

[Date]

[Company Name]
 [Street Address]
 [City, Province Postal Code]

Attention: [Recipient Name]

delivered by email

Re: IO P3 Vendor Performance Program – Scorecard for [Name of Company] (the “**Company**”)

Dear [Recipient Name]:

In January 2017, Infrastructure Ontario introduced a vendor past performance program for Public–Private Partnership (P3) projects (the “**P3 Vendor Performance Program**”, or “**Program**”).

The P3 Vendor Performance Program’s goals are to ensure the public interest is maintained by monitoring, tracking and holding construction contractors accountable for performance infractions during the construction phase of a project. We will apply performance data in a fair and transparent manner to construction contractor’s participation in future P3 request for qualifications (RFQ) processes.

You are receiving this letter because your Company has been an active P3 participant in the last 24 months, specifically in the capacity as a construction contractor on a project and pursuant to a project agreement. In accordance with the P3 Vendor Performance Program, your Company has been assessed against specific P3 project agreement criteria, each of which constitute a discrete performance infraction.

<p>As of [Date 1: Month Day, Year] the total number of performance infractions accumulated and recorded on P3 projects in the 24 months preceding [Date 1: Month Day, Year] in which the Company has participated as a construction contractor on P3 projects is [NUMBER (#)] infraction(s).</p>				
<p>The infraction data gathered during this period have the following statistical attributes:</p>				
Mean:	Median:	Mode:	Sample Standard Deviation:	Population Standard Deviation:

A detailed summary of the performance criteria and the Company’s infraction record with respect to P3 projects is shown in Appendix A to this letter. If you believe there is an administrative error regarding the tabulation of performance infractions please contact procurement@infrastructureontario.ca. Any dispute in respect of an administrative or clerical error shall be resolved only with respect to such error. In all other circumstances for the purposes of this program, the recording of infractions and application of deductions against the Company is not eligible for dispute.

As a result of the Company’s performance infraction record, to the extent that the Company seeks to prequalify with an Applicant Team under an P3 RFQ as a Construction Prime Team Member, IO will automatically deduct, from any RFQ Prequalification Submission submitted and received between [Date 2: Month Day, Year] and [Date 3: Month Day, Year [NTD: Dates 2 and 3 shall be the beginning and end of the next month in which Date 1 occurs] inclusive, the following number of points from the “Construction Team Member Capability and Experience” or equivalent section:

- [W]% for a Build-Finance RFQ
- [X]% for a Design-Build-Finance RFQ
- [Y]% for a Design-Build-Finance-Maintain RFQ (Social/Building Infrastructure Asset Class)
- [Z]% for a Design-Build-Finance-Maintain or Design-Build-Finance-Operate-Maintain RFQ (Civil Transit/Transportation Asset Class)

Performance infractions will be reviewed and updated by IO on a monthly basis and point deductions will be applied using a rolling 24 months of infraction data. Point deductions will be applied in accordance with the calibration table as disclosed in Appendix B. The calibration table in Appendix B has been developed using a data-driven statistical model which was built using RFQ scoring data from all P3 RFQs in all asset classes since 2008. Further questions regarding the mathematical inputs that contributed to the calibration model can be directed by email to: vpp@infrastructureontario.ca.

If the Company has elected to enter into a joint venture or partnership with any other construction contractor, the deduction applied to the joint venture/partnership Construction Prime Team Member in the applicable RFQ will be the weighted average (by joint venture or partnership interest) of the deductions applicable against all members of the joint venture/partnership. The formula to calculate the deduction is as follows:

$$\text{Construction Prime Team Member Deduction} = \sum_{i=1}^n JVI_i D_i$$

Where JVI_i is the joint venture or partnership interest of a company, and D_i is that company’s P3 Vendor Performance Program deduction.

