



**METROLINX**

An agency of the Government of Ontario

## Tender for

**Project Name:** Provision of Essential 12  
Month Renewal for Netbackup  
Platform Licences

**Tender Number:** PT-2017-IT-215



## 1.0 General

- 1.1 You are invited to remit your Submission for the Provision of Essential 12 Month Renewal for Netbackup Platform Licences, as more particularly described in the attached documents (hereinafter the "Work") as required by Metrolinx.
- 1.2 The undersigned (hereinafter "Contractor") acknowledges that all prices shall be firm for one hundred and twenty (120) days and quoted in Canadian Funds for the Work specified herein.

### 1.3 Closing

#### 1.3.1 **\*\*\*NOTE: ELECTRONIC BID SUBMISSION**

Your Submission for this opportunity must be made to Metrolinx through the use of **MERX EBS**. Contractors shall be solely responsible for the delivery of their Submission using MERX EBS by the Closing, in accordance with the Submission Instructions herein.

- 1.3.2 Submissions will be received by Metrolinx up to **3:00 p.m. local time on September 7th, 2017, (the "Closing")**. Submissions that are received after the Closing shall be deemed non-responsive and the entire Submission shall be disqualified regardless of the reason for lateness.

- 1.4 Direct all questions to the following Procurement Representative:

Monika Thomason, Procurement Officer	
Telephone number	(416) 202-5522
Email	monika.thomason@metrolinx.com

## 2.0 Completion of Tenders

### 2.1 Submission of Tenders

- 2.1.1 Contractors remitting a Submission to Metrolinx shall exercise extreme care when completing and submitting all Tender Document Forms.
- 2.1.2 Contractors shall examine carefully the whole of the Tender Documents and any data referred to therein. They shall make the necessary investigations to inform themselves thoroughly as to the character and magnitude of the Work.
- 2.1.3 The Contractor shall not claim at any time after the Close Date and/or after notification of award of the Contract that there was any misunderstanding or uncertainty in regard to the Tender Documents or any of the contents therein.
- 2.1.4 Your Submission shall be completed fully in a clear and comprehensible manner.

- 2.1.5 Submissions shall be remitted electronically through MERX EBS only. Submissions sent in any other manner shall be deemed non-responsive and automatically disqualified.
- 2.1.6 The Submission shall be remitted on the original Tender Document as issued by Metrolinx through the MERX website and except for designated sections where the Contractor is to enter information, the Tender Document shall be not be altered in any way including, but not limited to, strike-outs of the pre-printed provisions or any other qualifying statements.
- 2.1.7 Any Submission which contains such qualifying statements shall be deemed non-responsive and disqualified unless such qualifying statements are withdrawn in writing upon request by Metrolinx.
- 2.1.8 If during the preparation of their Submission, the Contractor desires to make a change which requires correction, alteration or erasure to any information previously entered in a designated section of the Submission by the Contractor, documents that have been uploaded to MERX using EBS can be added, removed and/or re-submitted as often as required at any time, prior to the Closing of the Tender.
- 2.1.9 Any Submission documents that are attempted to be uploaded via MERX EBS after the Closing has occurred (as confirmed by the MERX Audit Report) shall be automatically rejected by Metrolinx, regardless of the reason for lateness.
- 2.1.10 All prices shall be firm and quoted in Canadian funds. The prices quoted in the Submission shall represent full payment for all such Work as is necessary for the proper completion of the Contract.
- 2.1.11 Submissions must be remitted via MERX by the Contractor's E-bid Authorized Signer.
- (a) NOTE: The Contractor can have only one (1) E-Bid Authorized Signer which is to be used for any EBS submission process
  - (b) The E-Bid Authorized Signer does not have to be either the person placing the order for the Tender Document on MERX, nor do they have to be subscribed to MERX. Once an E-Bid Authorized Signer has been setup, a letter will be sent via email to the E-Bid Authorized Signer. For the purposes of a Joint Venture, the E-Bid Authorized Signer of the Participant-in-Charge shall execute the Submission.
  - (c) Submissions must be electronically remitted through the MERX EBS system. For more information on using MERX EBS, see the Electronic Bid Submission tutorial at <http://www.youtube.com/watch?v=To0fqSccw3M>. Alternatively you can contact contact MERX directly at 1-800-964-MERX (**6379**) or visit the MERX website at [www.merx.com](http://www.merx.com) for further

instruction or assistance regarding EBS and/or E-Bid Authorized Signer registrations.

