TORONTO ZOO

Request for Tenders for

CONSTRUCTION OF CORE WOODS HILL AODA RAMP

RFT No.: TZC T 51 (2022-09)

Contract No.: 2205-B-1

Issued: 2022-09-23

RFT TZC T 51 (2022-09)

Contract No.: 2205-B-1

CONSTRUCTION OF CORE WOODS HILL AODA RAMP

Bids are invited for Construction of Core Woods Hill AODA Ramp all in accordance with this Request for Tender. This RFT is posted on the Toronto Zoo web site at http://www.torontozoo.com/business .

Mandatory Site Meeting

.1 Suppliers are required to attend a mandatory site meeting to familiarize themselves with the Project and ascertain the full extent of the Work required. The mandatory site meeting will take place at 10:00 a.m. local time on Wednesday, 2022-09-28 at Toronto Zoo, Administration Building – Main Entrance, 361A Old Finch Avenue, Toronto, ON M1B 5K7, Toronto. Site meetings will not be available at any other times.

.2 A Supplier must sign the attendance sheet at the mandatory site meeting during the designated date and time for its Bid to be considered.

.3 Bids submitted by Suppliers that do not attend the mandatory site meeting or fail to sign the attendance sheet shall be declared non-compliant.]

.2 No statement or information provided in such meeting by either the Zoo or the Suppliers will amend any provision of this RFT or the Contract or may be relied upon by a Supplier in the RFT process or its Bid, except and to the extent such statement or information is later confirmed through the issuance of an Addendum.

QUESTIONS REGARDING THIS RFT

Questions regarding this RFT must be submitted in only to Francesca Pinochi, Supervisor, Procurement, Project Management Office (PMO) by email at fpinochi@torontozoo.ca no later than **2022-10-03**. Questions received later than this stated time and date may not be acknowledged or answered.

SUBMISSION

SUBMISSION DEADLINE: 2022-10-07 at 12:00 p.m. (Noon) local time

The Tender submission must be received at the email address bids@torontozoo.ca by the Submission Deadline. The date and time received shall be as displayed by the Zoo email server.

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PART 1: REQUEST FOR TENDERS PROCESS

SECTION 1 - RFT SPECIFIC PROCESS AND SUBMISSION INSTRUCTIONS

1.1 Introduction

This RFT is an invitation by the Toronto Zoo **to prospective Suppliers to submit bids for the performance of the Work, as further described in Part 3 (DRAWINGS AND SPECIFICATIONS) and the Contract (the "Project").**

.1 This RFT shall be interpreted in accordance with Section 3.123.3.10 (Governing Law) and 3.13 (RFT Definitions and Interpretation).

.2 Invitation to submit a Bid, including participation in any pre-qualification, request for information or other similar process or exchange of information prior to the RFT, does not imply that a Supplier is automatically prequalified to meet the requirements of the RFT or that the factors which were examined during such process or exchange may not be re-examined or re-evaluated by the Toronto Zoo during the consideration and selection process for this RFT. It will still be necessary for the Supplier to demonstrate its qualifications through the RFT process.

.3 The Successful Supplier will be required to execute the Contract with the Toronto Zoo for the provision of the Work. Suppliers should review the terms and conditions set out in Part 2 (FORM OF CONSTRUCTION AGREEMENT) to understand the Contract being entered into with the Toronto Zoo.

1.2 Procurement Contact

.1 The contact Person at the Toronto Zoo for all matters related to the RFT process (the "**Procurement Contact**") is set out below:

Name and Title	
Name:	Francesca Pinochi
Title:	Supervisor, Procurement, Project Management Office (PMO)
Email:	fpinochi@torontozoo.ca

.2 All communications relating to this RFT must be submitted to the Procurement Contact and only communications received by the Procurement Contact will be considered in the RFT process.

.3 All permitted communications with the Procurement Contact will be deemed as having been received by the Procurement Contact on the dates and times

1.3 RFT Documents

.1 This RFT is comprised of the following documents:

Part 1 – Request for Tender Process

Section 1 – RFT Process and Submission Instructions;

Section 2 – Evaluation, Acceptance and Execution;

Section 3 – Other RFT Terms and Conditions;

Part 2 – Form of Construction Agreement;

Part 3 – Drawings and Specifications;

Part 4 – Submission Forms, consisting of:

- Form A - Bid Submission Form;
- Form B - Bid Bond;
- Form C - Experience and Qualifications Form;
- Form D - List of Subcontractors Form;

Part 5 – Pricing Form; and all Addenda.

.2 Prior to submitting a Bid, Suppliers shall examine all components of the RFT (including all reference documents, appendices, forms and Addenda) and, in accordance with Section 1.8 (Questions) promptly notify the Procurement Contact of any perceived errors, omissions, conflicts, ambiguities or discrepancies in the RFT.

.3 While the Toronto Zoo has used considerable efforts to ensure an accurate representation of information in this RFT, the information contained in this RFT is supplied solely as a guide for Bidders. The information is not guaranteed or warranted to be accurate by the Toronto Zoo, nor is it necessarily comprehensive or exhaustive. Nothing in this RFT is intended to relieve Bidders from forming their own opinions and conclusions with respect to the matters addressed in this RFT.