*For example, if as of March 1, 2018, Contractor ABC’s point deduction for Build-Finance RFQs is minus 2.0% (based on having accumulated two infractions in the last 24 months) and Contractor XYZ does not have any record of infractions (and thus a 0% deduction), and Contractor ABC and XYZ are in a 50/50 joint venture bidding to an RFQ, then for any prequalification submission received up until April 30, 2018 in which Contractor ABC and Contractor XYZ are acting as 50/50 joint venture partners, the total deduction applied to the score of the joint venture will be **minus 1.00% of the Construction Team Member Capability and Experience available points**, according to the pre-disclosed calibration table.*

Please also note that if the Company enters into a joint venture or partnership with another construction contractor and ultimately is the successful winning vendor under that procurement, any performance

infractions that occur on the project will be equally recorded against the individual performance record of all constituent members of the joint venture or partnership.

More information regarding the purpose, objectives, design, methodology and administration of the P3 Vendor Performance Program is available at <http://www.infrastructureontario.ca/Major-Project-Vendor-Performance-Program>

Yours truly,

[SIGNED]
Vice President, Procurement
Infrastructure Ontario

APPENDIX A – Detailed Company Infraction Record as of [Date 1: Month Day, Year]

P3 Vendor Performance Infraction Criteria	Project A	Project B
<p>1. Contracting Authority has exercised remedial rights under, and in accordance with, the Project Agreement, which, in the opinion of Infrastructure Ontario, is due to contractor breach of the Project Agreement during the construction phase of the Project.</p>		
<p>2. Contracting Authority has sought indemnification in excess of \$100,000 under, and in accordance with, the Project Agreement, which, in the opinion of Infrastructure Ontario, is due to contractor breach of the Project Agreement during the construction phase of the Project.</p>		
<p>3. Contracting Authority has made a direct claim for, or set off of, proceeds in excess of \$100,000 from payments due under, and in accordance with, the Project Agreement, which, in the opinion of Infrastructure Ontario, is due to contractor breach of the Project Agreement during the construction phase of the Project, but in any case not relating to the Contracting Authority exercise of indemnification rights under the Project Agreement.</p>		
<p>4. Contracting Authority has issued a notification to the lenders' agent pursuant to the proceeding-at-risk protocol of the Project Agreement that, in the opinion of the Independent Certifier (DBF and DBFM) or Consultant (BF), Project Co have performed the Works in a manner that will result in Project Co becoming unable to satisfy the requirements for Substantial Completion.</p>	<p>Date: 2018.12.14 Description: X Project Agreement Reference: Y</p>	

P3 Vendor Performance Infraction Criteria	Project A	Project B
<p>5. Either: (i) the contractor has been subject to a Contracting Authority's exercise of the right to uncover work under the Project Agreement which is found to be defective; or (ii) Contracting Authority has had to remedy defective work attributable to the contractor or its subcontractors (other than Minor Deficiencies) at any time during the term of the Project Agreement.</p>		
<p>6. An order to stop work has been issued to the contractor by any Governmental Authority pursuant to legislative or regulatory power which results in a follow-on notice of violation, fine, or other disciplinary action against the contractor.</p>		
<p>7. Contracting Authority has drawn upon any deposited or withheld amounts in respect of the rectification of Minor Deficiencies for any Project.</p>		
<p>8. Contracting Authority has enforced against and/or drawn upon construction or warranty period performance security in excess of \$100,000, whether liquid or illiquid, in respect of any Project.</p>		
<p>9. The contractor, in response to a request by Contracting Authority under the Project Agreement, has failed to deliver a rectification plan (re works schedule) pursuant to the "failure to maintain schedule" provisions of the Project Agreement, or has delivered a rectification plan (re works schedule) pursuant to the "failure to maintain schedule" provisions of the Project Agreement that fails to meet the prescribed requirements of such plan, as set out in the Project Agreement.</p>		

