwise specified in this RFP, capitalized words and phrases have the meaning set out in Appendix A – Form of Agreement attached to this RFP.

**“Agreement”** or **“Master Agreement”** means the agreement to be made between the Preferred Proponent and OECM based on the PDF document attached as Appendix A – Form of Agreement with any applicable negotiated changes, together with all schedules and appendices attached thereto and all other documents incorporated by reference therein, as amended from time to time by agreement between OECM and the Successful Proponent;

**“Applicable Law”** means any common law requirement and all applicable and enforceable statutes, regulations, directives, policies, administrative interpretations, orders, by-laws, rules, guidelines, approvals and other legal requirements of any government and/or regulatory authority in effect from time to time;

**“Best and Final Offer”** or **“BAFO”** means a process during the negotiation stage in which the Preferred Proponent may be invited by OECM to submit a best and final offer on a process or section of the RFP to improve on their original Proposal submission. BAFO cannot be requested by a Proponent;

**“Broader Public Sector”** or **“BPS”** means:

- (a) Select classified, non-classified and hydro entities (referred to as Other Included Entities in the Management Board of Cabinet Procurement Directive);
- (b) The Legislative Assembly;
- (c) Every municipality in Ontario as defined in the *Municipal Affairs Act* and the *Municipal Act*;
- (d) Every regional municipality in Ontario as defined in the *Regional Municipalities Act*;

- (e) The District Municipality of Muskoka as described in the *District Municipality of Muskoka Act*;
- (f) Every local board in Ontario as defined in the *Municipal Affairs Act* and the *Municipal Act*;
- (g) Every university in Ontario;
- (h) Every college of applied art and technology in Ontario;
- (i) Every post-secondary institution in Ontario, the enrollments of which are used to calculate annual operating grant entitlement;
- (j) Every school board in Ontario as defined in the *Education Act*;
- (k) Every hospital listed in the Schedule to the *Classification of Hospitals Regulations* made under the *Public Hospitals Act*, and,
- (l) Every private hospital operated under the authority of a licence issued under the *Private Hospitals Act* including:
  - i. Community Health Centres; and,
  - ii. Community Care Access Locations;

See <https://www.ontario.ca/page/broader-public-sector-accountability>;

**“Business Day”** or **“Day”** means Monday to Friday between the hours of 9:00 a.m. to 5:00 p.m., except when such a day is a public holiday, as defined in the *Employment Standards Act* (Ontario), or as otherwise agreed to by the parties in writing;

**“Closing Date”** means the Proposal submission date and time as set out in OTP and in Section 6.1.1 and may be amended from time to time in accordance with the terms of this RFP;

**“Commercial Response”** means the Rates the Proponent uploads to OTP within Appendix B – Commercial Response as part of the Commercial Envelope;

**“Commercial Envelope”** means an area in OTP where the Proponent would upload its completed Commercial Response;

**“Confidential Information”** means confidential information of OECM and/or any Customer (other than confidential information which is disclosed to the Preferred Proponent in the normal course of the RFP) where the confidential information is relevant to the Deliverables required by the RFP, its pricing or the RFP evaluation process, and includes all information concerning the business or affairs of the party or its directors, governors, trustees, officers or employees that is of a confidential nature, which information if in written or other tangible form, is clearly designated as confidential, or if disclosed orally, is designated as confidential in a written memorandum delivered by the disclosing party promptly following such disclosure. For the purposes of greater certainty, Confidential Information shall:

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

**“Conflict of Interest”** includes, but is not limited to, any situation or circumstance where:

- (c) in relation to the RFP process, the Proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having or having access to information in the preparation of its Proposal that is confidential to OECM and not available to other respondents; (ii) communicating with any person with a view to influencing preferred treatment in the RFP process; or (iii) engaging in conduct that compromises or could reasonably be seen to compromise the integrity of the open and competitive RFP process and render that process non-competitive and unfair; or,
- (d) in relation to the performance of its contractual obligations in an OECM contract, the Proponent's other commitments, relationships or financial interests (i) could or could reasonably be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could or could reasonably be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations;

**“Consortium”** means when more than one (1) business entities (i.e. Consortium members) agree to work together and submit one (1) Proposal to satisfy the requirements of the RFP. One (1) of the Consortium members shall identify itself as the Proponent and assume full responsibility and liability for the work and actions of all Consortium members;

**“Cost Recovery Fee”** or **“CRF”** means a fee, which contributes to the recovery of OECM's operating costs as a not-for-profit/non share capital corporation, which is based on the before tax amount invoiced by the Successful Proponent to Customers for Deliverables acquired through OECM's competitively sourced agreements. Once CSAs have been executed, this fee is collected and remitted by the Successful Proponent to OECM on a quarterly basis;

**“Customer”** is typically an organization such as educational entities (e.g. school boards or authorities, colleges, and universities), shared service organizations, not-for-profit organizations, municipalities, utilities and local boards, health and social service entities, provincially funded organizations (“PFO”), Crown corporations, and any other Broader Public Sector agencies, boards or commissions or similar entities not specifically mentioned here;

**“Customer-Supplier Agreement”** or **“CSA”** means a schedule attached to the Agreement, which is executed between Customers and a Successful Proponent for the provision of the Deliverables in the RFP;

**“Deliverable”** means all Services to be provided or performed by the Successful Proponent, under the Agreement, and includes everything that is necessary to be supplied, provided or delivered by the Successful Proponent;

**“Eligible Proposal”** means a Proposal that meets or exceeds the prescribed requirement, proceeding to the next stage of evaluation;

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

**“MFIPPA”** means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56, as amended;

**“OECM”** means the Ontario Education Collaborative Marketplace;

**“OECM's Deadline for Issuing Final Addenda”** means the date and time as set out in Section 6.1.1 of this RFP and may be amended from time to time in accordance with the terms of this RFP;

**“Ontario Tenders Portal”** or **“OTP”** means the electronic tendering platform <https://ontariotenders.bravosolution.com/esop/nac-host/public/home.html> through which a Proponent's Proposal must be submitted by the Closing Date;

**“PFO”** means a provincially funded organization;

**“Personal Information”** has the same definition as in subsection 2(1) of FIPPA and in subsection 2(1) of MFIPPA, that is, recorded information about an identifiable individual or that may identify an individual and includes all such information obtained by the Proponent from OECM or the Customer or created by the Proponent pursuant to the RFP;



**“PIPEDA”** means the *Personal Information Protection and Electronic Documents Act, S.C. 2005, c.5*, as amended;

**“Preferred Proponent”** means the Proponent that is invited into negotiations in accordance with the evaluation process set out in this RFP;

**“Project Advisory Committee”** or **“PAC”** means the individuals providing input into the development of this RFP, and may also evaluate Proposals received in response to this RFP;

**“Proponent”** means an entity that submits a Proposal in response to this RFP and, as the context suggest, refers to a potential Proponent;

**“Proposal”** means all of the documentation and information submitted by a Proponent in response to the RFP;

**“Provider”** means a supplier who provides natural gas commodity (e.g. utility) and/or transportation service related to the supply and delivery of natural gas; **“Rates”** means the maximum prices, in Canadian funds, for the Services as set out in the Proponent’s submitted Appendix B - Commercial Response;

**“Request for Proposals”** or **“RFP”** means this Request for Proposals #2018-330 issued by OECM, including all appendices and addenda thereto;

**“Second Stage Selection Process”** means a request or document initiated by a Customer or OECM on behalf of a Customer, seeking specific Services, Rates and other relevant information from one (1) or more Successful Proponents;

**“Service”** means all natural gas management and advisory services to be provided or performed by the Successful Proponent, under the Master Agreement, and includes everything that is necessary to be supplied, provided or delivered by the Successful Proponent;

**“Subcontractor”** includes the Successful Proponent’s subcontractors or third party providers or their respective directors, officers, agents, employees or independent contractors, who shall fall within the meaning of Successful Proponent for the purposes of the Master Agreement as mutually agreed upon by the Customer;

**“Successful Proponent”** or **“Supplier”** means a Preferred Proponent who has fully executed an Master Agreement with OECM and has assumed full liability and responsibility for the provision of Deliverables pursuant to the Master Agreement either as a single Supplier or a lead Supplier engaging other suppliers or Subcontractors;

**“Technical Response”** means the information, which will be evaluated and scored, the Proponent submits within OTP as part of the Technical Envelope;

**“Technical Envelope”** means an area in OTP where the Proponent would complete Form 3 – Technical Response;

**“Term”** has the meaning set out in Section 4.1 of this RFP;

**“Transaction”** means the Service provided by the Successful Proponent for acquisition and selling of gas including transportation further described under Section 3.5.3 of this RFP;

**“Unfair Advantage”** means any conduct, direct or indirect, by a Proponent that may result in gaining an unfair advantage over other Proponents, including but not limited to (i) possessing, or having access to, information in the preparation of its Proposal that is confidential to OECM and which is not available to other Proponents, (ii) communicating with any person with a view to influencing, or being conferred preferred treatment in, the RFP process, or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the RFP process and result in any unfairness; and,

**“Zone”** means the OECM geographical boundaries within the Province of Ontario as identified in Appendix C – OECM Geographical Zones.

[End of Part 2]

## PART 3 – THE DELIVERABLES

### 3.1 Opportunity for Proponents

This non-binding RFP is an opportunity for prospective Proponents to submit a Proposal for the provision of Natural Gas Management and Advisory Services on an as-and-when-required basis to support OECM Customers as further described in this part of the document.

This RFP is issued by OECM.

### 3.2 Objective of this RFP

The objective of this RFP is to provide OECM Customers the ability to purchase Services to satisfy their needs.

The purpose of this RFP process is to select Successful Proponents that will:

- (a) Provide professional and knowledgeable advisory Services to Customers;
- (b) Inform Customers on market conditions and regulatory affairs;
- (c) Have knowledgeable resources to support the requirements of participating Customers;
- (d) Provide professional and timely customer service on daily operational issues related to natural gas management;
- (e) Reduce Customers' annual natural gas expenditure;
- (f) Work in a cooperative manner with Customers, and be flexible, innovative, and creative to promote best practices in natural gas acquisition, including transportation;
- (g) Develop natural gas acquisition strategy and portfolio management strategy that will provide value and price stability for Customers;
- (h) Support Customers in developing their natural gas strategy through environmentally-friendly processes and efficiency programs; and,
- (i) Reduce the costs of competitive procurement processes associated with the Services on an ongoing basis (i.e. fewer competitive procurement documents issued by Customers).

### 3.3 Project Advisory Committee

The following OECM Customers were involved with the development of the requirements set out in this RFP.

- (a) Brock University;
- (b) Conestoga College;
- (c) Ottawa-Carleton District School Board;
- (d) Toronto District School Board;
- (e) York Catholic District School Board; and,
- (f) York University.

The above Customers are **not**, in any way, committed to participating in the Master Agreement resulting from this RFP.

### 3.4 Historical Spend

OECM currently has Natural Gas Management and Advisory Services agreement in place with one (1) supplier. This agreement expires on November 22, 2019.