- (i) Please review the E-bid checklist on MERX as this will provide some general assistance regarding uploading of documents.
- (ii) It is the Contractor's sole responsibility to ensure that all required information for their Submission is uploaded to MERX via EBS. Failure of the Contractor to include all required items may result in the Contractor's Submission being deemed non-responsive and disqualified.
- (iii) The largest individual file size that can be submitted through MERX is 100MB, although there is no limit to the number of files that can be submitted. If any individual file size is over 100MB, the Contractor's submission can be split into multiple parts, and submitted as clearly labelled, multiple files once the submission has been broken up into files of 100MB or smaller.
- (iv) MERX places no restriction on file format and does not convert or zip files during the upload process.
- (v) In order to complete the Submission, the on-line authorization of the Contractor's E-Bid Authorized Signer will be required. It is the Contractor's sole responsibility to have an E-Bid Authorized Signer PIN number issued from Merx at least one (1) day prior to Closing. Closing Visit [tenders.merx.com/RequestEBSPin](http://tenders.merx.com/RequestEBSPin) to request a PIN for the Contractor's E-bid Submission Authorized Signer.
- (a) Information contained in the most recent Submission remitted via MERX EBS and received prior to the Closing will take precedence over the information contained in previously received Tender Submissions from the Contractor.
- (d) The Contractor may withdraw a Submission at any time prior to the Closing specified by Metrolinx by logging into MERX on the E-bid Submission screen locating the opportunity and clicking 'Delete' for the opportunity in question. Once deleted, an E-bid is given the status 'Not Submitted'.

## 2.2 Submission Deadline

- 2.2.1 Submissions must be fully uploaded via MERX EBS by the Closing. Any Tender submission or portions thereof received after the Closing (as confirmed by MERX Audit Report) shall be deemed non-responsive and the entire Submission shall be disqualified regardless of the reason for

lateness. The Contractor shall remit the Tender submission with sufficient time to ensure its arrival before the Closing.

- 2.2.2 It is recommended by MERX to allow at least four (4) hours to remit the Tender submission via EBS, which shall provide the Contractor with the opportunity to upload all documents and resolve any potential issues that may arise. If you have many large documents or you are not running on high speed internet access you may want to give yourself additional time. If the problem persists, call MERX directly at 1-800-964-MERX (6379). Metrolinx staff will be unable to assist with any EBS related issues.
- (a) If the Contractor attempts to remit their Submission, or portions thereof, after the Closing, such documents shall not be accepted by the MERX system.
  - (b) In the event that the MERX system allows late Submissions, this will not supersede any stipulations herein regarding late submissions.
- 2.2.3 Upon successful completion of the EBS submission, the Contractor will be provided with an E-bid Confirmation Number. This is the receipt that the Tender was uploaded successfully. All reports are kept on the Contractor's MERX account for seven (7) years after the Closing.
- 2.2.4 Notwithstanding the above, Metrolinx reserves the right to postpone the Closing at which time all potential Contractors shall be advised of the new Closing by way of Addenda.
- 2.2.5 After the Closing has occurred, all Tenders received will be opened by Metrolinx staff. **There will be no public access to this opening.** Upon execution of the final Contract, all Contractors that have submitted a Tender will be notified in writing of the results of the award to the successful Contractor. Results of the award to the successful Contractor will also be posted on the Metrolinx website at [www.metrolinx.com/tenders](http://www.metrolinx.com/tenders) under "Bid Award Results" (Tenders) and/or the MERX website at [www.merx.com/metrolinx](http://www.merx.com/metrolinx) (search "Metrolinx" or the Tender Number and select "Awards").
- 2.2.6 All documentation received by Metrolinx with regards to this Tender process will be retained by Metrolinx and will not be returned to the Contractor.

