COMMUNITY CARE ACCESS CENTRE
REQUEST FOR PROPOSALS FOR
GOODS AND/OR SERVICES
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SECTION 1 - INTRODUCTION

1.1 General

(1) This Request for Proposals (“RFP”) is issued by the Community Care Access Centre named in the Data Sheet (“CCAC”) in respect of the goods and services relating to negative pressure wound therapy products set out briefly in the RFP Data Sheet attached as Schedule 1 to this RFP (the “RFP Data Sheet”). A detailed description of the negative pressure wound therapy products and services that are the subject of this RFP is contained in the Draft Agreement and in the RFP Data Sheet (the “Negative Pressure Wound Therapy Products and Services”). The RFP number is set out in the RFP Data Sheet (the “RFP Number”).

(2) The purpose of this RFP Process is to select a negotiation partner or partners with whom CCAC intends to enter into negotiations in an effort to reach an agreement to provide the Negative Pressure Wound Therapy Products and Services.

(3) In this RFP, parties that submit documents in response to this RFP are referred to as “Respondents” and their submissions are referred to as “Proposals”. The entity or entities that are selected by CCAC to enter into a final agreement (the “Final Agreement”) are referred to as the “Successful Respondent(s)”.

(4) Where a Respondent has obligations to conduct itself in accordance with requirements set out in the RFP Documents or where the Respondent’s rights or remedies have been limited by the RFP Documents, such obligations and limitations apply to the Respondent itself, any members of the Respondent’s team, and any of their respective employees, consultants, advisors and representatives. For clarity, the Respondent is obliged to ensure that its team members, and the employees, consultants, advisors and representatives of the Respondent and its team members comply with the requirements imposed on the Respondent pursuant to the RFP Documents.

(5) The procurement process to select a Successful Respondent or Successful Respondents shall commence with the issuance of this RFP and, except as provided in RFP Section 3.7.1(10), the procurement process shall terminate either,

(a) on the cancellation or discontinuation of this RFP Process by CCAC, if such cancellation or discontinuation occurs; or

(b) on the execution of a Final Agreement by a Successful Respondent and CCAC,

whichever is first. The procurement process from the issuance of this RFP until the end of the procurement process as set out in this RFP Section 1.1(5) is referred to as the “RFP Process”.

(6) The RFP Process is intended to select, at a maximum, the number of Negotiations Respondents as set out in the RFP Data Sheet, as potential Negotiations Respondents. The CCAC may, in its sole discretion, select fewer Negotiations Respondents than the maximum number set out in the RFP Data Sheet. The CCAC may, in its sole discretion, select only one Negotiations Respondent.
1.2 Prequalified Parties

(1) This RFP is only open to those entities that meet the prequalification requirements ("Prequalification Requirements") specified in the RFP Data Sheet ("Prequalified Parties"). Prior to the preparation and submission of Proposals, Respondents are strongly encouraged to verify their prequalification status established by the OACCAC through the Provincial Prequalification Process in Ontario.

1.3 Respondent Representatives and Communication

(1) All correspondence from CCAC to a Respondent will be sent to either,

(a) the person to whom the RFP Documents were originally provided; or

(b) the Respondent’s contact person identified to the CCAC;

(the “Respondent Representative”).

(2) Each Respondent is solely responsible to ensure that all contact information of the Respondent Representative is accurate and updated at all times during the RFP Process. Respondents may update or revise their Respondent Representatives’ information by notifying the Contact Person, in writing.

1.4 Fairness Representative

(1) The CCAC may retain a fairness representative (a “Fairness Representative”) to monitor, advise or provide expert guidance during the RFP Process. If the CCAC has retained a Fairness Representative, the Fairness Representative will be named in the RFP Data Sheet and a description of the Fairness Representative’s participation in the RFP Process will be set out in the RFP Data Sheet.

SECTION 2 - THE RFP DOCUMENTS

2.1 RFP Documents

(1) The RFP Documents (the “RFP Documents”) are:

(a) this RFP;

(b) Schedule 1 – RFP Data Sheet;

(c) Schedule 2 – Written Quality Section;

(d) Schedule 3 – Proposal Submission Form;

(e) Schedule 4 – Price Submission Form;

(f) Schedule 5 – Site Visit;

(g) Schedule 6 – unless as otherwise indicated in the RFP Data Sheet, Draft Agreement (including all related Schedules appendices and attachments) as listed in the RFP Data Sheet; and
(h) Addenda to the RFP Documents, if any.

(2) Subject to RFP Section 2.2.1(1), the RFP Documents shall be read as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference. For greater clarity, background information documents are not RFP Documents.

2.2 Conflicts or Inconsistencies in Documents and Respondent Document and Information Review

2.2.1 Conflicts or Inconsistencies in Documents

(1) For the purpose of the RFP Process, if there are any conflicts or inconsistencies among the terms and conditions of the documents comprising RFP Documents the following shall apply:

(a) in respect of matters of interpretation related to the RFP Process and all competitive procurement process matters, this RFP shall prevail over the Schedules to this RFP; and

(b) in respect of all matters of interpretation of the nature of the Negative Pressure Wound Therapy Products and Services and the Draft Agreement, the Draft Agreement shall prevail over this RFP and all other Schedules to this RFP; and

(c) for the purpose of resolving conflicts or inconsistencies among the documents that constitute the Draft Agreement, the provisions of the Draft Agreement dealing with conflicts or inconsistencies shall govern.

2.2.2 Respondent Review of Documents and Information

(1) Despite RFP Section 2.2.1(1), if the Respondent believes that there is any term or condition in any RFP Document that is ambiguous, or that conflicts or is inconsistent with any other term or condition in the RFP Documents, the Respondent shall notify CCAC of that ambiguity, conflict or inconsistency in accordance with RFP Section 3.2.