Currently, there are eleven (11) unique Customers using the OECM Natural Gas Management and Advisory Services agreement:

- (a) Two (2) School Boards;
- (b) Six (6) Colleges;
- (c) Two (2) Universities; and,
- (d) One (1) other organization.

Approximate spend through the existing agreement from July 2014 to January 2019 is approximately five million three hundred and sixty thousand dollars (\$5,360,000).

Customers using the current OECM Natural Gas Management and Advisory Services agreement are **not**, in any way, obligated to participate in any Master Agreement resulting from this RFP.

### **3.5 Description of Deliverables**

The Successful Proponent will provide a broad range of Services to meet or exceed the natural gas management and advisory needs of Customers located across Ontario. The Successful Proponent shall provide the following Services to Customers including, but not limited to:

- (a) Market analysis;
- (b) Profile development;
- (c) Gas Transaction;
- (d) Portfolio administration;
- (e) Accounting and payment; and,
- (f) Environmental initiatives.

From time to time, the Successful Proponent shall provide additional Services to Customers within the scope for management and advisory of natural gas. Proponents shall include in Appendix B – Commercial Response the proposed additional Services that can be provided and the Rates associated.

The scope of this RFP enables ongoing opportunities for a Successful Proponent to work with Customers to adopt best practices and flexible approaches to management of natural gas and its acquisition.

#### **3.5.1 Market Analysis**

The Successful Proponent shall provide the following market analysis Services including, but not limited to:

- (a) Daily, weekly or monthly report, analysis, and commentary on natural gas market conditions and forecasts;
- (b) Monthly analysis and commentary on proposed or upcoming regulation changes that will affect gas costs, including transportation;
- (c) Current and historical market and pricing information as per Customer's requirements to be delivered according to the market condition (e.g. daily, weekly or monthly); and
- (d) Access (e.g. website or personnel) to information (e.g. market and pricing information) and knowledge transfer during Business Day hours.

#### **3.5.2 Profile Development**

The Successful Proponent shall provide the following profile development Services including, but not limited to:

- (a) Initial need analysis and gas acquisition management recommendation to Customers;

- (b) Establishing the Customers Mean Daily Volume (MDV) in conjunction with the local natural gas distribution company;
- (c) Liaise with gas utility (e.g. local utility and/or Providers) personnel;
  - i. Enroll and/or de-enroll Customer accounts with gas utility; and,
  - ii. Monthly gas nominations.
- (d) Assist Customers in developing natural gas budgets and cost objectives;
- (e) Advice on natural gas supply mechanisms (e.g. transportation and delivery options);
- (f) Advice on local distribution rate options and management of curtailed delivery programs;
- (g) Analyze and create risk assessment profile for Customers, as required; and
- (h) Recommendation on short and long term natural gas pricing strategies to manage the costs and meet gas cost objectives that are within the Customer's risk tolerance.

### **3.5.3 Gas Transaction**

The Successful Proponent shall provide the following gas Transaction Services for the acquisition and selling of gas including transportation, but not limited to:

- (a) Assist Customers in selecting gas Providers, including transportation, as required;
- (b) Assist Customers in negotiating gas supply contracts as required while ensuring Customer's internal policy and process are followed;
- (c) Facilitate the purchase of natural gas for one (1) or more Customers, including running and managing the procurement processes, as required, for commodity and/or transportation; and,
- (d) Assist Customers in selling of their gas supply, if required (e.g. during Customer equipment failure).

#### **3.5.3.1 Gas Transaction Quotation**

The Successful Proponent shall provide electronic or hard copies of the gas Transaction quotations to Customers which at a minimum shall contain the following information:

- (a) Customer name and location;
- (b) Date of quote provided;
- (c) Delivery point;
- (d) Daily volume and/or monthly volume
- (e) Unit gas Rate;
- (f) Gas transportation Rate;
- (g) HST and/or GST as applicable; and,
- (h) Total Rate.

### **3.5.4 Portfolio Administration**

The Successful Proponent shall provide the following profile administration Services including, but not limited to:

- (a) Manage the gas delivery imbalances (e.g. delivery rate optimization, load balancing (e.g. selling and/or buying gas as required), banked gas account (BGA));
  - i. Track monthly BGA report with gas utility;

- (b) Aggregate gas volume for the benefit of Customers where possible, if required, to achieve lower natural gas commodity costs;
- (c) Provide reports and analysis of actual versus forecasted gas consumption ; and
- (d) Provide saving analysis to Customers (e.g. rate comparison analysis), as required.

### **3.5.5 Accounting and Payment Services**

The Successful Proponent shall provide the following accounting and payment Services including, but not limited to:

- (a) Verification of commodity and transportation invoices;
- (b) Verification of utility invoices, at additional cost, if required; and
- (c) Provision of overall commodity and transportation cost reports and summaries, as required.

### **3.5.6 Environmental Initiatives**

OECM and its Customers are committed to reducing their carbon footprint. The Successful Proponent shall inform Customers about any environmentally-friendly processes, provide environmental initiative Services (e.g. emissions reporting, emissions offset trading), and advise on future environmental efficiency programs as they become available to Customers.

Successful Proponents shall provide support to Customers for developing their natural gas strategy at additional cost, as per request of the Customer, including but not limited to,

- (a) Tracking and reporting methodologies; and,
- (b) Action plans to reduce use of natural gas.

The Successful Proponent shall, in consultation with OECM, make any environmental initiatives related to the RFP Deliverables, available to Customers as required.

## **3.6 Invoicing**

Flexibility in invoicing processes is required. The Customer and Successful Proponent can mutually agree to invoicing details when executing a CSA.

### **3.6.1 Service Invoices**

The invoices for Services, in either paper or electronic format, as detailed in the Customer's CSA shall be itemized and contain, at a minimum, the following information:

- (a) Customer name and location;
- (b) Customer order date;
- (c) Customer invoice number and invoice date;
- (d) Service period;
- (e) Description of Services provided and Rates; and,
- (f) HST and total Rate.

### **3.6.2 Gas Transaction Invoices**

Gas Transactions, including any transportation costs, shall be invoiced separately from Service invoices. The invoices, in either paper or electronic format, as detailed in the Customer's CSA shall be itemized and contain, at a minimum, the following information:

- (a) Customer name and location;
- (b) Billing period;

- (c) Customer invoice number and invoice date;
- (d) Due date;
- (e) Transaction ID,
- (f) Delivery point;
- (g) Daily volume and monthly volume;
- (h) Unit Rate;
- (i) Total monthly Rate for each Transaction; and,
- (j) HST and/or GST as applicable; and,
- (k) Total Rate.

### **3.6.3 Payment Terms and Methods**

The Customer's common payment terms are net thirty (30) days for all Service invoices

Gas Transaction invoice payment terms will be aligned to the Customer's gas Provider agreements.

The Successful Proponent shall accept payment from Customers by cheque, or Electronic Funds Transfer ("EFT") at no extra charge to the Customer.

Different payment terms may be agreed to when executing a CSA (e.g. 2%/10 early payment discount for Customers).

Note – Customer's payment terms will not be in effect until the Successful Proponent provides an accurate invoice.

### **3.6.4 Electronic Fund Transfer**

The Successful Proponent shall provide the Customer with the necessary banking information to enable EFT, at no extra charge to the Customer, for any related invoice payments including, but not limited to:

- (a) A void cheque;
- (b) Financial institution's name;
- (c) Financial institution's transit number;
- (d) Financial institution's account number; and,
- (e) Email address for notification purposes.

## **3.7 Customer Support**

The Successful Proponent shall provide effective support to Customers including, but not limited to:

- (a) Providing a responsive account executive (with applicable back-up) assigned to the Customer to support their needs by providing day-to-day and ongoing administrative support, operational support and issue resolution;
- (b) Responding to Customer's inquiries (e.g. to day-to-day activities) within one (1) Business Day;
- (c) Ensuring minimal disruption to the Customer;
- (d) Providing easy access to the Successful Proponent (e.g. online, toll free telephone number, email, voicemail or chat);
- (e) Providing knowledge transfer, and no-charge educational events (e.g. webinars), if available;

- (f) Establishing an ongoing communications program with the Customer (e.g. new initiatives, regulation, legislation, innovation, and sustainability);
- (g) Adhering to the Customer's confidentiality and privacy policies (e.g. related to student's private information);
- (h) Providing written notice to Customers on any scheduled shut down that would impact services ;
- (i) Provide Customer reporting as described in Appendix E – Reporting Requirements or as may be required;
- (j) Attending meetings with Customers, as requested: and,
- (k) Additional project specific requirements.

### **3.7.1 Transition and Implementation**

The Successful Proponent shall provide support to ensure seamless transition **to** and/or **from** a different organization (e.g. setting up accounts) with no Service interruption and at no additional cost to Customers. The Successful Proponent will provide implementation and training plans to the Customer for approval prior to the implementation as required.

### **3.8 Disaster Recovery and Business Continuity**

The Successful Proponent shall possess and provide to OECM and/or Customers upon request, information about disaster recovery and business continuity programs including processes, policies, and procedures related to safety standards, preparing for recovery or continuation of Product and Service availability critical to Customers.

### **3.9 Licences, Right to Use and Approvals**

The Successful Proponent shall obtain all licences, right to use and approvals required in connection with the supply of the Products and Services, and provide them at Customer and OECM request. The costs of obtaining such licences, right to use and approvals shall be the responsibility of, and shall be paid for by, the Successful Proponent.

Where a Successful Proponent is required by Applicable Law to hold or obtain any such licence, right to use and approval to carry on an activity contemplated in its Proposal or in the Master Agreement, neither acceptance of the Proposal nor execution of the Master Agreement by OECM shall be considered an approval by OECM for the Successful Proponent to carry on such activity without the requisite licence, right to use or approval.

### **3.10 Workplace Hazardous Material Information System**

The Successful Proponent shall ensure Workplace Hazardous Materials Information System ("WHMIS") Material Safety Data Sheets ("MSDS") are onsite as required. Additionally, the Successful Proponent should provide the Customer's personnel WHMIS training, as it relates to the Products and equipment, in accordance with the *Ontario Occupational Health and Safety Act*.

Additional copies of MSDS sheets should be provided by the Successful Proponent to Customers, upon request.

[End of Part 3]

## PART 4 – AGREEMENT STRUCTURE AND MANAGEMENT

### 4.1 Master Agreement Structure

OECM may, through this RFP process, enter into Master Agreements with up to five (5) Successful Proponents for the provision of the Services.

The Term of the Master Agreement is intended to be for three (3) years, with an option in favour of OECM to extend the Term on the same terms and conditions for one (1) additional period of up to two (2) years. Performance as set out in Appendix F – Supplier’s Performance Management Scorecard will be considered when contemplating a Master Agreement extension and supplier refresh, if necessary.

Customers participating in the Master Agreements will execute a Customer-Supplier Agreement (“CSA”) with a Successful Proponent as attached in Appendix A – Form of Agreement.

The Master Agreement must be fully executed before the provision of any Deliverables commences.

#### 4.1.1 No Contract until Execution of Written Agreement

This RFP process is intended to identify Proponents for the purpose of negotiation of potential Master Agreements. The negotiation process is further described in Part 5 – Evaluation of Proposals.

