Infrastructure Ontario

Ontario Infrastructure and Lands Corporation

Procurement Policy

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1. PREAMBLE AND PURPOSE

Ontario Infrastructure and Lands Corporation ("**Infrastructure Ontario**" or "**IO**") is committed to ensuring that the procurement of goods, non-consulting services, and consulting services is undertaken in the most economical and efficient manner, taking into account the public interest, through processes that are fair, open, transparent, geographically neutral, and accessible to all qualified Vendors.

This Policy complies with the requirements of the Management Board of Cabinet *Procurement Directive*, dated September 1, 2023, as may be amended or replaced from time to time (the "**OPS Procurement Directive**").

The purpose of this Policy is:

- to govern all procurements issued by IO through a process that is fair, open, transparent, geographically neutral and accessible to qualified Vendors;
- to specify the responsibilities of individuals and the organization throughout each stage of the procurement process;
- to secure goods and services of the highest quality with the most value for money in a timely and efficient manner; and
- to ensure consistency in the management and execution of procurement related processes and decisions.

2. PRINCIPLES

Procurement is the whole process of the acquisition of goods and services (including the acquisition of infrastructure assets, associated services, and awarding of Contracts and contract management of Vendors to assure ongoing value). The procurement of goods and services must be conducted in a manner that takes into account the public interest and that conforms to the following principles:

2.1 Dignity, Respect, and Opportunity for All

IO recognizes the inherent dignity and equality of all persons and is committed to conducting procurements in a manner which provides recognition, opportunity and safety for equity-deserving groups. IO shall not tolerate any form of systemic or other racism or discrimination in its procurement practices or those of its bidding Vendors.

IO's ongoing commitment to anti-racism and discrimination-free practices shall be codified in each phase of IO procurements and in each Contract procured, facilitated and/or executed by IO.

2.2 Openness, Transparency, and Fairness

Access for qualified Vendors to compete for IO's business must be open and the procurement process must be conducted in a fair, transparent and efficient manner that provides equal and fair treatment to Vendors. Conflicts of Interest must be avoided during the procurement process and the ensuing Contract. Relationships must not be created which result in continuous reliance on a particular Vendor for a particular kind of work.

2.3 Value for Money

Goods and services must be procured only after consideration of both financial and non-financial factors, including government objectives, business requirements (IO's business requirements and the business requirements of IO's partners and clients), procurement alternatives, timing, supply strategy, and procurement method.

2.4 Professional and Responsible Management

The procurement of goods and services must be professionally, effectively and responsibly managed through appropriate organizational structures, systems, policies, processes, and procedures.

2.5 Geographical Neutrality and Reciprocal Non-Discrimination

To comply with all necessary obligations under Trade Commitments, IO must ensure that access for Vendors to compete for government business is consistent with applicable Trade Commitments.

3. APPLICATION

3.1 Application to Goods and Services

Subject to Section 3.2, this Policy is mandatory for IO and applies to the procurement of all goods and services (including construction, non-consulting services, consulting services, and information technology) procured by IO, either on its own behalf or on behalf of an entity other than IO.

3.2 Excluded Goods and Services

In accordance with the OPS Procurement Directive, this Policy does not apply to the following goods and services: (i) advertising, public relations, media relations or creative services[1]; (ii) acquisition and disposition of real property[2]; and (iii) external legal services.

3.3 Application to Staff

This Policy applies in its entirety to all IO staff and all individuals under contract to IO. For the purposes of this Policy, "all IO staff" and "all individuals under contract to IO" will be collectively known as IO.

3.4 Applicability of the OPS Procurement Directive

3.4.1 General Applicability of the OPS Procurement Directive

To the extent IO is bound by, and not exempted from, the applicable provisions of the OPS Procurement Directive, IO shall adhere to the applicable provisions of the OPS Procurement Directive in connection with the procurement of goods and services. Management Board of Cabinet approval is required for exemptions to any mandatory sections of the OPS Procurement Directive applicable to IO.

3.4.2 Conflict of OPS Directive and IO Procurement Policy

In the event of any ambiguity, conflict or inconsistency between the mandatory provisions of the OPS Procurement Directive applicable to IO and any provisions of this Policy, the mandatory provisions of the OPS Procurement Directive applicable to IO shall govern, except that if the ambiguity, conflict or inconsistency is between a general provision in the OPS Procurement Directive and a more specific provision in this Policy that either creates a higher standard or provides more detail than the OPS Procurement Directive, the more specific provision in this Policy shall govern in the applicable circumstances.

[1] For the acquisition of advertising, public relations, media relations or creative services, IO should consult with the Advertising Review Board, or its successor, and refer to the Management Board of Cabinet *Procurement Directive on Advertising, Public and Media Relations and Creative Communications Services*, dated July 2009, as may be amended or replaced from time to time.
[2] For the acquisition and disposition of real property, IO should refer to the Management Board of Cabinet *Realty Directive,* dated April 1, 2013, as may be amended or replaced from time to time.

Where any procurement of goods or services is conducted by IO on behalf of another entity which is bound by the OPS Procurement Directive, IO is under no obligation to adhere to those provisions of the OPS Procurement Directive for which IO is exempt.

3.4.3 IO Procurement Policy Governs: Procurement of P3 and Alternative Service Delivery Projects

It is presumed that upon the receipt by IO of a letter of direction from the Minister of Infrastructure to conduct a P3 or alternative service delivery (commercial project) procurement on behalf of, as co-sponsor with, or as agent for, another public body which is either bound by the OPS Procurement Directive or the Broader Public Sector Procurement Directive, the standards and principles set out in the IO Procurement Policy shall govern. In such circumstance, the procurement documents issued, together with the IO Procurement Policy, shall include all procurement legal obligations of the co-Sponsor or public body with whom IO is acting as co-Sponsor or for whom IO is acting as agent or procurement lead.

The other procurement directives or procurement policies of any other public body shall only apply in circumstances where a procurement legal obligation of the public body has not been met in the IO Procurement Policy or procurement documents for the applicable procurement.

The IO Procurement Policy and any other procurement directives or procurement policies of the other public body shall not apply in parallel when the overlapping relevant procurement standard or principle falls short of a requirement at law, but merely pertains to a matter of internal policy, procedure, operational matter, or practice.

3.5 Superseding Directions of Government

In certain instances, IO may be directed, in writing, to undertake a procurement process or enter into a contract, including by non-competitive methods through written direction from the Minister of Infrastructure or Deputy Minister or other written direction or minute endorsed by the Management Board of Cabinet or such other Ministry within the Government of Ontario having authority, such as a Deputy Minister to direct IO. To the extent that those written directions and/or instruments contain specific instructions about the procurement process or Vendor to be selected, those instructions shall supersede the applicable provisions and operation of this Policy.

3.6 No Circumvention of Procurement Directives

IO shall not permit ministries, agencies and other public bodies to circumvent application of the OPS Procurement Directive, the Broader Public Sector Procurement Directive (or otherwise make use of IO's status as an "other included entity" under the OPS Procurement Directive) by directing IO to conduct a procurement on their behalf which has not already been authorized by a letter of direction from the Minister of Infrastructure or other otherwise endorsed by the Management Board of Cabinet.

4. PROCUREMENT APPROVALS AND METHODS

4.1 Procurement Planning

IO must undertake procurement planning as an integral part of the procurement process to identify goods and services needed to meet business requirements and identify opportunities to aggregate spending on goods and services across the agency.

Procurement planning assists in identifying the potential supply source and procurement method as well as determining what and when approvals are needed to ensure sufficient time is allowed to complete the procurement process.

4.2 Procurement Value

4.2.1 Determining Procurement Value

4.2.1.1 IO must determine the Procurement Value of all procurements in order to determine the appropriate level of procurement approval authority and the available and recommended procurement methods. IO must consider all costs and benefits, including any Conferred Value, associated with entering into a Contract with a Vendor.

4.2.1.2 Where IO believes that there is a high probability that the result of a procurement process will result in no eligible Vendor submissions being within the Procurement Value, IO must ensure that an internal plan to mitigate the such exceedance of Procurement Value has been put in place, which for clarity, may include seeking increases to the Procurement Value or preapproved budget, as applicable.

4.2.2 Artificial Reduction in Procurement Value Prohibited

4.2.2.1 The value of a procurement must not be reduced in any attempt to avoid the application of other requirements of this Policy, including requirements relating to procurement method, level of procurement approval authority or reporting obligations.

4.2.2.2 Inappropriate reduction in Procurement Value may include subdividing a single scope of goods or services to be provided into multiple procurements or Contracts to one or more Vendors. For clarity, subdivision of a single scope of goods or services in a procurement or Contract is not prohibited where approvals for the full Procurement Value (that is, approval to procure the total scope of goods and services) is disclosed and sought in the first instance.

4.2.2.3 In the event that IO seeks to amend an existing Contract with a Vendor by adding related or follow-on goods or services to the scope of such Contract, and the need for such related or follow-on additional goods or services was not reasonably foreseeable at the time of the original procurement, then the amendment of the existing Contract is permissible and may proceed subject to all requirements with respect to Procurement Value Increases as set out in Section 4.3.2. For greater clarity, any such addition of related or follow-on goods or services to a Vendor's Contract scope, provided that such additional related or follow-on scope was not reasonably foreseeable at the time of the original procurement, shall not result in an interpretation that the original Procurement Value was artificially reduced.

4.3 Procurement Approvals

4.3.1 Requirement to Obtain Approvals

4.3.1.1 IO must seek all approvals from the appropriate level(s) of approval authority in writing before:

(i) commencing a procurement (including any procurement that establishes or uses a VOR Arrangement); and

(ii) executing a Contract procured pursuant to an IO procurement process (including any Contract that was procured pursuant to a second stage request under a VOR Arrangement).

4.3.1.2 Budgetary authority does not, in itself, imply purchasing authority.

4.3.2 Approvals for Procurement Value Increases

4.3.2.1 IO must seek all approvals from the appropriate level(s) of approval authority (including any procurement that establishes or uses a VOR Arrangement), in writing for all Procurement Value Increases before continuing with a procurement.

4.3.2.2 IO shall consider, as a result of any Procurement Value Increase, whether another procurement method should be used to re-procure the goods or services. Re-procurement of the goods or services may be relevant depending on the amount of the Procurement Value Increase relative to the original Procurement Value and whether the Procurement Value Increase causes the revised Procurement Value to exceed the approval threshold of the original approval authority. Approved Procurement Value Increases must be documented and changes in Procurement Value must be reflected through signed amendment(s) to the applicable Contract.

4.3.2.3 A Procurement Value Increase shall not be permitted where a Vendor under an existing Contract is requested to:

(i) provide additional scope of goods or services that is: (a) entirely unrelated to; (b) not a follow-on good or service; and (c) not explicitly contemplated within, the original scope of goods or services delivered by the Vendor, unless otherwise falling within the exemption set out in Section 4.3.2.4; or

(ii) retain another third party sub-Vendor on behalf of IO for a scope of goods or services that is: (a) entirely unrelated to; (b) not a follow-on good or service; and (c) not explicitly contemplated within, the original scope of goods or services delivered by the Vendor.

4.3.2.4 A Procurement Value Increase for the circumstances described in Section 4.3.2.3(i) may be permissible if the following conditions are satisfied:

(i) the original goods were for information technology software and systems;

(ii) the follow-on purchase of unrelated software and systems has been determined to be necessary for system compatibility with enterprise information technology architecture;

(iii) the follow-on Procurement Value Increase is supported by a business case consistent with the business case for a Non-Competitive procurement, inclusive of the required elements set forth in Part A of Schedule 2 to this Policy. The Procurement Value Increase and business case should be approved in accordance with the applicable non-competitive approval thresholds set out in IO's Delegation of Authority; and

(iv) all required approvals have been obtained.

4.3.3 Establishing Value for Money in IO Procurements

4.3.3.1 The IO Procurement department may, at its discretion, require an additional demonstration that value for money has been obtained in the following circumstances:

(i) where the Procurement Value is less than $34,700, and, pursuant to the rules set out in Table C to Schedule 1 to this Policy, only one Vendor under a VOR Arrangement has been invited to provide a second stage submission, particularly where the first stage of the VOR Arrangement did not involve the evaluation of Vendor pricing;

(ii) where an SOA call-up is only issued to one Vendor;

(iii) where IO receives only one responsive submission as described in Section 4.4.2.1, or

(iv) in satisfaction of the requirements of Section (A)(vii) of Schedule 2 to this Policy.

4.3.3.2 In exercising its discretion to demonstrate that value for money has been obtained in response to the circumstances set out in Section 4.3.3.1 above or Section 4.3.4.2 below, IO may do any one or more of the following, as reasonable and appropriate in the circumstances:

(i) negotiate with the Vendor, in accordance with Section 6.9.1, a lower price before execution of the Contract;

(ii) conduct a cost analysis of the Vendor's proposed price, and/or

(iii) establish that the Vendor's proposed pricing is at or within the budgeted amount for such Contract determined by IO prior to the commencement of the procurement process.

4.3.3.3 Demonstration of a satisfactory negotiated outcome under Section 4.3.3.2(i) may include,

(i) evidence that the Vendor's proposed price has been further reduced from initial pricing provided by such Vendor in the procurement process through the exercise of rights available to IO in the relevant procurement documents;

(ii) the inclusion by the Vendor in the draft Contract of representations that the proposed pricing represents pricing granted on a "most favoured nation" or "preferred vendor" basis or covenants that the goods and/or services contracted for shall be subject to "most favoured nation" or 'preferred vendor" conditions, or

(iii) evidence that the Vendor has applied a volume discount to its proposed pricing when compared to typical vendor pricing for similar goods and/or services.

For clarity, the inclusion by a Vendor of goods and/or services additional to the goods and/or services procured in a proposal or Contract, even at no additional cost, shall not automatically satisfy of any of the requirements of this Section 4.3.3.3. Where additional goods and/or services are to be provided, a separate value for money review shall be conducted in respect of same and consideration shall be paid, unless, at a minimum, IO exercises such option to purchase or otherwise contracts for such additional goods and/or services.

4.3.3.4 If the circumstances set out in Section 4.3.3.1 above occur, but the pricing of the Vendor's submission is within IO's preapproved budget for such procurement, IO shall not cancel and reissue the same procurement solely to obtain better pricing or otherwise engage in bid shopping

4.3.3.5 A cost analysis of the Vendor's proposed price carried out pursuant to Section 4.3.3.2(ii) should demonstrate either:

(i) that the Vendor's proposed pricing is comparable to the current average cost of such good or service of a similar quality offered by such Vendor's competitors, or

(ii) that the Vendor's proposed pricing is comparable to the pricing for the same good and/or service provided by that Vendor to IO within the last 5 years, adjusted for a reasonable annual escalation for inflation.

4.3.3.6 In order to satisfy Section 4.3.3.2(iii), it must be demonstrated that IO's preapproved budget for such procurement was based on a business case and/or due diligence sufficient to establish a reasonable estimate of the Procurement Value for such procurement.

4.3.4 Bids in Excess of Budgeted Approved Amount

4.3.4.1 IO shall have no obligation to execute or award a Contract where the price of:

(i) the highest ranked Vendor following the evaluation process; or

(ii) the Vendor whose submission is the only bid eligible for acceptance,

exceeds IO's preapproved budget for such Contract, irrespective of the method of procurement.

4.3.4.2 If IO determines that it wishes to award a Contract to a Vendor in the circumstances described in Section 4.3.4.1, then IO shall, before seeking approval for a budget increase in respect of the Contract to be awarded, attempt to mitigate the price impact relative to the previously approved budget by pursuing:

(i) at least one of the methods described in Section 4.3.3.2; or

(ii) any other method or process disclosed within the procurement documents that are available for use to mitigate price impacts, which may include, but are not limited to, competitive de-scoping mechanisms (i.e. “scope ladders”).