(2) It is the Respondent’s obligation to seek clarification from CCAC of any matter it considers to be unclear in accordance with RFP Section 3.2. CCAC is not responsible in any way whatsoever for any misunderstanding by the Respondent of the RFP Documents, background information provided by CCAC, responses to questions, or any other type of information provided by or communication made by CCAC.

2.3 Distribution of RFP Documents to Respondents

(1) CCAC will circulate this RFP and all other RFP Documents, including Addenda, as set out in the RFP Data Sheet.

2.4 Respondent Investigations

(1) Each Respondent is solely responsible, at its own cost and expense, to carry out its own independent research, due diligence or to perform any other investigations, including seeking independent advice, considered necessary by the Respondent to satisfy itself as to all existing conditions affecting the Negative Pressure Wound Therapy Products and Services or
the Draft Agreement. The Respondents’ obligations set out in this RFP Section 2.4 apply irrespective of any background information provided by CCAC or information contained in the RFP Documents or in responses to questions.

(2) CCAC does not represent or warrant the accuracy or completeness of any information set out in the RFP Documents or made available to Respondents. The Respondents shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by Respondents on any and all such information shall be at the Respondents’ sole risk and without recourse against CCAC.

2.5 Background Information

(1) CCAC may provide various types of additional background information for the Proponents’ review and information as indicated in the RFP Data Sheet (the “Background Information Document”). The Background Information Document is not an RFP Document.

SECTION 3 - THE RFP PROCESS

3.1 RFP Process Timetable

(1) The deadline for the submission of Proposals (the “Submission Deadline”) and the general timetable for the RFP Process (the “Timetable”) are set out in the RFP Data Sheet.

(2) CCAC may amend the Timetable in its sole discretion:

(a) at any time prior to the Submission Deadline for events that are to occur prior to or on the Submission Deadline, including the Submission Deadline itself; and

(b) at any time in the RFP Process for events that are to occur after the Submission Deadline.

(3) As a courtesy to CCAC, Respondents are requested and encouraged to notify CCAC, by email addressed to the Contact Person and by the time and date set out in the Timetable, whether or not the Respondent intends to submit a Proposal in response to this RFP.

3.2 Respondent Questions

3.2.1 Contact Person

(1) The Respondents shall submit all questions and other communications regarding the RFP Documents, the RFP Process and their Proposals to the contact person named in the RFP Data Sheet (the “Contact Person”) electronically at the coordinates listed in the RFP Data Sheet. The Contact Person may also name a designate in the RFP Data Sheet.

3.2.2 Submitting Questions

(1) Respondents shall submit questions in accordance with the deadlines set out in the Timetable, in the form set out in the RFP Data Sheet and the following:

(a) Respondents may categorize their questions as either,
(i) questions that are of general application and that would apply to other Respondents (“General Questions”); and

(ii) questions that the Respondent considers to be commercially sensitive or confidential to that particular Respondent (“Confidential Questions”).

(b) If CCAC disagrees with the Respondent’s categorization of a question as a Confidential Question, CCAC will give the Respondent an opportunity to either categorize the question as a General Question or to withdraw the question.

(c) If CCAC determines, in its sole discretion, that a Confidential Question, even if it is withdrawn by a Respondent, is of general application or would provide a significant clarification of the RFP Documents or RFP Process to Respondents, CCAC may issue a clarification to Respondents that deals with the same subject matter as the withdrawn Confidential Question.

(d) If CCAC agrees with the Respondent’s categorization of a Confidential Question, then CCAC will provide a response to that question to only the Respondent that submitted the question.

(2) Responses to questions prepared and circulated by CCAC are not RFP Documents and do not amend the RFP Documents. Only a response to a question that has been incorporated into or issued as an Addendum will modify or amend the RFP Documents and, otherwise, responses to questions will have no force or effect whatsoever and shall not be relied upon by any Respondent.

(3) CCAC may, in its sole discretion, distribute responses to questions of a minor or administrative nature to only the Respondent who submitted the minor or administrative question.

3.3 Communications Restrictions

3.3.1 Prohibited Contacts

(1) Respondents and their advisors, employees and representatives are prohibited from engaging in any effort to influence the outcome of the RFP Process.

(2) Without limiting the generality of RFP Section 3.3.1(1), neither Respondents or any of their respective advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents, or their Proposals:

(a) CCAC;

(b) any member of the Evaluation Committee;

(c) the Ministry of Health and Long-Term Care or any other Ministry, agency or entity listed in the RFP Data Sheet;
(d) any Member of the Provincial Parliament (including the Premier);
(e) the Premier of Ontario’s office or the Ontario Cabinet office; or
(f) any directors, officers, employees, agents, representatives, advisors or consultants of any entity listed in RFP Sections 3.3.1(2)(a) to 3.3.1(2)(e).

(3) If a Respondent, in the opinion of CCAC, contravenes RFP Section 3.3.1(1), CCAC may, in its sole discretion, disqualify the Respondent or impose conditions on the Respondent’s continued participation in the RFP Process that CCAC considers, in its sole discretion, to be appropriate.

(4) For clarity, CCAC is not obliged to take any of the actions set out in RFP Section 3.3.1(3).

3.3.2 Media Releases, Public Disclosures and Public Announcements

(1) A Respondent shall not, and shall ensure that its representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) that relates to the RFP Process, the RFP Documents or the Negative Pressure Wound Therapy Products and Services or any matters related thereto, without the prior written consent of CCAC.

3.3.3 Restrictions on Communications between Respondents – No Collusion

(1) A Respondent shall not discuss or communicate, directly or indirectly, with any other Respondent, any information whatsoever regarding the preparation of its own Proposal or the Proposal of the other Respondent. Respondents shall prepare and submit Proposals independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Respondent.