**No** legal relationship or obligation regarding the procurement of any Services shall be created between the Proponent and OECM by this RFP process until the successful completion of negotiation and execution of a written Master Agreement for the provision of the Services has occurred.

#### 4.1.2 Customer’s Usage of Master Agreements

The establishment and use of the Master Agreement consists of a two (2) part process.

**Part One**, which is managed by OECM, is the creation of the Master Agreement through the issuance of this RFP, the evaluation of Proposals submitted in response to it and the negotiation and execution of the Master Agreement.

**Part Two** (the Second Stage Selection Process) is managed by the Customer or by OECM on the Customer’s behalf, and is focused on the Customer’s specific needs. Depending on the Customer’s internal policies, and potential dollar value of the Services a Customer may select a Successful Proponent, or seek Rates (e.g. by issuing a non-binding Second Stage Selection Process) from the Successful Proponent for their specific Service requirements. If selected by the Customer, the Successful Proponent shall provide the Services in accordance with the specifications stated in the Master Agreement and in the Customer’s CSA.

When a second stage selection process is issued, it does **not** constitute a contract A, contract B situation, it will identify the required Services or it may request the Successful Proponent to propose appropriate Services to fulfill the Customer’s requirements and any other applicable information. The Customer may negotiate their unique requirements with the Successful Proponent and mutually agree to additional terms and conditions (e.g. reporting, Rates, payment terms) ensuring the additional terms and conditions are not in any way inconsistent with the Form of Agreement agreed to by OECM and the Successful Proponent.

The Successful Proponent must respond to a second stage selection process and at minimum, the response should set out the following:

- (a) Proposed Services;
- (b) Timelines for Services; and,
- (c) Final, net Rates.



Customers are **not** obligated to sign a CSA to obtain specific Service pricing. However, a CSA must be signed before the provision of any Service commences.

#### **4.1.3 No Guarantee of Volume of Work or Exclusivity of Master Agreement**

The volume information contained in this RFP constitutes an estimate and is supplied solely as a guideline to the Proponent. Such information is not guaranteed, represented, or warranted to be accurate, nor is it necessarily comprehensive or exhaustive.

Nothing in this RFP is intended to relieve the Proponent from forming its own opinions and conclusions with respect to the matters addressed in this RFP. Volumes are an estimate only and may not be relied on by the Proponent.

OECM makes no guarantee of the value or volume of work to be assigned to the Successful Proponent.

The Master Agreement executed with the Successful Proponent may not be an exclusive Master Agreement for the provision of the Deliverables. Customers may contract with others for the same or similar Deliverables to those described in this RFP.

## **4.2 Rates**

The proposed Service Rates shall be firm for the first year of the Master Agreement and shall be:

- (a) Maximum monthly Rates applicable to all Customers;
- (b) Maximum per diem Rate applicable to all Customers;
- (c) In Canadian funds and shall include all applicable costs, including, but not limited to overhead, materials, fuel, fuel surcharge, duties, tariffs, travel, delivery, office support, profit, permits, licences, labour, insurance, and Workplace Safety Insurance Board costs; and,
- (d) Exclusive of the HST, or other similar taxes.

The Successful Proponent may, however, lower its Rates for specific Services when the Customer and Successful Proponent mutually agree without affecting the Rates in the Master Agreement.

In extenuating circumstances, OECM may consider a Rate adjustment substantially effecting the provision of Services resulting from new or changed municipal, provincial, or federal regulations, by-laws, Fair Wage Policy, tariffs, or ordinances. Any such request from the Successful Proponent must be accompanied by documentation deemed appropriate by OECM. The Successful Proponent must submit documentation (i.e. Rate impact analysis) demonstrating how the request affects the delivery of Services in this Master Agreement. OECM will not consider any fixed costs or overhead adjustments in its review of the Successful Proponent's documentation.

### **4.2.1 Optional Rate Refresh**

OECM's goal is to keep Rates as low as possible for Customers. However, the Successful Proponent may request a Rate refresh by providing a written notice to OECM eight (8) months prior to the anniversary date of the Master Agreement and subsequently every year thereafter including the extension periods, if exercised.

As part of any review OECM will consider Rate adjustments that reflect changes in operation, adjustments due to new or changed municipal, provincial, or federal regulations, by-laws, tariffs, or ordinances. Any Rate refresh request from a Successful Proponent must be accompanied and supported by appropriate documentation (e.g. detailed calculations and individual Customer impact analysis) to support any Rate adjustment. OECM may use a third party index (e.g. Consumer Price Index) in its Rates review. OECM will not consider any fixed costs or overhead adjustments in its review.

Customer utilization and Successful Proponent performance (i.e. Supplier's Performance Management Scorecard results) will be considered when contemplating a Rate refresh.

If a proposed Rate refresh was agreed upon between OECM and the Successful Proponent, the new Rates would only be applicable to Services ordered after the effective date of the new Rates. The effective date of the Rate change must allow Customers a minimum of one-hundred and eighty (180) days' prior notice from OECM. If, however, a proposed Rate increase is not accepted by OECM the Master Agreement may be terminated within one-hundred and eighty (180) days unless the Successful Proponent agrees to withdraw its request for a Rate increase and continue the provision of the Services at the existing agreed upon Rates.

If a Rate refresh is not requested, the existing Rates shall remain in effect until the next Rate refresh opportunity.

Decreases to the Rates shall be accepted at any time during the Term of the Master Agreement.

#### 4.2.2 Optional Process to Add Services

During the Term of the Master Agreement, if mutually agreed by OECM and the Successful Proponents, other Services (e.g. newly available and innovative Services) may be added to the Master Agreement throughout the Term of the Master Agreement to align with Customer needs.

Additional Service requests from the Successful Proponent must be accompanied by appropriate documentation (e.g. Service description, and rationale for the addition).

Volumes and Successful Proponent's performance (i.e. as described in Appendix F – Supplier's Performance Management Scorecard results) will be considered when contemplating adding Services to the Master Agreement. In the event the Successful Proponent's performance is poor and/or unacceptable, OECM may not agree to the Successful Proponent's Service addition request. All other Services shall remain unchanged.

Rates, for newly added Services, will be negotiated by OECM at the time ensuring Rate alignment with similar Services currently available on the Master Agreement.

#### 4.2.3 OECM Geographical Zones

OECM Customers are located in five (5) geographical Zones (as set out below and detailed in Appendix C – OECM Geographical Zones) throughout the Province of Ontario.

- (a) Central Zone;
- (b) East Zone;
- (c) North East Zone;
- (d) North West Zone; and,
- (e) West Zone.

Also refer to Appendix D – OECM School Board, University and College Customers in Ontario illustrating OECM's educational Customers by Zone.

#### 4.2.4 OECM Cost Recovery Fee

As a not-for-profit/non-share capital corporation, OECM recovers its operating costs from its agreements through a Cost Recovery Fee ("CRF"). CRFs from the resulting Master Agreement from this RFP and other OECM agreements are structured to support OECM's financial model, while providing savings to Customers.

The Successful Proponent shall pay OECM a CRF for all Services invoiced by the Successful Proponent to the Customers through the Term of the Master Agreement will be as follows:

Services	CRF Percentage
<ul style="list-style-type: none"> <li>• Market Analysis</li> <li>• Profile Development</li> <li>• Gas Transaction</li> </ul>	3%

Services	CRF Percentage
<ul style="list-style-type: none"> <li>Portfolio Administration</li> <li>Accounting and Payment Services</li> </ul>	
<ul style="list-style-type: none"> <li>Environmental Initiatives</li> <li>Additional Services</li> </ul>	1%

The CRF shall be paid to OECM, via EFT, on a quarterly basis based on the calendar year by the tenth (10) Business Day of the applicable quarter.

CRF payment dates, for the first year of the Master Agreement, will be as follows:

CRF Payments	Payment Date
The first CRF including any Customer purchases made between the Master Agreement execution date and December 31, 2019 shall be paid to OECM by:	January 15, 2020
The next CRF, including any Customer purchases made between January 1, 2020 to March 31, 2020 shall be paid to OECM by:	April 14, 2020,
Subsequent CRF payments shall be paid to OECM on the tenth (10) Business Day following each calendar quarter.	July 15, 2020, September 15, 2020, and, December 14, 2020

HST is applicable to the CRF payments made to OECM.

The CRF will be reviewed (e.g. annually) and may, at OECM's sole discretion, be adjusted downwards.

During the Term of the Master Agreement, OECM may implement other CRF methodologies. Should this take place, the maximum CRF noted above shall not increase.

OECM may charge interest, as described in the Master Agreement, for late CRF payments.

Upon termination or expiry of the Master Agreement, the Successful Proponent will submit all outstanding CRF payments within thirty (30) days of the Master Agreement termination or expiry date.

#### 4.2.5 Saving Calculation

OECM tracks, validates, and reports on savings on all of its agreements. Collaborative procurement processes enables several types of savings including direct and indirect savings (e.g. process improvement, lead time reduction, standardization, economies of scale, cost avoidance).

Once OECM receives Customer approval, the Successful Proponent shall provide OECM with the Customers' historical spend (e.g. baseline information) prior to the effective date of this Master Agreement if applicable to facilitate savings calculations.

#### 4.3 Master Agreement Management Support to OECM

OECM will oversee the Master Agreement, and the Successful Proponent shall provide appropriate Master Agreement management support including, but not limited to:

- (a) Supplying of the Services in compliance with the Deliverables of this RFP and resulting Master Agreement;
- (b) Assigning an Account Executive and team responsible for supporting and overseeing all aspects of the Master Agreement;

- (c) Working and acting in an ethical manner demonstrating integrity, professionalism, accountability, transparency and continuous improvement;
- (d) Promoting the Master Agreement within the Customer community;
- (e) Maintaining OEM's and Customer's confidentiality by not disclosing Confidential Information without the prior written consent of OEM and/or the Customer, as the case may be, as further described in Appendix A – Form of Agreement;
- (f) Attending business review meetings with OEM to review such information as:
  - i. CSAs and upcoming opportunities;
  - ii. Review and monitor performance management compliance;
- (g) Complying with OEM's Supplier Code of Conduct requirements;
- (h) Managing issue resolution in a timely manner (with escalation processes to resolve outstanding issues);
- (i) Timely submission of reports showing invoiced Services, CSAs, the applicable CRF, and other ad hoc reports as described in Appendix E – Reporting Requirements, and,
- (j) Complying with Master Agreement close out processes (e.g. ensuring all Master Agreement obligations have been fulfilled, such as submission of final reporting and CRF to OEM).

#### **4.3.1 Master Agreement Launch**

Once the Master Agreement is awarded, the Supplier will meet with OEM to discuss an effective launch strategy, and shall provide:

- (a) Supplier profile and logo;
- (b) Supplier contact information;
- (c) Customer engagement strategy;
- (d) Access to knowledge sharing materials (e.g. webinars); and,
- (e) Other relevant materials.

#### **4.3.2 Promoting Master Agreements**

To support Customers, OEM and the Supplier will work together to encourage the use of the Master Agreement resulting from this RFP.