.4 For clarity, no prequalification documents issued by the Toronto Zoo or prequalification submissions delivered by the Suppliers to the Toronto Zoo shall form a part of the RFT or the Contract.

.5 It shall be the responsibility of each Supplier to acquire, other sources or in person from the Procurement Contact, as specified in the RFT, any document that is referenced or mentioned in this RFT which is not included herein.

.6 The failure of any Supplier to acquire, receive or examine any document, form, Addendum, or policy shall not relieve the Supplier of any obligation with respect to its Bid or the Contract. The Toronto Zoo is not responsible for any misunderstanding on the part of any Supplier concerning this RFT or its processes.

1.4 Responding to the RFT and Prohibited Communications

Toronto Zoo website

.1 The RFT is available only through, the Toronto Zoo website at: https://www.toronto.ca/business

Prohibited Communications

.2 Suppliers (including potential Suppliers) shall not, and shall cause their representatives not to discuss, disclose or communicate, directly or indirectly, any details pertaining to or in connection with their Bid or this RFT to:

- any employee, official, agent, elected or appointed official or other representative of the Toronto Zoo other than the Procurement Contact; or
- anyone not specifically involved in their Bid (including, without limitation, any other Supplier),

except as may be authorized in writing by the Procurement Contact Other than the Procurement Contact, no Toronto Zoo representative, whether an official, agent or employee, is authorized to speak for the Toronto Zoo with respect to this RFT. Any Supplier who uses or relies on any representation, information, clarification, correspondence or other communication from any other Toronto Zoo representative does so entirely at the Supplier's own risk and the Toronto Zoo shall not be bound by such representation, information, clarification, correspondence or other communication.

.3 Without limiting any other provision of this Section 1.4. any attempt by a Supplier to bypass the RFT process may be grounds for rejection of its Bid.

1.5 RFT Timetable

.1 The Toronto Zoo's currently proposed schedule for each step in the RFT process is set out in below.

Event	Date /Time
Issue Date of RFT	**2022-09-23**
Site Visit / Pre-Bid Meeting	**2022-09-28** at **10:00 a.m.**
Deadline for Questions	**2022-10-03**
Submission Deadline	**2022-10-07**
Bid Validity Period	**90 days after Submission Deadline**
Anticipated Award Date	**2022-10-20**

.2 The Toronto Zoo reserves the right to, in the Toronto Zoo's sole and absolute discretion, at any time:

- revise the RFT schedule, to accelerate, eliminate or postpone any of the dates or times set out in this RFT, including the Submission Deadline;
- to add to, delete or re-order any of the milestones set out in this RFT, at any time; or
- modify the RFT process.

1.6 In the event of an inconsistency or a conflict between the Submission Deadline as displayed in the Toronto Zoo website portal and the Submission Deadline as indicated in an Addendum, the Submission Deadline as displayed in the Toronto Zoo website portal shall take precedence.

1.7 Site Meetings

.3 **Mandatory Site Meeting**

.1 Suppliers are required to attend a mandatory site meeting to familiarize themselves with the Project and ascertain the full extent of the Work required. The mandatory site meeting will take place at 10:00 a.m. local time on 2022-09-28 at Toronto Zoo, Main Entrance, Administration Building, 361A Old Finch Avenue, Toronto, ON M1B 5K7. Site meetings will not be available at any other times.

.2 Suppliers must sign the attendance sheet at the mandatory site meeting during the designated date and time for their Bid to be considered.

.3 Bids submitted by Suppliers that do not attend the mandatory site meeting or fail to sign the attendance sheet shall be declared non-compliant.]

.4 No statement or information provided in such meeting by either the Toronto Zoo or the Suppliers will amend any provision of this RFT or the Contract or may be relied upon by a Supplier in the RFT process or its Bid, except and to the extent such statement or information is later confirmed through the issuance of an Addendum.

1.7 <u>Addenda</u>

.1 The RFT may only be amended by Addendum in accordance with this Section 1.7 (Addenda). Prior to the Submission Deadline, the Toronto Zoo may at any time or times modify the RFT in whole or in part through the issuance of an Addenda, if deemed necessary by the Toronto Zoo. Each Addendum shall form an integral part of this RFT.

.2 All Addenda will be posted on the http://www.torontozoo.com/business and Toronto Zoo, the Toronto Zoo is not responsible for any failure of such notice system or for notices not received by Suppliers.

.3 Suppliers must check the Toronto Zoo's http://www.torontozoo.com/business frequently to inform themselves of any posted Addendum. Toronto Zoo. Suppliers shall be wholly responsible for checking and reviewing any posted Addenda and ensuring the completeness of the RFT (as amended) and their Bids (as impacted by such Addenda). The Toronto Zoo is not responsible for any incomplete or incorrect Bids resulting from the issuance of an Addendum or a Supplier's failure to update its Bid in response to an Addendum.

.4 The Toronto Zoo will make reasonable efforts to issue the final Addendum (if any) in a sufficient time prior to the Submission Deadline to allow Suppliers to submit their Bids. If any Addendum requires substantial amendments to the RFT, the Toronto Zoo may, in its sole and absolute discretion, extend the Submission Deadline.

.5 Other than documents issued as part of the RFT (including Addenda), the Toronto Zoo shall not be responsible for any explanations, instructions, or interpretations even if provided by its actual or purported employees, designees or agents. No oral or written explanations, instructions or interpretations shall modify any of the requirements or provisions of the RFT unless in the form of an Addendum.

