**RFB for** **Artificial Intelligence Solutions – Tender# 20123**

**ATTACHMENT 3 – TERMS AND CONDITIONS**

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**RFB Tender\_20123**

**TERMS AND CONDITIONS**

# TERMS AND CONDITIONS

**General Terms and Conditions**

## Bidder Representations and Warranties

By submitting a Bid for consideration, the Bidder in each case, agrees, confirms or warrants as follows:

1. to be bound to their Bid;
2. that to its best knowledge and belief no actual or potential Conflict of Interest exists with respect to the submission of the Bid or performance of the contemplated contract other than those disclosed in the Form of Offer indicated in the Qualification Envelope. Where Supply Ontario discovers a Bidder’s failure to disclose all actual or potential Conflicts of Interest, Supply Ontario may disqualify the Bidder or terminate any contract awarded to that Bidder pursuant to this procurement process;
3. that it has accepted the provisions of this RFB and has prepared its Bid with reference to all of the provisions of the RFB including the attached Form of Agreement and has factored all of those provisions, including the insurance requirements, into its pricing assumptions and calculations and into the proposed costs indicated in the Commercial Envelope; and
4. that its Bid was arrived at separately and independently, without conspiracy, collusion or fraud. See the [Competition Bureau of Canada](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home) for further information.

## General Instructions and Requirements

### **Bidders to Follow Instructions**

Bidders should structure their Bids in accordance with the instructions in this RFB. Where information is requested in this RFB, any response made in a Bid should reference the applicable section numbers of this RFB where that request was made.

### **Conditional Bids May be Disqualified**

A Bidder who submits conditions, options, variations or contingent statements to the terms set out in the RFB, including the Form of Offer and Form of Agreement, either as part of its Bid or after receiving notice of selection, may be disqualified. Supply Ontario acknowledges the need to add transaction-specific particulars to the Form of Agreement, but Supply Ontario will not otherwise make material changes to the Form of Agreement.

### **Bids in English**

All Bids are to be in English only. Any Bids received by Supply Ontario that are not entirely in the English language may be disqualified.

### **Supply Ontario’s Information in RFB Only an Estimate**

Supply Ontario and its advisors make no representation, warranty or guarantee, as to the accuracy of the information contained in this RFB, issued by way of addenda or contained in a modification to the RFB. Any quantities shown or data contained in this RFB or provided by way of a modification or addenda are estimates only and are for the sole purpose of indicating to Bidders the general size of the work.

It is the Bidder's responsibility to avail itself of all information necessary to prepare a Bid in response to this RFB.

### **Bidders Shall Bear Their Own Costs**

The Bidder shall bear all costs associated with or incurred in the preparation and presentation of its Bid including, but not limited to, if applicable, costs incurred for interviews or demonstrations.

### **No Guarantee of Volume of Work or Exclusivity of Contract**

Supply Ontario makes no guarantee of the value or volume of work to be assigned to the successful Bidder. The Agreement executed with the successful Bidder will not be an exclusive contract for the provision of the described Deliverables. Supply Ontario may contract with others for the same or similar Deliverables to those described in this RFB or may obtain the same or similar Deliverables internally.

### **RFB Terms**

All rights and obligations that apply to this procurement process are found only in the RFB. For greater clarity, no other documents are to be read into this RFB or used to interpret or understand its terms or establish any rights or obligations related to this procurement.

### **Accessibility Obligations**

The Province of Ontario is committed to the highest possible standard for accessibility. Vendor(s) are responsible for complying with the requirements under the Ontario Human Rights Code, the Ontarians with Disabilities Act, 2001 and Accessibility for Ontarians with Disabilities Act, 2005 (“AODA”) and its regulations. In circumstances where Vendors are providing a service to the public on behalf of Supply Ontario, they may need to follow Supply Ontario direction to ensure Supply Ontario compliance with the AODA and its regulations (such as the Integrated Accessibility Standards Regulation). The vendor is responsible for applying Integrated Accessibility Standards Regulation and effective dates and timelines as they pertain to the Government of Ontario, as directed by Supply Ontario.