The Supplier will actively promote the Master Agreement to Customers by:

- (a) Conducting sales and marketing activities directly to onboard Customers;
- (b) Executing CSAs with interested Customers;
- (c) Providing excellent and responsive customer support;
- (d) Gathering and maintaining Customer and market intelligence, including contact information;
- (e) Identifying Customer savings; and,
- (f) Identifying improvement opportunities (e.g. new Services).

OEM will promote the use of the Master Agreement with Customers by:

- (a) Using online communication tools to inform and educate;
- (b) Holding information sessions and webinars, as required;
- (c) Attending, where appropriate, Customer and Supplier events;

- (d) Facilitating CSA execution, where appropriate;
- (e) Facilitating Second Stage Selection Process requests, as required;
- (f) Providing effective business relationship management;
- (g) Managing and monitoring Supplier performance;
- (h) Facilitating issue resolution; and,
- (i) Marketing promotions.

#### **4.3.3 Supplier's Performance Management Scorecard**

To ensure Master Agreement requirements are met, the Supplier's performance will be measured and tracked by OECM as described in Appendix F – Supplier's Performance Management Scorecard.

#### **4.3.4 Supplier Recognition Program**

OECM's Suppliers play a fundamental role in ensuring Customers' needs are met with consistent and exceptional service.

As part of OECM's efforts to provide greater value to Customers and support their Supplier selection process across OECM agreements, OECM has implemented a Supplier Recognition Program ("SRP").

Through the SRP, OECM will objectively assess Supplier's performance using an open, fair and transparent framework to recognize and reward top-performing suppliers on an annual basis.

The following four (4) key areas of focus that Suppliers will be measured upon include:

- (a) Supplier performance;
- (b) Master Agreement performance (see Section 4.3.3 – Supplier's Performance Management Scorecard);
- (c) Generated savings and value; and,
- (d) Technical Response scores from the Supplier's Proposal.

Further details will be provided to the Successful Proponents.

#### **4.3.5 Reporting to OECM**

The Supplier shall be responsible for providing reports as further described in Appendix E – Reporting Requirements.

Report details will be discussed and established at the Master Agreement finalization stage between OECM and the Preferred Proponent. Other reports may be added, throughout the Term of the Master Agreement, if mutually agreed upon between OECM and the Supplier, and/or the Customer and Supplier.

[End of Part 4]

## PART 5 – EVALUATION OF PROPOSALS

### 5.1 Stages of Proposal Evaluation

OECM will conduct the evaluation of Proposals in the following stages:

Stage	Type of Evaluation	Refer to RFP Section	Scoring Methodology and Maximum Points (if applicable)	Minimum Threshold Requirement (if any)
Stage I	Qualification Response	5.2	Pass/Fail	Pass
Stage II	Technical Response	5.3	350	175
Stage III	Commercial Response	5.4	150	Not Applicable
Stage IV	Cumulative Score	5.5	500	Not Applicable
Stage V	Tie Break	5.6	No Point Allocation	Not Applicable
Stage VI	Negotiations	5.7	No Point Allocation	Not Applicable
Stage VII	Master Agreement Finalization	5.8	No Point Allocation	Not Applicable

### 5.2 Stage I – Review of Qualification Responses (Pass/Fail)

Stage I will consist of a review to determine which Proposals comply with all of the qualification requirements.

The Proponent **must** complete the following forms in OTP to qualify and proceed to the next stage of evaluation.

Form	Title	Refer to OTP Section
Form 1	Form of Offer	1.1
Form 2	Compliance with Form of Agreement	1.5
Appendix B	Commercial Response	3.1

If the Proponent fails to insert information contained in the above forms, OECM may provide an opportunity to rectify such deficiency within a period of two (2) Business Days from notification thereof. Only Proponents satisfying the identified deficiencies within allotted time will proceed to Stage II.

### 5.3 Stage II – Form 3 – Technical Response

Stage II will consist of an evaluation and scoring of the Technical Response of each Eligible Proposal. The Technical Response includes a series of questions the Proponent is required to respond to in order to demonstrate the Proponent's ability to fulfill the RFP Deliverables. Only information contained within the Technical Response will be evaluated in Stage II.

Only Proposals that meet or exceed the minimum thresholds will receive a **pass** in this stage and proceed to Stage III of the evaluation process.

In the case that contradictory information or information that contains conditional statements is provided, OECM will, in its sole and absolute discretion, determine whether the response complies with the requirements, and may seek clarification from the Proponent.

A Proposal that does not respond to a particular question, is left blank, or contains a response of N/A or not applicable will receive a zero (0) score.

Point allocations for the Technical Response sections are as follows:

Technical Response Sections	Available Points	Minimum Threshold, if any
1. Proponent's Overview	90	45
2. Market Analysis & Profile Development	110	55
3. Gas Transaction	60	30
4. Portfolio Administration	40	Not Applicable
5. Accounting and Payment	10	Not Applicable
6. Environmental Initiatives	15	Not Applicable
7. Account Management and Customer Support	25	Not Applicable
<b>TOTAL POINTS:</b>	<b>350</b>	<b>175</b>

Detailed sub-point allocations are set out in the Form 3 – Technical Response on OTP.

#### 5.4 Stage III – Commercial Response

The Proponent **must** complete and upload Appendix B – Commercial Response into the OTP Commercial Envelope for this stage of evaluation.

Upon the completion of Stage II of the evaluation, the Commercial Response will be opened for all Eligible Proposals.

Point allocations for the Commercial Response sections are as follows:

Commercial Response Sections	Available Points
1. Management and Advisory Services	150
2. Additional Services	Not Evaluated
<b>TOTAL POINTS:</b>	<b>150</b>

Detailed sub-point allocations are set out in the Appendix B – Commercial Response on OTP.

Rates will be evaluated using a relative formula. See example below:

<b>EXAMPLE OF COMMERCIAL RESPONSE EVALUATION FOR PART 1 – MANAGEMENT AND ADVISORY SERVICES, NO. 1.1 MARKET ANALYSIS</b>		
Proposed Rates	Calculation	Resulting Points
If Proponent 1 proposes the lowest maximum monthly Rate of \$100.00 for market analysis, it would receive 100% of the points allocated.	$\$100 \div \$100 \times 10$ Points	10
If Proponent 2 proposes the second lowest maximum monthly Rate of \$200.00 for market analysis, it would receive 50% of the points allocated.	$\$100 \div \$200 \times 10$ Points	5
If Proponent 3 proposes the third lowest maximum monthly Rate of \$400.00 for market analysis, it would receive 25% of the points allocated.	$\$100 \div \$400 \times 10$ Points	2.5

Where \$0.00 is entered in any Rate cell, it is deemed to mean that the particular Products/Services **will be provided to Customers at no cost**. Therefore, when evaluating and scoring the Rates, a Proposal specifying \$0.00 in a Rate cell in the Commercial Response shall receive the maximum point allocation for that particular Product/Service. The remaining Proposals will be evaluated using a relative formula based on the remaining percentage of available points regardless of the Proposals of \$0.00 Rate as per below example.

<b>EXAMPLE – WHERE FIVE (5) PROPOSALS WERE RECEIVED WITH \$0.00 RATE PROPOSED</b>		
Number of Proponents proposing \$0.00 Rate for a particular Service	The number of remaining Proponents	The percentage (%) of the sub-point allocation for the remaining Proponents will be:
1	4	80%
2	3	60%
3	2	40%
4	1	20%

Where N/A or not applicable is entered in a Commercial Response cell or a Commercial Response cell is left blank for the Service, it is deemed to mean that the particular Service will **not be provided** to Customers. Therefore, when evaluating and scoring the Rates, a Proposal specifying N/A or not applicable, or left blank in Appendix B – Commercial Response will receive a zero (0) point allocation for that particular pricing section.

**5.5 Stage IV – Cumulative Score**

At this stage, the scores from Stages II and III will be combined for each Proposal.

Subject to the express and implied rights of OECM; the Proponents with the highest scoring Proposals or all the Proponents may become the Preferred Proponents, and be invited to negotiations, as further described below.

Reference checks will be performed to confirm or clarify information provided within the Proposal. The reference checks themselves will not be scored, however, OECM may adjust Technical Response scores related to the information obtained during the reference check.

**5.6 Stage V – Tie Break Process**

At this stage, where two (2) or more of the highest scoring Proposals achieve a tie score on completion of the Stage IV, OECM may invite all Proponents to negotiations or break the tie by selecting the Proposal with the highest score in Stage II – Technical Response.

**5.7 Stage VI – Negotiations**

Concurrent negotiations, with the Preferred Proponents, will be based on the RFP requirements, and the Proposals, understanding that OECM is seeking the best overall solution and value for money for Customers.

The negotiations may include:

- (a) Services;
- (b) Master Agreement management (e.g. performance, KPIs, penalties, reporting);
- (c) Master Agreement terms and conditions;
- (d) Additional references, if required;
- (e) Rates; and,
- (f) Best and Final Offer.

OECM may also request supplementary information from a Preferred Proponent to verify, clarify or supplement the information provided in its Proposal or confirm the conclusions reached in the evaluation and may include requests by OECM for improved Rates.

OECM intends to complete negotiations within fifteen (15) calendar days after notification. If, for any reason, OECM and a Preferred Proponent fail to reach an agreement within the aforementioned timeframe, OECM may at its sole and absolute discretion (a) request the Preferred Proponent to submit its Best and Final



Offer; (b) terminate negotiations with that particular Preferred Proponent; (c) extend the negotiation timeline; (d) publish one (1) or some of the Suppliers, who have executed Master Agreements, within our promotional marketing launch. Other Master Agreements, if successfully negotiated with other Preferred Proponents would be added to OECM's website at a later date; or (e) exclude a Preferred Proponent from further consideration and begin discussions with the next highest scoring Proponent without becoming obligated to offer to negotiate with all Proponents. Upon successful negotiations, the Preferred Proponent will be invited to execute a Master Agreement.

#### **5.8 Stage VII – Master Agreement Finalization**

The Preferred Proponent will be given five (5) Business Days to execute the Master Agreement, unless otherwise specified by OECM. Once the Master Agreement has been executed, Customers may execute a CSA.

OECM shall at all times be entitled to exercise its rights under Section 6.6.

[End of Part 5]

## PART 6 – TERMS AND CONDITIONS OF THE RFP PROCESS

### 6.1 General Information and Instructions

#### Procurement Process Non-Binding

This RFP process is non-binding, and it does not intend to create, and shall not create, a formal legally-binding procurement process, and shall not give rise to the legal rights or duties applied to a formal legally-binding procurement process. This procurement process shall instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation:

- (a) This RFP shall not give rise to any contract A – based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and,
- (b) Neither the Proponent nor OECM shall have the right to make any breach of contract, tort or other claims against the other with respect to the award of a Master Agreement, failure to award a Master Agreement or failure to honour a response to this RFP.

#### Non-Binding Rates

While the Proposal Rates will be non-binding prior to the execution of a written Master Agreement, such information will be assessed during the evaluation and ranking of the Proposals, as further described in Part 5 – Evaluation of Proposals. Any inaccurate, misleading, or incomplete information, including withdrawn or altered Rates, could adversely impact any such evaluation, ranking, or Master Agreement award.