.6 Any reference in this RFT to any document comprising this RFT includes any amendments to such document made in accordance with this Section 1.7 (Addenda).

1.8 Questions

.1 Prospective Suppliers finding errors, omissions, conflicts, ambiguities, or discrepancies in the RFT or having questions, comments, or concerns regarding this RFT, its process and related matters ("**Questions**") may submit such Questions to the Procurement Contact using the Toronto Zoo QBD form attached. The Toronto Zoo will make reasonable efforts to respond to Questions received by the deadline for Questions set out in the RFT timetable in Section 1.5 (RFT Timetable). However, the Toronto Zoo shall have no obligation to respond to any or all Questions, and the Toronto Zoo's determination as to whether it will respond to any Question shall be in the Toronto Zoo's sole and absolute discretion. The onus is on each Supplier to confirm the Toronto Zoo has received all correspondence from the Supplier.

.2 Although it is the Toronto Zoo's practice to make available to all Questions received as well as responses to such Questions: (i) for Questions of an administrative nature; or (ii) where a prospective Supplier's Question is identified as commercially confidential in nature and where, the Toronto Zoo in its sole and absolute discretion deems the Question or response to be commercially confidential, the Toronto Zoo may provide a response only to that Supplier. The Toronto Zoo reserves the right to edit Questions for clarity and applicability to all Suppliers generally.

.3 Pursuant to Section 1.7.1 (Addenda), responses to Questions prepared and circulated by the Toronto Zoo are not RFT documents and do not amend the RFT, unless such responses form part of an Addendum.

1.9 Submission of Bids

.1 General

.1 Subject to Section 1.9.3 (Bid Bond) with respect to the submission of the Bid Bond, Bids must be in person Toronto Zoo prior to the Submission Deadline. Bids will be rejected as non-compliant if submitted by any other mechanism including, but not limited to, post, courier, fax, e-mail or orally, unless specifically requested Toronto Zoo

.2 It is the Supplier's sole responsibility to ensure its Bid is received by the Submission Deadline in accordance with the requirements of this RFT. The receipt of Bids can be delayed due to several factors including "internet traffic", file transfer size and transmission speed. The Supplier should allow sufficient time to download, complete and upload, as applicable, the submission forms comprising its Bid and any attachments.

- A Bid will only be considered submitted once it has been received by the Toronto Zoo. The time of such receipt is reflected by the date and time stamped by the Toronto Zoo email server.

.3 Suppliers must submit their Bids in the format presented, prescribed and compatible with the requirements of the RFT and Toronto Zoo must include all attachments required by the Toronto Zoo. Failure to fully complete the forms presented in this RFT or to include and submit the required attachments or separate documentation, as applicable, may result in the bid being rejected as non-compliant.

.4 The forms, documents and other items outlined in this Section 1.9 (Submission of Bids) must be completed in their entirety and submitted in the format presented and prescribed by the Toronto Zoo in accordance with the requirements of the RFT. Failure to so submit any such items may result in the Bid being rejected as non-compliant.

.5 All Suppliers should exercise extreme care when completing their Bid submissions, as failure to complete the Bid fully or to comply with the requirements of this RFT may cause the Bid to be rejected as non-compliant.

.2 Bid Submission Form

.1 Suppliers shall complete and submit all information and respond to all items in the Bid submission form set out in Part 4 (Bid Submission Form) ("**Bid Submission Form**").

.2 The Bid Submission Form contains confirmatory statements and declarations in respect of the Toronto Zoo's Policies.

.3 Bid Bond

.1 In addition to the requirements set out in this RFT in respect of the submission of Toronto Zoo, each Supplier shall submit, a bid bond to secure the execution of the Contract by the Supplier ("**Bid Bond**").

.2 The Bid Bond shall be made out to the Toronto Zoo and enclosed with your submission delivered to bids@torontozoo.ca before the Submission Deadline

.3 The Bid Bond shall be in the amount and in the form provided in Form B of Part 4 (Bid Bond Form) or in another substantially similar format approved by the Toronto Zoo prior to Bid submission; and

.4 The Bid Bond shall be authorized by the Supplier and by a licensed surety company, authorized to carry on business in the Province of Ontario, and having a place of business in Ontario.

.5 Failure of a Supplier to submit a Bid Bond, in compliance with the requirements of Sections 1.9.3.1 and 1.9.3.2 (Bid Bonds) shall result in the Bid being rejected as non-compliant.

.4 **Experience and Qualifications Form**

.1 Each Supplier shall complete and submit the Experience and Qualifications Form provided in Form C of Part 4 (Experience and Qualifications Form). In submitting such form, the Supplier gives the Toronto Zoo consent to contact the references therein to confirm the information therein. Failure to provide the required information listed on the Experience and Qualifications Form shall render the Bid non-compliant. If, in the Toronto Zoo's sole and absolute discretion, the references do not confirm the Supplier's experience and qualifications as required by the RFT, the Bid will be declared non-compliant and will not be considered for acceptance.

.2 The Toronto Zoo reserves the right to verify whether Suppliers are relying upon experience of an Affiliated Person including the nature of the corporate relationship and its relevance to the Project. If, in the Toronto Zoo's sole and absolute discretion, it is determined that a Supplier is relying on an Affiliated Person's experience and a transfer of the Affiliated Person's experience cannot be demonstrated as relevant to the Project then the Bid will be declared non-compliant and not be considered for acceptance.