### **Trade Agreements**

Bidders should note that procurements falling within the scope of:

1. Chapter 5 - Government Procurement of the of the Canadian Free Trade Agreement ("CFTA");
2. Chapter 9 – Public Procurement of the Trade and Cooperation Agreement between Ontario and Quebec ("OQTCA");
3. The World Trade Organization’s (WTO) Revised Agreement on Government Procurement between the Government of Canada and the Government of the United States of America ("GPA"); or
4. Chapter 19 – Government Procurement of the Canada-European Union Comprehensive Economic and Trade Agreement (“CETA”)

are subject, respectively, to that chapter or those agreements. For further reference, please see: (for the CFTA) the [Internal Trade Secretariat](https://www.cfta-alec.ca/) website; (for Ontario/Quebec) the [Ontario Ministry of Economic Development, and Job Creation and Trade](https://www.ontario.ca/document/trade-and-cooperation-agreement-between-ontario-and-quebec-0)  website; (for the GPA) the [WTO](https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm) website; and (for CETA) the [Global Affairs Canada](http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/19.aspx?lang=eng) website.

## Communication after Issuance of RFB

### **All New Information to Bidders by way of Addenda**

This RFB may only be amended by Supply Ontario by an addendum through the Ontario Tenders Portal eTendering System in accordance with this section. If Supply Ontario, for any reason, determines that it is necessary to provide additional information relating to this RFB, such information will be communicated to all Bidders through Addenda to the RFB by way of the Ontario Tenders Portal eTendering System. Each Addendum shall form an integral part of this RFB.

Each Addendum may contain important information including significant changes to this RFB. The onus remains on the Bidder to make any necessary amendments and to re-submit its Bid based on the Addenda. Supply Ontario may also be issuing Addenda included in the RFB as an attachment, which will contain responses to Bidders’ questions. Bidders are responsible for obtaining all Addenda issued by Supply Ontario.

If Supply Ontario makes any changes to the RFB after a Bidder has submitted its Bid, the Bid will be invalidated on the Ontario Tenders Portal eTendering System and the Bidder will need to re-submit its Bid. The Bidder will be required to update any new or modified sections of the RFB by way of the Ontario Tenders Portal eTendering System and re-submit its Bid.

### **Post-Deadline Addenda and Extension of RFB Closing Date and Time**

Supply Ontario may, at its discretion, issue Addenda after the Deadline for Issuing Addenda and may also then extend the RFB Closing Date and Time for a reasonable amount of time.

### **Supply Ontario May Verify Information or Seek Clarification and Incorporate Response into Bid**

Supply Ontario reserves the right, but is not obliged, to verify or seek clarification and supplementary information relating to the verification or clarification from Bidders after the RFB Closing Date and Time including those related to an ambiguity in a Bid or in any statement made subsequently during the evaluation process. The response received by Supply Ontario from a Bidder shall, if accepted by Supply Ontario, form an integral part of that Bidder's Bid. However, Bidders are cautioned that any verifications or clarifications sought will not be an opportunity either to correct errors or change their Bids in any substantive manner.

Verifications or clarifications under this subsection may be made by whatever means Supply Ontario deems appropriate and may include contacting,

1. any person identified in the Bid; and
2. persons or entities other than those identified by any Bidder.

In submitting a Bid, a Bidder is deemed to consent to Supply Ontario's verification or clarification rights.

In the event that Supply Ontario receives information at any stage of the evaluation process, which results in earlier information provided by the Bidder being deemed by Supply Ontario to be inaccurate, incomplete or misleading, Supply Ontario reserves the right to revisit the Bidder’s compliance with the mandatory requirements and/or adjust the scoring of rated requirements.

## Bid Process Requirements

### **Bids must be submitted on time and in the Ontario Tenders Portal eTendering System**

Bids must be submitted by the RFB Closing Date and Time through the Ontario Tenders Portal (“OTP”) eTendering System. The OTP will not allow a Bidder to submit a Bid after the RFB Closing Date and Time. Any Bid submitted in any other manner will be disqualified and returned to the Bidder, if applicable. For the purpose of calculating time, the OTP electronic time-stamp on the submission shall govern.

**Please note:** Any Bids (or sections of a Bid) submitted through the OTP online messaging function will not be accepted. Any inquiries regarding problems or access related to the OTP should be directed to Jaggaer support.

### **Bidders to Review RFB**

Bidders shall promptly examine all of the documents comprising this RFB and:

1. shall report any errors, omissions or ambiguities; and
2. may direct questions or seek additional information,

through the Ontario Tenders Portal eTendering System online messaging function on or before the Bidder’s Deadline for Questions to the RFB Contact set out at Section 1.1 - Procurement Details of this RFB. The time stamp on questions submitted by Bidder’s through the OTP online messaging function shall be used to determine if the question was received on or before the Bidder’s Deadline for Questions. No such communications are to be directed to anyone other than the RFB Contact or designate. Supply Ontario is under no obligation to provide additional information but may do so at its sole discretion.