3.4 Meetings with Respondents

3.4.1 Respondents Meeting(s)

(1) CCAC may, in its sole discretion, convene Respondents meetings (each, a “Respondents Meeting”) as set out in the RFP Data Sheet. While attendance at a Respondents Meeting is not mandatory, Respondents are strongly encouraged to attend. A Respondent’s failure to attend a Respondents Meeting is at the Respondent’s sole risk and responsibility.

(2) No statement, consent, waiver, acceptance, approval or anything else said or done in any Respondents Meetings by CCAC or any of their respective Advisors, employees or representatives shall amend or waive any provision of the RFP Documents, or be binding on CCAC or be relied upon in any way by Respondents, except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.6.

3.5 Notification of Changes of Respondent’s Structure

(1) During the RFP Process, a Respondent shall notify the RFP Coordinator, in writing, as soon as possible, and in any event, no later than seven days prior to the Submission Deadline, of any proposed changes to its joint venture arrangements, ownership structure or its
subcontracting arrangements from those set out in the Proposal or in the Respondent's Prequalification Application. The notification shall clearly identify the proposed change, including sufficient information and documentation to demonstrate that, following the change, the Respondent is able to meet or exceed the Prequalification Requirements.

(2) The CCAC may,

(a) approve or refuse to approve the changes in the joint venture arrangements, ownership structure or subcontracting arrangements of a Respondent; and

(b) if the CCAC has refused to give its approval and the Respondent carries out its proposed changes, reject the Respondent's or Successful Respondent's Proposal as a result of these changes.

(3) The CCAC's approval pursuant to RFP Section 3.5(2) shall not be unreasonably withheld.

(4) In the case of an actual change in the Respondent previously made without consent by the CCAC or a change proposed after the Submission Deadline, the CCAC may, in its sole discretion, disqualify the Respondent and terminate the Respondent's continued involvement in the RFP Process, or allow the Respondent to continue under such terms and conditions as the CCAC, in its sole discretion, may require.

3.6 Addenda/Changes to the RFP Documents

(1) CCAC may, in its sole discretion, amend or supplement the RFP Documents prior to the Submission Deadline. CCAC shall issue changes to the RFP Documents by Addenda only. No other statement, whether oral or written, made by CCAC or its representatives, including, for clarity, the Contact Person, or any other person, shall amend the RFP Documents. CCAC may issue Addenda at any time during the RFP Process.

(2) The Respondent is solely responsible to ensure that it has received all Addenda issued by CCAC. Respondents may, in writing, seek confirmation of the number of Addenda issued under this RFP from the Contact Person.

(3) Any reference to any one or all of the RFP Documents in the RFP Documents includes any amendments to the RFP Documents made in accordance with this RFP Section 3.6.

3.7 Confidentiality and Intellectual Property Matters

3.7.1 Confidentiality and Disclosure Issues – Respondent Information

(1) Except as provided otherwise in this RFP Section 3.7.1 or in RFP Section 3.12 or as required by the Applicable Law, the CCAC shall treat the Respondents’ Proposals and information gathered in any site visit carried out as part of this RFP Process as confidential, but this does not include information that is or becomes generally available to the public other than as a result of disclosure by the CCAC.

(2) The Respondent shall not require the CCAC or any of its representatives to sign a confidentiality agreement in respect of any step taken or information provided as part of this
RFP Process. If the Respondent refuses to participate in a site visit because the CCAC refuses to sign a confidentiality agreement, the Respondent shall receive a score of zero for the site visit, as applicable.

(3) The Respondent, by submitting its Proposal, agrees that, the CCAC may disclose,

(a) the name and address of the Respondents;
(b) the Total Estimated Contract Price on a per year basis and the final ranking (including the Final Proposal Scores) of any Respondent;
(c) any of the Respondents scores, including the score for the Written Quality Section, site visit and price;
(d) the Respondent’s relative ranking with respect to any of its scores;
(e) the name and address of the Successful Respondents; and
(f) the nature of the award (for example, type and quantity of Equipment and Supplies) to the Successful Respondents,

to other CCACs, any Local Health Integration Network, other Respondents and the public.

(4) The Respondent agrees that the CCAC may disclose Proposals, all information submitted in the Respondent’s Proposals and all information relating to the evaluation of Respondents to the Fairness Representative.

(5) The Respondent agrees that the CCAC may disclose Proposals, all information submitted in the Respondents’ Proposals and all information relating to the evaluation of Respondents (including information from site visits) to other community care access centres in the Province of Ontario and to any Local Health Integration Network in Ontario.

(6) The Respondent agrees that data and statistics in respect of its Proposal and any Agreement with the CCAC may be collected by the community care access centres in Ontario, the Ontario Association of Community Care Access Centres, or nationally, under the direction of the Ontario Ministry of Health and Long-Term Care or the federal Department of Health, on a no-names basis and the Respondent, by submitting a Proposal, consents to the disclosure of such information.

(7) The CCAC may provide the Proposals and all evaluation information to any person involved in the review and evaluation of the Proposals, the CCAC award of Agreements or, in the case of Successful Respondents, the implementation of the Agreement and the CCAC may,

(a) make copies of the Proposal;
(b) destroy copies of the Proposal after the completion of the evaluation process; and
(c) retain the Proposal.
(8) The CCAC may disclose to the Government of Ontario and any Local Health Integration Network in Ontario, any information with respect to the Respondent, the Proposals, the RFP Process (including any information obtained in the site visit) or any Agreements between the CCAC and Service Providers. Respondents acknowledge that information provided to the Government of Ontario and any Local Health Integration Network is subject to the Freedom of Information and Protection of Privacy Act, (Ontario) R.S.O. 1990, c.F.31 (“FIPPA“). Respondents are advised that FIPPA does provide protection for confidential and proprietary business information. Proponents are strongly encouraged to consult their own legal advisors as to the appropriate way in which confidential or proprietary business information should be marked in their Proposals.