.3 The Toronto Zoo reserves the right to verify past performance of the Supplier or its Affiliated Persons with the Toronto Zoo's performance records on relevant Toronto Zoo projects (including the Toronto Zoo's agencies, boards, commissions, and corporations).

.4 The Toronto Zoo reserves the right to verify a mandatory certification of qualifications submitted by a Supplier for itself or its Affiliated Persons with any relevant third-party certifying organization.

.5 **List of Subcontractors Form**

.1 The Supplier shall complete and submit the form provided in Form D of Part 4 (List of Subcontractors Form) indicating the subcontractors it intends to employ to carry out each portion of the Work ("**Subcontractors**") indicated therein.

.2 Suppliers must not include companies under suspension by the Toronto Zoo on their list of Subcontractors.

.6 **Pricing Form**

.1 Each Supplier shall complete and submit the Pricing Form set out in Part 5 (PRICING FORM) according to the instructions contained in such form.

.2 In completing the Pricing Form, Suppliers must consider compliance with all of the requirements of the RFT, including Part 3 (DRAWINGS AND SPECIFICATIONS) and the terms of the Contract. The Toronto Zoo will assume, in evaluating all Bids, that compliance with such requirements has been accounted for the in the completed Pricing Form.

.7 **Other Mandatory Submission Requirements**

.1 None.

1.10 Amendment of Bids

.1 Prior to the Submission Deadline, a Supplier may amend its Bid at any time after submission of the Bid Toronto Zoo and a Supplier may amend its Bid one or more times if it so wishes prior to the Submission Deadline.

.2 If a Supplier amends its Bid, the Supplier must resubmit the Bid prior to the Submission Deadline Toronto Zoo the most recently submitted version of the Bid as dated and stamped recorded Toronto Zoo, shall be irrevocable and binding in accordance with the provisions of the RFT, and may be accepted by the Toronto Zoo in its sole and absolute discretion unless such Bid has been properly withdrawn in accordance with Section 1.11 (Withdrawal of Bids).

1.11 Withdrawal of Bids

.1 A Bid may be withdrawn at any time prior to the Submission Deadline by delivering written notice of withdrawal to the Procurement Contact by means of email or in person Toronto Zoo before the Submission Deadline.

.2 For clarity, a Bid may only be withdrawn by delivering such notice to the Procurement Contact prior to the Submission Deadline and cannot be withdrawn by any other means. If a Supplier fails to properly withdraw a Bid, the Bid shall be considered as the Supplier's submitted Bid, shall be irrevocable and binding in accordance with the provisions of the RFT, and may be accepted by the Toronto Zoo in its sole and absolute discretion, notwithstanding such failure.

.3 Any Bids that are properly withdrawn will not be examined or evaluated for the purpose of the RFT but shall be retained for the Toronto Zoo's record retention purposes.

1.12 Bid Validity Period

.1 Upon the Submission Deadline, each submitted Bid shall be irrevocable and binding on Suppliers for the period following the Submission Deadline as set out in the RFT timetable in Section 1.5 (RFT Timetable) ("**Bid Validity Period**").

.2 In exceptional circumstances, prior to the expiration of the Bid Validity Period, the Toronto Zoo may request Suppliers to extend the validity of their Bids and any accompanying Bid Bonds. The request and responses shall be made in writing by the Procurement Contact Toronto Zoo. A Supplier may refuse the Toronto Zoo's request without rendering its Bid non-compliant. A Supplier granting the request shall not be required or permitted to modify its Bid.

SECTION 2 - EVALUATION, ACCEPTANCE AND EXECUTION

2.1 Evaluation

.1 **Evaluation Process**

.1 The Toronto Zoo will conduct the evaluation of Bids in the following two stages.

Stage 1: The Bids will be reviewed to determine whether they comply with all of the mandatory requirements of the RFT, including the requirements of Section 1.9 (Submission of Bids). Bids that that are substantially incomplete or do not substantially comply with the requirements of this RFT will be excluded from consideration in Stage 2.

Stage 2: The compliant Bids will be ranked on the basis of the submitted pricing of each in accordance with the price evaluation method set out in the Pricing Form.

.2 Subject to its reserved rights set out in this Part, the Toronto Zoo may at any time and from time to time, in its sole and absolute discretion, revisit, revise, confirm or adjust the evaluations of a Bid at any time during the RFT process.

.2 **Tied Bids**

If the Toronto Zoo receives two (2) or more Bids identical in price, the Toronto Zoo reserves the right to select one of such Bids as set out the Toronto Zoo's Policies. The Tied Bid procedure allows Toronto Zoo the tie to be broken by way of coin toss or lottery.

.3 **Materially Unbalanced or Abnormally Low Bids**

.1 A Bid is materially unbalanced if:

- it is based on prices which are significantly less than cost for some items and prices which are significantly overstated in relation to cost for other items; and
- the Toronto Zoo has determined that the Bid may not result in the lowest overall cost to the Toronto Zoo even though it may be the lowest submitted Bid; or
- it is so unbalanced as to be tantamount to allowing an advance payment.