#### 6.1.1 RFP Timetable

The following is a summary of the key dates for this RFP process:

RFP Timetable	
Event	Time/Date
OECM's Issue Date of RFP:	May 9, 2019
Proponent's Information and OTP Demonstration Session:	1:00 pm on May 22, 2019
Proponent's Deadline to Submit Questions:	5:00 pm on May 22, 2019
OECM's Deadline for Issuing Answers:	May 27, 2019
Proponent's Deadline to Submit Questions Related to Addenda & Question and Answer Documents:	5:00 pm on May 29, 2019
OECM's Deadline for Issuing Final Documents:	June 3, 2019
Closing Date:	2:00 pm on June 14, 2019
Anticipated Master Agreement Start Date:	<b>August 2019</b>

Note – all times specified in this RFP timetable are local times in Toronto, Ontario, Canada.

OECM may amend any timeline, including the Closing Date, without liability, cost, or penalty, and within its sole discretion.

In the event of any change in the Closing Date, the Proponent may thereafter be subject to the extended timeline.

### **6.1.2 Proponent's Information and OTP Demonstration Session**

The Proponent may, but is not required to, participate in the Proponent's Information and OTP Demonstration Session, which will take place at the time set out in Section 6.1.1.

Prior to the Proponent's Information and OTP Demonstration Session, OECM will send a **Message** via OTP with the teleconference and webinar information to the Proponents who expressed interest on OTP.

The Proponent's Information and OTP Demonstration Session may provide an opportunity for the Proponent to enhance its understanding of this RFP and to learn how to use OTP to submit its Proposal.

Any changes to the Proponent's Information and OTP Demonstration Session meeting date will be issued in an addendum on OTP.

Information provided during this session will be posted on OTP.

In the event of a conflict or inconsistency between the Proponent's Information and OTP Demonstration Session and the RFP, the RFP shall prevail.

The Proponent can contact OTP technical support directly for further assistance, using the contact details set out in Section 6.3.1.

### **6.1.3 Proponent to Follow Instructions**

The Proponent should structure its Proposal in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in the Proposal should reference the applicable section numbers of this RFP where that request was made.

### **6.1.4 OECM's Information in RFP Only an Estimate**

OECM makes no representation, warranty or guarantee as to the accuracy of the information contained in this RFP or issued by way of addenda. Any data contained in this RFP or provided by way of addenda are estimates only and are for the sole purpose of indicating to Proponents the general size of the work.

It is the Proponent's responsibility to avail itself of all the necessary information to prepare a Proposal in response to this RFP.

### **6.1.5 Proponent's Costs**

The Proponent will bear all costs and expenses incurred relating to any aspect of its participation in this RFP process, including all costs and expenses relating to the Proponent's participation in:

- (a) The preparation, presentation and submission of its Proposal;
- (b) The Proponent's attendance at any meeting in relation to the RFP process, including any presentation and/or interview;
- (c) The conduct of any due diligence on its part, including any information gathering activity;
- (d) The preparation of the Proponent's own questions; and,
- (e) Any discussion and/or finalization, if any, in respect of the Form of Agreement.

## **6.2 Communication after RFP Issuance**

### **6.2.1 Communication with OECM**

All communications regarding any aspect of this RFP must be sent to OECM as a **Message** in OTP.

If the Proponent fails to comply with the requirement to direct all communications to OECM through OTP, it may be disqualified from this RFP process. Without limiting the generality of this provision,

Proponents shall not communicate with or attempt to communicate with the following as it relates to this RFP:

- (a) Any employee or agent of OECM;
- (b) Any member or advisor of the Project Advisory Committee;
- (c) Any member of OECM's governing body (such as Board of Directors, or advisors);
- (d) Any employee, consultant or agent of OECM's Customers; and,
- (e) Any elected official of any level of government, including any advisor to any elected official.

### **6.2.2 Proponent to Review RFP**

The Proponent shall promptly examine this RFP and all Appendices, including the Form of Agreement and:

- (a) Shall report any errors, omissions or ambiguities; and,
- (b) May direct questions or seek additional information **on** or **before** the Proponent's Deadline to Submit Questions to OECM.

All questions submitted by Proponents shall be deemed to be received once the **Message** has entered into OECM's OTP inbox.

In answering a Proponent's questions, OECM will set out the question, without identifying the Proponent that submitted the question and OECM may, in its sole discretion:

- (a) Edit the question for clarity;
- (b) Exclude questions that are either unclear or inappropriate; and,
- (c) Answer similar questions from various Proponents only once.

Where an answer results in any change to the RFP, such answer will be formally evidenced through the issue of a separate addendum for this purpose.

To ensure the Proponent clearly understand issued addenda, OECM allows Proponents to ask questions related to addenda, and question and answer documents. Refer to Section 6.1.1 for timelines.

OECM is under no obligation to provide additional information but may do so at its sole discretion.

It is the responsibility of the Proponent to seek clarification, by submitting questions to OECM through OTP, on any matter it considers to be unclear. OECM shall not be responsible for any misunderstanding on the part of the Proponent concerning this RFP or its process.

### **6.2.3 Proponent to Notify**

In the event the Proponent has any reason to believe that an error, omission, uncertainty or ambiguity, as set out in Section 6.2.2 exists, the Proponent must notify OECM through OTP prior to submitting a Proposal.

If appropriate, OECM will then clarify the matter for the benefit of all Proponents.

The Proponent shall not:

- (a) After submission of a Proposal, claim that there was any misunderstanding or that any of the circumstances set out in Section 6.2.2 were present with respect to the RFP; and,
- (b) Claim that OECM is responsible for any of the circumstances listed in Section 6.2.2 of this RFP.

#### 6.2.4 All New Information to Proponents by way of Addenda

This RFP may only be amended by an addendum in accordance with this section.

If OECM, for any reason, determines that it is necessary to provide additional information relating to this RFP, such information will be communicated to all Proponents by addenda on OTP. Each addendum shall form an integral part of this RFP.

Any amendment or supplement to this RFP made in any other manner will not be binding on OECM.

Such addenda may contain important information including significant changes to this RFP. The Proponent is responsible for obtaining all addenda issued by OECM.

The Proponent who intends to respond to this RFP is requested not to cancel the receipt of addenda or amendments option provided by OTP, since it must obtain all of the information documents that are issued on OTP.

In the event that a Proponent chooses to cancel the receipt of addenda or amendments, its Proposal may be rejected.

### 6.3 Proposal Submission Requirements

#### 6.3.1 General

The Proponent shall submit its Proposal through OTP at <https://ontariotenders.bravosolution.com/esop/nac-host/public/web/login.html>.

The Proponent should contact OTP customer support if it experiences technical difficulties or to seek support about the use of OTP via:

- (a) Email at [eTenderhelp\\_CA@bravosolution.com](mailto:eTenderhelp_CA@bravosolution.com); or,
- (b) By phone at 866-722-7390.

To be considered in the RFP process, a Proposal must be submitted and received **before** the Closing Date as set out in Section 6.1.1 and on OTP.

**The Proponent is strongly encouraged to become familiar with the use of OTP well in advance of the Closing Date.**

The Proponent will not be able to submit a Proposal after the Closing Date, as OTP will close the access to the RFP on the Closing Date.

A Proposal sent by, email, facsimile, mail and/or any other means other than stated in this RFP shall **not** be considered. Notwithstanding anything to the contrary contained in any applicable statute relating to electronic documents transactions, including the *Electronic Commerce Act, 2000, S.O. 2000, c. 17*, any notice, submission, statement, or other instrument provided in respect of the RFP may not be validly delivered by way of electronic communication, unless otherwise provided for in this RFP.

#### 6.3.2 Proposal in English

All Proposal submissions are to be in English only. Any Proposal received by OECM that is not entirely in the English language may be disqualified.

#### 6.3.3 Proposal Submission Requirements

The Proponent is solely responsible for submitting its Proposal on OTP prior to the Closing Date.

The Proposal should be submitted in accordance with the instructions set out on OTP and in this RFP as set out below.

Appendix/Form Title	OTP Envelope	Complete Form within OTP	Complete Appendix and Upload to OTP
Form 1 – Form of Offer	Qualification	√	
Form 2 – Compliance with Agreement	Qualification	√	
Form 3 – Technical Response	Technical	√	
Appendix B – Commercial Response	Commercial		√

#### 6.3.4 Other Proposal Considerations

In preparing its Proposal, the Proponent should adhere to the following:

- (a) Information contained in any embedded link will not be considered part of a Proposal, and will not be evaluated or scored;
- (b) Completely address, on a point-by-point basis, each Technical Response question in Form 3 – Technical Response. Technical Responses left blank and/or unanswered will receive a score of zero (0). Refer to Section 5.3;
- (c) Information attached as part of the Commercial Envelope in OTP will not be considered as part of the evaluation of Stage II - Technical Response. Refer to Section 5.3; and,
- (d) The Proposal should be complete in all respects. Proposal evaluation and scoring applies only to the information contained in the Proposal, or accepted clarifications as set out in Section 6.3.13 Clarification of Proposals.

#### 6.3.5 Proposal Receipt by OECM

Every Proposal received will be date/time stamped by OTP.

A Proponent should allow sufficient time in the preparation of its Proposal to ensure its Proposal is received on or before the Closing Date.

#### 6.3.6 Withdrawal of Proposal

A Proponent may withdraw its Proposal by deleting its submission on OTP before the Closing Date or at any time throughout the RFP process until the execution of a Master Agreement. To withdraw a Proposal after the Closing Date, the Proponent should send a **Message** to OECM through OTP.

#### 6.3.7 Amendment of Proposal on OTP

A Proponent may amend its Proposal after submission through OTP, but only if the Proposal is amended and resubmitted before the Closing Date.

#### 6.3.8 Completeness of Proposal

By submitting a Proposal, the Proponent confirms that all of the components required to use and/or manage the Services have been identified in its Proposal or will be provided to OECM or its Customers at no additional charge. Any requirement that may be identified by the Proponent after the Closing Date or subsequent to signing the Master Agreement shall be provided at the Proponent's expense.

#### 6.3.9 Proposals Retained by OECM

All Proposals submitted by the Closing Date shall become the property of OECM and will not be returned to the Proponent.

#### **6.3.10 Acceptance of RFP**

By submitting a Proposal, a Proponent agrees to accept the terms and conditions contained in this RFP, and all of the representations, terms, and conditions contained in its Proposal.

#### **6.3.11 Amendments to RFP**

Subject to Section 6.1.1 and Section 6.2.4, OECM shall have the right to amend or supplement this RFP in writing prior to the Closing Date. No other statement, whether written or oral, shall amend this RFP. The Proponent is responsible to ensure it has received all addenda.

#### **6.3.12 Proposals will not be Opened Publicly**

The Proponent is advised that there will not be a public opening of this RFP. OECM will open Proposals at a time subsequent to the Closing Date.

#### **6.3.13 Clarification of Proposals**

OECM shall have the right at any time after the Closing Date to seek clarification from any Proponent in respect of the Proposal, without contacting any other Proponent.