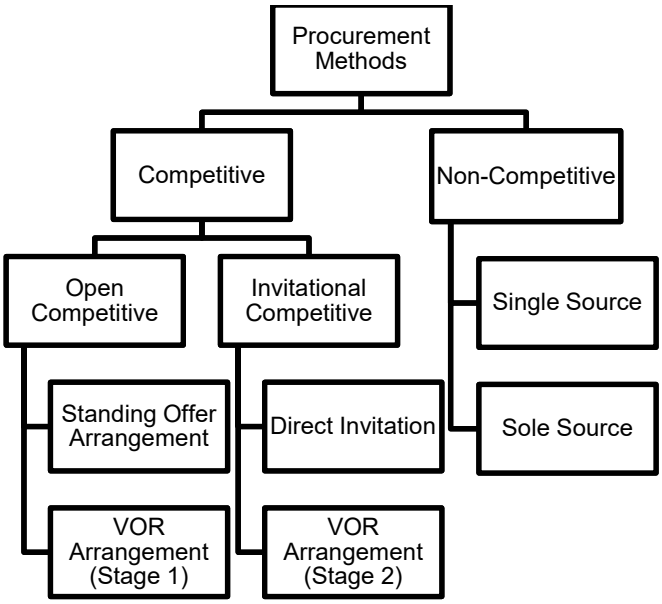
To the extent that any mitigation of the price impact of the Vendor’s submission results in a reduction in price but not below the previously approved budget for such procurement, IO shall have no obligation to either: (i) seek any approval for an increase to the approved budget; or (ii) execute or award a Contract, and may thereafter cancel and/or reissue the procurement.

4.3.4.3 IO’s ability to execute or award any Contract to a Vendor whose price exceeds the approved Procurement Value shall be subject to, at all times, obtaining necessary approval for a Procurement Value Increase.

4.4 Procurement Methods

4.4.1 Competitive vs. Non-Competitive

Procurements may be either competitive or non-competitive. Non-competitive procurement methods are conducted either by way of a Sole Source or a Single Source procurement. Non-competitive procurements also occur when the term of a Contract is extended and the procurement document for such Contract did not contemplate such extension. Competitive procurement methods are conducted either in an Open Competitive or an Invitational Competitive manner. In turn, an Invitational Competitive procurement may proceed by way of a direct invitation of Vendors or by way of a VOR Arrangement, in which an open competitive pre-qualification or establishment of a source list of Vendors precedes either an invitational second stage request, or a rotational award of Contracts to VOR Vendors. Procurement methods are graphically presented in the following diagram.



An appropriate procurement method must be selected and used depending on the type of procurement (i.e. goods, Consulting Services or Non-Consulting Services) and the Procurement Value.

4.4.2 Competitive Procurements – Unique Circumstances

Notwithstanding any other provision of this Policy to the contrary, IO shall be considered to have procured a Contract in a competitive manner in the following circumstances:

4.4.2.1 at the conclusion of a competitive procurement process, only one Vendor has submitted a proposal that is eligible for acceptance;

4.4.2.2 the award of a Contract to a Vendor is made on substantially the same terms of its bid or submission within a reasonable period of time following the expiry of any applicable bid validity period;

4.4.2.3 in a P3 Project, following the termination of the Project Agreement and/or the exercise of step-in rights under the Project Agreement, where a new Project Agreement or series of related Contracts is re-negotiated and/or executed with a some or all members of the original Vendor consortium based on terms and conditions substantively the same as those of the original Project Agreement;

4.4.2.4 in respect of the purchase of information technology systems and software, where a third party is procured to conduct the screening and assessment of Vendors and:

(i) the scope of services for the third party explicitly includes the requirement to conduct such an assessment at the time of entering into a Contract with IO and such scope is approved in writing by the Executive Team Member with accountability for Information Technology before the closing of the procurement process for the procurement of the third party;

(ii) such third party was procured in a standalone Open Competitive procurement;

(iii) such third party has documented criteria for and completed a market-wide screening and assessment of potential Vendors for the purposes of identifying eligible Vendors with systems and/or software which satisfy IO's requirements in a manner that is substantively similar to an open market Request for Qualifications;

(iv) IO conducts an assessment of proposed qualified Vendors as recommended by such third-party on an invitational basis in a manner that is substantively similar to an Invitational Competitive RFP; and

(v) the final Contract terms with the successful Vendor for the system and/or software include representations that the proposed pricing represents pricing granted on a "most favoured nation", "preferred vendor" or includes covenants that the goods and/or services contract for shall be provided at a demonstrable discount, "most favoured nation" or "preferred vendor" conditions.

4.4.3 Criteria for Non-Competitive Procurements

IO shall procure all goods and services competitively, except that a non-competitive procurement method may only be used if:

4.4.3.1 either:

(i) a business case addressing all of the elements in Part A of Schedule 2 to this Policy, including the identification of any applicable exemption listed in Part B of Schedule 2 to this Policy, is included;

(ii) the non-competitive procurement is a Single Source (but not a Sole Source) procurement of goods or Non-Consulting Services with a Procurement Value less than $34,699 (as set out in Table B1 of Schedule 3 to this Policy); or

(iii) IO has been given superseding direction of Government pursuant to Section 3.5; and

4.4.3.2 all required approvals have been obtained.

4.4.4 Criteria for Competitive Procurements

4.4.4.1 Competitive procurements, regardless of whether the procurement is for goods, Non-Consulting Services or Consulting Services must proceed first by way of any VOR Arrangement or Standing Offer Agreement, if:

(i) a VOR Arrangement or SOA call-up for the particular good or service already exists, whether established by IO, a Ministry or third-party procuring entity whose VOR Arrangements or Standing Offer Agreements are available to IO for use; and

(ii) the scope associated with the anticipated good or service is expressly contemplated within the terms of the master agreement or standing offer agreement, as applicable, with the Vendor.

4.4.4.2 The use of a VOR Arrangement or Standing Offer Arrangement may be set aside in favour of a standalone Open Competitive procurement if, in the judgment and discretion of the Senior Vice President, Procurement and the Executive Team Member with accountability for Procurement, the scope associated with the anticipated good or service is not clearly contemplated, or is significantly more complex than the scope originally contemplated, within the terms of the master agreement or standing offer agreement, as applicable, with Vendors under the VOR Arrangement or Standing Offer Agreement.

4.4.4.3 In determining the number of potential Vendors that must be invited pursuant to a VOR Arrangement, or determining whether to conduct an Invitational Competitive or Open Competitive procurement, IO shall abide by the requirements set out in Schedule 1 to this Policy, first having taken into consideration the Procurement Value and the category of procurement (i.e. goods, Consulting Services or Non-Consulting Services).

4.4.5 Criteria for Invitational Competitive Procurements

Provided that all required approvals have been obtained, IO may use an Invitational Competitive procurement process instead of an Open Competitive procurement process in the following circumstances:

4.4.5.1 the Invitational Competitive procurement process follows any other Open Competitive prequalification process (including an RFSO, the first stage of a VOR Arrangement, or any other Open Competitive process which establishes a roster of qualified Vendors for one or more subsequent procurements) which explicitly permits one or more subsequent Invitational Competitive procurement processes;

4.4.5.2 the goods or services to be procured are of a confidential and commercially sensitive or privileged nature, such that disclosure of those matters through a public tendering process could reasonably be expected to compromise the confidentiality obligations of IO or any entity on behalf of whom IO is conducting a procurement process, cause economic disruption, or otherwise be contrary to the public interest;

4.4.5.3 the Invitational Competitive procurement process is in respect of information technology goods, in particular the provision of software licenses, and where IO demonstrates prior to the commencement of such Invitational Competitive procurement that there are has been a reasonable assessment of the number of qualified Vendors in the market capable of providing such information technology goods for IO's use; or

4.4.5.4 where none of other subsections of this Section 4.4.5 apply, then only if the business case for the proposed Invitational Competitive procurement is consistent with the business case for a Non-Competitive procurement, inclusive of the required elements set forth in in Part A of Schedule 2 to this Policy.

4.4.5.5 where a business case is completed for a proposed invitational competitive procurement, the business case shall follow the approval thresholds applicable to non-competitive procurements, with CEO approval serving as the highest level of approval required. The CEO may require additional approvals at their discretion.

4.4.6 Unsolicited Proposals

Unsolicited proposals shall be reviewed by IO in accordance with the Government of Ontario's unsolicited proposals submission guideline and framework, located at Ontario's unsolicited proposals portal: https://www.ontario.ca/page/unsolicited-proposals.

If presented with an unsolicited proposal outside of the scope of the Government of Ontario's unsolicited proposals framework, IO shall, before either accepting the unsolicited proposal, issuing a "Swiss Challenge" RFP, or issuing an advance contract award notice following the receipt of such unsolicited proposal, fulfill the criteria set out in Section 4.4.3 of this Policy.

4.5 Market Sounding Not a Procurement

From time to time, IO may issue a Request for Expression of Interest or otherwise engage potential Vendors and other stakeholders in an informal market sounding as described in Section B.1 of Schedule 3 to this Policy. Such market soundings do not constitute the initiation of an actual procurement process.

No presumption of any collusion risk or Conflict of Interest shall be created in a procurement simply by virtue of any one or more potential Vendors' participation in a market sounding process.

Although IO may conduct or engage in a market sounding on any topic at any time, if a market sounding is conducted in respect of a topic pertaining to a specific procurement and that procurement process is ongoing (that is, an RFQ or RFP has been issued), the communications protocols existing in those procurement documents (including any commercially confidential meeting process as described in Section 6.7.3) must be followed.

5. ETHICS AND INTEGRITY IN PROCUREMENT CONDUCT

5.1 General Ethics

IO shall make all efforts to ensure ethical behaviour and practices in IO procurements to protect the public interest, reinforce IO's reputation in the marketplace and continually increase confidence in IO's procurement processes. Employees shall abide by the *IO Code of Conduct*, *IO Conflict of Interest and Confidentiality Policy* and the *IO Disclosure of Wrongdoing Policy*.

5.2 Conflicts of Interest

Conflicts of Interest, whether perceived, potential or actual, may occur in a variety of instances. This section highlights requirements to be met, principles to be followed, and guidelines to be considered when encountering Conflicts of Interest.

5.2.1 General Requirements

5.2.1.1 Procurement documents must require self-disclosure by bidding Vendors of all perceived, potential or actual Conflicts of Interest within submitted bidding materials.

5.2.1.2 Procurement documents and contract documents must make it an ongoing obligation of bidding Vendors and existing Vendors under contract with IO, and any other IO counterparties to disclose perceived, potential or actual Conflicts of Interest that may arise over the course of a procurement or contractual mandate.

5.2.1.3 Evaluators to any IO procurement must undergo project-specific screening with respect to any perceived, potential or actual Conflicts of Interest vis-à-vis the bidding Vendors to the procurement.

5.2.1.4 IO shall retain sole discretion in determining, at any time in a procurement process, whether there is a perceived, potential or actual Conflict of Interest and the method required to mitigate the Conflict of Interest, if necessary.

5.2.1.5 Conflicts of Interest shall be assessed on the specific facts at hand.

5.2.1.6 IO shall retain sole discretion in determining the extent of due diligence and investigation that is required to determine whether a Conflict of Interest exists, can be mitigated, and the extent to which the Conflict of Interest will affect (or will have a perceived effect on) the fairness of the evaluation.

5.2.1.7 No Conflict of Interest determination, due diligence standard, mitigation approach, or other discretionary determination associated with the Conflict of Interest disclosure process made in the context of a given procurement shall be binding on IO in a future IO procurement and any discrepancy between a past and current Conflict of Interest determination, due diligence standard, mitigation approach, or other discretionary determination associated with the Conflict of Interest disclosure process shall not be presumed to breach any duty of fairness to bidding Vendors in the current procurement.

5.2.1.8 Conflicts of Interest must be determined and assessed in accordance with the principles and guidelines set out in this Policy, but because of fact-specific determinations, may result in varying outcomes. In order to ensure consistent interpretation and application of this Policy, all Conflict of Interest determinations on IO procurements are subject to review at the discretion of the General Counsel, or the General Counsel's designated appointees or committee, which in the case of P3 projects, may include representatives of IO's co-Sponsors.

5.2.1.9 Perceived, potential or actual Conflicts of Interest whether disclosed or undisclosed and later discovered by IO, which cannot be mitigated to the satisfaction of IO in its sole discretion, may result in the rejection of a submission, disqualification of a Vendor, removal of a team member from a Vendor team, or other sanction against an evaluator or participant to an evaluation process, termination of an advisor contract, and or other remedy as deemed necessary by IO including those set out in Section 5.6 of this Policy.

5.2.2 Acting on Both Sides Generally Prohibited

Vendors may be in a Conflict of Interest for a particular IO procurement if the Vendor is bidding to an IO procurement and such bidding Vendor or individuals or entities that form the bidding Vendor's team, are, in respect of the same procurement, either:

5.2.2.1 employed by IO, IO's advisors, or other Vendors under contract with IO (and in the case of a P3 project, IO's co-Sponsor, their advisors, and Vendors under contract with the co-Sponsor);

5.2.2.2 related to or affiliated with Vendors who are acting as advisors to IO or other Vendors under contract with IO (and in the case of a P3 project, advisors to IO's co-Sponsor or other Vendors under contract with the co-Sponsor); or

5.2.2.3 privy to strategic and confidential information relevant to the procurement possessed by IO, IO's advisors or other Vendors under contract with IO (and in the case of a P3 project, IO's co-Sponsor, their advisors, and Vendors under contract with the co-Sponsor).

5.2.2.4 IO shall generally prohibit any instance where a Vendor, or any affiliated, related company, or employee, officer, or director of the Vendor, is acting as both a bidding Vendor and:

(i) an advisor to IO (or in the case of a P3 project, including IO's co-Sponsor); or

(ii) is already engaged in a contract with IO (or in the case of a P3 project, including IO's co-Sponsor),

in respect or anticipation of, the same procurement. The advisor and contracting party described in subsections (i) and (ii) above shall collectively be known as the "**Owner Conflicted Party**" for the purposes of Section 5.2.2 of this Policy.

5.2.2.5 The principle established in Section 5.2.2.4 shall take into account the following guidelines:

(i) If the Conflict of Interest is created or discovered prior to the award of the Contract, the preferred mitigation is for IO to require that the bidding Vendor replace the company or individual that is the source of the Conflict of Interest. The potential requirement of a bidding Vendor to remove or substitute the company or individual from its team is subject to the following additional considerations:

(a) whether the mandate of the Owner Conflicted Party is, or will be, complete before the commencement of the procurement process;

(b) irrespective of the timeline of completion of the Owner Conflicted Party's mandate, whether confidential information has already been acquired by the Owner Conflicted Party that would confer to a bidding Vendor an unfair competitive advantage if the Owner Conflicted Party, or its employee(s) or related or affiliated company were permitted to participate in the procurement as a bidding Vendor;

(c) the ongoing relevancy of the previously acquired confidential information and/or the feasibility of disclosing the confidential information to all bidding Vendors;

(d) if the mandate of the Owner Conflicted Party is ongoing or will resume at a later date in the procurement process, or will not be complete before the commencement of the procurement process, then the likelihood that the Owner Conflicted Party will come into possession of confidential information that will confer an unfair competitive advantage to a bidding Vendor as well as the likelihood that the Owner Conflicted Party will have to perform a role in the due diligence or evaluation of proposals that would render its judgment impaired in the exercise of such duties; and

(e) the overall strength and sufficiency of mitigation measures that may be implemented and/or the ability of IO to rely upon those mitigation measures, in the face of the facts at hand.

(ii) If the Conflict of Interest is created or discovered after the execution of the Contract, the preferred mitigation is for IO to investigate the possibility of replacing its own Owner Conflicted Party. The potential replacement of the Owner Conflicted Party and preservation of the successful Vendor's team is subject to the following additional considerations:

(a) whether the Owner Conflicted Party, even though its mandate is concluded with respect to the procurement, is expected to return to perform work for IO (and in the case of a P3 project, including IO's co-Sponsor) during the course of the project to opine on the work product of the contracting Vendor;

(b) whether the Owner Conflicted Party is acting as a direct advisor to IO (or in the case of a P3 project, including IO's co-Sponsor) or is only indirectly providing advisory services as a sub-consultant;

(c) irrespective of the direct or indirect nature of the relationship between the Owner Conflicted Party and IO (or in the case of a P3 project, including IO's co-Sponsor), the materiality of the work to be done by the Owner Conflicted Party in comparison to the materiality of the work to be done by the Vendor for the remainder of the project where the potential Conflict of Interest would persist.