It is the responsibility of the Bidder to seek clarification from the RFB Contact on any matter it considers to be unclear. Supply Ontario shall not be responsible for any misunderstanding on the part of the Bidder concerning this RFB or its process.

### **No Incorporation by Reference by Bidder**

The entire content of a Bid should be submitted in a fixed form and the content of web sites or other external documents referred to in the Bid will not be considered to form part of its Bid.

### **Amending or Withdrawing Bids Prior to RFB Closing Date and Time**

At any time prior to the RFB Closing Date and Time, a Bidder may amend or withdraw a submitted Bid. The right of Bidders to amend or withdraw includes amendments or withdrawals wholly initiated by Bidders and amendments or withdrawals in response to subsequent information made through an addendum to the RFB.

### **Bid to be Retained by Supply Ontario**

Supply Ontario will not return any Bid, sample or accompanying documentation submitted by a Bidder including amended or withdrawn Bids.

## Negotiation, Execution of Agreement, Notification and Debriefing

### **Negotiation Overview**

Bidders will be offered a Limited Contract Negotiation (LCN) during the contracting stages, based on their responses to the LCNF criteria during the Rated stages. This process will commence with the bidder(s) who qualify at the end of Stage 1 or the first stage after the Commercial envelopes are opened and found satisfactory by Supply Ontario.

Bidders who accepted the Form of Agreement (FOA) as is in the rated section shall proceed with contract execution, provided they meet the terms set forth in the first stage.

Bidders who indicated specific clauses for negotiation will have the opportunity to negotiate only those particular clauses and no others.

Depending on the outcome of these negotiations to the SO’s satisfaction, the SO reserves the right to enter into an agreement with the successful bidders.

Supply Ontario intends to conclude negotiations within ten (10) business days commencing from the date Supply Ontario invites a Bidder to enter negotiations, unless otherwise agreed between SO and the bidder.

Under this RFB, a Bidder may elect not to enter into negotiations by not proposing any amendments in its bid.

### **Selection of Bidder**

Notice of selection by Supply Ontario will be in writing. The Preferred Bidder(s) that do not include Propose Changes to the Negotiable Topics in their Bid shall execute the Agreement in the form attached to this RFB and satisfy any other applicable conditions of this RFB within the period of time set out to do so in Section 1.1 - Procurement Details of this RFB. This provision is solely to the benefit of Supply Ontario and may be waived by Supply Ontario at its sole discretion. The Preferred Bidder(s) that include Negotiable Topics in their Bid will be invited to enter negotiations with Supply Ontario.

Bidders are reminded that there is a question-and-answer period available if they wish to ask questions or seek clarification about the terms and conditions set out in the Form of Agreement. Supply Ontario will consider such requests for clarification in accordance with its right to do so under this RFB.

### **Timeframe For Negotiations**

Supply Ontario intends to conclude negotiations with a Bidder selected to enter negotiations within ten (10) business days commencing from the date Supply Ontario invites a Bidder to enter negotiations. Accordingly, such invited Bidder should be prepared to provide requested information in a timely fashion and to conduct its negotiations expeditiously. Supply Ontario at its sole discretion may extend this deadline.

### **Negotiation Process**

Any negotiations will be subject to the process rules contained in this section and will not constitute a legally binding offer to enter into a contract on the part of Supply Ontario or the Bidder.

During negotiations Supply Ontario may request information to verify, clarify or supplement the information provided by the Bidder.

Prior to the commencement of the negotiation meetings, Supply Ontario will review the selected Bidders initial list of items they would like to negotiate that are submitted as a part of Bidder’s bid submission and begin preparation for the negotiations.

The Bidder will be invited to attend negotiations meeting(s) and one of those in attendance must have the authority to bind the Bidder.

If at anytime during negotiation, Supply Ontario at its sole discretion can enter into a contractual agreement with a Bidder(s).

Each party to the contract negotiations shall bear its own costs to participate in the negotiations.

Each Bidder submitting a Bid in response to this RFB:

a) Acknowledges that SO may, in accordance with this RFB, negotiate the terms of an Agreement and execute an Agreement with a Bidder(s) with which it has negotiated an Agreement; and

b) Agrees that it will not contest or challenge the procurement process or the execution of an Agreement as being contrary to the requirements of this RFB for the reason that the Agreement that is negotiated in accordance with this RFB differs from the form of Agreement.

Bidders are cautioned that there will be no legally binding relationship created with any Bidder prior to the execution of the Contract.