(9) The CCAC may disclose any information with respect to the Respondents, the Proposals and the RFP Process and any Agreements between the CCACs and Service Providers as required by the Applicable Law.

(10) Notwithstanding RFP Section 8.2.1, the provisions of this RFP Section 3.7.1 shall be binding and shall survive any cancellation of this RFP and the conclusion of the RFP Process.

3.7.2 Confidentiality and Disclosure Issues – CCAC Information

(1) The Respondent shall treat all information provided to it by the CCAC in respect of this RFP Process, no matter how disclosed or obtained, as confidential, but confidential information does not include information that is or becomes generally available to the public (other than as a result of disclosure by the Respondent).

3.7.3 Ownership of Proposals

(1) All Proposals submitted before the Submission Deadline shall become the property of CCAC and will not be returned to the Respondent. For clarity, this RFP Section 3.7.1 applies to Proposals that are withdrawn after the Submission Deadline and are no longer under consideration in the RFP Process.

3.8 Conflict of Interest and Ineligible Persons

(1) Each Respondent shall disclose any potential, perceived or actual conflict of interest of the Respondent (“Conflict of Interest”) to the Contact Person and in its Proposal Submission Form, in accordance with this RFP Section 3.8. CCAC may, in its sole discretion, waive any Conflict of Interest or may impose conditions on a Respondent that require the management, mitigation and/or minimization of the Conflict of Interest.

(2) Upon discovery of a Conflict of Interest, Respondents shall promptly disclose the Conflict of Interest in a written statement to the Contact Person. If CCAC discovers a Respondent’s failure to disclose a Conflict of Interest, CCAC may disqualify the Respondent or terminate any Final Agreement awarded to that Respondent pursuant to this RFP Process.

(3) If, in the sole discretion of CCAC, a Respondent is determined to have a Conflict of Interest that, in CCAC’s sole discretion, cannot be managed, mitigated or minimized, CCAC may, in addition to any other remedies available at law or in equity, disqualify the Proposal submitted by the Respondent.
(4) As a result of their involvement in the subject matter of this RFP, the persons named in the RFP Data Sheet as “Ineligible Persons”, their employees, and any of their subcontractors, advisors, consultants or representatives engaged in respect of the subject matter of this RFP and, except with the prior written consent of CCAC, any person controlled by, that controls or that is under common control with the Ineligible Persons (each an “Ineligible Person’s Affiliate”) are not eligible to participate as a member or advisor to any Respondent in this RFP Process.

3.9 Respondent Costs

(1) The Respondent shall bear all costs and expenses of any kind whatsoever incurred by it relating to any aspect of its participation in this RFP Process.

(2) CCAC is not liable to pay any costs or expenses of any kind whatsoever of any Respondent or to reimburse or compensate a Respondent for costs or expenses of any kind whatsoever in respect of its participation in the RFP Process, regardless of the outcome of the RFP Process.

3.10 Applicable Law

(1) This RFP and the Final Agreement shall be governed and construed in accordance with the laws of Ontario and the applicable laws of Canada (the “Applicable Law”).

3.11 Respondents and Joint Ventures

(1) A Proposal may be submitted by,

(a) a single Prequalified entity as the Respondent;

(b) a Prequalified Applicant Team;

(c) a Prequalified joint venture Respondent (the “Prequalified Joint Venture Respondent”);

(d) a Prequalified Prime Contractor and Prequalified subcontractor(s) that form a new applicant team (the “New Applicant Team”); or

(e) a collection of Prequalified entities or Prequalified individuals that comprise a new joint venture as the Respondent (the “New Joint Venture Respondent”);

if the Respondent, Prequalified Applicant Team, New Applicant Team or Joint Venture Respondent meets the Prequalification Requirements set out in the RFP Data Sheet.

(2) Each Prequalified Joint Venture Respondent shall re-state, in the Proposal Submission Form, the joint venture arrangements that form the basis on which the Joint Venture Respondent plans to carry out its obligations under the Agreement. Each New Joint Venture Respondent shall describe, in the Proposal Submission Form, the joint venture arrangements that form the basis on which the Joint Venture Respondent plans to carry out its obligations under the Draft Agreement.
(3) Prequalified Joint Venture Respondents shall not change their joint venture arrangements from those arrangements on which the Prequalified Joint Venture Respondent was prequalified for this RFP Process without the prior written approval of the CCAC.

(4) All Joint Venture Participants of both Prequalified Joint Venture Respondents and New Joint Venture Respondent shall sign the Proposal Submission Form.

(5) All Joint Venture Participants of Successful Respondents shall,

(a) be parties to the Agreement with the CCAC; and

(b) be jointly and severally liable in accordance with the Draft Agreement.

3.12 Public Statements and News Releases

(1) No Respondent shall make any public statement or news release pertaining to this RFP at any time during this RFP Process without the prior written consent of the CCAC.

(2) If a Respondent (including a Successful Respondent) makes a public statement, either in the media or otherwise in contravention of RFP Section 3.12(1), or issues a statement that is circulated broadly among the Respondent’s staff or clients, in addition to any other legal remedies or provisions of this RFP,

(a) the CCAC may, in its sole discretion and notwithstanding RFP Section 3.7, disclose any information about that Respondent’s or Successful Respondent’s Proposal if, in the CCAC’s sole discretion, such disclosure is necessary to provide accurate information to the public or to correct erroneous information that has appeared in the media or has been broadly circulated; and

(b) the Respondent or Successful Respondent must report such public statements as a breach of a contract with a CCAC in any subsequent prequalification process in which the Respondent or Successful Respondent seeks to prequalify for the provision of equipment and supplies to community care access centers in the Province of Ontario.