(d) whether there is mutual agreement of the Vendor and IO in respect of identifying the party to be removed; and

(e) the likelihood of finding, using commercially reasonable efforts, a replacement party to fulfill the role of the Vendor or Owner Conflicted Party, as the case may be.

5.2.2.6 Notwithstanding Section 5.2.2.4, there shall be no presumed unfair competitive advantage when an existing advisor to IO (or in the case of a P3 project, including IO's co-Sponsor), is seeking to expand or add to its advisory role by bidding to (or having its employee(s) or related or affiliated company bid to) another procurement process in which the Contract is for additional advisory services to IO (or in the case of a P3 project, including IO's co-Sponsor) on the same project.

5.2.3 Acting for Multiple Parties in P3 Ancillary Agreements Prohibited

In P3 projects in which the execution of the Project Agreement requires the contemporaneous execution of multi-party ancillary agreements, the following restrictions shall apply:

5.2.3.1 The party acting as the independent certifier must not be retained as the technical advisor to the lenders or as an advisor to either of the parties to the Project Agreement or any of their respective related entities in respect of the Project Agreement (including, but not limited to, acting as transaction advisor to either party to the Project Agreement).

5.2.3.2 The party acting as the technical advisor to the lenders cannot also act in any of the following capacities:

(i) custodian under the custody agreement;

(ii) account trustee under the insurance trust agreement; and

(iii) any other third party under an ancillary agreement to the Project Agreement to which the lenders' agent is also a party.

5.2.4 Teaming With Multiple Bidding Vendors – Collusion Risks

The potential for collusion among bidding Vendors may arise in situations where:

(i) a Vendor, or any affiliated, related company, employee, officer, or director of the Vendor, is providing services for more than one bidding Vendor within the same procurement; or

(ii) any affiliated, related company, employee, officer, or director of the Vendor is acting on two different bidding Vendor teams within the same procurement, and where the affiliated or related Vendor parties are governed by the same directing minds.

While collusion risks are not the same as Conflict of Interest risks, the powers of IO to assess and mitigate the occurrence of both types of risks are similar.

5.2.4.1 IO shall generally prohibit, within all procurement documents, the ability for any one team member of one bidding Vendor to also be a team member of another bidding Vendor within the same procurement, except where there may be legitimate circumstances that warrant non-exclusivity of team member arrangements.

5.2.4.2 In cases where a related or affiliated company is acting for more than one bidding Vendor team, IO will make a determination of whether the collusion risk can be mitigated based on the specific facts of each case. In making this determination, IO will consider:

(i) the commercial risk to the overall procurement;

(ii) the timing of IO's discovery of the potential collusion risk among bidding Vendors as it relates to the stage and progress of the procurement;

(iii) the respective roles and arrangements of the related or affiliated companies on the bidding Vendor teams; and

(iv) the extent and robustness of controls and ethical wall procedures to segregate the related or affiliated companies, including whether the affiliated entities on the bidding Vendor teams are only under common financial control with separate and distinct corporate governance structures or whether they share the same directing minds.

5.2.4.3 IO shall retain sole discretion in determining the extent of due diligence and investigation that is required to determine whether the potential for collusion exists, can be mitigated, and the extent to which the collusion risk will affect (or will have a perceived effect on) the fairness of the evaluation.

5.2.4.4 Collusion determinations, for the purposes of procedural fairness to Vendors, shall only apply within a single procurement and are not presumed to apply to other procurements. No determination with respect to collusion, standard of investigative due diligence, method of mitigation, made in the context of one procurement shall be binding on IO in another procurement.

5.2.5 Conflicts of Interest Due to Litigation Against IO

To the extent that any litigation or proceeding, which includes but is not limited to mediation, arbitration, or an adjudication ("**Litigation**"), against IO by a bidding Vendor causes an impairment over the objective, unbiased and impartial exercise of IO's independent judgment or could, or could be seen to, compromise, impair or be incompatible with the effective performance of the Vendor's obligations under the Contract being procured, the Litigation may be grounds to determine that a Vendor is in a Conflict of Interest. The determination of whether the Litigation against IO renders a bidding Vendor conflicted shall take into consideration the following:

5.2.5.1 All contracting Vendors shall not be deprived of their legal rights to seek recourse against IO in the courts of law or equity, and the potential for excluding a Vendor that is in Litigation against IO must be balanced against the fundamental legal rights of Vendors.

5.2.5.2 Litigation that is directly related or pursuant to the IO procurement process or project being procured shall be presumed to place the Vendor in a Conflict of Interest position.

5.2.5.3 Litigation that is not related or pursuant to the IO procurement process or project being procured may still constitute a Conflict of Interest, but IO must be able to demonstrate the means by which its objective, unbiased and impartial exercise of independent judgment is impaired and/or the litigation could or could be seen to compromise, impair or be incompatible with the effective performance of the Vendor's obligations under the Contract being procured.

5.2.5.4 Without limitation to IO's rights under Section 5.2.1.4, when a Conflict of Interest arises as a result of Litigation against IO, the withdrawal, abandonment, dismissal, or settlement of the Litigation, or the issuance of a determination from an arbiter, court, or adjudicator, as applicable, in respect of the Litigation, shall be presumed to successfully mitigate the Conflict of Interest.

5.2.5.5 All references to IO in this Section 5.2.4 may be read to include IO's co-Sponsor or public body with whom IO is acting as co-Sponsor or for whom IO is acting as agent or procurement lead when both IO and the applicable co-Sponsor have issued the procurement documents jointly (as a joint procuring authority).

5.2.6 Incumbent Advantage

IO is under no duty to take measures to reverse any legitimate or natural incumbent advantage of an incumbent Vendor, such as the advantage flowing from the knowledge and experience obtained while performing a Contract. The experience acquired by a Vendor who is providing or has provided the goods and services described in a procurement process (or similar goods or services) will not, in itself, be considered as conferring an unfair competitive advantage or creating a Conflict of Interest.

5.2.7 Presumed Removal of Ineligible Persons

5.2.7.1 If IO discovers that a person listed in the procurement documents as being ineligible to bid or participate with a bidding Vendor team (an "**Ineligible Person**") has been included as part of a bidding Vendor's proposal, it is presumed that such event constitutes a Conflict of Interest and IO may, in its sole discretion, require the removal of the Ineligible Person from the bidding Vendor's team or disqualify the bidding Vendor entirely. There shall be no obligation of IO to conduct additional due diligence to verify whether or not the Ineligible Person was actually involved in the preparation of the Vendor's proposal.

5.2.7.2 In certain circumstances, an Ineligible Person may be permitted, at IO's discretion, to participate as part of a bidding Vendor's team if:

(i) the bidding Vendor can demonstrate to IO's satisfaction that confidential information possessed by an Ineligible Person has not been disseminated or used and will not be used for the remaining duration of the procurement process; and

(ii) IO is satisfied and can demonstrate that the continued participation of an Ineligible Person would not cause procedural unfairness to the other bidding Vendors participating in the procurement, if any.

5.2.8 Former IO Employees

Employees who depart IO continue to be governed by their obligations under IO's Conflict of Interest and Confidentiality Policy. The post-service restrictions include the requirement for non-disclosure of confidential information and restrictions on switching sides. IO must generally ensure that bidding Vendors are not possessed of confidential information which would confer upon them an unfair competitive advantage in respect of any procurement to which the bidding Vendor is participating.

5.2.8.1 Former IO employees who are within the time period of post-service employment restrictions are presumed to be in a Conflict of Interest for bidding purposes on all projects on which they directly worked while employed at IO. Such former employees shall be specifically prohibited from participating as a bidding Vendor to the procurement and shall be listed, or presumed to be listed, as an Ineligible Person in the procurement documents.

5.2.8.2 Any former IO employee who is possessed of confidential information in respect of a specific procurement that would confer upon a bidding Vendor an unfair competitive advantage in that particular procurement, may be in a Conflict of Interest and IO must conduct a fact-based assessment of whether an actual Conflict of Interest exists, and if so, the appropriate means of mitigating the Conflict of Interest.

5.2.8.3 Any former IO employee who is prohibited from participating on procurement with a bidding Vendor during the procurement process pursuant to Sections 5.2.8.1 or 5.2.8.2 may be permitted to perform work on the Contract with IO after the award of the Contract (if the bidding Vendor with whom the former IO employee is employed is the successful Vendor), provided that:

(i) such former IO employee did not participate in the procurement process for that Contract; and

(ii) the evaluation of the bidding Vendor during the evaluation process was made without regard to the presence of the former IO employee on the bidding Vendor's team.

5.2.8.4 All references to a former IO employee in this Section 5.2.8 may be read to include the former employee of IO's co-Sponsor or public body with whom IO is acting as co-Sponsor or for whom IO is acting as agent or procurement lead when both IO and the applicable co-Sponsor have issued the procurement documents jointly (as a joint procuring authority).

5.2.9 Conflicted Evaluators and Participants in Evaluation of IO Procurements

5.2.9.1 IO shall generally prohibit any instance where a company or individual is acting, or is proposing to act, as an evaluator or subject matter expert to an evaluation and is either, in respect of the same procurement,:

(i) employed by a bidding Vendor;

(ii) affiliated with or related to a bidding Vendor; or

(iii) would otherwise have, or be perceived to have, a bias in favour of the bidding Vendor in the procurement,

(each a "**Conflicted Evaluator**") by removing the Conflicted Evaluator from the evaluation or, if necessary, working on the project entirely.

5.2.9.2 The principle established in Section 5.2.9.1 shall take into account the following considerations:

(i) whether the continued participation of the Conflicted Evaluator during the procurement (but not during the evaluation phase) would confer an unfair competitive advantage to a bidding Vendor due to the bidding Vendor's relationship with the Conflicted Evaluator;

(ii) whether the Conflicted Evaluator has a financial or other pecuniary interest in a bidding Vendor;

(iii) whether the Conflicted Evaluator has a material familial relationship or financial interest in common with the bidding Vendor or any individual team member of the bidding Vendor in a personal capacity, including outside of the procurement; and

(iv) the general freedom of parties to contract in the marketplace and acknowledgement that there may be very few individuals with the expertise possessed by the evaluator or subject matter expert in question.

5.2.10 Conflict of Interest Screening Among IO Partners, Clients and Co-Sponsors

IO shall ensure that all governance documents with co-sponsoring ministry, agency and other partner public bodies contain provisions that ensure that such co-sponsoring ministry, agency and other public body makes full and ongoing disclosure of all perceived, potential and actual Conflicts of Interest and agrees to be subject to the Conflict of Interest sections of this Policy.

5.2.11 Conflict of Interest Screening Processes Specific to P3 Projects

This Section 5.2.11 shall apply to P3 projects only.

5.2.11.1 Following the identification of the prequalified parties to the RFQ, a consolidated listing of all disclosed names and individuals involved in the preparation of the successful prequalified parties' submissions shall be prepared and used to assess the relevant IO employees, advisors and representatives of the co-sponsoring ministry, agency or public body for perceived, potential or actual Conflicts of Interest. Where a perceived, potential or actual Conflict of Interest arises and cannot be mitigated, IO may, without limitation to IO's rights under Section 5.2.1.4, to remove any IO employee, advisor and representative of the co-sponsoring ministry, agency or public body from the remainder of the project (including RFP design development and RFP evaluation).

5.2.11.2 IO shall cause all bidding Vendors to supply a list of individuals involved in the preparation and oversight of decision making for any proposal and it shall be presumed that all names disclosed by bidding Vendors are or have been involved in the preparation of the proposal submitted by such Vendor.

5.2.12 Conflict of Interest Disclosure and Mitigation

5.2.12.1 Further to the general requirements set out in Section 5.2.1, it is incumbent on all individuals and Vendors participating in, advising or bidding to an IO procurement to disclose and declare the existence of all perceived, potential or actual Conflicts of Interest immediately to the contact persons designated under the procurement documents or conflict review teams assigned to the project, as applicable, or failing any identification of such persons, the General Counsel, so that measures can be taken to protect all parties.

5.2.12.2 The determination and resolution of Conflicts of Interest must be done in as open and transparent a manner as possible, including the detailed keeping of electronic records and, taking into consideration the risk to the procurement process, the notification of external legal counsel and fairness monitors.

5.2.13 Advance Determinations of Conflict of Interest Non-Binding

5.2.13.1 Vendors may request in writing, in anticipation of and prior to the commencement of a procurement, an advance determination from IO of whether a relationship, contractual arrangement or other situation or circumstance including the potential involvement of an individual or firm with the Vendor, would constitute a perceived, potential or actual Conflict of Interest under the potential procurement process (an "**Advance COI Determination**").

5.2.13.2 Any Advance COI Determination issued by IO shall be made in accordance with this Policy based on the facts and circumstances that are known to IO at the time, but shall not be determinative or binding on IO, and shall be issued on a without prejudice basis.

5.2.13.3 As a principle, IO should provide clarity to the Vendor market regarding possible Conflicts of Interest, but IO shall not be obligated to respond to a request for an Advance COI Determination. Any failure or refusal of IO to respond to a Vendor's request for an Advance COI Determination shall not result in a presumed interpretation that there is no perceived, potential or actual Conflict of Interest and shall not constitute a waiver of any rights of IO under this Policy or the procurement documents with respect to Conflict of Interest determinations and actions.

5.2.13.4 IO may, in response to a Vendor's request for an Advance COI Determination, request that the Vendor proactively mitigate the Conflict of Interest through means prescribed by IO and may further request that the Vendor update its disclosure, at the time of the commencement of the procurement and issuance of the procurement documents, regarding the perceived, potential or actual Conflict of Interest and the mitigation measures undertaken as a condition of continued participation in the applicable procurement process.

5.3 Ethics Requirements

5.3.1 Third Party Attestation re Existence and Design of Policies

All P3 procurements, at a minimum, shall require bidding Vendors to obtain third party attestations (from a reputable, national professional accounting and advisory firm with expertise in forensic reviews) regarding the presence and design of internal policies, processes and controls establishing ethical standards for bidding practices (including with respect to reporting on Conflicts of Interest) and that such policies, process and controls, if correctly implemented and consistently followed, are designed to protect against unethical bidding practices, including failures to disclose Conflicts of Interest.

5.3.2 Officer's Certificate re Ethical Bidding Practices and COI

All procurements for the delivery of construction and project services (including P3), at a minimum, shall require that team members of the bidding Vendors provide a certificate of an officer, at the time of the receipt of both the RFQ and RFP submissions, that certifies and attests to the status of the team member with respect to any charges or investigations for unethical bidding practices, the existence of and adherence to policies with respect to ethical bidding practices, and that the team member has generally conducted itself with integrity and propriety and has not engaged in any inappropriate bidding practices or unethical behaviour in the course of the procurement.

5.3.3 IO Due Diligence for Vendor Ethical Conduct

IO shall have sole and absolute discretion to determine the timing and administration of the attestations and/or certificates described in Sections 5.3.1 and 5.3.2, and the specific parties from whom such attestations and/or certificates are required. IO shall also have sole and absolute discretion to conduct further due diligence on any of the content provided to satisfy itself of the conduct of a bidding Vendor, and may, if not satisfied with of the information provided by the bidding Vendor, disqualify the Vendor within the applicable procurement.

5.4 Anti-Racism and Anti-Discriminatory Processes, Policies and Procedures

IO shall incorporate such processes, policies and procedures as required to safeguard its ongoing commitment to anti-racist and anti-discriminatory practices in IO procurements, including, but not limited to, the imposition of requirements obligating bidding Vendors to demonstrate and maintain a commitment to anti-racist and anti-discriminatory practices in IO's procurement documents and Contracts.