### 3.0 Investigation by Contractors

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No plea of ignorance of conditions which exist, or any conditions or difficulties which may be encountered, will be accepted as a reason for failure to complete the Contract or as a basis for claims for additional compensation or extension of time to complete the Work.

## 4.0 Award of Contract

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Award of the Contract for the Work shall be confirmed to the successful Contractor by way of a standard Metrolinx Purchase Order, referencing this Request for Tender and the Contractor's Submission which will be attached and form part of the Purchase Order.

## 5.0 Rights of Metrolinx

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- 5.1 Metrolinx has the right to cancel this call for Tender and any acceptance of a Submission for any reason and at any time, without any obligation whatsoever to a Contractor.
- 5.2 METROLINX RESERVES THE RIGHT TO REJECT ANY OR ALL SUBMISSIONS; THE LOWEST TENDER WILL NOT NECESSARILY BE ACCEPTED. Metrolinx's selection will be based on which Contractor has provided a Tender which Metrolinx determines, in its sole discretion, subjectively exercised, to provide the greatest value based on quality, service and price and determined on the evaluation criteria contained in these Tender Documents.
- 5.3 Metrolinx reserves the right to correct arithmetical errors in any and all Submissions where such errors affect the Total Contract Price or any other of the Contract Prices bid. Correction to: extensions, based upon unit prices; sums, differences or other arithmetical operations will be identified in the Tender Document by Metrolinx and acknowledged in each instance by the initials of the Contractor's and Metrolinx's authorized signatories. Such corrections will become part of the Contractor's Tender. Failure of the Contractor to acknowledge such corrections will result in its Tender being deemed non-responsive and disqualified.
- 5.4 to award or not award based on the Contractor's experiences with Metrolinx or other departments or agencies within the Ontario government, if the Contractor:
  - 5.4.1 was previously given a "Notification of Award" of contract by a department or agency within the Ontario government and defaulted in proceeding with the work of the contract;
  - 5.4.2 has submitted false or misleading information in this Submission;
  - 5.4.3 failed or refused to comply with any applicable federal, provincial or municipal law governing a bid or a prior contract with a department or agency within the Ontario government;
  - 5.4.4 had a previous contract with a department or agency within the Ontario government that was terminated for default in the past year; or
  - 5.4.5 is an affiliate of or successor to any corporation described in Sections 5.4.1 through 5.4.4 above, including any firm that is controlled within the meaning of the Ontario Business Corporations Act by the same person or group of persons who so controlled any corporation described in Sections 5.4.1 through 5.4.4 above.

## 6.0 General Conditions

6.1 The Contract for the supply and delivery of the Work shall be subject to the following General Conditions, including Metrolinx standard Purchase Order Terms and Conditions, as in Section 6.2 below:

### 6.2 Standard Purchase Order Terms and Conditions

<b>Terms and Conditions</b>	
<p>Metrolix (the "Corporation") is a Crown agency established by the Metrolix Act, 2006 (Ontario). The authority for this contract is found in sections 16 and 19 of that Act.</p> <p>This purchase order, upon acceptance by the Vendor or its duly authorized Agent, shall serve as a written memorandum of the complete contract between the Vendor and the Corporation and, upon acceptance by the Vendor, the Vendor shall be deemed to covenant to comply with the conditions herein.</p> <p>Subject to the provisions herein, the Sale of Goods Act (Ontario) applies to this contract insofar as any part of this contract relates to goods.</p> <p>In addition to the warranties and conditions implied by the Sale of Goods Act (Ontario), the Vendor represents and warrants that there are no patents, trademarks or other rights restricting the use, repair or replacement of the goods furnished or any part thereof and hereby agrees to indemnify and save harmless the Corporation from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, filed, or prosecuted in any manner by reason of such use, repair or replacement of the goods being a violation of any patent, trademark or other right.</p> <p>Property and risk in the goods passes upon examination and acceptance by the Corporation.</p> <p>Any goods that are not in accordance with this purchase order will be returned at the Vendor's expense.</p>	<p>7. Where a supply contract with the Vendor exists, the delivery terms of the supply contract prevail. Where no supply contract exists, the delivery terms of this purchase order apply. In either event, if the Vendor fails to deliver the goods on the date specified, the Corporation may terminate this purchase order upon seven (7) days notice to the Vendor.</p> <p>8. In the event that unauthorized deliveries are made in advance of the delivery date specified, Corporation may return any such goods at the Vendor's expense.</p> <p>9. Where a purchase order is made pursuant to a supply contract with the Vendor, and any prices in the purchase order conflict with the prices in the supply contract, the prices in the supply contract shall prevail.</p> <p>10. Substitutions are not permitted without the written approval of Corporation.</p> <p>11. Where a purchase order is made pursuant to a service contract with the Vendor, and service is provided under this purchase order, the Vendor shall perform the service in accordance with the terms and conditions of the service contract. In the event that no service contract exists and a service is provided under this purchase order, the Vendor shall perform the same in a good and workmanlike manner, and hereby warrants that the materials used are free of defects.</p> <p>12. The Vendor represents and warrants that at the time of this purchase order, it is in full compliance with all tax statutes administered by the Ministry of Finance for Ontario and that, in particular, all returns required to be filed under all provincial tax statutes have been filed and all taxes due and payable under those statutes have been paid or satisfactory arrangements for their payment have been made and maintained.</p>
<b>Instructions</b>	
<p>The Vendor must communicate promptly with the Corporation for further instructions if it is unable to supply the order as specified.</p> <p>A detailed packing slip must accompany each shipment.</p> <p>The purchase order number must be shown on all packages, bills of lading, invoices and other relevant documents.</p> <p>Invoices must be submitted in duplicate, must show full particulars, description of goods, quantity, rate and charge for each item, contact name and delivery location.</p> <p>Invoices must show the name and postal address of the Vendor to whom the account is payable and the office where such payment is to be directed.</p> <p>Where goods are shipped F.O.B. Vendor's dock via a common carrier, the Vendor must make a reasonable contract with the carrier and must give immediate notice of shipments to the Corporation.</p>	<p>7. When transportation charges have been prepaid on orders shipped F.O.B. Vendor's dock, the original freight, cartage or express receipt must accompany the invoice, and the freight charges must be shown as a separate item on the invoice.</p> <p>8. Invoices for labour and materials must give details of quantities and prices of materials and the number of hours worked with the rates per hour.</p> <p>9. Invoices for rental of equipment must give the commencement date of rental, the duration of rental and the rental rates.</p> <p>10. Invoices must be typed or printed in ink.</p> <p>11. HST must be charged where applicable and shown as a separate item on the invoice.</p>

### 6.3 Assignment

The Contract, and any part thereof, shall not be assigned, delegated or subcontracted by the Contractor without the prior written consent of Metrolinx.

### 6.4 Entire Agreement

This Contract constitutes the entire agreement between the parties relating to the subject matter of this Contract and, except as stated in the Contract, contains all the representations, warranties, covenants and agreements of the respective parties relating to the subject matter of this Contract. There are no oral representations, warranties, covenants and agreements by the parties of any kind. This Contract may not be amended or modified in any respect except by written instrument signed by the parties. In the event that circumstances require an amendment to the Contract, the parties will use their best efforts to mutually agree to any required changes.

## 6.5 Applicable Law

The Contract shall be interpreted in accordance with and be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

## 6.6 Method of Payment

Payment for Work completed to the satisfaction of Metrolinx shall be made in arrears within thirty (30) days of receipt of detailed invoices for completed Work. It is understood that the Contract is based on reimbursement for actual goods received from and work completed by the Contractor. The Contractor's Total Contract Price shall not exceed the Purchase Order amount, unless an increase is so authorized by Metrolinx and affected by extension/revision to the Purchase Order.