SECTION 4 - PREPARATION, SUBMISSION, WITHDRAWAL AND MODIFICATION OF THE PROPOSAL

4.1 Format and Content of the Proposal

(1) Respondents shall prepare their Proposals in accordance with and in the content and format requirements set out in Schedule 2 to the RFP.

(2) The Respondents’ Written Quality Section shall be no longer than the applicable page limits set out in Schedule 2 to this RFP, excluding only the Table of Contents and title pages. If the Written Quality Section is longer than the applicable page limits set out in Schedule 2 to this RFP, the CCAC shall ignore the excess pages after the last allowable page.

4.2 Submission of Proposals
(1) Each Respondent shall submit its Proposal on or before the Submission Deadline. Each Respondent shall submit its Proposal in the format, either in hard copy or electronically, required by CCAC as set out in the RFP Data Sheet. For the purposes of the RFP Process, the determination of whether the Proposal is submitted on or before the Submission Deadline shall be based on:

(a) for Proposals submitted in hard copy, the time and date stamp the Respondent must ensure it receives from CCAC at the address for submission set out in the RFP Data Sheet; and

(b) for Proposals submitted electronically, the time and date stamp that the Proposal is received by the CCAC Contact Person.

For clarity, the time and date of an electronic submission is solely determined by the time and date the Proposal is received by CCAC in accordance with RFP Section 4.2(1)(b) and without consideration as to the time or date it was sent by the Respondent. A Proposal received after the Submission Deadline, in each case as documented by the applicable time and date stamp, shall be returned unopened to the sender and, in the case of electronic submissions, deleted from the mailbox of the CCAC Contact Person.

(2) It is the sole responsibility of the Respondent to ensure that the Proposal is received by CCAC on or before the Submission Deadline and, for hard copy submission, to ensure it receives a date and time stamp receipt from CCAC confirming the timely delivery of the Proposal. Unless otherwise set out in the RFP Data Sheet, CCAC will not accept Proposals delivered by electronic mail or facsimile.

(3) Respondents should prepare their Proposals assuming that the key terms and conditions set out in the Draft Agreement will be required in any Final Agreement. In any negotiation, the Respondent will be considered to have taken these key terms and conditions into account in its Proposal and in its pricing.

(4) CCAC may, in its sole discretion, decline to enter into negotiations or may cease negotiations, irrespective of the Respondent’s ranking in the evaluation process, with any Respondent if it becomes apparent that a Respondent has not prepared its Proposal taking into account the terms and conditions of the Draft Agreement, in accordance with RFP Section 4.2(3).

4.3 Withdrawal of Proposals

(1) A Respondent may withdraw its Proposal at any time by providing notice in writing to the Contact Person. If a Respondent withdraws its Proposal after the Submission Deadline, CCAC may, in its sole discretion, impose an evaluation penalty on the Respondent in any or all future CCAC competitive procurement processes.

(2) If a Respondent withdraws or attempts to amend its pricing after the Submission Deadline, CCAC may, in its sole discretion, cease to consider the Respondent’s Proposal any further in the RFP Process and may, as applicable, cease any negotiations with the Respondent. If a Respondent withdraws or attempts to amend its pricing after the Submission Deadline, CCAC may, in its sole discretion, impose an evaluation penalty on the Respondent in any or all future CCAC competitive procurement processes.

4.4 Amendment of Proposal
(1) Respondents may amend their Proposals after submission but only if the Proposal is resubmitted on or before the Submission Deadline in accordance with the following:

(a) the Respondent shall withdraw its original Proposal by notifying the Contact Person in writing before the Submission Deadline; and

(b) the Respondent shall submit a revised replacement Proposal in accordance with the RFP Documents and on or before the Submission Deadline in accordance with the requirements of RFP Section 4.1.

SECTION 5 - EVALUATION, CLARIFICATION AND VERIFICATION OF PROPOSALS

5.1 Evaluation Committee

(1) CCAC will establish an evaluation committee (the “Evaluation Committee”) for the purpose of evaluating Proposals in accordance with the RFP Documents. CCAC, in its sole discretion, will determine the size, structure and composition of the Evaluation Committee and any sub-committees of the Evaluation Committee and whether the Evaluation Committee will be assisted by CCAC advisors.

(2) If a member of the Evaluation Committee or, if applicable, an evaluation sub-committee, becomes unable to continue serving on the Evaluation Committee, CCAC may, in its sole discretion, elect whether or not to replace the individual.

5.2 CCAC’s Clarification and Verification of Proposals

(1) CCAC may:

(a) require the Respondent to clarify or verify the contents of its Proposal or any statement made by the Respondent;

(b) require the Respondent to submit supplementary documentation clarifying or verifying any matters contained in its Proposal; and

(c) seek a Respondent’s acknowledgement of CCAC’s interpretation of the Proposal or any part of the Proposal.

(2) CCAC is not obliged to seek clarification or verification of any aspect of a Proposal or any statement by a Respondent, including an ambiguity in a Proposal or in a statement made by a Respondent.

(3) Any written information received by CCAC from a Respondent pursuant to a request for clarification or verification from CCAC as part of the RFP Process may, in CCAC’s sole discretion, be considered as an integral part of the applicable Proposal.

5.3 Evaluation Process

5.3.1 Compliance of Proposals

(1) Respondents are strongly encouraged to prepare and submit their Proposals in accordance with the requirements of the RFP Documents.
(2) Unless the RFP Documents explicitly state that a Respondent will or may be disqualified for a particular failure to comply with the requirements of the RFP Documents, Respondents will not be disqualified for failing to comply with the requirements for the format or content of their Proposals or, for clarity, with Schedule 2. However, Respondents are likely to be penalized in the evaluation of their Proposals if they fail to comply with the requirements of the RFP Documents.

(3) For clarity, the use of the terms “shall” or “must” in the RFP Documents does not supersede the approach to compliance set out in this RFP Section 5.3.1 and is not intended to indicate that a failure to comply with the applicable requirement will result in disqualification.