### .**Negotiable Topics**

1. The Negotiations will be limited to the Negotiable Topics.

### **Bidder to Withdraw Material Deviations**

If, at Supply Ontario’s discretion, a proposed change(s) is deemed to be a Material Deviation, Supply Ontario may issue a clarification request to the Bidder to withdraw the Material Deviation. If the Material Deviation is not withdrawn, the Bid may be disqualified from further evaluation.

### **Unsuccessful Negotiations**

Supply Ontario may, in its sole discretion, determine that negotiations with a Bidder are unsuccessful, where:

1. The timeframe provided for negotiations under section 1.5.3 has expired
2. At any point during negotiations where it becomes clear to Supply Ontario that it is unsuccessful

Where Supply Ontario determines that the negotiations with a Bidder are unsuccessful, Supply Ontario may discontinue negotiations with that Bidder.

### **Terminating Negotiations**

Supply Ontario may terminate Negotiations with a Bidder at any time if the Bidder:

* Requires changes that fall outside of the scope of the RFB
* Proposes rates or price that would exceed the Rates set out in the selected Bidder’s Bid or propose the delivery of Deliverables that do not, in Supply Ontario’s opinion, correspond with the Deliverables as described in the RFB.
* Requires changes that are deemed to be Material Deviations by SO and Bidder refuses to withdraw the Material Deviations

### **Notification to Other Bidders of Outcome of Procurement Process**

Once the successful Bidder and Supply Ontario execute the Agreement, the other Bidders will be notified by Supply Ontario in writing of the outcome of the procurement process, including the name of the successful Bidder, and the award of the contract to the successful Bidder.

### **Debriefing**

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

### **Bid Dispute**

Bidders are advised that a formal bid dispute process is available, the details for which are available from the RFB Contact.

### **Prohibited Bidder Communications**

Bidders shall address all questions and requests for clarification with respect to their Bids, or the RFB documents or the RFB process only to the RFB Contact set out at Section 1.1 - Procurement Details of this RFB.

Bidders shall not contact or make any attempt to contact:

1. any Ontario government employee or representative, other than the RFB Contact; or,
2. any other Bidder;

with respect to a Bid, the RFB documents, or the RFB process, at any time during the RFB process.

Without limiting the generality of the above, Bidders, shall not contact or attempt to contact:

* 1. any member of Supply Ontario evaluation team for the RFB;
  2. any expert or advisor assisting Supply Ontario evaluation team;
  3. any staff of the Premier of Ontario’s office or the Ontario Cabinet Office;
  4. any Member of the Ontario Provincial Parliament or his or her staff or advisors; or
  5. any Member of the Ontario Provincial Cabinet or their staff or advisors;

on matters related to their Bids, the RFB documents, or the RFB process at any time during the RFB process.

### **Bidder Not to Make a Public Statement or Communicate With Media**

A Bidder may not at any time directly or indirectly make a public statement or communicate with the media in relation to this RFB or any contract awarded pursuant to this RFB without first obtaining the written permission of Supply Ontario. Where a Bidder makes a communication contrary to this section Supply Ontario may disclose such information necessary to correct any inaccuracy of information.

### **Confidential Information of Supply Ontario**

All information provided by or obtained from Supply Ontario in any form in connection with this RFB either before or after the issuance of this RFB:

* 1. is the sole property of Supply Ontario and must be treated as confidential;
  2. is not to be used for any purpose other than replying to this RFB and the performance of any subsequent Contract;
  3. must not be disclosed without prior written authorization from Supply Ontario; and
  4. shall be returned by the Bidders to Supply Ontario immediately upon the request of Supply Ontario.

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

The *Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31*, as amended, applies to information provided to Supply Ontario by a Bidder. A Bidder should identify any information in its Bid or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by Supply Ontario. The confidentiality of such information will be maintained by Supply Ontario, except as otherwise required by law or by order of a court or tribunal. Bidders are advised that their Bids will, as necessary, be disclosed on a confidential basis, to Supply Ontario’s advisers retained for the purpose of evaluating or participating in the evaluation of their Bids.

By submitting any Personal Information requested in this RFB, Bidders are agreeing to the use of such information as part of the evaluation process, for any audit of this procurement process and for contract management purposes. Where the Personal Information relates to an individual assigned by the successful Bidder to provide the Deliverables, such information may be used by Supply Ontario to compare the qualifications of such individual with any proposed substitute or replacement. If a Bidder has any questions about the collection and use of Personal Information pursuant to this RFB, questions are to be submitted to the RFB Contact in accordance with the Bidders to Review RFB Section 1.4.3.