.2 A Bid is abnormally low if the pricing, in combination with other constituent elements of the Bid, appears unreasonably low to the extent that the pricing raises material concerns with the Toronto Zoo as to the capability of the Supplier to perform the Contract based on the offered pricing.

.3 If a materially unbalanced Bid or an abnormally low Bid is identified, the Toronto Zoo may seek clarification from the Supplier, including a detailed price analysis of its pricing in relation to the subject matter of the Contract, the scope of Work, the estimated quantities, the schedule for the performance of the Work, the allocation of risks and responsibilities and any other requirements of RFT.

.4 If after evaluation of the price analysis, the Toronto Zoo determines that the Supplier has failed to demonstrate its capability to perform the Contract based on the offered pricing, or that the offered pricing in constitutes a material risk to the Toronto Zoo, the Toronto Zoo may reject the Bid.

2.2 Rights of the Toronto Zoo

In addition to, but without limiting any other rights or options of the Toronto Zoo under this RFT, the Toronto Zoo may, in its sole and absolute discretion carry out the RFT process as it determines to be in the best interests of the Toronto Zoo and to be the most beneficial to Toronto Zoo. The Toronto Zoo may, in its sole and absolute discretion, exercise any or all of the following rights and options with respect to this RFT, at any time.

.1 The Toronto Zoo may waive minor irregularities in any Bid.

.2 The Toronto Zoo shall not be obliged to accept or reject any Bid (in whole or in part), including if:

- the Bid contents appear to be incorrect, inaccurate, or inappropriate;
- the Supplier has engaged in conduct prohibited by the RFT; or
- the Supplier or any member of a Supplier's Joint Venture is or becomes bankrupt, insolvent, makes an assignment for the benefit of its creditors generally or has a receiver appointed over all or a substantial part of its assets.

.3 The Toronto Zoo may suspend, modify and/or cancel this RFT (with or without the substitution of another RFT) or the Project.

.4 The lowest quoted price may not necessarily be accepted by the Toronto Zoo.

.5 The Toronto Zoo may verify the validity of a Bid including the Supplier's statements, claims, qualifications, or capabilities, by whatever means the Toronto Zoo deems appropriate including obtaining references other than those offered by the Supplier and conduct investigations as to the qualifications of each Supplier.

.6 The Toronto Zoo may, at any time during the RFT process, require (within such time as set by the Toronto Zoo) one, some or all of the Suppliers to:

- submit supplementary information or documentation clarifying any matters contained in their Bid;
- meet with the Toronto Zoo to clarify aspects of their Bid;
- acknowledge and agree to the Toronto Zoo's interpretation of any aspect of a Bid,

provided, however, that the Toronto Zoo is not obliged to seek clarification of any aspect of a Bid and may request clarification from some but not all Suppliers. Such clarification may be in respect of clarification with respect to whether a Bid meets the mandatory requirements of the RFT or whether the Supplier meets the necessary experience and performance qualifications set out in the RFT, if any. Any supplementary information and documents submitted by a Supplier which have been accepted by the Toronto Zoo and the interpretations prepared by the Toronto Zoo which have been acknowledged and agreed to by a Supplier shall be considered to form part of the Bid.

.7 The Toronto Zoo reserves the right to assess the ability of the Supplier to perform the Contract and may reject any Bid where, in the Toronto Zoo's sole determination, the personnel and/or resources of the Supplier are insufficient.

.8 Bids that are improperly prepared, not in compliance with all of the requirements or instructions of the RFT, incomplete, improperly signed, conditional, qualified, illegible, obscure or contain reservations, additions not called for, arithmetical errors, omissions, erasures, alterations, or irregularities of any kind may, be considered informal or irregular and may be rejected or be retained by the Toronto Zoo for consideration and acceptance.

.9 The Toronto Zoo may choose to meet with some or all of the Suppliers in connection with their Bids or the matters provided for in the RFT. The Toronto Zoo may visit the existing place or places of business of some or all Suppliers for purposes of clarification or verification.

.10 The Toronto Zoo may award one or more contracts for portions or all of the Work to as many Suppliers and/or Other Persons as it deems appropriate, including awarding a contract for Work less than the scope or quantity contemplated in the Successful Supplier's Bid or the RFT.

.11 The Toronto Zoo may issue a solicitation to one, some or all of the Suppliers and/or any Other Person.

.12 After the Submission Deadline, the Toronto Zoo may increase or decrease the quantity of any unit of Work in accordance with the Contract.

.13 The Toronto Zoo may exercise any other right or option provided for in, or in connection with, this RFT, including the rights and options set out in the Toronto Zoo's Policies.

.14 The Toronto Zoo may do nothing in relation to the Bids or this RFT.

2.3 Contract Execution

.1 Once a Bid has been accepted by the Toronto Zoo, the Procurement Contact will notify the Successful Supplier that it has been awarded the Contract.

.2 The Successful Supplier will be required to execute and deliver the Contract as well as the other documentation set out below in this Section 2.3.2 (Contract Execution) by taking the following steps within ten (10) Business Days after being notified by the Toronto Zoo that the Contract is ready for execution:

.1 execute and return the Contract, without any unilateral revisions to the Contract;

.2 obtain and deliver a performance bond and a labour and material payment bond for the due and proper performance of the Work, each in accordance with the requirements of the Contract and signed and sealed by the Supplier and its surety;

.3 arrange for the certificate of insurance in the form attached as a part of the Contract to be completed and signed (including stamp of insurance broker) and delivered to the Toronto Zoo;

.4 A letter from Workplace Safety and Insurance Board certifying that the Contractor is in good standing with the Board. A "letter of good standing" must be re-submitted throughout the Contract every 90 days.