OECM will exercise this right in a similar manner for all Proponents who, in the opinion of OECM, make an unintentional error of form in its Proposal.

Any clarification sought shall not be an opportunity for the Proponent to either correct errors or to change its Proposal in any substantive manner. Subject to the qualification in this provision, any written information received by OECM from a Proponent in response to a request for clarification from OECM may be considered, if accepted, to form an integral part of the Proposal, at OECM's sole and absolute discretion.

OECM shall not be obliged to seek clarification of any aspect of any Proposal.

#### **6.3.14 Verification of Information**

OECM shall have the right, in its sole discretion, to:

- (a) Verify any Proponent's statement or claim made in its Proposal or made subsequently in a clarification, interview, site visit, oral presentation, demonstration, or discussion by whatever means OECM may deem appropriate, including contacting persons in addition to those offered as references, and to reject any Proponent statement or claim, if such statement or claim or its Proposal is patently unwarranted or is questionable, which may result in changes to the scores for the Proponent's Technical Response; and,
- (b) Access the Proponent's premises where any part of the work is to be carried out to confirm Proposal information, quality of processes, and to obtain assurances of viability, provided that, prior to providing such access, the Proponent and OECM shall have agreed on access terms including pre-notification, extent of access, security and confidentiality. OECM and the Proponent shall each bear its own costs in connection with access to each other's premises.

The Proponent shall co-operate in the verification of information and is deemed to consent to OECM verifying such information, including references.

#### **6.3.15 Proposal Acceptance**

The lowest price Proposal or any Proposal shall not necessarily be accepted. While price is an evaluation criterion, other evaluation criteria as set out in Part 5 will form a part of the evaluation process.

#### **6.3.16 RFP Incorporated into Proposal**

All provisions of this RFP are deemed to be accepted by each Proponent and incorporated into each Proposal.

### **6.3.17 Exclusivity of Contract**

The Master Agreement, if any, with the Preferred Proponent will not be an exclusive agreement for the provision of the described Deliverables.

### **6.3.18 Substantial Compliance**

OECM shall be required to reject Proposals, which are not substantially compliant with this RFP.

### **6.3.19 No Publicity or Promotion**

No Proponent, including the Preferred Proponent, shall make any public announcement or distribute any literature regarding this RFP or otherwise promote itself in connection with this RFP or any arrangement entered into under this RFP without the prior written approval of OECM.

In the event that a Proponent, including the Preferred Proponent, makes a public statement either in the media or otherwise in breach of this requirement, in addition to any other legal remedy it may have in law, in equity or within the context of this RFP, OECM shall be entitled to take all reasonable steps as may be deemed necessary by OECM, including disclosing any information about a Proposal, to provide accurate information and/or to rectify any false impression which may have been created.

## **6.4 Negotiations, Timelines, Notification and Debriefing**

### **6.4.1 Negotiations with Preferred Proponent**

OECM reserves the right to accept or reject any Proposals in whole or in part; to waive irregularities and omissions, if doing so is in the best interests of OECM and its Customers.

The Preferred Proponent shall execute the Master Agreement in the form attached to this RFP with negotiated changes, if any, and satisfy any other applicable conditions of this RFP within twenty (20) days of invitation to enter into negotiations. This provision is solely to the benefit of OECM and may be waived by OECM at its sole discretion.

If the Preferred Proponent and OECM cannot execute the Master Agreement within the allotted twenty (20) days, OECM will be at liberty to extend the timeline, request the Preferred Proponent to submit its Best and Final Offer as described in Section 5.7, terminate discussions and negotiations with the Preferred Proponent, or begin discussions with the next highest scoring Proponent without becoming obligated to offer to negotiate with all Proponents.

### **6.4.2 Failure to Execute an Master Agreement**

When the Preferred Proponent successfully reaches an agreement with OECM at the end of the negotiation process in accordance with the evaluation set out in this RFP, the Preferred Proponent will be allotted five (5) Business Days to execute the Master Agreement unless otherwise specified by OECM.

If the Preferred Proponent cannot execute the Master Agreement within the allotted timeframe, OECM may rescind the invitation to execute a Master Agreement.

In accordance with the process rules in this Part 6 – Terms and Conditions of the RFP Process, there will be no legally binding relationship created with any Proponent prior to the execution of a written agreement.

### **6.4.3 Master Agreement**

If a Master Agreement is subsequently negotiated and awarded to a Preferred Proponent as a result of this RFP process;

- (a) Any such Master Agreement will commence upon signature by the duly authorized representatives of OECM and the Preferred Proponent; and,
- (b) May include, but not be limited to, the general Master Agreement terms contained in Appendix A – Form of Agreement.



#### **6.4.4 Notification to Other Proponents**

Once the Master Agreement is executed, other Proponents will be notified directly in writing and shall be notified by public posting in the same manner that the RFP was originally posted of the outcome of the procurement process and the award of the contract.

#### **6.4.5 Debriefing**

Any Proponent may request a debriefing after receipt of a notification of award. All requests must be in writing to OECM and should be made within sixty (60) days of notification of award. The intent of the debriefing information session is to aid the Proponent in presenting a better proposal in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process.

#### **6.4.6 Bid Dispute Resolution**

In the event that the Proponent wishes to review the decision of OECM in respect of any material aspect of the RFP process, and subject to having attended a debriefing, the Proponent shall submit a protest in writing to OECM within ten (10) days from such a debriefing.

Any request that is not timely received will not be considered and the Proponent will be notified in writing.

A protest in writing should include the following:

- (a) A specific identification of the provision and/or procurement procedure that is alleged to have been breached;
- (b) A specific description of each act alleged to have breached the procurement process;
- (c) A precise statement of the relevant facts;
- (d) An identification of the issues to be resolved;
- (e) The Proponent's arguments and supporting documentation; and,
- (f) The Proponent's requested remedy.

For the purpose of a protest, OECM will review and address any protest in a timely and appropriate manner. OECM will engage an independent and impartial third party should the need arise.

### **6.5 Prohibited Communications, and Confidential Information**

#### **6.5.1 Confidential Information of OECM**

All correspondence, documentation, and information of any kind provided to any Proponent in connection with or arising out of this RFP or the acceptance of any Proposal:

- (a) Remains the property of OECM and shall be removed from OECM's premises only with the prior written consent of OECM;
- (b) Must be treated as confidential and shall not be disclosed except with the prior written consent of OECM;
- (c) Must not be used for any purpose other than for replying to this RFP and for the fulfillment of any related subsequent agreement; and,
- (d) Must be returned to OECM upon request.

#### **6.5.2 Confidential Information of the Proponent**

Except as provided for otherwise in this RFP, or as may be required by Applicable Laws, OECM shall treat the Proposal and any information gathered in any related process as confidential, provided that such obligation shall not include any information that is or becomes generally available to the public other than as a result of disclosure by OECM.

During any part of this RFP process, OECM or any of its representatives or agents shall be under no obligation to execute a confidentiality agreement.

In the event that a Proponent refuses to participate in any required stage of the RFP because OECM has refused to execute any such confidentiality agreement, the Proponent shall receive no points for that particular stage of the evaluation process.

### **6.5.3 Proponent's Submission**

All correspondence, documentation, and information provided in response to or because of this RFP may be reproduced for the purposes of evaluating the Proposal.

If a portion of a Proposal is to be held confidential, such provisions must be clearly identified in the Proposal.

### **6.5.4 Personal Information**

Personal Information shall be treated as follows:

- (a) Submission of information – The Proponent should not submit as part of its Proposal any information related to the qualifications or experience of persons who will be assigned to provide Services unless specifically requested. OECM shall maintain the information for a period of seven (7) years from the time of collection. Should OECM request such information, OECM will treat this information in accordance with the provisions of this section;
- (b) Use – Any personal information as defined in the *Personal Information Protection and Electronic Documents Act, S.C. 2005, c.5* that is requested from a Proponent by OECM shall only be used to select the qualified individuals to undertake the Services and to confirm that the work performed is consistent with these qualifications; and,
- (c) Consent – It is the responsibility of the Proponent to obtain the consent of such individuals prior to providing the information to OECM. OECM will consider that the appropriate consents have been obtained for the disclosure to and use by OECM of the requested information for the purposes described.

### **6.5.5 Non-Disclosure Agreement**

OECM reserves the right to require any Proponent to enter into a non-disclosure agreement satisfactory to OECM.

### **6.5.6 Freedom of Information and Protection of Privacy Act**

The *Freedom of Information and Protection of Privacy Act (Ontario)*, applies to information provided by the Proponent. A Proponent should identify any information in its Proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by OECM and its Customers. The confidentiality of such information will be maintained by OECM, except as otherwise required by law or by order of a court, tribunal, or the Ontario Privacy Commissioner.

By submitting a Proposal, including any Personal Information requested in this RFP, the Proponent agrees to the use of such information for the evaluation process, for any audit of this procurement process, and for contract management purposes.

### **6.5.7 Intellectual Property**

The Proponent shall not use any intellectual property of OECM or Customers, including but not limited to, logos, registered trademarks, or trade names of OECM or Customers, at any time without the prior written approval of OECM and the respective Customer.

## **6.6 Reserved Rights and Governing Law of OECM**

### **6.6.1 General**

In addition to any other express rights or any other rights, which may be, implied in the circumstances, OECM reserves the right to:

- (a) Make public the names of any or all Proponents;
- (b) Request written clarification or the submission of supplementary written information from any Proponent and incorporate such clarification or supplementary written information, if accepted, into the Proposal, at OECM's discretion, provided that any clarification or submission of supplementary written information shall not be an opportunity for the Proponent to correct errors in its Proposal or to change or enhance the Proposal in any material manner;
- (c) Waive formalities and accept Proposals that substantially comply with the requirements of this RFP, in OECM's sole and absolute discretion;
- (d) Verify with any Proponent or with a third party any information set out in a Proposal;
- (e) Check references other than those provided by Proponents;
- (f) With supporting evidence, disqualify any Proponent on grounds such as:
  - i. Bankruptcy or insolvency;
  - ii. False declarations;
  - iii. Significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior agreement or agreements;
  - iv. Final judgments in respect of serious crimes or other serious offence; or,
  - v. Professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Proponent;
- (g) Disqualify any Proponent whose Proposal contains misrepresentations or any other inaccurate or misleading information;
- (h) Disqualify any Proponent who fails to cooperate with OECM in a manner which in the opinion of OECM impedes the evaluation process, or which compromises the competitiveness of the process, or whose Proposal is determined by OECM to be non-compliant with the requirements of this RFP;
- (i) Disqualify a Proposal based upon the past performance or on inappropriate conduct in a prior procurement process, or where the Proponent has or the principals of a Proponent have previously breached an agreement with OECM, or has otherwise failed to perform such agreement to the reasonable satisfaction of OECM (i.e. has not submitted required reporting and/or cost recovery fees to OECM);
- (j) Disqualify any Proponent, who, in relation to this RFP or the evaluation and selection process, has engaged directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the Successful Proponent.
- (k) Disqualify the Proponent who has been charged or convicted of an offence in respect of an agreement with OECM, or who has, in the opinion of OECM, engaged in any illegal business practices, including activities such as bid-rigging, price-fixing, bribery, fraud, coercion or collusion, unethical conduct, including lobbying as described above or other forms of deceitfulness, or other inappropriate communications offering gifts to any employees, officers, agents, elected or appointed officials or other representatives of OECM, or where the Proponent reveals a Conflict of Interest or Unfair Advantage in its Proposal or a Conflict of Interest or evidence of any Unfair Advantage is brought to the attention of OECM;
- (l) Disqualify any Proposal of any Proponent who has breached any Applicable Laws or who has engaged in conduct prohibited by this RFP, including where there is any evidence that the Proponent or any of its employees or agents colluded with any other Proponent, its employees or agents in the preparation of the Proposal;
- (m) Make changes, including substantial changes, to this RFP provided that those changes are issued by way of addenda in the manner set out in this RFP;
- (n) Accept or reject a Proposal if only one (1) Proposal is submitted;