5.3.2 Evaluation of Proposals

(1) The Respondents’ Proposals will be reviewed and evaluated by the Evaluation Committee on the basis of the evaluation criteria set out in the RFP Data Sheet (the “Evaluation Criteria”).

(2) CCAC may require that Respondents receive a pre-established minimum passing score before being eligible to be considered further in the RFP Process (including being eligible for a Site Visit). If CCAC intends to require a minimum passing score in this RFP Process, the required minimum passing score and any related requirements are set out in the RFP Data Sheet. Failure to achieve a minimum passing score may prevent a Respondent from being eligible to be considered further in the RFP Process.

(3) The CCAC may, in its sole discretion, establish a short-list of Respondents. If the CCAC intends to establish a short-list, the process for establishing a short-list will be set out in the RFP Data Sheet and only those Respondents that meet the requirements set out in the RFP Data Sheet will be eligible to be considered further in the RFP Process.

5.3.3 Site Visit

(1) CCAC, may in its sole discretion and based on the Respondents’ scores after the evaluation of the Proposals, conduct Site Visits for some or all of the Respondents and CCAC may, in its sole discretion,

(a) determine the number of Respondents to be asked to participate in a Site Visit;

(b) determine the content and length of the Site Visits; and

(c) request that specific individuals from the Respondent or the Respondent Team Members be present at the Site Visit.

Respondents will not be permitted to add to or alter their Proposals through the Site Visit or oral presentation process.

(2) Instructions and a specific list of questions for the Site Visit are set out in Schedule 5 to the RFP.

5.3.4 Final Proposal Score and Ranking Respondents

(1) The score established based on RFP Section 5.3.2(1) and, if applicable, RFP Section 5.3.3(2), shall be the Final Proposal Score.
5.4 One Proposal per Person or Entity

(1) A person or entity shall submit or participate in only one Proposal either individually as a Respondent or as a participant in a joint venture.

(2) Except as set out in the RFP Data Sheet, no person or entity shall be a subcontractor of a Respondent while submitting a Proposal individually as a Respondent or as a participant in a joint venture in the same RFP Process.

(3) Notwithstanding any exception to Section 5.4(2) set out in the RFP Data Sheet,

(a) if a Respondent is submitting a Proposal on behalf of a Prequalified Applicant Team, a Prequalified Applicant Team Member cannot, in respect of this RFP Process,

(i) submit a Proposal individually;

(ii) participate as a subcontractor of a Respondent that is different than the Prime Contractor of its Prequalified Applicant Team; or

(iii) be a participant in a joint venture; and

(b) if a Prequalified Joint Venture Respondent is submitting a Proposal as a Respondent, a Prequalified Joint Venture Participant cannot, in respect of this RFP Process,

(i) submit a Proposal individually;

(ii) participate as a subcontractor of a Respondent; or

(iii) be a Joint Venture Participant in a joint venture that is different than the Prequalified Joint Venture Respondent.

(4) If a person or entity submits or participates in more than one Proposal in contravention of RFP Section 5.4(1) or 5.4(2), the CCAC may, in its sole discretion, disqualify all of the Proposals submitted by that person or entity or in which that person or entity has participated.

(5) A person or entity is permitted to be a subcontractor in more than one Proposal, provided that no individual associated with or employed by that subcontractor participates in the preparation of more than one Proposal nor has knowledge of the pricing (other than its own) of more than one Proposal.

SECTION 6 - GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

6.1.1 CCAC Evaluation Discretion

(1) CCAC intends to reserve a high level of discretion in the evaluation of Proposals and intends to select a negotiation partner, or negotiations partners, with whom CCAC believes it is most likely to be able to successfully negotiate a Final Agreement. In its selection of a negotiation partner(s), CCAC intends to apply evaluation criteria that are both subjective and objective and that may or may not be disclosed to the Respondents.
6.1.2 Respondent’s Past Performance and Publicly Available Information

(1) CCAC may, in its sole discretion, consider:

(a) any instances of poor performance by a Respondent that CCAC has experienced; and

(b) any publicly available information about a Respondent that is, in CCAC’s sole discretion, credible information,

in its evaluation of Proposals.

6.1.3 Disqualification

(1) CCAC may, in its sole discretion, disqualify a Respondent or reverse its decision to identify a Respondent as a Negotiations Respondent or a Successful Respondent at any time prior to the execution of the Final Agreement if,

(a) the Respondent fails to cooperate in any attempt by the CCAC to verify any information provided by the Respondent in its Proposal or site visit;

(b) the Respondent contravenes RFP Section 3.3.1 or RFP Section 5.4;

(c) the Respondent fails to comply with the laws of the Province of Ontario or of Canada, as applicable;

(d) the Proposal contains false or misleading information;

(e) the Proposal, in the sole discretion of the CCAC, reveals a Conflict of Interest that cannot be managed or mitigated;

(f) the Respondent makes a misrepresentation in its Proposal;

(g) there is evidence that the Respondent, its employees, agents, consultants or representatives colluded with one or more other Respondents or any of its or their respective employees, agents, consultants or representatives in the preparation or submission of Proposals;

(h) the Respondent or any of its subcontractors or joint venture entities has committed a material breach of any agreement between the Respondent and the CCAC;

(i) the Respondent has been convicted of an offence in connection with any services rendered to the CCAC or any Ministry, agency, Board or Commission of the Government of Ontario;

(j) the Respondent or any of its subcontractors or joint venture entities has committed a material breach of an agreement for the supply of medical equipment or supplies with another community care access center in the province of Ontario; or
(k) the Respondent was convicted of a criminal offence within the three years immediately prior to the Submission Deadline.