.3 Should the Successful Supplier fail to execute and deliver the Contract and deliver the accompanying documents in accordance with the requirements of Section 2.3.2 (Contract Execution), the Successful Supplier shall be deemed to have abandoned all rights and interests in the Contract and the RFT and the Toronto Zoo may, without prejudice to any other remedy or right which it may have, exercise all or any one or more of the following rights:

- rescind its award of the Contract;
- call on the Bid Bond;
- accept the Bid of the next highest ranked Supplier and proceed to execute the Contract with such Supplier; or
- suspend the Successful Supplier from participating in other Toronto Zoo procurement processes for such period of time as may be determined under the Supplier Performance Evaluation.

2.4 Notification to Other Suppliers

Once the Successful Supplier is notified that the Toronto Zoo has awarded the Contract, the other Suppliers will be notified by the Toronto Zoo in writing Toronto Zoo of the outcome of the RFT process.

2.5 Debriefing

Unsuccessful Suppliers may request a debriefing after receipt of a notification of the outcome of the selection process. All requests must be in writing to the Procurement Contact Toronto Zoo. The intent of the debriefing information session is to aid the Supplier in presenting a better bid in subsequent procurement opportunities. Any debriefing provided is at the sole and absolute discretion of the Toronto Zoo, and not for the purpose of providing an opportunity to challenge the RFT process.

SECTION 3 - GENERAL RFT TERMS AND CONDITIONS

3.1 General Process Terms and Conditions

.1 Suppliers acknowledge that their Bids are governed by the terms and conditions set out in this RFT as well as the by-laws, policies and procedures established by the Toronto Zoo (including the Toronto Zoo's Policies and Procedures) and any additional terms and conditions related to the provision of the Toronto Zoo and Suppliers will become familiar, and comply with, all of the foregoing. Each Supplier shall comply with the Toronto Zoo's Policies and Procedures including the specific policies set out in Form A of Part 4 – Bid Submission Form (Toronto Zoo's Policies and Procedures) and elsewhere in this RFT. It is the responsibility of the Supplier to review all such policies.

.2 Suppliers should structure their bids in accordance with the instructions in this RFT. Where information is requested in this RFT, any response made in a Bid should reference the applicable section numbers of this RFT.

.3 The Toronto Zoo will have no obligation to consider information, documentation or other content not included in a Bid for the purpose of evaluating the Bid. For clarity, the Toronto Zoo will not consider any content referred to in but not included in the Bid, including information referenced by links to websites or other external documents.

3.2 Suppliers Shall Bear Their Own Costs

Each Supplier shall bear all costs, expenses and financial obligations associated with or incurred by the Supplier to: (i) prepare and present its Bid or to otherwise participate in the RFT process including, if applicable, costs incurred for samples, interviews or demonstrations; or (ii) to establish a legally binding contract with the Toronto Zoo.

3.3 Limitation of Liability

.1 Notwithstanding anything in the RFT and any express or implied duties or obligations of the Toronto Zoo to the contrary, the Toronto Zoo and each of its agencies, boards, commissions, elected officials, officers, employees, servants, agents, volunteers, suppliers, advisers and contracted personnel will have no liability to any Person, including any Supplier and prospective Supplier for any damages, costs, liabilities, losses or expenses including direct, indirect, special or punitive damages, or for loss of profits, loss of opportunity or loss of reputation arising out of or otherwise relating to:

- this RFT,
- participation of any such Person in this RFT process;
- the provision and availability or lack of availability or accuracy of the Toronto Zoo RFT issued by the Toronto Zoo; or
- the Toronto Zoo's acts or omissions in connection with the conduct of this RFT process, including the acceptance, non-acceptance or delay in acceptance by the Toronto Zoo of any Bid.

.2 This limitation applies to all possible claims, whether arising in contract, tort, equity, or otherwise, including any claim for a breach by the Toronto Zoo of a duty of fairness, if any, or relating to a failure of the Toronto Zoo to comply with the rules set out in this

RFT. By submitting a Bid to the Toronto Zoo, each Supplier irrevocably and unconditionally waives any claims for damages, costs, liabilities, losses and expenses, and shall not seek any order for injunctive relief or specific performance, against the Toronto Zoo, its agencies, boards, commissions, elected officials, officers, employees, servants, agents, volunteers, advisers and contracted personnel.

.3 Each Supplier agrees that, despite Section 3.3.1(Limitation of Liability) or any limitations of liability or releases in favour of Toronto Zoo, if the Toronto Zoo is found to be liable, in any way whatsoever, for any act or omission in respect of the RFT Toronto Zoo to any Supplier or any other Person participating in the RFT process, and the aggregate amount of damages recoverable against Toronto Zoo for any matter relating to or arising from any act or omission by the Toronto Zoo, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the Toronto Zoo shall be no greater than the Supplier's cost of preparing its Bid.