5.5 Anti-Racism and Anti-Discrimination Requirements

5.5.1 Third Party Attestation re Existence and Design of Policies

IO may, in its sole discretion, require bidding Vendors to obtain third party attestations (from a reputable, independent consulting firm with expertise in equity and diversity regarding the presence and design of appropriate internal policies, processes and controls establishing and maintaining a corporate commitment to providing safe spaces and opportunities for equity-deserving groups, including (but not limited to) Black, Indigenous and racialized communities and eliminating anti-racism, anti-discrimination and workplace hate and intolerance.

5.5.2 Officer's Certificate re Anti-Racism and Anti-Discrimination Practices

IO may, in its sole discretion, require that team members of the bidding Vendors provide a certificate of an officer, at the time of the receipt of any submission or proposal that certifies and attests to the status of the team member with respect to any applications, complaints, charges, investigations, convictions, judgements, decisions or awards under any international, federal or provincial human rights-, employment equity- or hate crime-related legislation including, but not limited to the *Criminal Code* and the Ontario *Human Rights Code* or any civil claims, judgments or orders of any nature or kind related to any alleged human rights violation, and any employment equity breach or hate crime allegations, the existence of and adherence to policies with respect to anti-racism and anti-discrimination practices, and that the team member has generally conducted itself in a manner supportive of creating safe spaces and opportunities for equity-deserving groups including (but not limited to) Black, Indigenous and racialized communities and eliminating anti-racism, anti-discrimination and workplace hate and intolerance.

5.5.3 IO Due Diligence for Vendor Commitment to Anti-Racism and Anti-Discrimination Practices

5.5.3.1 IO shall have sole and absolute discretion to determine the timing and administration of the attestations and/or certificates described in Sections 5.5.1 and 5.5.2, and the specific parties from whom such attestations and/or certificates are required.

5.5.3.2 IO shall also have sole and absolute discretion to conduct further due diligence on any of the content provided to satisfy itself of the conduct of a bidding Vendor, including, without limitation, making reference to any international, federal or provincial human rights-, employment equity- or hate crime-related legislation in its review.

5.5.3.3 IO may, if not satisfied with the information provided by the bidding Vendor, disqualify the Vendor within the applicable procurement and subject to and in accordance with Section 5.8 of this Policy, debar such Vendor from participation in any IO procurement.

5.6 Participant Obligations During Evaluation

In addition to the general requirements and policies governing IO employees, all participants in IO procurements, including third party advisors and service providers retained by IO and/or participating in the evaluation of bids, must execute project specific participant agreements and undertakings in advance of evaluating bid information and participating in the evaluation process. Each participant agreement and undertaking shall address the following:

5.6.1 Participant Training and Responsibilities for Evaluation

5.6.1.1 All participants in the evaluation process of IO procurements must be trained on the particulars of that specific evaluation process, including their role, responsibilities and obligations during the evaluation process. Individuals who have not been trained on the evaluation process particulars of an IO procurement will not be eligible to evaluate bids for that procurement and will not be permitted to participate in that procurement's evaluation process.

5.6.1.2 An exemption to Section 5.6.1.1 may be granted, in writing, at the sole discretion of the Executive Team Member with accountability for Procurement to a participant in the evaluation process of an IO procurement where such participant:

(i) is a third party advisor or service provider retained by IO and/or participating in an evaluation process for an IO procurement as a subject matter expert;

(ii) is participating in the evaluation process as a subject matter expert only and not in any other capacity;

(iii) has expertise as a subject matter expert specifically in connection for matters described in Sections 5.2, 5.3, 5.4 or 5.5 or any matter relating to the existence, sufficiency or compliance of non-scored or pass/fail submission requirements (including, but not limited to, health and safety certification and reporting requirements, insurance certification or bonding requirements); and

(iv) time is demonstrated to be of the essence.

5.6.2 Participant Project-Specific Confidentiality Obligations

Information included in a Vendor's proposal shall be presumed to be confidential (subject to requirements to disclose proposal information pursuant to applicable law) and all participants to the evaluation process of an IO procurement must treat information in bidder proposals with appropriate regard for their confidential nature, including following any instructions given to them by IO procurement staff.

5.6.3 Participant Conflict of Interest Declarations for Evaluation

In addition to the general requirement to disclose Conflicts of Interest set out in Section 5.2.12.1, participants must make declarations of all perceived, potential or actual Conflicts of Interest in respect of the individuals and companies identified by bidding Vendors in their submissions, before receiving the submission of any Vendor.

5.7 Fairness Monitors

5.7.1 Use of Fairness Monitors at IO

The procurement process shall be monitored periodically to ensure the principles set out in this Procurement Policy are upheld and adhered to. IO must ensure that in all P3 RFQ and RFP procurements (but not including the procurement of advisors to the P3 procurement), a fairness monitor has been retained before the commencement of the procurement (issuance of an RFQ).

Fairness monitors are not necessarily exclusive to P3 procurements and may be retained where the procurement process risk associated with the procurement warrants additional third-party process validation.

5.7.2 The Duty of Fairness Arises at Law

The duty of fairness of IO and any public procuring authority to bidding Vendors arises from its obligations at law (especially within binding procurements). While fair treatment of bidding Vendors is a principle under which all IO procurements must be conducted, the standard of what constitutes procedural fairness in procurement does not exist as a free-standing commercial standard and IO should, in assessing whether IO has met its duty of fairness (where such duty applies) seek the input of external legal counsel.

5.7.3 Fairness Monitor Mandate and Accountability

If a fairness monitor observes a situation that constitutes, or has the potential to create, fairness deficiencies, the fairness monitor will inform IO of its concerns and seek a resolution. If a resolution cannot be reached, the fairness monitor should advise the General Counsel or head of the IO procurement department.

Fairness monitors must be accountable to submit a final report to the head of the IO procurement department, including the fairness monitor's overall attestation of assurance on the fairness of the monitored activity and any unresolved fairness deficiencies observed. An executive summary of the report will be publicly disclosed within a reasonable time following the conclusion of a procurement.

5.8 Debarment Regime

IO may exclude a Vendor from bidding to any IO procurement, or a submitted bid may be rejected and returned to a Vendor if, in the sole and absolute discretion of IO, any one of the circumstances set out in Schedule 4 to this Policy (each, a "**Head of Debarment**") has occurred in any past or current procurement issued by IO.

5.8.1 General Right to Debar

Notwithstanding the specific circumstances which may give rise to a Head of Debarment as set out in Schedule 4, IO may, in its sole and absolute discretion, prohibit any Vendor from bidding to any IO procurement if:

5.8.1.1 the grounds for such prohibition are substantively analogous to a Head of Debarment, or

5.8.1.2 continuing to permit such Vendor to participate in IO procurements would reasonably be expected to impair IO's ability to protect the public interest.

continuing to permit such Vendor to participate in IO procurements would reasonably be expected to impair IO's ability to protect the public interest

5.8.2 Relevant Experience

Where a bidding Vendor to an IO procurement submits project experience, project example or other product which is attributable to a Vendor who has been debarred in accordance with this Section 5.8, IO may, in its sole and absolute discretion, decline to evaluate such project experience, project example or other product in a Vendor's Proposal with the consequential impacts to the overall score, status and/or ranking of the Vendor's Proposal in the procurement process as set out in the procurement documents.

5.8.3 Debarment Period

Subject to Sections 5.8.4, 5.8.6 and 5.8.7, in the event that IO debars a Vendor in accordance with this Section 5.8, the duration of such debarment in each case shall be for 36 months commencing on the date determined through the application

of Section 5.8.4.3 or 5.8.4.4, as the case may be (in each case, the "**Debarment Period**").

5.8.4 Notice of Debarment and Right to Dispute

5.8.4.1 Following IO's decision to debar a Vendor, IO shall promptly issue the affected Vendor a written notice of such intention (each a "**Notice of Debarment**") which shall contain:

(i) notice of IO's intention to debar the Vendor;

(ii) the identification of any related entity or individual, and any partner, principal, director or officer of such Vendor, as well as any other legal entity with one or more of the same partner(s), principal(s), director(s), or officer(s) intended to be barred by IO;

(iii) the duration of the Debarment Period, and

(iv) the reasons and grounds for the debarment with reference to this Policy, and including (if applicable) reference to any current or past Contract, Project Agreement, or IO procurement.

5.8.4.2 A Vendor in receipt of a Notice of Debarment may dispute IO's decision to debar the Vendor in writing within five Business Days following the date of the Notice of Debarment (each, a "**Vendor Debarment Dispute**").

5.8.4.3 If a Vendor in receipt of a Notice of Debarment does not submit a Vendor Debarment Dispute in accordance with Section 5.8.4.2, the effective date of such Vendor's debarment shall be the sixth Business Day following the date of the Notice of Debarment without further notice to the Vendor.

5.8.4.4 Any Vendor Debarment Dispute received by IO in accordance with Section 5.8.4.2 shall be referred to the General Counsel and the Executive Team Member with accountability for Procurement for review to determine whether or not the Notice of Debarment was issued in accordance with this Policy. The outcome of the review and the effective date of the debarment, if any, shall be communicated to the Vendor in writing and be effective from and after the date of such written communication.

5.8.5 Recording and Disclosing Debarred Vendors

5.8.5.1 If a determination is made by IO that a Vendor is to be debarred, the Vendor shall be added to a list of debarred/prohibited Vendors (including companies, partnerships, joint ventures and individuals) maintained by IO.

5.8.5.2 IO may elect to publish the identity of debarred Vendors and their respective Debarment Periods on its website or in its procurement documents following the conclusion of the dispute process set out in Section 5.8.4.

5.8.5.3 Bidding Vendors shall be required to confirm within their proposal submissions that none of the individuals (including employees, officers, and directors), or entities (including affiliated and related companies) who comprise the bidding Vendor are currently prohibited from bidding to IO procurements.

5.8.6 Early Termination of Debarment Period

5.8.6.1 IO may, in its sole discretion and upon written notice to a debarred Vendor, shorten the duration of a Debarment Period imposed on such Vendor with due consideration to the grounds set out in each applicable Head of Debarment.

5.8.6.2 Notwithstanding Section 5.8.6.1, a debarred Vendor may apply to IO for a review of its debarment upon completion of at least half of the total Debarment Period. An application for a review of the debarment must be submitted to IO in writing and include reasons for lifting the debarment with supporting documentation relevant to the applicable Head(s) of Debarment. A determination under this Section 5.8.6.2 shall be made in writing to the Vendor following IO's review of the Vendor's application.

5.8.6.3 If a debarred Vendor makes an application under Section 5.8.7.2 which is unsuccessful, the Vendor may make one further application for review upon completion of at least half of the remaining Debarment Period. If such application is unsuccessful, IO may, but is not obligated to, consider any subsequent applications for a review of the debarment.

5.8.6.4 A decision to reinstate a debarred Vendor may be made by IO in its sole and absolute discretion, and where applicable, may include conditions or limitations to ensure that the Vendor's participation does not undermine the principles which govern this Policy, including conducting a procurement process in a fair, transparent and efficient manner, and will not undermine IO's commitment to protect the public interest.

5.8.7 Extension of a Debarment Period and Right to Dispute

Provided that a Debarment Period has not expired, IO may extend the Debarment Period of any affected Vendor where IO determines, in its sole and absolute discretion:

5.8.7.1 that the original circumstances supporting debarment pursuant to this Section 5.8 have not been sufficiently mitigated, rectified or addressed by the Vendor such that IO has a reasonable expectation that the Vendor's conduct or processes will trigger an additional assessment of debarment under one or more of the grounds cited in the original Notice of Debarment; or

5.8.7.2 that based on other circumstances, events, acts or omissions including, without limitation, knowledge of other pending or actual debarment of the Vendor in other jurisdictions and/or with other public procurement authorities, IO has a reasonable expectation that the participation of such Vendor in IO's procurement cannot be accommodated without risk to IO's commitment to protect the public interest.

Following IO's decision to extend a Debarment Period, IO shall promptly issue the affected Vendor with a written notice of such extension and the provisions of Sections 5.8.4, 5.8.6 and 5.8.7 shall apply to the extension, *mutatis mutandis*.

5.9 Project Specific Non-Disclosure Agreements

It is at the sole discretion of IO whether specific employees of, or individuals or firms retained by, IO must execute project specific non-disclosure agreements separate from the applicable employment, advisory or service contracts already in place.

6. PROCUREMENT PROCESS PROCEDURES

6.1 Binding and Non-Binding Procurement Processes

IO may determine that a binding "Contract A"–"Contract B" model of procurement is not required in order to meet IO's procurement objectives and may use public procurement processes that do not create binding obligations on the parties.

6.2 Procurement Documents

Procurement documents must be in writing and include sufficient detail concerning the procurement process, submission requirements and form of contract to be entered into, such that Vendors are able to understand how their submissions will be evaluated. Procurement documents should also clearly indicate whether or not the procurement is a binding procurement process.

6.3 Tendering System

Communications with Vendors shall be made through easily accessible and auditable methods.

6.3.1 Open Competitive Procurement Communications

For open competitive procurements, procurement documents shall be distributed through the use of an Electronic Tendering System.

6.3.2 Invitational Competitive Procurement Communications

For invitational competitive procurements, including circumstances where Vendors have been prequalified pursuant to a VOR Arrangement, IO may distribute procurement documents directly to invited or qualified Vendors, as applicable. For greater clarity, "call-up" documentation issued pursuant to the terms of a Standing Offer Agreement does not constitute an invitational procurement and such call-up documents attached to an SOA are not procurement documents.

6.4 Bid Response Time

Sufficient time must be given to Vendors to prepare and submit bid responses. Where IO has issued an amendment or addendum to the procurement documents, Vendors must be given sufficient time prior to the deadline to submit a bid that addresses such amendment or addendum. IO shall at all times retain discretion to amend or extend a submission deadline to ensure sufficient time is provided.

6.5 Late Submissions

6.5.1 Late Submissions to be Rejected

Submissions that are received late shall be rejected and not evaluated. Late submissions shall be returned to Vendors unopened.

6.5.2 Vendors Bear Risks of Delivery

Bidding Vendors shall assume the risk of all delays in the delivery of their bids or submissions, including all risks associated with the physical delivery of bids, electronic transmission, and any third parties involved in the delivery of bids.

Where electronic submission of bids is made available through an Electronic Tendering System, it is expected that bidding Vendors will submit their bids in a reasonable amount of time in advance of the submission deadline. Vendors are responsible for taking appropriate steps to guard against potential system transmission problems.

6.6 Financial Bid Security

Financial bid security may be included as a requirement in a binding procurement at the discretion of IO. If bid security is obtained, it must be held until the terms of the security are fulfilled, including award of a Contract and/or expiration of the bid validity period. If a Vendor submits a bid that has insufficient security (i.e. less than the exact financial security prescribed, or none at all), that Vendor's bid will be rejected on the grounds that it is not substantially complete or is materially non-compliant, as the case may be.

6.7 Communications with Vendors During the Procurement Process

Communications from Vendors received by IO employees, their agents or sub-contractors at any time during the procurement process must be avoided and directed to the contact person identified in the procurement document in order to guard against complaints; maintain the integrity of the procurement process; ensure that all Vendors are provided with consistent information; and ensure that the information given does not change the intended meaning of the procurement document or any part therein.

6.7.1 Additional Information and Addenda

6.7.1.1 Any additional information which clarifies or modifies the procurement documents must be provided in the same manner as the originally issued procurement document via an amendment or addendum.

6.7.1.2 Procurement documents must make clear that binding amendments to the procurement documents shall only be made by addendum. Information supplied to Vendors through general notices, written responses to questions or requests for information, or other communications that are separate from the procurement documents shall not constitute part of the procurement documents and are not binding.

6.7.2 Commercially Confidential Questions and Requests for Information

6.7.2.1 All procurements should provide sufficient time for Vendors to ask questions of clarification regarding the procurement documents, evaluation criteria and contractual requirements.

6.7.2.2 It is presumed that the answer to a question posed by any particular Vendor should be communicated to all bidding Vendors participating in the applicable procurement process, unless a determination is otherwise made by IO that the question posed is commercially confidential to the Vendor.