(2) For the purposes of RFP Sections 6.1.3(1) (h), (i), (j) and (k) the term “Respondent” includes the Respondent itself and,

(a) if the Respondent is an individual,
   (i) any current employee of the Respondent;
   (ii) any partnership of which the Respondent is or was a partner; and
   (iii) any corporation of which the Respondent is or was a controlling shareholder;

(b) if the Respondent is a corporation,
   (i) any current director, officer, employee or controlling shareholder of the Respondent;
   (ii) any partnership of which the Respondent is or was a partner; and
   (iii) any corporation of which the Respondent is or was a controlling shareholder; and

(c) if the Respondent is a partnership,
   (i) any current member or employee of the Respondent; and
   (ii) any corporation of which the Respondent is or was a controlling shareholder.

SECTION 7 - COMPETITION, NEGOTIATIONS AND THE IDENTIFICATION OF A SUCCESSFUL RESPONDENT

7.1 Evaluation Results and the Identification of a Successful Respondent or Negotiations Respondents

(1) At the end of the evaluation process, CCAC may identify one or more Respondent(s) with whom it wishes to enter into negotiations (each, a “Negotiations Respondent”). Negotiations may, in the sole discretion of CCAC, be carried out in sequence (starting with the highest ranked Respondent) or in parallel. Negotiations are intended to lead to the identification of one of the Negotiations Respondents as the Successful Respondent, if the negotiations with one of the Negotiations Respondents can be concluded successfully.

(2) Negotiations in this RFP Process may include negotiations with respect to price, payment, change to the scope of Negative Pressure Wound Therapy Products and Services, business synergies between CCAC and a Respondent, and any other terms and conditions that, CCAC, in its sole discretion, wishes to raise for negotiation. Negotiations may proceed on new and different terms and conditions than those set out in the Draft Agreement (including a change to the Negative Pressure Wound Therapy Products and Services set out in the Draft
Agreement), without offering other Respondents either an opportunity to negotiate or the opportunity to amend their Proposals.

(3) CCAC may, in its sole discretion, impose time limits on negotiations with any Negotiations Respondent. In the event that the any Negotiations Respondent is unable to successfully complete negotiations with CCAC, then CCAC may, in CCAC’s sole discretion, commence negotiations with an alternate Respondent or Respondents.

(4) Notwithstanding RFP Section 1.1(6), CCAC reserves the right in its sole discretion to subs-divide and/or bundle the goods and services that are the subject of this RFP and execute one or any number of Agreements for the goods and services.

7.2 CCAC Authorization and Approvals

(1) The Successful Respondent acknowledges and agrees that the entering into of the Final Agreement by CCAC is conditional on and subject to CCAC obtaining any necessary authorizations and approvals required in connection with the Negative Pressure Wound Therapy Products and Services.

7.3 Notification If Successful Or Not

(1) The successful and unsuccessful Respondents shall be notified by CCAC in writing as to their success or failure in the RFP Process.

7.4 Debriefing of Respondents

(1) CCAC shall, at the request of a Respondent, carry out information sessions with the unsuccessful Respondent to explain CCAC’s evaluation of the Respondent's Proposal (the “Debriefing Sessions”).

(2) The scheduling of the Debriefing Sessions shall be determined by CCAC. Unless otherwise determined by CCAC, Debriefing Sessions shall not be held until after the execution of the Final Agreement.

(3) The Successful Respondent may request a debriefing which debriefing CCAC may provide at its convenience.

7.5 Geographic Designations

(1) In accordance with GC Section 3.1.3(2) of the Draft Agreement, the CCAC is permitted to assign volume to the Service Provider at any location in the Service Area and may, in its sole discretion, designate particular parts of the Service Area to be served by specific Service Providers. If the CCAC intends to make such a designation, this intention will be set out in the RFP Data Sheet.

(2) If the CCAC has set out an intention to designate geographic areas in the RFP Data Sheet (in accordance with RFP Section 7.5(1)) the Respondent may, in its Proposal Submission Form, identify its preference to serve a particular geographic area.

(3) While a Respondent’s ranking may affect the likelihood of that Respondent receiving its stated geographic area preference, with higher ranked Respondents having a higher likelihood of receiving their preferred geographic area than those ranked below them, the
CCAC is not obliged, in any way, to make awards to Respondents based on their stated geographic area preferences.

(4) Respondents acknowledge and agree that this RFP Section 7.5 does not supersede either GC Section 3.1.3 of the Draft Agreement or the Service Area as defined in the Special Conditions of the Draft Agreement. Respondents also acknowledge and agree that notwithstanding a geographic area designation in accordance with this RFP Section 7.5, a Service Provider, may, in the sole discretion of the CCAC, be required to provide Services throughout the entire service area of the CCAC.

SECTION 8 - GENERAL LEGAL MATTERS AND RIGHT TO ACCEPT OR REJECT

8.1 General Rights of CCAC

(1) CCAC may, in its sole discretion,
   (a) reject any or all of the Proposals;
   (b) accept any Proposal;
   (c) if only one Proposal is received, elect to accept or reject it;
   (d) elect to cancel the RFP Process at any time before the end of the RFP Process (including after the identification of a Successful Respondent) but, for clarity, before execution of the Final Agreement;
   (e) after a CCAC cancellation of the RFP Process, if any, subsequently advertise or call for new submissions for the same or different subject matter of these RFP Documents with the same or different participants; and
   (f) alter the Timetable, the RFP Process or any other aspect of the RFP Documents.

(2) CCAC shall not be liable for any expense, cost, loss or damage incurred or suffered by any Respondent or any of its representatives or any person connected with any one of them, as a result of any action taken by CCAC in accordance with RFP Section 8.1.