.4 Notwithstanding the Toronto Zoo's limitation of liability, the Supplier may seek a debriefing or may pursue a dispute of the RFT process in accordance with the Toronto Zoo's Policies and Legislation.

3.4 Joint Venture Bids

A Supplier may be a private legal entity or any combination of such entities in the form of a joint venture (**Joint Venture**) under and existing agreement or with the intent to enter into such an agreement as supported by a letter of intent. In the case of a Joint Venture, all members shall be jointly and severally liable for the execution of the entire contract if selected by the Toronto Zoo. The Joint Venture shall nominate a representative who shall have the authority to conduct all business on behalf of all members of the Joint Venture during the procurement process and for the execution and performance of any resulting contract.

3.5 Participation in Multiple Bids

Submission or participation in more than one Bid by a Supplier will result in the disqualification of all proposals in which the Supplier is involved. This does not limit the inclusion of the same subcontractor from being named in more than one Bid as a subcontractor only.

3.6 Toronto Zoo Materials

.1 The RFT and all correspondence, data, plans, materials, drawings, specifications, reports, estimates, summaries, photographs, models and all other information and documentation in any form provided or made available to any Supplier or prospective Supplier by, or on behalf of, the Toronto Zoo in connection with, or arising out of this RFT (collectively, the "**Toronto Zoo Materials**") and all intellectual property rights therein:

- are and shall remain the sole and absolute property of the Toronto Zoo;
- must be treated by Suppliers and prospective Suppliers as confidential and Suppliers must maintain such confidentiality;

- must not be disclosed without prior written authorization from the Toronto Zoo;
- must not be used for any purpose other than for replying to this RFT, and for fulfillment of the Contract or any related subsequent agreement; and
- immediately upon the request of the Toronto Zoo, must be returned by the Supplier to the Toronto Zoo and all electronic copies must be destroyed.

.2 Unless and to the extent provided otherwise in the Contract, the Toronto Zoo and its advisers make no representation or warranty as to the accuracy or completeness of the Toronto Zoo Materials. Any quantities shown or data contained in the Toronto Zoo Materials are estimates only and are for the sole purpose of indicating to Suppliers the general scale and scope of the Work. Use of or reliance by Suppliers on the Toronto Zoo Materials Toronto Zoo shall be at the Supplier's sole risk and without recourse against the Toronto Zoo.

.3 It is the Suppliers' responsibility to make their own independent investigations, due diligence, projections, and conclusions, and consult their own advisors, to obtain all the information necessary to:

- verify and confirm the accuracy and completeness of the Toronto Zoo Materials, unless and to the extent provided otherwise in the Contract;
- satisfy themselves as to all existing conditions affecting the Project or the Contract; and
- prepare their Bids in response to this RFT.

3.7 <u>Ownership of Bid Materials</u>

.1 The documentation comprising any Bid, along with all correspondence, data, plans, materials, drawings, specifications, reports, estimates, summaries, photographs, models and all other information and documentation in any form provided or made available to the Toronto Zoo by, or on behalf of, any Supplier in connection with, or arising out of this RFT (collectively, the "**Bid Materials**") and all intellectual property rights therein, once received by the Toronto Zoo:

- shall become the sole and absolute property of the Toronto Zoo;
- shall become subject to MFIPPA, and the Toronto Zoo may be required to disclose the Bid Materials members of the public, pursuant to MFIPPA.

.2 Each Supplier:

- represents and warrants that the information contained in its Bid Materials does not infringe any intellectual property right of any third party;
- hereby assigns and transfer to the Toronto Zoo, and shall cause all its personnel and other third parties to assign and transfer to the Toronto Zoo, all right, title and interest in the Bid Materials, including intellectual property rights therein:

- shall cause all its personnel and other third parties to waive, for the benefit of the Toronto Zoo, their respective moral rights (and any similar rights to the extent that such rights exist) in and to the Bid Materials; and

- shall indemnify, defend and hold harmless the Toronto Zoo, City of Toronto and Toronto Regional Conservation Authority and its agencies, boards, commissions, elected officials, officers, employees, servants, agents, volunteers, advisers and contracted personnel, if any, against all claims, actions, suits and proceedings brought against, or losses, costs, expenses, damages suffered, sustained, or incurred by them which may be directly or indirectly attributable to, or arising or alleged to arise out of the infringement or alleged infringement of any patent, copyright, trademark, or other intellectual property right of a third party in connection with the Bid Materials.

.3 Suppliers are also advised that MFIPPA does provide protection for confidential and proprietary business information. For the purposes of the Toronto Zoo's compliance with MFIPPA, Suppliers are advised to identify in their Bid Materials material any scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause them injury.

.4 Each Supplier's name and total bid price may be made public. Bid Materials will, as necessary, be made available:

- on a confidential basis, to advisers retained by the Toronto Zoo to advise or assist with the RFT process;

- to members of Council in accordance with the Toronto Zoo's procedures; and

- to members of the public pursuant to MFIPPA.

.5 The Toronto Zoo will not return the Bid or any other Bid Materials.