6.7.2.3 Where a question posed by a bidding Vendor is asserted by that Vendor to be commercially confidential in nature, then:

(i) if IO is in agreement and a determination is made that the question is commercially confidential, the response to such question will only be communicated to that Vendor; or

(ii) if IO is not in agreement and a determination is made that the question is not commercially confidential, then the Vendor shall withdraw the question and either:

(a) no response shall be given;

(b) in IO's determination, the question and response is materially relevant to the procurement and IO shall have discretion to issue a response or communication to all bidding Vendors on the substance of the question without specifically identifying the bidding Vendor who asked it; or

(c) the Vendor may agree to reclassify or resubmit the question as not commercially confidential, allowing for a response to be given to all bidding Vendors.

6.7.2.4 IO shall retain the discretion to determine whether a question is commercially confidential in nature and requires a commercially confidential response, irrespective of whether the Vendor identified its question as being general or commercially confidential in nature.

6.7.2.5 IO is under no legal obligation to answer a question posed by a bidding Vendor and the failure to do so shall not constitute a waiver of any IO's rights or obligations in the procurement documents.

6.7.3 Commercially Confidential Meetings

IO may, at its discretion, provide the opportunity for Vendors involved in a procurement process to participate in commercially confidential meetings to discuss matters related to the procurement. When commercially confidential meetings are administered by IO, the following principles shall be applied:

6.7.3.1 information supplied to bidding Vendors shall not be binding to the procurement documents unless reflected in a written addendum to the procurement documents; and

6.7.3.2 the use of commercially confidential meetings and a general description of the framework or protocol associated with commercially confidential meetings should be included in the procurement documents.

6.8 Substitution and Team Member Changes Within Bidding Vendors

From time to time Vendors may desire to, or will be required to, during the procurement process, substitute individuals or entities previously identified as key team members or integral to the Vendor's preparation of a submission. These instances may or may not be within the direct control of the Vendor. Where substitutions of previously identified Vendor team members are requested by Vendors during a procurement process, IO shall ensure that such substitutions or other changes to a Vendor's previously identified committed bidding team adhere to the following requirements:

6.8.1 Notice of Team Member Substitution

6.8.1.1 Request notices of team member substitutions should clearly identify the proposed change.

6.8.1.2 IO shall retain the discretion to request follow up information to satisfy IO that the change will not result in a material adverse effect on the bidding Vendor's ability to provide a compliant submission or impair the Vendor's ability to perform the obligations under the Contract.

6.8.1.3 If the substitution is occurring in an RFP process involving a Vendor who has previously prequalified under an RFQ process or first stage VOR Arrangement, IO must satisfy itself that the substituted member of the Vendor team would have met or exceeded any applicable criteria applied during the RFQ process or first stage VOR Arrangement.

6.8.2 Assessments of Substitutions

6.8.2.1 In assessing a proposed substitution of team member by a Vendor, IO shall retain sole discretion to:

(i) consent to or reject a proposed substitution;

(ii) impose such other terms or conditions as required to satisfy IO pertaining to the matters identified in Sections 6.8.1.2 and 6.8.1.3, above; and

(iii) disqualify Vendors from a procurement where a change has been effected without consent of IO.

6.8.3 Substitution Requests Made After Submission

6.8.3.1 IO shall have no obligation to consider a requested team member substitution by a bidding Vendor after the deadline for submission of the proposal.

6.9 Negotiation Process

IO may include a process within its procurement documents to allow for negotiations of the terms and conditions governing the future arrangements with preferred Vendors, designated as the negotiation proponents at the conclusion of the evaluation process. This process ensures that the eventual contracting party has put forward a proposal that provides the best value for IO.

6.9.1 Principles of Negotiation

In any negotiation process, IO must adhere to the following principles:

6.9.1.1 the outcome of a negotiation with a single negotiations proponent in a competitive procurement process must not result in the substance of that negotiation proponents proposal changing to the extent that if the immediately preceding evaluation process was repeated, the overall rank order of vendors from the evaluation process would change (referred to as a “flipping of rank”) and such flipping of rank results in a different Vendor being the successful Vendor to the procurement; and

6.9.1.2 the scope of the project cannot be modified to such an extent that a fundamentally different scope is created to which there was no opportunity for any other bidding Vendor to bid.

6.9.2 Negotiations Process in P3

6.9.2.1 Negotiations processes shall be included in all P3 RFPs and the terms of the negotiation shall form part of the terms of the binding procurement.

6.9.2.2 Negotiations can occur consecutively with negotiation proponents in the order of their ranking or, in cases where the scores are very close, can occur simultaneously with the highest scoring proponents.

6.9.2.3 IO reserves the right to switch from one type of negotiation to the other should the circumstances warrant.

6.9.3 No Change to Irrevocability of Offer

In a binding procurement process, a bidding Vendor's original proposal remains valid during the process and can be accepted by IO at any time, regardless of the outcome of any negotiation.

6.9.4 Negotiations to Ensure Value for Money

Negotiations that result in a lowering of the price of a successful Vendor before award and execution of a Contract are permitted at all times (including those instances set forth in Section 4.3.3), provided that the negotiations occur in accordance with the principles set out in Section 6.9.1.

6.10 Bid Validity Periods

6.10.1 Requirement for Proposal Validity Periods in Binding Procurements

In binding procurement processes, IO must include within the procurement documents the bid validity date or bid validity period (that is, the length of time or period after the submission deadline which a Vendor's submission is irrevocably eligible for acceptance).

6.10.2 Extension of Bid Validity Periods

6.10.2.1 IO may seek an extension of the bid validity period from all responsive Vendors who, at IO's sole discretion, are still under consideration in the evaluation process by issuing a request in writing to such Vendors.

6.10.2.2 A request for an extension to the bid validity period may be made at any time before the expiry of the bid validity period.

6.10.2.3 IO may, at its sole discretion, continue with the evaluation of submissions and/or the negotiation with Vendors who have accepted the request to extend the bid validity period.

6.10.2.4 The refusal of a Vendor to extend the validity of its submission does not nullify the original bid validity period and that Vendor's submission shall still be irrevocable and eligible for acceptance until the expiry of the original bid validity period.

6.11 Proposal Fees

IO may, at its discretion, offer Proposal Fees in its competitive procurement processes for the purposes of increasing the competitiveness of IO's procurements and incentivizing new and existing participants to participate in and actively engage with IO during the procurement process. IO also recognizes the value of bidder engagement in the development of the procurement documents, Contract and design (if applicable), as well as IO's receipt of intellectual property rights to design-related materials (if applicable) in bidding Vendors' proposals.

6.11.1 Offering a Proposal Fee

6.11.1.1 IO is not obligated to offer a Proposal Fee in connection with any procurement process.

6.11.1.2 Proposal Fees are not necessarily exclusive to P3 procurements.

6.11.1.3 Proposal Fees should only be considered in procurement processes where the procurement is of sufficient complexity, anticipated duration, and/or facing such market capacity or other technical, financial or commercial challenges such that the failure to offer a Proposal Fee would likely materially adversely impact the competitiveness of the procurement process and/or the quality of submissions anticipated to be received.

6.11.1.4 A Proposal Fee may only be offered if the preapproved budget for such Contract is sufficient to accommodate such payment, and where the requisite approvals are obtained.

6.11.1.5 The amount, and conditions precedent to qualifying for payment of, a Proposal Fee, if offered, shall be disclosed in the procurement document(s) for the procurement. IO may amend the procurement document(s) to offer a Proposal Fee after the commencement of a procurement process, except that a Proposal Fee may not be introduced into any procurement following receipt of submissions from bidding Vendors to that procurement.

6.11.1.6 Subject to Section 6.11.1.7, any bidding Vendor who withdraws from the procurement process (whether prior to the deadline for submissions or following the submission deadline in contravention of submission or proposal irrevocability provisions in the applicable procurement document) shall forfeit and shall not be entitled to a Proposal Fee or any portion thereof in connection with that procurement process.

6.11.1.7 IO may offer a Proposal Fee in one or more installments and on a schedule as set out in the procurement document(s) for a procurement process, which may include one or more partial pre-payments, subject to such conditions precedent, if any, in IO's discretion. The procurement document(s) may also include provisions which permit a bidding Vendor who has withdrawn from the procurement process to qualify for or keep any, part or all of a Proposal Fee (including any partial pre-payment or installment of a Proposal Fee), if applicable.

6.11.2 Increasing the Amount of a Proposal Fee

6.11.2.1 IO is not obligated to increase the amount of any Proposal Fee.

6.11.2.2 A Proposal Fee may only be increased if the preapproved budget for such Contract is sufficient to accommodate such increased payment, and where the requisite approvals are obtained.

6.11.3 Calculating Proposal Fees and Increases to Proposal Fees

6.11.3.1 The amount of a Proposal Fee (and any increase to the amount of a Proposal Fee) shall only be calculated using the operational guidance approved by both the General Counsel and Executive Team Member with accountability for Procurement, as amended from time to time, but such amount may not represent more than a portion of IO's estimate of a bidding Vendor's pursuit costs in connection with a procurement process.

6.11.3.2 If a Proposal Fee is not offered in the procurement document(s) issued at the commencement of a procurement, but offered during the procurement process by way of addendum, then the calculation of the amount of such Proposal Fee pursuant to Section 6.11.3.1 shall be calculated as though it had been offered in the originating procurement documents.

6.11.4 Payment of a Proposal Fee

6.11.4.1 A Proposal Fee shall only be paid directly by IO or its co-Sponsor, if applicable, and not by the successful Vendor, and otherwise in accordance with the terms and conditions set out in the procurement documents.

6.12 Break Fees

IO may, at its discretion, offer Break Fees in its competitive procurement processes for the purposes of maintaining active and engaged bidding Vendor participation (and therefore competitiveness) in a procurement process which is perceived by bidding Vendors to be at a higher risk of cancellation.

6.12.1 Offering a Break Fee

6.12.1.1 IO is not obligated to offer a Break Fee in connection with any procurement process.

6.12.1.2 Break Fees are not necessarily exclusive to P3 procurements.

6.12.1.3 Break Fees should only be considered in procurement processes where the actual or perceived risk of cancellation is both acute and demonstrable, and where the failure to offer a Break Fee would likely materially adversely impact the engagement and participation of bidding Vendors in the procurement process.

6.12.1.4 A Break Fee may only be offered if IO's preapproved budget for such Contract is sufficient to accommodate such payment, and where the requisite approvals are obtained.

6.12.1.5 The amount, and conditions precedent to qualifying for payment of, a Break Fee, if offered, shall be disclosed in the procurement document(s) for the procurement. IO is not prohibited from amending procurement documents to offer a Break Fee after the commencement of a procurement process.

6.12.1.6 Subject to Section 6.12.1.7, any bidding Vendor who withdraws from the procurement process (whether prior to the deadline for submissions or following the submission deadline in contravention of submission or proposal irrevocability provisions in the applicable procurement document) shall forfeit and shall not be entitled to a Break Fee or any portion thereof in connection with that the subsequent cancellation of that procurement process.

6.12.1.7 In the event that a Proposal Fee is offered to bidding Vendors to a procurement process in installments in accordance with Section 6.12.1.7, and that procurement process is subsequently cancelled by IO, IO may deem any amounts paid or payable to bidding Vendors pursuant that Section to be the Break Fee associated with that procurement process, payable subject to such conditions precedent, if any, in IO's discretion.

6.12.2 Increasing the Amount of a Break Fee

6.12.2.1 IO is not obligated to increase the amount of any Break Fee.

6.12.2.2 A Break Fee may only be increased if IO's preapproved budget for such Contract is sufficient to accommodate such increased payment, and where the requisite approvals are obtained.

6.12.3 No Combined Receipt of Proposal Fee and Break Fee

No bidding Vendor is entitled to payment of both a Proposal Fee and a Break Fee in connection with the same procurement except by operation of Section 6.12.1.7.

6.13 Confidentiality of Vendor Submissions

IO must treat all Vendor submission information in a secure and confidential manner to ensure the integrity of the contracting process.

Submission information is presumed to be commercially confidential and must be divulged only to individuals authorized to participate in the procurement and evaluation process.

Before the award of a Contract, submission information shall not be disclosed to any individual outside the procurement or evaluation process except where required by applicable law. If such disclosure is required at law, IO must make best efforts to mitigate and limit the disclosure of any Vendor submission only to those individuals who are required recipients, including requiring the execution of additional confidentiality agreements, in order to prevent Vendor submission information from becoming generally public or known to the bidding market.

7. EVALUATION CRITERIA, PROCEDURES AND DEBRIEFING

7.1 Evaluation Criteria

7.1.1 Principles of Evaluation Criteria Development

7.1.1.1 Evaluation criteria should be developed in consideration with the method of procurement and the principles set out in this Policy.

7.1.1.2 Evaluation criteria must be clearly disclosed in the procurement documents.

7.1.1.3 Procurement documents should disclose a tie-breaking mechanism with respect to scored evaluation criteria where two or more bidding Vendors are tied following the conclusion of the evaluation process.

7.1.1.4 The guidelines for assessment of evaluation criteria shall be set out in the evaluation frameworks pursuant to Section 7.2.1. The degree to which the contents of an evaluation framework are disclosed, if at all, as part of the procurement documents, shall remain at IO's discretion.

7.1.1.5 Evaluation frameworks must not be developed in a way that create hidden evaluation criteria and IO shall not, within evaluation frameworks or scoring worksheets, cause disclosed evaluation criteria to be further divided into undisclosed scoring sub-categories.

7.1.2 Re-evaluation of Identical Criteria

In general, where a set of scored criteria have been evaluated within an RFQ or the first stage of a VOR Arrangement, it shall be presumed to be prohibited to evaluate the same scored criteria within the subsequent RFP, RFT or second stage to the VOR Arrangement. Repetition of scored criteria in a subsequent RFP, RFT or second stage to the VOR Arrangement must be approved by IO Procurement prior to the issuance of the RFP, RFT or second stage to the VOR Arrangement.

7.2 Evaluation Process

7.2.1 Evaluation Frameworks

7.2.1.1 All bids received must be evaluated in accordance with this Policy and an evaluation framework established and agreed to by the relevant decision-making parties before the closing of each procurement. The evaluation framework must, at a minimum, set out:

(i) the decision-making protocol of the evaluation process;

(ii) roles and responsibilities for each individual involved in evaluating Vendor submissions or assisting with the evaluation process; and

(iii) the methodology of scoring the evaluation criteria.

7.2.1.2 The evaluation framework for a procurement must be finalized by IO no later than the submission deadline of the applicable procurement process.

7.2.1.3 All submissions received by IO pursuant to:

(i) non-binding procurements (including all RFQs and non-binding RFPs) will be reviewed for substantive completeness; and

(ii) binding procurements (including binding RFPs and RFTs) will be reviewed for compliance with the requirements of the procurement documents.

7.2.1.4 Submissions that are either not substantially complete or materially non-compliant, as the case may be, shall be rejected and the Vendor consequently disqualified from the applicable procurement unless IO determines, in its sole discretion, that the bidding Vendor's failure to submit a substantially complete submission or its failure to materially comply with the legal requirements of the RFP or RFT should be waived, thereby allowing the bidding Vendor to continue in the evaluation process.

7.2.2 Legal Compliance Distinguished from Technical Conformance

7.2.2.1 In binding procurements that require bidding Vendors to respond to a selected set of output specifications or contract requirements that require the exercise of bidding Vendor's discretionary judgment within the evaluated submission (either in respect of materials, quality, approach, or methods), and in particular for all P3 RFPs, distinction is made between the legal standard of compliance and general technical compliance or technical conformance. The latter is a concept that generally speaks to the degree to which a Vendor has shown its understanding of how the output specifications or relevant contract requirements are to be met.

7.2.2.2 The legal standard of compliance or "substantial compliance" in P3 procurements describes the standard met by a bidding Vendor's submission that contains no failures to conform with the RFP requirements which would generally:

(i) materially impede the ability for the submission to be evaluated;

(ii) constitute an attempt to alter the terms of the RFP ("Contract A"); or

(iii) constitute an attempt to alter the terms of the Project Agreement ("Contract B")

each of which constitute a "material deviation" for the purposes of P3 procurements.