- (o) Reject a Subcontractor proposed by a Proponent within a Consortium;
- (p) Select any Proponent other than the Proponent whose Proposal reflects the lowest cost to OECM;
- (q) Cancel this RFP process at any stage and issue a new RFP for the same or similar requirements, including where:
  - i. OECM determines it would be in the best interest of OECM not to award a Master Agreement,
  - ii. the Proposal prices exceed the bid prices received by OECM for Services acquired of a similar nature and previously done work,
  - iii. the Proposal prices exceed the costs OECM or its Customers would incur by doing the work, or most of the work, with its own resources,
  - iv. the Proposal prices exceed the funds available for the Services, or,
  - v. the funding for the acquisition of the proposed Services has been revoked, modified, or has not been approved,

and where OECM cancels this RFP, OECM may do so without providing reasons, and OECM may thereafter issue a new request for proposals, request for qualifications, sole source, or do nothing.

- (r) Discuss with any Proponent different or additional terms to those contained in this RFP or in any Proposal;
- (s) Accept any Proposal in whole or in part;
- (t) If OECM receives a Proposal from a Proponent with Rates that are abnormally lower than the Rates in other Proposals, OECM may verify with the Proponent that the Proponent satisfies the conditions for participation and is capable of fulfilling the Master Agreement; or,
- (u) Reject any or all Proposals in its absolute discretion, including where a Proponent has launched legal proceedings against OECM and/or its Customers or is otherwise engaged in a dispute with OECM and/or its Customers;

and these reserved rights are in addition to any other express rights or any other rights which may be implied in the circumstances and OECM shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any Proponent or any third party resulting from OECM exercising any of its express or implied rights under this RFP.

By submitting a Proposal, the Proponent authorizes the collection by OECM of the information set out under (d) and (e) in the manner contemplated in those subparagraphs.

### **6.6.2 Rights of OECM – Proponent**

In the event that the Preferred Proponent fails or refuses to execute the Master Agreement within allotted time from being notified, OECM may, in its sole discretion:

- (a) Extend the period for concluding the Master Agreement, provided that if substantial progress towards executing the Master Agreement is not achieved within a reasonable period of time from such extension, OECM may, in its sole discretion, terminate the discussions;
- (b) Exclude the Preferred Proponent from further consideration and begin discussions with the next highest scoring Proponent without becoming obligated to offer to negotiate with all Proponents; or,
- (c) Exercise any other applicable right set out in this RFP, including but not limited to, cancelling the RFP and issuing a new RFP for the same or similar Services.

OECM may also cancel this RFP in the event the Preferred Proponent fails to obtain any of the permits, licences, and approvals required pursuant to this RFP.

### **6.6.3 No Liability**

The Proponent agrees that:

- (a) Any action or proceeding relating to this RFP process shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose the Proponent irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;
- (b) It irrevocably waives any right to and shall not oppose any Ontario action or proceeding relating to this RFP process on any jurisdictional basis; and,
- (c) It shall not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Ontario court as contemplated by this RFP.

The Proponent further agrees that if OECM commits a material breach of OECM's obligations pursuant to this RFP, OECM's liability to the Proponent, and the aggregate amount of damages recoverable against OECM for any matter relating to or arising from that material breach, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct, or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of OECM, shall be no greater than the Proposal preparation costs that the Proponent seeking damages from OECM can demonstrate. In no event shall OECM be liable to the Proponent for any breach of OECM's obligations pursuant to this RFP, which does not constitute a material breach thereof. The Proponent acknowledges and agrees that the provisions of the *Broader Public Sector Accountability Act, 2010* shall apply notwithstanding anything contained herein.

#### **6.6.4 Assignment**

The Proponent shall not assign any of its rights or obligations hereunder during this RFP process without the prior written consent of OECM. Any act in derogation of the foregoing shall be null and void.

#### **6.6.5 Entire RFP**

This RFP and all Appendices form an integral part of this RFP.

#### **6.6.6 Priority of Documents**

In the event of any inconsistencies between the terms, conditions, and provisions of the main part of the RFP and the Appendices, the RFP shall prevail over the Appendices during this RFP process.

#### **6.6.7 Disqualification for Misrepresentation**

OECM may disqualify the Proponent or rescind a Master Agreement subsequently entered if the Proponent's Proposal contains misrepresentations or any other inaccurate, misleading or incomplete information.

#### **6.6.8 References and Past Performance**

The evaluation may include information provided by the Proponent's references and may also consider the Proponent's past performance with OECM and/or its Customers.

#### **6.6.9 Cancellation**

OECM may cancel or amend the RFP process without liability at any time.

#### **6.6.10 Competition Act**

Under Canadian law, a Proposal must be prepared without conspiracy, collusion, or fraud. For more information, refer to the Competition Bureau website at <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home>, and in particular, part VI of the *Competition Act*, R.S.C. 1985, c. C-34.

#### **6.6.11 Trade Agreements**

The Proponent should note that procurements coming within the scope of either Chapter 5 of the Canadian Free Trade Agreement, Chapter 19 of the Comprehensive Economic and Trade Agreement ("CETA") or within the scope of the Trade and Cooperation Agreement between Quebec and Ontario are subject to such agreements, although the rights and obligations of the parties shall be governed by the specific terms of this RFP.

For more information, refer to the following:

- (a) Canadian Free Trade Agreement website at <https://www.cfta-alec.ca/>;
- (b) Trade and Cooperation Agreement between Quebec and Ontario at <https://www.cfta-alec.ca/wp-content/uploads/2017/07/OQTC-Consolidated-Jan-24-2017.pdf>; and,
- (c) Comprehensive Economic and Trade Agreement at <http://www.international.gc.ca/gac-amc/campaign-campagne/ceta-aecg/index.aspx?lang=eng>.

#### **6.6.12 Governing Law**

The terms and conditions in this Part 6:

- (a) Are included for greater certainty and are intended to be interpreted broadly and separately (with no particular provision intended to limit the scope of any other provision);
- (b) Are non-exhaustive (and shall not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations); and,
- (c) Are to be governed by and construed in accordance with the laws of the province or territory within which the Customer is located and the federal laws of Canada applicable therein.

[End of Part 6]

## APPENDIX A – FORM OF AGREEMENT

This appendix is posted as a separate PDF document.

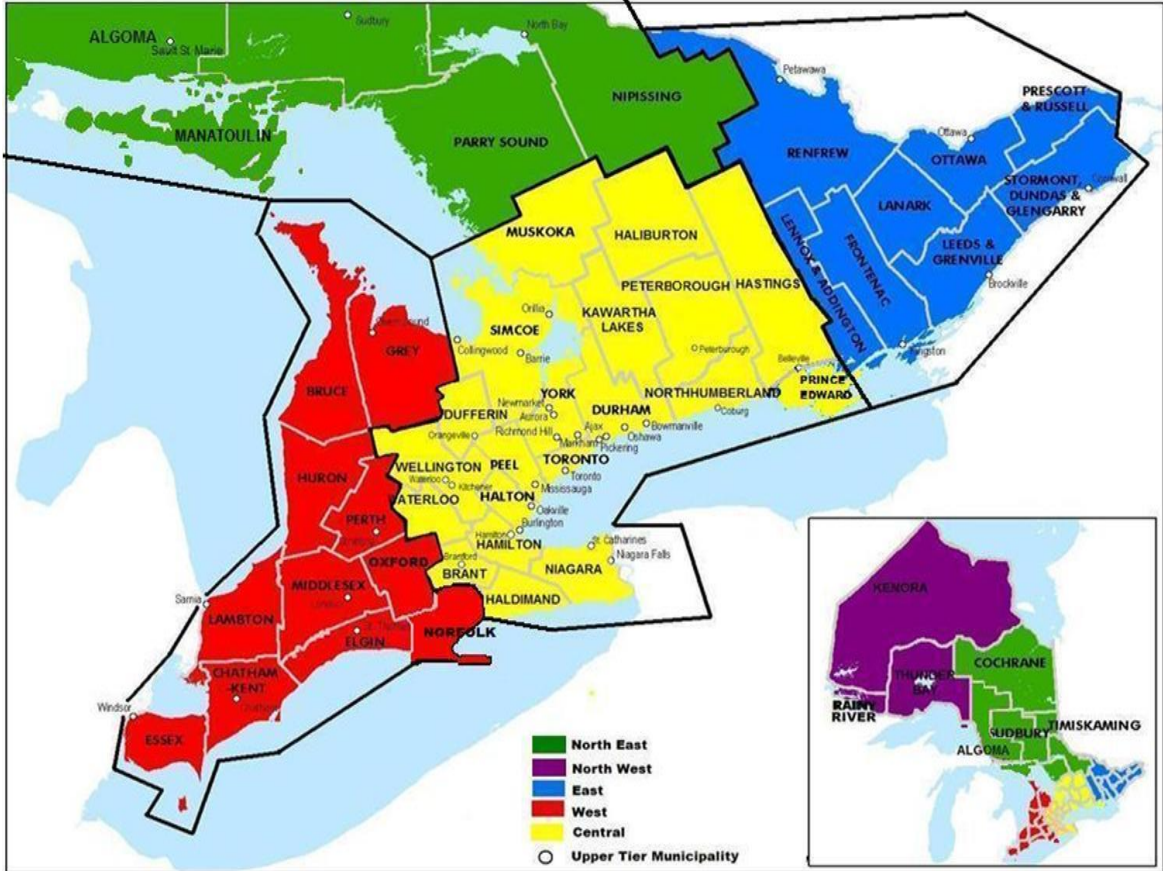
## **APPENDIX B – COMMERCIAL RESPONSE**

The Proponent should complete this appendix and upload it into OTP.



**APPENDIX C – OEMC GEOGRAPHICAL ZONES**

Customers in the Province of Ontario supported by OEMC agreements are located in one (1) or more of the following five (5) geographical Zones.