3.8 <u>Failure or Default of Supplier</u>

.1 Without prejudice to any other right or remedy available to the Toronto Zoo under this RFT or at law, if the Supplier, for any reason, fails or defaults in respect of an obligation of the Supplier under the terms of the RFT, the Toronto Zoo may:

- disqualify the Supplier from the RFT and/or from competing for any future solicitations issued by the Toronto Zoo; and

- require the Supplier to pay the Toronto Zoo the difference between its Bid and any other Bid which the Toronto Zoo accepts, if the latter is for a greater amount and, in addition, to pay the Toronto Zoo any other cost which the Toronto Zoo may incur by reason of the Supplier's failure or default.

.2 The Supplier shall be ineligible to submit a new bid for any solicitations that the Toronto Zoo is required to reissue as a result of the Supplier's failure or default under

the Contract or where the Toronto Zoo deems that the Supplier has abandoned the Contract.

3.9 Trade Agreements

Suppliers should be aware that procurements falling within the scope of the Canadian Free Trade Agreement or other trade agreements applicable to the Toronto Zoo are subject to such agreements, but the rights and obligations of the parties will be governed by the specific terms of this RFT

3.10 Governing Law and Enforceability

.1 The terms and conditions of the RFT process are to be governed by and construed in accordance with the Toronto Zoo's Policies, the laws of the province of Ontario and the federal laws of Canada applicable therein.

.2 If any provision of the RFT or its application to any party or circumstance is unenforceable, the provision shall be ineffective only to the extent of the unenforceability without: (i) invalidating the remaining provisions of the RFT; (ii) changing the fundamental nature of the obligations assumed by the parties; and (iii) affecting its application to other parties or circumstances.

3.11 RFT Definitions and Interpretation

.1 **Definitions**

Throughout this RFT, unless inconsistent with the subject matter or context, the following definitions shall apply other than in respect of Part 2 (FORM OF CONSTRUCTION AGREEMENT).

.1 "**Addenda**" or "**Addendum**" means a document containing additional information and/or changes to the RFT issued by the Toronto Zoo on its website Toronto Zoo

.2 "**Bid**" means an offer submitted by a Supplier in response to the RFT, which includes all of the documentation necessary to satisfy the submission requirements of the RFT and "**Bids**" shall have a corresponding meaning;

.3 "**Bid Bond**" has the meaning set out in Section 1.9.3 (Bid Bonds).

.4 "**Bid Materials**" has the meaning set out in Section 3.7.1 (Ownership of Bid Materials).

.5 "**Bid Submission Form**" has the meaning set out in Section 1.9.2 (Bid Submission Form).

.6 "**Bid Validity Period**" has the meaning set out in Section 1.12. (Bid Validity Period).

.7 "**Business Day**" means a day other than:

.1 a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the Toronto Zoo of Toronto; or

.2 a day identified by the Toronto Zoo as a designated or statutory holiday

.8 "**Toronto Zoo**" means the Board of Management of the Toronto Zoo.

.9 "**Materials**" has the meaning set out in Section 3.6 (Toronto Zoo Materials).

.10 "**Contract**" means the contract in the form set out in Part 2 (FORM OF CONSTRUCTION AGREEMENT) to be executed by the Successful Supplier and the Toronto Zoo, which sets out the terms and conditions for the performance of the Work.

.11 "**Joint Venture**" has the meaning set out in Section 3.4 (Joint Venture Bids).

.12 "**MFIPPA**" means the *Municipal Freedom of Information and Protection of Privacy Act*, as amended, supplemented, re-enacted or replaced from time to time.

.13 "**Person**" means any individual, partnership, limited partnership, firm, joint venture, syndicate, company or corporation with or without share capital, trust, trustee, executor, administrator or other legal personal representative, governmental authority or entity however designated or constituted

.14 "**Procurement Contact**" has the meaning set out in Section 1.2 (Procurement Contact).

.15 "**Project**" has the meaning set out in Section 1.1 (Introduction): Construction of Core Woods Hill AODA Ramp

.16 "**RFT**" means this RFT package in its entirety, including all documents listed in Section 1.3 (RFT Documents) and Addenda that may be issued by the Toronto Zoo.

.17 "**Subcontractor**" means a Person undertaking the execution of a part of the Work by virtue of an agreement with the Contractor.

.18 "**Submission Deadline**" means the specified deadline for Bids to be submitted to the Toronto Zoo as indicated in the RFT timetable in Section 1.5 (RFT Timetable).

.19 "**Successful Supplier**" means the Supplier that has been selected to enter into the Contract for the performance of the Work.

.20 "**Supplier**" means a Person, including, where applicable, a Joint Bid Team, that submits a Bid in response to this RFT and "**Suppliers**" shall have a corresponding meaning.

.21 Toronto Zoo "**Work**" means all work, services and deliverables to be provided by a Contractor in respect of the Project as described in this RFT.

.2 **Interpretation of the RFT**

.1 Except where otherwise requested, all documents relating to the Bid and all communications between Suppliers and the Toronto Zoo will be in the English language.

.2 Except where otherwise disclosed, all references to times in this RFT will mean local time in Toronto, Ontario, Canada.

.3 The phrase “includes” “, include” or “including” means “includes, without limitation” or “including” or “include, without limitation”.

.4 In the RFT, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

.5 Unless otherwise stated herein, all amounts in the RFT are in Canadian dollars, including any amounts provided in the Pricing Form.

.6 In addition to the words defined in Section 13.13.1 (Definitions), the other words used in this RFT shall be interpreted consistent with the definitions contained in the Toronto Zoo's Policies.

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