7.2.2.3 All P3 bidding Vendors are expected to submit proposals which are compliant with the requirements of the applicable P3 RFP. IO also expects that P3 bidding Vendors will submit design submissions which demonstrate an understanding of, and settled intention to meet, the requirements of the project specific output specifications in particular. P3 bidding Vendors are expected to understand that the RFP evaluation process is designed to reward designs that convincingly demonstrate the foregoing. A P3 submission that fails to meet the requirements of the project specific output specifications risks the following consequences:

(i) the failure to meet the requirements of the project specific output specifications is so severe that the non-conformity qualifies as a material deviation and renders the submission legally non-compliant (i.e. "Contract A" is not formed under Canadian procurement law) resulting in that submission's disqualification;

(ii) the failure to meet the requirements of the project specific output specifications is not so severe that it qualifies as a material deviation, but is sufficient to result in an evaluated score that does not pass an applicable minimum score threshold, thereby eliminating the submission from the evaluation process; or

(iii) the failure to meet the requirements of the project specific output specifications is not so severe that it qualifies as a material deviation or causes the submission to fail any minimum score threshold, but is merely reflected in a low score during the evaluation process.

7.2.3 Sequential Evaluation

7.2.3.1 In order to ensure that the evaluation of technical submissions is not influenced by knowledge of the bidding Vendors' proposed pricing, the technical and financial submissions must be evaluated sequentially.

7.2.3.2 For all P3 RFPs and all other binding procurement RFPs, sequential evaluation of technical and financial information shall be carried out by:

(i) requiring pricing information to be provided in a separate sealed envelope or electronic file; and

(ii) ensuring that the pricing envelope is not unsealed or opened until the results of the evaluation of technical content are finalized.

7.2.3.3 For all other procurements issued by IO in which a Vendor provides pricing for a Contract, sequential evaluation of technical and financial information shall be carried out by either:

(i) the method described in Section 7.2.3.2 above; or

(ii) where pricing information has not been requested to be provided in a separate sealed envelope at the time of submission:

(a) segregating the technical and financial information immediately after the time of bid receipt; and

(b) ensuring that the results of the financial or price evaluation are not made known to any technical evaluator until the results of the evaluation of technical content are finalized.

7.2.3.4 Sequential evaluation shall not be required in any procurement where a Vendor does not provide pricing information for a Contract which will be evaluated as part of the evaluation process.

7.2.3.5 Sequential evaluation shall not be required in any procurement where there is only one bidding Vendor who submits a proposal.

7.2.3.6 In accordance with Section 10.1, any proposed exception to the requirements set out in Section 7.2.3.1 and/or Section 7.2.3.2 requires written approval from the General Counsel and the Executive Team Member with accountability for Procurement and is subject to such terms and conditions as may be imposed by them.

7.2.4 Consensus

Evaluation decisions will be reached through consensus or as otherwise permitted pursuant to the evaluation framework for the procurement established in accordance with Section 7.2.1 of this Policy. Consensus scoring, for the purposes of this Policy, means that all evaluators (or members of an evaluation committee, if applicable) come to a mutual agreement on a common score for evaluated criteria and a common set of notes for each bid submitted by a bidding Vendor. The record of consensus must be recorded in writing or in an electronic record, and once recorded, all individual scores and comments recorded by evaluators in the evaluation process shall be null and void for the purposes of determining the results of the evaluation.

7.2.5 Subject Matter Experts

7.2.5.1 Subject matter experts are those participants to an evaluation process who have particular expertise with respect to certain of the contents and subject matter of the submissions and may be called upon to assist any other evaluation participant, including the evaluation committee and evaluation teams in discharging their respective duties.

7.2.5.2 Subject matter experts shall neither score a submission nor include in any materials given to any other evaluator or participant to the evaluation process any presumed rating or score for any part of the submissions or criteria (including whether a submission passes any applicable minimum score threshold). Subject matter experts may, however, provide reports to support evaluators in their scoring of submissions or to identify bidding Vendor failures to conform to project specific output specifications that should be discussed during the negotiations period.

7.2.5.3 No subject matter expert shall propose to presume the legal compliance or legal non-compliance of a submission and no subject matter expert shall fetter or otherwise derogate from IO's sole and absolute discretion to determine the legal compliance of a submission in accordance with the terms of a binding "Contract A" RFP.

7.2.6 Requests for Clarification During Evaluation

7.2.6.1 If, during the evaluation of a Vendor's submission, IO encounters a matter that requires clarification from the Vendor and after applying reasonable judgment and assumptions IO is unable to continue the evaluation process without seeking such clarification from the Vendor, then IO may request a Vendor to provide clarification on its submission, provided that:

(i) the request for clarification issued by IO is issued in writing;

(ii) the request relates to an existing part or aspect of the Vendor's submission; and

(iii) the request is not worded in a manner that is intended to obtain new information not already part of a submission, correct defects in a submission not permitted at law, or otherwise invites a substantive revision or modification of the submission.

7.2.6.2 IO shall not consider in the evaluation process any response to a clarification request that constitutes bid repair.

7.2.6.3 IO has no obligation to seek clarification from a Vendor where IO has determined that, in its discretion, the evaluation process is able to continue with respect to a Vendor's submission.

7.2.7 Verification of Factual Statements and/or Omissions During Evaluation

7.2.7.1 IO shall have at all times the right to:

(i) verify the accuracy of statements made within Vendor submissions; and

(ii) make an assessment of the materiality of information that has been omitted from a Vendor's submission,

for the purposes of determining whether a Vendor has made a false representation or misleading statement within its bid or submission.

7.2.7.2 Verification of information may occur either through reference to information that is in the public domain or through consultation of individuals whom IO has identified as being authoritative sources with regard to the statement or omission in question.

7.2.7.3 If an inaccurate statement is made, or a fact is omitted by, a Vendor in its submission and such factual statement or omission has been determined by IO, through a factual verification process, to be material in nature and would materially adversely affect IO's evaluation of a Vendor's submission, then IO may, without limiting the rights of IO set forth in Section 5.6.1 of this Policy:

(i) disqualify the Vendor from the procurement process or require the removal of an individual or team member to whom the statement or omission refers, if applicable; or

(ii) consider in the evaluation process and scoring of evaluation criteria either the corrected factual statement or the disclosure of factual information where previously omitted, as applicable.

7.2.8 Interviews

IO may elect to conduct interviews with some or all bidding Vendors to a procurement process for the purpose of further understanding a Vendor's written Proposal, as a independently scored component of a Vendor's Proposal (including, but not limited to, observations of a Vendor's collaborative behaviour) and/or to meet members of the Vendor proposed to provide the goods and/or services being procured.

Procurement documents should clearly state whether interviews will be conducted and if so, identify their purpose and orientation in the procurement process, associated evaluation criteria and the scoring methodology to be applied.

7.2.9 Evaluation Committees

In some procurements the procurement process, evaluation requirements, commercial transaction structure, or contractual requirements may be sufficiently complex to warrant an additional level of project-specific evaluation oversight in the form of an evaluation committee. The responsibility of the evaluation committee is to ensure that the evaluation process is conducted in accordance with the evaluation framework established in accordance with Section 7.2.1 of this Policy in all material respects, including reviewing and approving the evaluation framework, overseeing the activities of all participants associated with the evaluation process, and ensuring that all required due diligence necessary to carry out the evaluation process has been conducted.

In order to maintain integrity and accountability in the procurement process, members of an evaluation committee shall only be comprised of individuals who are employees of IO and/or employees of the other public body on behalf of whom IO is procuring on behalf or acting as a co-Sponsor or agent. To the extent that any individual is not an employee of IO or such public body or co-Sponsor is put forward to serve as a member of an evaluation committee, written approval must first be obtained by the Executive Team Member with accountability for Procurement or delegate.

7.2.10 Escalation by the Evaluation Committee

From time to time, it may be necessary for a matter pertaining or relevant to an evaluation process to be escalated for determination above the level of authority granted to an evaluation committee. No member of an evaluation committee may make disclosure regarding any contents of the evaluation process except in accordance with this Policy and the applicable project specific evaluation framework. Disclosure of confidential information obtained during and relating to the evaluation process may be made outside of the evaluation process in the following circumstances:

7.2.10.1 where any occurrence of wrongdoing or other actions or omissions, which if not disclosed, could compromise the integrity and fairness of the evaluation process;

7.2.10.2 where information obtained in the course of the evaluation process could represent a material enterprise-wide risk to IO outside of the context of the procurement;

7.2.10.3 in the event that the evaluation committee cannot achieve consensus and is at an impasse and requires the input or guidance of the higher authority within IO in order to resolve such impasse; or

7.2.10.4 in the event that the evaluation committee wishes to waive a prescribed minimum scoring threshold requirement contained in the RFP.

7.2.11 Evaluation Records

All records of evaluation must be kept in accordance with applicable law and recordkeeping policies. The records of evaluation include, but are not limited to:

7.2.11.1 consensus notes, scores and all other consensus records, including presentations prepared for the purposes of obtaining approval of evaluation results;

7.2.11.2 presentations materials prepared by Vendors and notes taken by evaluators where an interview process is included in the evaluation process;

7.2.11.3 individual scoring notes and individual evaluator worksheets, which, notwithstanding the consensus based decision making process, are an integral part of the evaluation process and constitute a portion of the complete record regarding the procurement and part of the written record of all communications substantially affecting the procurement within the meaning of Trade Commitments; and

7.2.11.4 all decisions of any project-specific evaluation committee (if applicable) that oversees the evaluation process, as convened in accordance with the evaluation framework for the procurement.

7.3 Notification

7.3.1 Notification of Unsuccessful Bidding Vendors

7.3.1.1 Notification of unsuccessful bidding Vendors may be made either (i) directly through communication to each unsuccessful Vendor or (ii) indirectly by posting of the identification of the successful Vendor on the Electronic Tendering System used to execute the procurement process.

7.3.1.2 Notification of unsuccessful bidding Vendors may be made as early as immediately after the formalization of final evaluation results, but must be made no later than as soon as reasonably possible after the conclusion of the procurement process (i.e. immediately after the awarded Contract is executed).

7.3.2 Notification of Rejected Submission or Disqualification

7.3.2.1 Notification to a Vendor whose submission is rejected or disqualified should be made directly to Vendor within a reasonable time after the decision to reject or disqualify has been made by IO and must cite the reasons for rejection or disqualification.

7.4 Debriefing

The process of debriefing ensures that the procurement process adheres to the principles of this Policy. The purpose of a debriefing session is to give IO an opportunity to provide feedback to unsuccessful Vendors on the strengths and areas for improvement of their submissions.

7.4.1 Timing of Debriefing

Debriefing sessions may be held after (i) a Contract is awarded to the successful Vendor in an RFP process or (ii) the identification of prequalified parties in an RFQ process.

7.4.2 Debriefing Procedures

Debriefings will be held or delivered at IO's discretion and the procurement documents should clearly state whether debriefings will be offered and, if so, the timeline within which a Vendor must request a debriefing in order to be eligible to receive such debriefing. The method of debriefing will be determined and delivered at IO's discretion.

8. CONTRACT DEVELOPMENT AND MANAGEMENT

8.1 Contract Development

The procurement of goods and services, and the resulting Contracts, must be professionally, effectively and responsibly managed. Following the procurement process, the responsibilities of both the IO and the successful Vendor must be formally defined in a signed written Contract. In developing and executing Contracts, IO must ensure, at a minimum, the following:

(i) the Contract is finalized using the form of Contract that was released with the procurement document;

(ii) legal advice has been sought on the development of all terms and conditions to Contract;

(iii) provisions related to pricing and term of the Contract and any options to vary the pricing or extend the Contract (if available or applicable) are clearly set out in the form of Contract released with the procurement document; and

(iv) the Contract includes the ongoing requirement of a Vendor to disclose perceived, potential or actual Conflicts of Interest.

8.2 Contract Management

In managing IO Contracts, particular attention should be paid to ensure that:

(i) payments are in accordance with the provisions of the Contract;

(ii) payments for applicable expenses are in accordance with the Management Board of Cabinet *Travel, Meal and Hospitality Expenses Directive*;

(iii) overpayments are recovered;

(iv) assignments are properly documented;

(v) performance is managed and documented, and any performance issues are addressed; and

(vi) procurement documents, including the Contract, identify the framework under which price increases will be permitted including, but not limited to, the frequency of price increases, allowable amount of increase, and any benchmarks (including inflation indices) that will be used to confirm the price increase.

8.3 Vendor Performance

IO may, consistent with the principles set out in this Policy, including consideration of the public interest, value for money and responsible management, take into consideration a Vendor's past performance in the evaluation of a procurement process provided that IO has demonstrated due regard to the following factors:

(i) the objectivity of the methodology for rating the past performance of a Vendor and the relationship that such methodology have for the scored evaluation criteria in the relevant procurement;

(ii) transparency and disclosure of a pre-established Vendor performance monitoring system or program that is fair, well documented, unbiased, free of Conflict of Interest, and specifically identifies (with supporting details and, possibly, a scoring system) the failures of performance of a Vendor;

(iii) the ability of the performance monitoring system to distinguish or treat Vendors who have never contracted with IO;

(iv) the situations in which the Vendor performance monitoring system or program applies to an individual, as opposed to a firm or team; and

(v) the general fairness and due process afforded to Vendors in the administration of the Vendor performance monitoring system or program.

The presence of a vendor performance program does not prevent or preclude IO from including evaluation criteria in a procurement that takes into consideration past performance or other reference checking based on past experience, provided that such criteria satisfy the requirements of evaluation criteria generally set out in Section 7.1.

9. OTHER REQUIREMENTS

9.1 Applicable Law

IO will comply with all legislative and regulatory provisions applicable to procurements undertaken by IO.

9.2 Trade Commitments

To the extent IO is bound by, and not exempted from, applicable Trade Commitments, IO shall adhere to the requirements of applicable Trade Commitments in connection with the procurement of goods and services.

To the extent that IO is not bound by, or is otherwise exempted from, applicable Trade Commitments, but IO is undertaking a procurement on behalf of, as co-Sponsor with, or as agent for, another public body that is bound by (and not exempted from) the same applicable Trade Commitments, IO shall, in undertaking the procurement, adhere to the applicable requirements of the applicable Trade Commitments to which the public body is bound.

9.3 Contractor Security Screening

IO shall ensure that, where applicable in accordance with the requirements set forth by the Ontario Ministry of Government and Consumer Services contractor security screening policy, and subject to any security risk assessments conducted by IO in accordance with IO's security clearance policies, if the security clearance of a Vendor (and the Vendor's team members) is required in connection with the scope of work to be performed under a Contract with such Vendor, the requirement to obtain security clearance (including identification of the level and individuals from whom it is required, if available) is clearly disclosed in the procurement documents.

10. POLICY COMPLIANCE

10.1 Reporting Non-Compliance with this Policy

There will be no exceptions to the requirements of this Policy in the execution of day-to-day business without written approval from the General Counsel and the Executive Team Member with accountability for Procurement.

Should instances of non-compliance relating to this Policy arise without the written approval from General Counsel and the Executive Team Member with accountability for Procurement, employees, agents and sub-contractors of IO must report such incidents of non-compliance to the General Counsel and the Executive Team Member with accountability for Procurement.

Non-compliance issues relating to this Policy of a serious nature will be immediately reported to the President and Chief Executive Officer. A legal opinion should be obtained regarding whether the specific facts are “non-compliance issues of a serious nature”.

10.2 Disputing a Procurement Process

Where a Vendor elects to challenge a process within an existing procurement, the Vendor shall send a written letter outlining their complaint to procurement@infrastructureontario.ca, Attention: General Counsel, which shall include the following:

(i) name and address of the Vendor;

(ii) solicitation and/or procurement number and name of procurement process; and

(iii) detailed and factual statement of the grounds of the complaint and supporting documentation.