## APPENDIX D – OECM SCHOOL BOARD, COLLEGE AND UNIVERSITY CUSTOMERS IN ONTARIO

Zones	School Board Clients			College Clients	University Clients
Central	Brant Haldimand Norfolk Catholic DSB	Hamilton-Wentworth DSB	Waterloo Catholic DSB	Centennial College	Brock University
	CSD catholique Centre-Sud	Hastings and Prince Edward DSB	Waterloo Region DSB	Conestoga College Institute of Technology and Advanced Learning	University of Guelph
	CSD du Centre Sud-Ouest	Kawartha Pine Ridge DSB	Wellington Catholic DSB	Durham College of Applied Arts and Technology	McMaster University
	DSB of Niagara	Niagara Catholic DSB	York Catholic DSB	George Brown College of Applied Arts & Technology	OCAD University
	Dufferin-Peel Catholic DSB	Peel DSB	York Region DSB	Georgian College of Applied Arts and Technology	Ryerson University
	Durham Catholic DSB	Peterborough Victoria Northumberland and Clarington Catholic DSB		Humber College Institute of Technology & Advanced Learning	University of Toronto
	Durham DSB	Simcoe County DSB			Trent University
	Grand Erie DSB	Simcoe Muskoka Catholic DSB		Loyalist College of Applied Arts and Technology	University of Ontario Institute of Technology
	Halton Catholic DSB	Toronto Catholic DSB		Mohawk College of Applied Arts and Technology	University of Waterloo
	Halton DSB	Toronto DSB		Niagara College of Applied Arts and Technology	University of Western Ontario
	Hamilton-Wentworth Catholic DSB	Trillium Lakelands DSB		Seneca College of Applied Arts and Technology	Wilfrid Laurier University
		Upper Grand DSB		Sheridan Institute of Technology and Advanced Learning Fleming College	York University
East	Algonquin and Lakeshore Catholic DSB	Limestone DSB	Upper Canada DSB	The Algonquin College of Applied Arts and Technology	Carleton University
	Catholic DSB of Eastern Ontario	Ottawa Catholic DSB		Canadore College of Applied Arts and Technology	University of Ottawa
	CSD catholique de l'Est Ontarien	Ottawa-Carleton DSB			Queen's University
	CSD catholique du Centre-Est de l'Ontario	Renfrew County Catholic DSB		La Cité collégiale	
North East	CSD des écoles publiques de l'Est de l'Ontario	Renfrew County DSB		St. Lawrence College of Applied Arts and Technology	
	Algoma DSB	CSD du Nord-Est de l'Ontario	Nipissing-Parry Sound Catholic DSB	Cambrian College of Applied Arts and Technology	Algoma University
	CSD catholique des Grandes Rivières	DSB Ontario North East	Northeastern Catholic DSB	Collège Boréal	Laurentian University
	CSD catholique du Nouvel-Ontario	Huron-Superior Catholic DSB	Rainbow DSB	Sault College	Nipissing University
North West	CSD catholique Franco-Nord	Near North DSB	Sudbury Catholic DSB		
	CSD du Grand Nord de l'Ontario				
	CSD catholique des Aurores Boréales	Lakehead DSB	Superior North Catholic DSB	Confederation College of Applied Arts and Technology	Lakehead University
West	Keewatin-Patricia DSB	Northwest Catholic DSB	Superior-Greenstone DSB	Northern College of Applied Arts and Technology	
	Kenora Catholic DSB	Rainy River DSB	Thunder Bay Catholic DSB		
	Avon Maitland DSB	Lambton Kent DSB		Fanshawe College of Applied Arts and Technology	University of Windsor
	Bluewater DSB	London District Catholic SB		Lambton College of Applied Arts and Technology	
	Bruce-Grey Catholic DSB	St. Clair Catholic DSB		St. Clair College of Applied Arts and Technology	
	CSD des écoles catholiques du Sud-Ouest	Thames Valley DSB			
Greater Essex County DSB	Windsor-Essex Catholic DSB				
Huron-Perth Catholic DSB					

Please note: DSB means District School Board; and CDSB means Catholic District School Board.

## APPENDIX E – REPORTING REQUIREMENTS

Once Customer-Supplier Agreements have been executed, the Supplier must provide the following reports to OECM for the Term of the Master Agreement. Reports shall be submitted via email in Microsoft Excel format according to the dates set out below. Final reporting requirements will be determined during negotiations.

Supplier Reporting Requirements		
Reports	Frequency	Due Date
<b><u>Integrated Reports</u></b>		
<b>1. Sales Report</b> including but not limited to: <ul style="list-style-type: none"> <li>(a) Customer's name;</li> <li>(b) Customer contract number;</li> <li>(c) Invoice number and date;</li> <li>(d) Service period;</li> <li>(e) Service provided;</li> <li>(f) Service description;</li> <li>(g) Transaction ID, if any;</li> <li>(h) Delivery point, if any;</li> <li>(i) Quantity purchased;</li> <li>(j) Gas consumption in gigajoule (GJ);</li> <li>(k) Rate (e.g. Maximum monthly Rate);</li> <li>(l) Total Rate (including HST and GST, if applicable);</li> <li>(m) Savings (e.g. list Rate minus discount, net Rate, savings); and,</li> <li>(n) Cost Recovery Fees.</li> </ul>	Monthly	8th Business Day
<b>2. CSA Status Report</b> including, but not limited to: <ul style="list-style-type: none"> <li>(a) The number of executed CSAs and those pending execution.</li> </ul>		
<b>3. Second Stage Selection Process Report</b> including, but not limited to: <ul style="list-style-type: none"> <li>(a) Customer's name;</li> <li>(b) Reference number;</li> <li>(c) Number of requests received and submitted;</li> <li>(d) Service requirement (e.g. type, committed volume);</li> <li>(e) Resulting savings; and,</li> <li>(f) Status (e.g. complete, due date to return to Customer).</li> </ul>		
<b><u>Other Reports:</u></b>		
Key Performance Indicators ("KPIs") Report - As set out in Appendix F – Supplier's Performance Management Scorecard	Quarterly (calendar)	8th Business Day following each quarter
Specific Customer Reports - As required including but not limited to: <ul style="list-style-type: none"> <li>(a) Monthly budget report;</li> <li>(b) Monthly Banked Gas account ("BGA") report;</li> <li>(c) Monthly Cumulative Sum ("CUSUM") report;</li> <li>(d) Monthly contract parameters report for Large Volume Contracts based on aggregated Customer portfolio;</li> <li>(e) Monthly market outlook report;</li> <li>(f) Weekly market intelligence report;</li> <li>(g) Natural gas cost analyzer report during the first month of implementation;</li> <li>(h) Natural gas cost analyzer report as required after Customer implementation;</li> <li>(i) Annual budgets and consumption forecast report;</li> </ul>	As requested	As requested

<p>(j) Monthly updated Balancing Gas Account reports; and  (k) Monthly bill verification report to Customer pertaining all necessary information to support Customer make a payment without delay.</p> <p><del>(l) Monthly budget report;</del>  <del>(m) Monthly Banked Gas account ("BGA") report;</del>  <del>(n) Monthly Cumulative Sum ("CUSUM") report;</del>  <del>(o) Monthly contract parameters report for Large Volume Contracts based on aggregated Customer portfolio;</del>  <del>(p) Monthly market outlook report;</del>  <del>(q) Weekly market intelligence report;</del>  <del>(r) Natural gas cost analyzer report during the first month of implementation;</del>  <del>(s) Natural gas cost analyzer report as required after Customer implementation;</del>  <del>(t) Annual budgets and consumption forecast report;</del>  <del>(u) Monthly updated Balancing Gas Account reports; and</del>  <del>(v) Monthly bill verification report to Customer pertaining all necessary information to support Customer make a payment without delay.</del></p> <p>Customers may require other reporting. The Supplier will work with Customers to develop reporting packages that are relevant to Customer's needs including customized reporting, as required. The details of such reports will be set out in each Customer-Supplier Agreement</p>		
<p>OECM Ad Hoc Reports - As requested and mutually agreed upon</p>	<p>As requested</p>	<p>As requested</p>

## APPENDIX F – SUPPLIER’S PERFORMANCE MANAGEMENT SCORECARD

Master Agreement performance means the Supplier aligns with OECM's three (3) pillars of Savings, Choice and Service, supporting the growth of the Master Agreement among Customers, and providing quality Services at competitive Rates.

Supplier performance means the Supplier meets or exceeds the performance requirements described below and adheres to all the other contractual requirements.

To ensure Master Agreement requirements are met, the Supplier’s performance will be measured and tracked by OECM to ensure:

- On-time delivery of high quality Services at the Master Agreement Rates or lower;
- Customer satisfaction;
- On-time Master Agreement activity reporting to OECM;
- On-time Cost Recovery Fee remittance; and,
- Continuous improvement.

Reporting, as described in Appendix E – Reporting Requirements is mandatory for the Successful Proponent to submit as they provide evidence and justification of adherence to the Master Agreement. Through consolidation of reporting information, OECM provides Customers a thorough understanding of the Master Agreement aiding the adoption of the Master Agreement.

By providing the reports, OECM is able to analyze and maintain the integrity of the Master Agreement and ensure that our core principles of Savings, Choice and Service are communicated to the Customer community.

Failure to provide accurate reports by the deadline may be deemed poor performance, and will reflect on the Suppliers Performance Management Scorecard.

During the Term of the Master Agreement, the Supplier shall collect and report the agreed upon performance measures as requested by OECM. The Performance Management Scorecard and other performance indicators will be used to measure the Supplier’s performance throughout the Term of the Master Agreement, ensuring Customers receive Services deemed acceptable and delivered on time. The Supplier’s performance score will be considered when OECM contemplates Master Agreement decisions such as:

- The approval or rejection, in whole or in part, of the Supplier’s Rate refresh requests;
- The approval or rejection of the Supplier’s request to add other related Services to the Master Agreement;
- Master Agreement extensions; and,
- Master Agreement termination.

The Supplier shall maintain accurate records to facilitate the required performance management reporting requirements.

The key performance indicators (“KPIs”) include but are not limited to the following:

<b>Customer Performance Measures</b>		
<b>Key Performance Indicator</b>	<b>Service Level</b>	<b>Measurement</b>
Customer Satisfaction – Customer ratings for Service	High level of satisfaction from annual Customer survey	98% satisfaction level

<b>Customer Performance Measures</b>		
<b>Key Performance Indicator</b>	<b>Service Level</b>	<b>Measurement</b>
Customer Issues – Number of Customer complaints	Total of Customer complaints annually out of total Customer requests	Customer complaints are less than 2% of total Customer requests
Accurate Invoicing	Number of Invoicing errors annually	98% accuracy
Account Executive Response Time	Response time of less than 1 Business Day	98% of the time

<b>OECM Performance Measures</b>		
<b>Key Performance Indicator</b>	<b>Service Level</b>	<b>Measurement</b>
Supplier Integrated Reporting Remittance	On time	98% of the time
Cost Recovery Fee Payment Remittance	Day of	98% of the time
Response Time to OECM Inquiries	24 Hours	98% of the time

During the business review meetings, OECM will review the key performance indicators with the Supplier.

Other key performance indicators, as mutually agreed upon between the Supplier and OECM, may be added during the Term of the Master Agreement.

A Customer may, when executing a Customer-Supplier Agreement, seek other key performance indicators.