8.2 Legal Issues and Limits on Liability

8.2.1 No Contract Created by this RFP

(1) This document is a request for proposals in respect of the Negative Pressure Wound Therapy Products and Services and is not a tender. Neither the RFP Documents nor the submission of any Proposals in response to the RFP Documents shall, in any way whatsoever, create a binding agreement between CCAC and any Respondent. For clarity, these RFP Documents are not intended to be an offer to enter into a bidding contract with Respondents (often referred to as “Contract A”) and no agreement of any kind shall exist between the Successful Respondent and CCAC until a Final Agreement, if any, has been formally executed by the Successful Respondent and CCAC.
(2) Notwithstanding any other provision of this RFP, CCAC may, in its sole discretion, accept or reject any or all Proposals. CCAC may accept any Proposal in whole or in part. There is no express or implied term of this RFP that the lowest priced Proposal or the highest ranked Proposal will be identified as the Successful Respondent.

8.2.2 Limit on Liability

(1) Notwithstanding that in accordance with RFP Section 8.2.1(1), this RFP is not a tender and is not intended to create “Contract A”, the Respondent and all other entities participating in this RFP Process agree that if CCAC is found to be liable, in any way whatsoever, for any act or omission in respect of this RFP Process, the total liability of CCAC to any Respondent or any other entity participating in this RFP Process, and the aggregate amount of damages recoverable against CCAC for any matter relating to or arising from any act or omission by CCAC, 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 CCAC, shall be no greater than the Respondent’s cost of preparing its Proposal or the liability cap amount set out in the RFP Data Sheet, whichever is less.

SECTION 9 - DISPUTE RESOLUTION

9.1 Dispute Resolution Procedure

(1) Where a Respondent has a concern, complaint or dispute relating to the RFP Process (a “Dispute”), it shall be handled in accordance with the procedure set out in the RFP Data Sheet.
SECTION 10 - DEFINITIONS

10.1 General

(1) Unless otherwise defined in this RFP, capitalized terms and expressions used in this RFP have the meaning given to them in the Draft Agreement. In this RFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.

(2) All references in this RFP to CCAC’s “discretion” or “sole discretion” means in the sole and absolute discretion of CCAC.

10.2 RFP Definitions

Whenever used in the RFP:

(1) “Addendum” means a written addendum to the RFP Documents issued by CCAC as set out in RFP Section 3.6;

(2) “Applicable Law” is defined in RFP Section 3.11(1);

(3) “Background Information Document” is defined in RFP Section 2.5(1);

(4) “Confidential Information” is defined in RFP Section 3.7.1;

(5) “Confidential Questions” is defined in RFP Section 3.2.2(1)(a)(ii);

(6) “Conflict of Interest” is defined in RFP Section 3.8(1);

(7) “Contact Person” is defined in RFP Section 3.2.1(1);

(8) “Debriefing Sessions” is defined in RFP Section 7.4(1);

(9) "Dispute” is defined in RFP Section 9.1(1);

(10) “Draft Agreement” means Schedule 6 to this RFP;

(11) “Evaluation Committee” is defined in RFP Section 5.1(1);

(12) “Evaluation Criteria” is defined in RFP Section 5.3.2(1);

(13) “Fairness Representative” is defined in RFP Section 1.4(1);

(14) “Final Agreement” is defined in RFP Section 1.1(3);

(15) “FIPPA” is defined in RFP Section 3.7.1(8);

(16) “General Questions” is defined in RFP Section 3.2.2(1)(a)(i);

(17) “includes” and “including” means “includes without limitation” and “including without limitation” respectively;

(18) “Ineligible Persons” is defined in RFP Section 3.8(4);
(19) “Ineligible Persons Affiliate” is defined in RFP Section 3.8(4);

(20) “Negative Pressure Wound Therapy Products and Services” is defined in RFP Section 1.1(1);

(21) “Negotiations Respondent” is defined in RFP Section 7.1(1);

(22) “New Applicant Team” is defined in RFP Section 3.11(1)(d);

(23) “New Joint Venture Respondent” is defined in RFP Section 3.11(1)(e);

(24) “Prequalification Application” means the Respondent’s application for prequalification submitted to the Ontario Association of Community Care Access Centres in accordance with the Provincial Prequalification Process;

(25) “Prequalification Requirements” is defined in RFP Section 1.2(1);

(26) “Prequalified Applicant Team” means an applicant team that has been Prequalified as an “Applicant Team” in the Provincial Prequalification Process;

(27) “Prequalified Applicant Team Member” means a team member of a Prequalified Applicant Team;

(28) “Prequalified Joint Venture Participant” means an individual Joint Venture Participant in a Prequalified Joint Venture Respondent;

(29) “Prequalified Joint Venture Respondent” is defined in RFP Section 3.11(1)(c);

(30) “Prequalified Parties” is defined in RFP Section 1.2(1);

(31) “Proposal” is defined in RFP Section 1.1(3);

(32) “Provincial Prequalification Process” means the prequalification process established by the Ontario Association of Community Care Access Centres for the prequalification of service providers in the Province of Ontario;

(33) “Respondent” is defined in RFP Section 1.1(3);

(34) “Respondent Representative” is defined in RFP Section 1.3(1);

(35) “Respondents Meeting” is defined in RFP Section 3.4.1(1);

(36) “RFP” is defined in RFP Section 1.1(1);

(37) “RFP Data Sheet” means Schedule 1 to this RFP;

(38) “RFP Documents” is defined in RFP Section 2.1(1);

(39) “RFP Number” is defined in RFP Section 1.1(1);

(40) “RFP Process” is defined in RFP Section 1.1(5);

(41) “Site Visit” is defined in RFP Section 5.3.3;
(42) “Submission Deadline” is defined in RFP Section 3.1(1);

(43) “Submission Requirements” means all of the submission requirements set out in the RFP Documents; and

(44) “Successful Respondent” is defined in RFP Section 1.1(3); and

(45) “Timetable” is defined in RFP Section 3.1(1).

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