11. ROLES AND RESPONSIBILITIES

With respect to this Policy, the two separate and distinct roles include that of:

(i) the **IO business unit and/or client**, who is responsible for making a business case and obtaining the necessary approval to spend, commission the procurement services, and give the final approval to the recommended method of procurement; and

(ii) the **procurement authority**, under the oversight of both the General Counsel and the Executive Team Member with accountability for Procurement, who are responsible for ensuring that the procurement process fully complies with this Policy.

12. POLICY AMENDMENT

This Policy may only be amended in accordance with IO's Delegations of Authority.

13. REFERENCES

- Directive on Advertising, Public and Media Relations, and Creative Communications Services
- IO Code of Conduct
- IO Conflict of Interest and Confidentiality Policy
- IO Delegations of Authority
- IO Disclosure of Wrongdoing Policy
- OPS Procurement Directive
- Travel, Meal and Hospitality Expenses Directive

14. EFFECTIVE DATE

September 28, 2023

15. EVALUATION

The effectiveness and relevance of the Policy will be assessed annually after the effective date, or as may otherwise be required.

16. AMENDMENT DATE

- December 2, 2012
- January 17, 2013
- June 30, 2016
- August 15, 2017
- June 1, 2018
- August 1, 2019
- April 6, 2021
- September 28, 2023

Schedule 1 – PROCUREMENT METHODS TABLES

TABLE A – CONSULTING SERVICES (NON-VOR)

Procurement Value	Minimum Required Procurement Method
$0 – $138,999	Invitational Competitive (minimum three (3) Vendors must be invited)
$139,000 or greater	Open Competitive

TABLE B1 – GOODS and NON-CONSULTING SERVICES (NON-VOR)

Procurement Value	Minimum Required Procurement Method
$0 – $34,699	Non-Competitive (Single Source permitted)
$34,700 – $138,999	Invitational Competitive (minimum three (3) Vendors must be invited)
$139,000 or greater	Open Competitive

TABLE B2 – INFORMATION TECHNOLOGY GOODS and NON-CONSULTING SERVICES (NON-VOR)

Procurement Value	Minimum Required Procurement Method
$0 – $34,699	Non-Competitive (Single Source permitted)
$34,700 – $249,999	Invitational Competitive (minimum three (3) Vendors must be invited)
$250,000 or greater	Open Competitive

TABLE C – VENDOR OF RECORD SECOND STAGE REQUESTS

Procurement Value	Minimum Required Number of Vendors
$0 – $34,699	IO must invite at least one (1) Vendor
$34,700 – $249,999	IO must invite at least three (3) Vendors
$250,000 – $749,999	IO must invite at least five (5) Vendors
$750,000 or greater	IO must invite at least eight (8) Vendors

QUALIFICATIONS AND CONDITIONS TO PROCUREMENT METHODS TABLES

1. Non-Competitive procurements must be conducted pursuant to Section 4.4.3 of this Policy.

2. Where there are fewer prequalified Vendors on a VOR list under a VOR Arrangement than the requirements noted in Table C above, then all qualified and listed Vendors must be invited. A VOR Arrangement Vendor list may be, for the purposes of this Policy, a predetermined and disclosed sub-division of a larger list. For example, where a Province-wide VOR Arrangement has prequalified Vendors within regional sub-divisions, invitation of Vendors in accordance with the regional sub-divided list is sufficient for compliance with Table C above.
3. Notwithstanding that IO may be permitted to invite only one Vendor under a VOR Arrangement where the Procurement Value is less than $34,699, the IO Procurement department may, at its discretion, require added evidence of value for money being obtained in accordance with Section 4.3.3.1(i) of this Policy.
4. The requirement of proceeding with an Open Competitive procurement is subject to Section 4.4.5 of this Policy, which permits the IO Procurement department to provide approval for an Invitational Competitive procurement to be used in limited circumstances.

Schedule 2 – NON-COMPETITIVE PROCUREMENT BUSINESS CASE REQUIREMENTS AND ALLOWABLE EXCEPTIONS

A. BUSINESS CASE REQUIREMENTS

Pursuant to Section 4.4.3.1(i) of this Policy, any non-competitive procurement (either a Single Source or a Sole Source) that requires written rationale in the form of a business case must include the following:

(i) a description of the business requirements;

(ii) a description of the proposed non-competitive procurement process including the estimated Procurement Value and the estimated agreement start and end dates;

(iii) the allowable exception identified in Part B below, or where no allowable exception exists, it must be noted in the business case that no enumerated allowable exception exists;

(iv) the rationale for pursuing a non-competitive procurement process, including: the circumstances that prevent the use of a competitive procurement process, further details to support the allowable exception identified, and, if applicable, documentary evidence to support an allowable exception where only one Vendor is able to meet the procurement requirements (i.e. Sole Source);

(v) identifying if the proposed Vendor has previously been awarded a contract with IO within the past five years for the same or closely related requirements, and the type of procurement process(es) used;

(vi) in respect of a Single Source, a description of the potential pool of Vendors that might have responded to a competitive procurement, where appropriate, and an assessment of all potential Vendor complaints and how IO would respond and manage these complaints;

(vii) a description of how IO will ensure it will comply with the principles of this Policy, particularly value for money;

(viii) any alternatives considered;

(ix) the impact on the business requirements if the non-competitive procurement is not approved;

(x) if appropriate, a description of how IO will meet these business requirements, in the future, using a competitive procurement process; and

(xi) any other matters considered relevant.

B. ALLOWABLE EXCEPTIONS TO COMPETITIVE PROCUREMENT

Pursuant to Section 4.4.3 of this Policy any non-competitive procurement (either a Single Source or a Sole Source) that requires written rationale in the form of a business case must identify any allowable exception from using a competitive procurement method.

B.1 Exceptions Applicable to Goods, Consulting Services and Non-Consulting Services

Non-competitive procurement of goods, Consulting Services and Non-Consulting Services are allowed, subject to appropriate procurement approvals, in the following circumstances:

(i) Where an unforeseen situation of urgency exists and the goods, Consulting Services, Non-Consulting Services or construction cannot be obtained by means of a competitive procurement process. An unforeseen situation of urgency does not occur where IO has failed to allow sufficient time to conduct a competitive procurement process.

(ii) Where goods, Consulting or Non-Consulting Services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through a competitive procurement process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest.

(iii) Where a competitive process could interfere with the government's ability to maintain security or order or to protect human, animal or plant life or health.

(iv) Where there is an absence of any bids in response to a competitive procurement process that has been conducted in compliance with this Policy.

(v) Where pursuant to a competitive procurement process conducted in accordance with this Policy, it is determined there has been collusion involving any Vendor(s) to that prior procurement process, provided that:

  (a) the procurement is with a Vendor other than the colluding Vendor(s); and

  (b) the procurement is substantially similar in scope of Goods, Consulting Services or Non-Consulting Services.

(vi) Where the procurement is in support of First Nations, Inuit and Métis people.

(vii) Where the procurement is with a public body, including a federal, provincial or municipal body, ministry, agency, board, corporation or authority.

(viii) Where the exception and/or authorization to procure Goods, Consulting Services or Non-Consulting Services in a non-competitive manner is directed or a necessary consequence of the direction given to IO.

(ix) Where the procurement is a Sole Source (but not a Single Source), specifically:

A. as a result of a requirement to ensure compatibility with existing products; provided that, the reason for the requirement of compatibility is not as result of one or more previous non-competitive procurements;

B. as a result of a requirement to recognize exclusive rights, such as exclusive licenses, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representatives; or

C. for the procurement of goods and services the supply of which is controlled by a Vendor that has a statutory monopoly.

(x) Where there is a need for additional deliveries by the original Vendor of goods or services that were not included in the initial procurement, if the change of Vendor for such additional goods or services:

(a) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and

(b) would cause significant inconvenience or substantial duplication of costs.

(xi) Where the procurement is a result of the termination of, or an ongoing dispute or legal proceeding under, an existing contract for goods, Consulting Services or Non-Consulting Services, and the procurement has been determined, upon the receipt of legal advice, to be necessary to mitigate damages suffered as a result of the termination of, or lack of resolution of dispute under, the existing contract; provided that the procurement is substantially similar in the type of scope of goods, Consulting Services or Non-Consulting Services provided under the existing contract.

B.2 Additional Exceptions Applicable to Only to Goods and Non-Consulting Services

Non-competitive procurement of goods, and Non-Consulting Services (but not Consulting Services) are allowed, subject to appropriate procurement approvals, in the following additional circumstances:

(i) Where an award is made under a co-operation agreement that is financed, in whole or in part, by an international organization only to the extent that the agreement includes different rules for awarding Contracts.

(ii) Where construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt compound and pre-mixed concrete for use in the construction or repair of roads.

(iii) Where the procurement is a Sole Source (but not a Single Source), specifically:

A. for the purchase of goods on a commodity market;

B. for work to be performed on or about a leased building or portions thereof that may be performed only by the lessor;

C. for work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect to the property or original work;

D. for a Contract to be awarded to the winner of a design contest;

E. for the procurement of a prototype or a first good/service to be developed in the course of research, experiment, study, or original development but not for any subsequent purchases;

F. for the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases;

G. for the procurement of original works of art;

H. for the procurement of subscriptions to newspapers, magazines or other periodicals; or

I. for the purchase of real property.

Schedule 3 – DEFINITIONS AND PROCUREMENT FORMATS

A. GENERAL DEFINITIONS

"**P3**" means a public-private partnership, and "**P3 projects**" and "**P3 procurements**" refer to the infrastructure projects procured and delivered through the Infrastructure Ontario's major project capital delivery program. A P3 project includes, but is not limited to, a major infrastructure project that utilizes arm's length project finance (previously known as Ontario's alternative financing and procurement model) and may also include the procurement of a major infrastructure project pursuant to a procurement and contractual models as determined by Infrastructure Ontario from time to time.

"**Break Fee**" means, if offered, an amount payable to each qualifying bidding Vendor to a competitive procurement process by IO and its co-Sponsor, if applicable, in the event that competitive procurement process is cancelled by IO, subject to and in accordance with the terms and conditions of the applicable procurement documents, all as consideration for:

(i) participation in a competitive procurement process;

(ii) contribution to the development (including design, if applicable) of the applicable procurement documents and Contract, and

(iii) strategic, technical and/or professional advice in respect of the applicable procurement documents and Contract.

"**Conferred Value**" means any monetary or non-monetary benefit received by Infrastructure Ontario, including, but is not limited to, examples such as the exchange of goods and/or services in return for other goods and/or services, revenue generating opportunities and partnership agreements with non-profit organizations, and other arrangements that provide value to Infrastructure Ontario.

"**Conflict of Interest**" includes any situation or circumstance where a Vendor (or any team member bidding together with the Vendor) or any of the employees of the Vendor and/or team member engaged in the development or oversight of development of the Vendor's proposal (including for such employees in their personal capacities):

(i) has other commitments, relationships, financial interests or involvement in any litigation or proceeding that:

  (a) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of Infrastructure Ontario's independent judgment; or

  (b) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Contract to be procured;

(ii) has contractual or other obligations to Infrastructure Ontario (or its procuring partners and/or clients) that could or could be seen to have been compromised or impaired as a result of its participation in the procurement process or the project/assignment; or

(iii) has knowledge of confidential information (other than confidential information disclosed by Infrastructure Ontario in the normal course of the procurement process) of strategic and/or material relevance to the procurement process or the project/assignment that is not available to other Vendors and that could or could be seen to give the Vendor an unfair competitive advantage.

"**Consulting Service**" means the provision of expertise or strategic advice b for the purposes of assisting IO in decision-making relevant to IO's business. Examples of Consulting services are:

(i) management consulting (e.g., helping management improve their performance, primarily through the analysis of existing problems and development of plans for improvement. This includes organizational change management assistance and strategy development);

(ii) information technology consulting (e.g., advisory services that assess different technology strategies, including aligning their technology strategy with their business or process strategy). For clarity, this excludes the provision of information technology system implementation services where such services are purchased in conjunction with the purchase of information technology systems and software provided by the same Vendor.

(iii) technical consulting (e.g., activities related to actuarial science, appraisal, community planning, health sciences, interior design, realty, social sciences). For clarity, this excludes technical consulting related to Project Services as defined in IO's Delegation of Authority;

(iv) research and development (e.g., investigative study for the purpose of increasing the available store of knowledge and/or information on a particular subject);

(v) policy consulting (e.g., advisory services to provide policy options, analysis and evaluation); and

(vi) communication consulting (e.g., the provision of strategy and advice in conveying information through various channels and media).

Examples of items that are not Consulting Services include:

(i) Consulting services do not include services in which the physical component of an activity would predominate, for example, services for the operation and maintenance of a facility or plant, water-testing services, exploratory drilling services, surveying, temporary help services, training/education instructors, employee placement, auditing services, and aerial photography.

(ii) Consulting services do not include any licensed professional services provided by medical doctors, dentists, nurses, pharmacists, veterinarians, engineers, land surveyors, architects, accountants, lawyers, and notaries in their regulated capacities

"**Contract**" means the formal written legal contract for goods or services that is entered into with a third party, at the conclusion of a procurement process or otherwise, including any schedules and extracts from a bid or proposal that are incorporated therein, as applicable and any amendments thereto executed with the appropriate level of procurement approval authority.

"**Debarment Period**" has the meaning given to it in Section 5.8.3.

"**Electronic Tendering System**" means a computer-based system (such as MERX, Ontario Tenders Portal, or Biddingo) that provides Vendors with access to information related to Open Competitive procurements.

"**Evaluation Framework**" means the document developed by IO to describe and outline the evaluation process that will be used to select the prequalified parties for an RFQ or the preferred proponent for an RFP.

"**Executive Team Member**" comprises executive positions directly reporting to President and Chief Executive Officer, and excludes non-executive staff.

"**Head of Debarment**" has the meaning given to it in Section 5.8.

"**Ineligible Person**" has the meaning given to it in Section 5.2.7.1.

"**Invitational RFP**", "**Invitational Tenders**" or "**Invitational Competitive**" means a procurement method of inviting at least three Vendors to respond to a request for the supply of goods or services, including Consulting Services, based on stated delivery requirements, performance specifications, terms and conditions.

"**Non-Consulting Service**" means the provision of services other than a Consulting Service.

"**Notice of Debarment**" has the meaning given to it in Section 5.8.4.1.

"**Open Competitive**" means a procurement method that is accessible to prospective Vendors through the use of a publicly available system, including an Electronic Tendering System, and/or publishing the notices in one or more newspapers that are easily accessible to the market.

"**Owner Conflicted Party**" has the meaning given to it in Section 5.2.2.4.

"**Policy**" means this Infrastructure Ontario Procurement Policy.

"**Procurement Value**" means all costs and Conferred Value associated with a procured Contract, including all actual and quantifiable contingent payments payable by IO associated with the goods and services procured (e.g. cash allowances) pursuant to the Contract, excluding sales taxes. Within Infrastructure Ontario, with the exception of P3 project procurements, the Procurement Value is estimated and set out in the requisition request form, commonly known as the Procurement Initiation Form.

"**Procurement Value Increase**" means the increase in costs and Conferred Value in excess of the original Procurement Value incurred since the date of the original procurement approval, excluding sales taxes. A Procurement Value Increase may be caused, without limitation, by price increases, volume uptake, extension of Contract expiry dates, or other unforeseen circumstances. Within Infrastructure Ontario, with the exception of P3 Project Agreements, a Procurement Value Increase is requested pursuant to a Change Request Form.