## Reserved Rights and Governing Law

### **Reserved Rights of Supply Ontario**

Supply Ontario reserves the right to:

1. make public the names of any or all Bidders; the name of the selected Bidder(s); and, the total price for the contract awarded;
2. request written clarification or the submission of supplementary written information in relation to the clarification request from any Bidder and incorporate a Bidder’s response to that request for clarification into the Bidder’s Bid;
3. assess a Bidder’s Bid on the basis of:
4. a financial analysis determining the actual cost of the Bid when considering factors including transition costs arising from the replacement of existing goods, services, practices, methodologies and infrastructure (howsoever originally established);
5. information provided by references;
6. the Bidder’s past performance on previous contracts awarded by the Government of Ontario;
7. the information provided by a Bidder pursuant to Supply Ontario exercising its clarification rights under this RFB process; or
8. other relevant information that arises during this RFB process;
9. waive non-compliance where, in Supply Ontario's sole discretion, such non-compliance is minor and not of a material nature, or to accept or reject in whole or in part any or all Bids, with or without giving notice. Such minor non-compliance will be deemed substantial compliance and capable of acceptance. Supply Ontario will be the sole judge of whether a Bid is accepted or rejected;
10. verify with any Bidder or with a third party any information set out in a Bid;
11. check references other than those provided by any Bidder;
12. disqualify any Bidder whose Bid contains misrepresentations or any other inaccurate or misleading information;
13. disqualify any Bid or rescind any contract award where the Bidder either: fails to disclose; or, is determined to have an actual or perceived unfair advantage or Conflict of Interest determined to be material by Supply Ontario;
14. disqualify any Bidder or the Bid of any Bidder who has engaged in conduct prohibited by this RFB;
15. make changes, including substantial changes, to this RFB provided that those changes are issued by way of a modification in the manner set out in this RFB;
16. select any Bidder other than the Bidder whose Bid reflects the lowest cost to Supply Ontario or the highest score;
17. cancel this RFB process at any stage;
18. cancel this RFB process at any stage and issue a new RFB for the same or similar Deliverables;
19. accept any Bid in whole or in part; or
20. reject any or all Bids;

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

By submitting its Bid, the Bidder authorizes the collection by Supply Ontario of the information set out under (e) and (f) in the manner contemplated in those subparagraphs.

### **No Contract Until Execution of Written Agreement**

The RFB process is intended to identify prospective vendors for the purposes of negotiating and entering into a potential agreement. No legal relationship or obligation regarding the procurement of any good or service shall be created between the Bidder and Supply Ontario by the RFB process until the successful conclusion and execution of the Agreement for the acquisition of such goods and/or services.

### **No Contract A**

The procurement process is not intended to create and shall not create a formal legally binding bidding process and shall instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation: (a) the RFB shall not give rise to any “Contract A” based tendering law duties or any other legal obligations arising out of any contract or collateral contract; and (b) neither a Bidder nor Supply Ontario shall have the right to make any claims with respect to the award of a contract, failure to award a contract or failure to honour a response to the RFB. No legal relationship or obligation shall be created between any Bidder and Supply Ontario until the successful conclusion and execution of an agreement.

### **Governing Law of RFB Process**

This RFB process shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

## Supplementary Terms and Conditions

### **Occupational Health and Safety Requirements**

Vendo(s) are required to comply with the Occupational Health and Safety Act (“OHSA”) and regulations and applicable OPS and site-specific health and safety requirements. Vendor(s) are responsible for meeting all of the ‘employer’ obligations under the OHSA and shall ensure that all work is carried out safely. The Vendor shall ensure that all subcontractors (hired by the Vendor) work in accordance with the OHSA and its regulations.

### **Publication of Data and Consent**

It is Ontario’s intention, in accordance with the [Open Data Directive](https://www.ontario.ca/page/ontarios-open-data-directive) and as part of its commitment to open data, to publish and allow the public to use:

* 1. procurement contract data, including the name of the Preferred Bidder and total contract value; and,
  2. data created or collected as an output of a contract,

except where Ontario chooses not to publish the data in accordance with the [Open Data Directive](https://www.ontario.ca/page/ontarios-open-data-directive), such as for privacy, confidentiality, security, legal or commercially-sensitive reasons.

Each Bidder, by submitting a Bid, expressly consents to the above and agrees that, if it becomes the Preferred Bidder, it will not object to the above being incorporated into its contract.

**[End of Terms and Conditions]**