P3 Vendor Performance Infraction Criteria	Project A	Project B
<p>10. The Substantial Completion Date of a Project, net of all resolved claims related to Delay Events and adjustment of the Scheduled Substantial Completion Date in accordance with the Project Agreement, occurred greater than 90 days after the Scheduled Substantial Completion Date.</p>		
<p>11. The Substantial Completion Date of a Project, net of all resolved claims related to Delay Events and adjustment of the Scheduled Substantial Completion Date in accordance with the Project Agreement, occurred after the Anticipated Substantial Completion Date as set out in the first Substantial Completion Countdown Notice delivered in accordance with the Project Agreement.</p>		
<p>12. A contractor Key Individual is not made available to perform the stated project role or has been substituted without obtaining prior consent of Contracting Authority under the Project Agreement where such consent is required under the Project Agreement.</p>		
<p>13. Recommendations to rectify health and safety infractions made pursuant to an independent health and safety inspection report have not been implemented or addressed in a timely manner to the satisfaction of Infrastructure Ontario, acting in its sole discretion.</p>		
<p>TOTAL COUNT OF INFRACTIONS IN PAST 24 MONTHS</p>	<p>1</p>	

Annotation 1	This criterion is only recorded in respect to the “Remedial Rights” section of a Project Agreement. Additionally, no infraction shall be recorded on account of this criterion where the exercise of a Remedial Right falls under the definition of a “Reimbursement Event” under a Project Agreement.
Annotation 3	No infraction shall be recorded on account of this criterion solely as a result of the requirement of a contractor to pay liquidated damages to Contracting Authority due to the failure to achieve Substantial Completion by the Scheduled Substantial Completion Date.
Annotation 9	<p>This criterion is not related to, and no infraction shall be recorded on account of, general review of works schedules pursuant to the “Review Procedure” or the “Work Scheduling Requirements” schedules to a Project Agreement or any other general request for a works schedule that is not part of the “failure to maintain schedule” section of a Project Agreement.</p> <p>Multiple infractions, as a general matter, will not be recorded in respect of the same failure to provide a requested rectification plan pursuant the "failure to maintain schedule" provisions of a Project Agreement.</p> <p>If, however:</p> <ul style="list-style-type: none"> (i) Contracting Authority makes a second request for a rectification plan pursuant the prescribed requirements of the "failure to maintain schedule" provisions of a Project Agreement, either after a resolution of the previous rectification plan or relating to a materially different set of circumstances that has caused a project to fall behind schedule, and the construction contractor fails to deliver such rectification plan; or (ii) the contractor, in response to a rectification plan request delivers a plan that did not meet the prescribed requirements of a Project Agreement, provides another response that still does not meet the prescribed requirements of a Project Agreement, then in each case of a non-responsive or unsatisfactory rectification plan that does not meet the requirements of a Project Agreement, an additional infraction will be recorded in respect of each additional failure up to a maximum rate of once per calendar year quarter.
Annotation 10	No infraction shall be recorded on account of this criterion until all claims related to Delay Events have been finally resolved.
Annotation 11	No infraction shall be recorded on account of this criterion until all claims related to Delay Events have been finally resolved.
Annotation 12	Death, injury, departure, dismissal, or other removal of a Key Individual does not automatically result in an infraction to be recorded under this criterion. However, in all cases, consent must be obtained for any replacement or substituted Key Individual in accordance with a Project Agreement.

APPENDIX B – Point Calibration Deduction Table

Delivery Model	BF			DBF		DBFM (Social)			DBFM (Civil)		
RFQ Construction Points	Range:	85	90	35		Range:	15	25	Range:	20	25
Number of Infractions	Deduction from Construction Team Members Section of RFQ										
1	1.0%	0.85	0.90	1.0%	0.35	1.0%	0.15	0.25	1.0%	0.20	0.25
2	1.83%	1.56	1.65	3.5%	1.23	3.83%	0.58	0.96	3.5%	0.70	0.88
3	3.5%	2.98	3.15	6.0%	2.1	6.67%	1.00	1.67	8.5%	1.70	2.13
4	5.17%	4.39	4.65	11.0%	3.85	12.33%	1.85	3.08	13.5%	2.70	3.38
5	6.0%	5.10	5.40	16.0%	5.6	18.0%	2.70	4.50	21.0%	4.20	5.25
6	7.6%	6.46	6.84	18.8%	6.58	20.2%	3.03	5.05	22.8%	4.56	5.70
7	10.0%	8.50	9.00	23.0%	8.05	23.5%	3.53	5.88	25.5%	5.10	6.38
8 or more	14.0%	11.90	12.60	30.0%	10.50	29.0%	4.35	7.25	30.0%	6.00	7.50