"Prohibited Act" has the meaning given in the relevant procurement documents, or in the absence of a definition within the procurement documents, the definition given in terms of this Policy is the following:

(i) offering, giving or agreeing to give to Infrastructure Ontario or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:

  (a) for doing or not doing, or for having done or not having done, any act in relation to a Vendor becoming a prequalified party; or

  (b) for showing or not showing favor or disfavor to any person in relation to a Vendor's procurement submission;

(ii) provided that this definition shall not apply to a Vendor, team member, or key individual (or anyone employed by or acting on their behalf) providing consideration to Infrastructure Ontario or any public body in the ordinary course;

(iii) entering into any other agreement with Infrastructure Ontario or any public body in connection with the project if a commission or a fee has been paid or has been agreed to be paid by a Vendor or any of its team members, key individuals or any of their affiliates, or on its behalf or to its knowledge, to Infrastructure Ontario or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to Infrastructure Ontario, provided that this definition shall not apply to a fee or commission paid by the Vendor or any of its team members, key individuals or any of their affiliates (or anyone employed by or acting on their behalf) to Infrastructure Ontario or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course without contravening the intent of this section;

(iv) breaching or committing any offence under applicable law in respect of corrupt or fraudulent acts in relation to a procurement process; or

(v) defrauding or attempting to defraud or conspiring to defraud Infrastructure Ontario or any other public body.

"**Project Agreement**" means the Contract specifically applying to a P3 procurement.

"**Proposal Fee**" means, if offered, an amount payable to each qualifying, unsuccessful bidding Vendor to a completed competitive procurement process by IO and its co-Sponsor, if applicable, subject to and in accordance with the terms and conditions of the applicable procurement documents, all as consideration for:

(i) participation in a competitive procurement process;

(ii) contribution to the development (including design, if applicable) of the applicable procurement documents and Contract;

(iii) strategic, technical and/or professional advice in respect of the applicable procurement documents and Contract, and

(iv) where applicable, receipt of intellectual property rights in or to submitted plans, drawings, designs or other materials within the submitted proposal of the bidding Vendor.

"**Request for Expression of Interest**" or "**RFEI**" has the meaning set out in Section B.1.1 of this Schedule 3.

"**Request for Proposals**" or "**RFP**" has the meaning set out in Section B.3.1 of this Schedule 3.

"**Request for Qualifications**" or "**RFQ**" has the meaning set out in Section B.2 of this Schedule 3.

"**Request for Standing Offer**" or "**RFSO**" has the meaning set out in Section B.3.5 of this Schedule 3.

"**Request for Tender**" or "**RFT**" has the meaning set out in Section B.3.2 of this Schedule 33.

"**Restricted Person**" has the meaning given in the relevant procurement documents, or in the absence of a definition within the procurement documents, the definition given in terms of this Policy is the following:

any person who, or any member of a group of persons acting together, any one of which:

(i) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;

(ii) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;

(iii) in the case of an individual, (i) he or she has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such individual is a "Restricted Person" is made hereunder, whether or not such person received a custodial sentence; or (ii) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a "Restricted Person" is made hereunder;

(iv) in the case of a person other than an individual, (i) it or any of the members of its (or its general partner's) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a "Restricted Person" is made hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or its general partner's) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a "Restricted Person" is made hereunder;

(v) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;

(vi) is subject to a material claim of Infrastructure Ontario or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a "Restricted Person" is made hereunder, and which, in respect of any such pending claim, if it were to be successful would, in Infrastructure Ontario's view, in either case, be reasonably likely materially to affect the ability of the Vendor to perform its obligations under an agreement, if it were to become the successful Vendor in a procurement process; or

(vii) has a material interest in the production of tobacco products.

"**Single Source**" means the use of a non-competitive procurement method to acquire goods or services from a specific Vendor even though there may be more than one Vendor capable of delivering the same goods or services.

"**Sole Source**" means the use of a non-competitive procurement method to acquire goods or services from a specific Vendor because there are no other Vendors available or able to provide the required goods or services.

"**Standing Offer Agreement**" or "**SOA**" has the meaning set out in Section B.3.5 of this Schedule 3.

"**Trade Commitments**" means any applicable trade agreements to which Ontario is a signatory or pursuant to which Ontario has accepted obligations.

"**Vendor**" means a third party or group of third parties, which may include any company, partnership, joint venture or individual, in their own capacity or acting as a consortium, that can provide goods, Non-Consulting Services, and/or Consulting Services (and for clarity, without regard to whether or not a direct or indirect contracting relationship exists) and includes but is not limited to contractors, subcontractors, service providers, suppliers and consultants. Any Vendor that is participating in a procurement process with the intention or potential to act as a potential provider of goods or services may also generally be referred to as a "**bidder**" or a "**bidding Vendor**".

"**Vendor Debarment Dispute**" has the meaning given to it in Section 5.8.4.2.

"**VOR**" or "**VOR Arrangement**" has the meaning set out in Section B.3.4 of this Schedule 3.

B. PROCUREMENT METHODS DEFINITIONS

B.1 Requests for Expressions of Interest and Requests for Information

B.1.1 Request for Expressions of Interest

A Request for Expression of Interest ("**RFEI**" or "**EOI**"), which may also be sometimes referred to as a "request for information" is used to assess the ability of the current market to fulfill the potential need for goods or services, identify a list of potential Vendors that may be interested in participating in a future procurement. An RFEI may also allow potential Vendors to gain a better understanding of the potential scope of work in preparation for a future procurement, assemble consortia or partnerships as necessary to better respond to future requirements of a potential procurement, or provide valuable feedback to IO about the feasibility of the requirements associated with a potential procurement.

Depending on the formality of interaction associated with an RFEI or EOI, the process may be less formally described and conducted as a "**market sounding**".

The term "request for information" is often equated to an RFEI or EOI, but is more commonly used at IO, and particularly within P3 projects, to mean the form of communication request made by bidding Vendors during a procurement process to seek information and/or ask questions of IO in respect of an ongoing procurement.

B.2 Requests for Qualifications

A Request for Qualifications ("**RFQ**") is used prior to the issuance of an RFP to request Vendors to submit qualifications demonstrating their capability to provide the good or service that will be the subject of the RFP. Vendors that meet the stipulated requirements shall, subject to any specific limitations set out in the RFQ regarding the maximum number of prequalified Vendors, be added to a list of prequalified Vendors for subsequent RFPs.

B.3 Requests for Proposals, Tenders, VOR Arrangements and Standing Offer Arrangements

B.3.1 Request for Proposals

A Request for Proposals ("**RFP**") broadly describes the competitive procurement process for goods or services where such goods or services are known, but the means and methodology of how such goods and/or services will be provided are unknown. Vendor proposals for the means and methods of such goods and/or services are evaluated based on pre-determined criteria, which may be both financial and non-financial in nature.

B.3.2 Request for Tenders

A Request for Tender ("**RFT**") broadly describes a type of RFP where both the type of goods and services and the general means for delivery of such goods and services are known. Vendor proposals are based solely on pricing after demonstrating that all mandatory qualifications to deliver the goods and services have been met.

B.3.3 Request for Quotation

A Request for Quotation broadly describes a type of RFP where (i) both the type of goods and services and the general means for delivery of such goods and services are known and (ii) there is no need to assess qualifications of potential Vendors as all potential Vendors are known to be capable of delivering the good or service. Responses to a Request for Quotation are based solely on price.

B.3.4 Vendor of Record Arrangements

A Vendor of Record Arrangement ("**VOR**" or "**VOR Arrangement**") broadly describes a type of RFP that combines both an Open Competitive prequalification step and an Invitational Competitive second stage request step into one procurement process.

In the first stage, Vendors for specific services are added to a list of prequalified Vendors based on an evaluation of capabilities, experience, pricing and rates, or other information relevant for contracting purposes. Vendors are permitted to apply for VOR Arrangements without pricing in accordance with the applicable Trade Commitments. Prequalified Vendors are required to execute master agreements that may include terms describing: the manner in which Vendors will be invited to participate in the second stage; pricing upset limits for individual mandates, and any refresh mechanisms used to update the list of qualified Vendors.

In the second stage, Vendors are invited to submit proposals to specific scopes of work for goods or services. The complexity of a second stage process within a VOR Arrangement may vary, and depending on the circumstances, can resemble that of a standalone RFP, RFT or Request for Quotation. In the circumstance that only one Vendor is required to be invited to submit a response to a second stage request (see Table C of Schedule 1 to this Policy), such procurement is still, for clarity, an Invitational Competitive procurement and is not a non-competitive procurement subject to the requirements of Section 4.4.3 of this Policy.

For the purpose of this Policy, a VOR Arrangement established and maintained by the Advertising Review Board is considered to be a VOR Arrangement which IO is authorized to utilize.

B.3.5 Request for Standing Offer Arrangements

A Request for Standing Offer ("**RFSO**") Arrangement describes a type of RFP that competitively procures Vendors in a single stage procurement based on an evaluation of capabilities, experience, pricing and rates, or other information relevant for contracting purposes. A selected number of successfully qualified Vendors are selected under the RFSO evaluation to enter into a Standing Offer Agreement ("**SOA**") which functions similar to a master service agreement under a VOR Arrangement, but has the added and distinct feature of including binding and irrevocable pricing for each Vendor with respect to defined scopes of work. Vendors who have executed an SOA are committed to deliver pricing on the terms as submitted and are eligible to be engaged upon a "call-up", whereby IO accepts the terms of the pricing.

The RFSO is a more efficient alternative to a VOR Arrangement when the scope of work which would typically be issued under a second stage process is known and repeatable for the program of services being procured. For the purposes of obtaining procurement approvals and optimizing the use of the RFSO, it is generally expected that full purchasing approvals for the duration of the term of the SOAs are obtained at the time of issuance of the RFSO, and not on a call-up by call-up basis.

Schedule 4– HEADS OF DEBARMENT

A. HEADS OF DEBARMENT

1. IO becomes aware that a Vendor has:

   (i) failed to fully and accurately disclose a Conflict of Interest (including as part of any Conflict of Interest disclosure required of evaluators or other participants to an IO procurement process) or acted in a Conflict of Interest without the knowledge and consent of IO, or

   (ii) included false or misleading information in response to an IO procurement, or made misrepresentations;

   with effect from and after the date of IO's discovery of the occurrence of the events described in subsection (i) or (ii), as the case may be.

2. IO becomes aware that a Vendor has been sanctioned by its regulatory, licensing or governing body (if applicable) for breach of professional and/or ethical obligations owed by the Vendor under the applicable guidelines, by-laws, rules or other requirements of such body, with effect from and after the date the date of the discovery of the imposition of such sanction.

3. IO becomes aware that a Vendor:

   (i) has engaged in a Prohibited Act; or

   (ii) is a Restricted Person,

   as such terms are defined within the relevant procurement documents, or in the absence of a definition within the procurement documents, the definition given to those terms in this Policy) on any current or past procurement issued by IO, with effect from and after the date of IO's discovery of the Prohibited Act or identification of the Restricted Person, as the case may be.

4. Subject to Article C of this Schedule 4, if a Project Co Event of Default occurs under a Project Agreement, and

   (i) if capable of being remedied, remains unremedied following the expiration of the associated cure period, if any, or

   (ii) if disputed by Project Co in accordance with the Project Agreement, following the conclusion of the dispute resolution process,

   with effect from and after the date of the occurrence of the Project Co Event of Default, the day following the expiry of the associated cure period, if any, or the conclusion of the dispute resolution process, as the case may be.

For the purposes of this Section, the debarment may apply to any one or more Vendors in a consortium of Vendors on a P3 Project, determined at IO's sole discretion, taking into consideration the circumstances giving rise to the Project Co Event of Default. Only the affected Vendor(s) shall be delivered the notice of debarment set out in Section 5.5.4 of this Policy.

5. Subject to Article C of this Schedule 4, in respect of any Stipulated Price Contract procured by IO, if a Vendor is notified that it is in default pursuant to GC 7.1 of CCDC 2, 2008 (or equivalent), and such default has not been remedied as agreed to by the parties, from and after the date of delivery of a notice by IO to the Vendor that the default has not been satisfactorily remedied.

6. Subject to Article C of this Schedule 4, in respect of a default in any other Contract or other written agreement between IO and a Vendor which is not subject to this Policy, if such default or material breach has not been remedied as agreed to by the parties, with effect from and after the date of delivery of a notice by IO to the Vendor that the default or material breach has not been satisfactorily remedied.

7. In respect of documented incidences of poor performance under any Contract or other written agreement between IO and a Vendor which is not subject to this Policy:

   (i) where such poor performance is an event or failure, or a series of events or failures, which individually or in the aggregate, is/are of a material nature, as determined by IO in its sole discretion (regardless of whether such event(s) or failure(s) constitute an event of default under the relevant agreement or a breach of any professional obligations by any applicable regulatory body), and

   (ii) such event(s) or failure(s) are not otherwise recorded and applied under any vendor performance program established in accordance with Section 8.3,

   with effect from and after the date of the occurrence of the incidences of poor performance.

8. If a Vendor has engaged in abusive behavior or threatening conduct towards IO, its co-Sponsors, partners or service providers, or any employees, agents or representatives thereof with effect from and after the date of the occurrence of the abusive behaviour.

9. If IO becomes aware that a Vendor or prospective Vendor has:

   (i) engaged in, allowed, ignored or inadequately addressed practices, behavior, incidences or conduct which is inconsistent with IO's commitment to dignity, respect and opportunity for all set out in Section 2.1, or

(ii) has failed to comply or comply satisfactorily with any requirements may IO impose upon a Vendor, procurement process or Contract pursuant to Section 5.4 or 5.5,

with effect from and after the date of IO's discovery of the applicable act, omission, incident or failure.

B. EARLY TERMINATION OF A DEBARMENT PERIOD

The Debarment Period imposed under each Head of Debarment may be terminated early in accordance with Section 5.8.6 of this Policy in each case with consideration of the following:

(i) With reference to Section A.1 of this Schedule 4, if the debarred individual or Vendor has demonstrated to IO, in its sole discretion, that measures have been implemented to prevent future partial, inaccurate or false statements or misrepresentations or omissions of disclosure of actual Conflicts of Interest;

(ii) With reference to Section A.2 of this Schedule 4, if the debarred Vendor has demonstrated to IO, in its sole discretion, that measures have been implemented to prevent future occurrences of such sanctioned act or omission;

(iii) With reference to Section A.3 of this Schedule 4, if the debarred Vendor has demonstrated to IO, in its sole discretion, that measures have been implemented to prevent future occurrence of any Prohibited Acts, or that the Vendor is no longer a Restricted Person;

(iv) With reference to Section A.4 of this Schedule 4, if the debarred Vendor has demonstrated to IO that measures have been implemented to materially reduce the likelihood of future circumstances similar to those which gave rise to the Project Co Event of Default;

(v) With reference to Section A.5 of this Schedule 4, if the debarred Vendor has demonstrated to IO, in its sole discretion, that measures have been implemented to materially reduce the likelihood of future events or failures which gave rise to the default;

(vi) With reference to Section A.6 of this Schedule 4, if the debarred Vendor has demonstrated to IO, in its sole discretion, that measures have been implemented to materially reduce the likelihood of future events or failures which gave rise to the default or material breach;

(vii) With reference to Section A.7 of this Schedule 4, if the debarred Vendor has demonstrated to IO that measures have been implemented to materially reduce the likelihood of future circumstances similar to those which gave rise to the events or failures which gave rise to the incidences of poor performance;

(viii) With reference to Section A.8 of this Schedule 4, if the debarred Vendor has demonstrated to IO that measures have been implemented to materially reduce the likelihood of future circumstances similar to those which gave rise to the occurrence of abusive behaviour including, but not limited to, the institution of remedial policies and training and/or the termination or other restriction of individual employment.

(ix) With reference to Section A.9 of this Schedule 4, if the debarred Vendor has demonstrated to IO that measures have been taken or implemented to materially reduce the likelihood of future circumstances similar to those which gave rise to the act, omission or failure including, but not limited to, the institution of remedial policies, processes and procedures, training and/or the termination or other restriction of individual employment.

C. DISCRETION TO DEBAR NOTWITHSTANDING CURE PERIOD OR DISPUTE RESOLUTION PROCESS

IO may, in its sole discretion, debar any Vendor from bidding to any IO procurement for the Debarment Period without regard to the availability of a cure period or commencement of a dispute resolution process with the approval of and subject to any provisions imposed by the General Counsel and with effect from and after the date of the occurrence of a Head of Debarment described in Sections 4, 5 and 6 of Article B of this Schedule 4.