## 6.7 Alternative Goods

Alternative goods will only be considered if specifically permitted within the specifications portion of this document. Acceptance of alternatives with claimed equivalence, compatibility and functionality will always be at the sole discretion of Metrolinx and would only be considered in these cases if the information necessary to make such assessments was included with the Tender.

## 6.8 Insurance

The Contractor maintains insurance of such types and in such amounts as is commercially reasonable for the business operated by the Contractor, and for the Work required by this Contract.

## 6.9 Indemnification

The Contractor shall hereby indemnify, hold Metrolinx harmless and, where required by Metrolinx, defend Metrolinx in respect of the amount of any claim, loss, cost, expense, liability, fine, penalty, interest, payment or damage (including reasonable counsel fees) (hereinafter collectively referred to as the "Claim") incurred by or asserted against Metrolinx collectively resulting from or in connection with the breach of any of the representations and warranties made by the Contractor herein or the breach or non-fulfillment of any of the covenants, conditions and agreements made by the Contractor herein, including without limitation any failure by the Contractor to complete the Work as required by the Contract.

## 6.10 French Language Services

6.10.1 Insofar as this Contract relates to the provision of services directly to the public on behalf of Metrolinx, the French Language Services Act shall be applicable to the performance of the Work. A service for the purposes of the French Language Services Act refers to any service or procedure provided to the public. Services being provided in French must be



equivalent to those offered in English, and must be available within the same timeframe and of the same quality.

6.10.2 The Contractor shall provide and perform the Work in a manner so as to comply with the requirements set out in the French Language Services Act.

6.10.3 Without limitation, services and communications which must be provided in French in French Designated Areas may include:

- (a) Consultations/Public Meetings: Presentation materials, displays, comments cards/feedback mechanism or other materials. Contractor must have at least one bilingual staff or interpreter on hand able to answer questions and discuss technical drawings/documents in French. As applicable, the Contractor shall compile and analyze the views of Francophones separately, as they may have different concerns.
- (b) Signage: Construction contracts may from time to time involve erecting temporary signage to redirect or warn the public of hazards. Such signage shall be bilingual.
- (c) Communications: Communication plans, customer impact documents, information bulletins, notices of service disruption and public relations information.

## 6.11 Contract Performance Management Program

6.11.1 Contract Performance Management (CPM) Program means the Metrolinx policy for monitoring, evaluating and recording vendor performance, as same may be amended or replaced from time to time. The Contract Performance Management Program establishes a standard methodology for the incorporation of a vendor's past performance as a criterion in assessing that vendor's bids or tenders for future work with Metrolinx.

6.11.2 Pursuant to Metrolinx's CPM Program, Metrolinx may consider a Contractor's past performance under contracts with Metrolinx in evaluating Submissions received in response to this Tender Document. The Contract Performance Rating ("CPR") is the average of a vendor's performance evaluation scores (as assessed by or on behalf of Metrolinx) for a thirty-six (36) month period preceding the Closing. If a Contractor has not completed any work for Metrolinx in the three (3) years preceding the Closing, for the purpose of evaluating the Submission, the Contractor will be assigned a CPR which is the straight average of all the CPRs of all vendors who have performed services for Metrolinx during the prior fiscal year.

6.11.3 If the CPR is being applied as a component of the award evaluation for this Tender Process, the legal name of the Contractor stated on the Submission will be used. It is the responsibility of the Contractor to ensure that its proper legal name has been stated on the Submission.

Metrolinx will not accept any requests from the Contractor to change the legal name provided after the Closing.

6.11.4 For the purposes of this Tender Process, the application of the CPR is set out in the Contract Performance Appraisal set out in Attachment #2.

## 6.12 Contractor Work Performance Rating

6.12.1 Metrolinx shall during the term of a Contract, maintain a record of the performance of the Contractor completing Work for Metrolinx. This information shall be used to complete a "Contract Performance Appraisal" report, a copy of which will be forwarded to the Contractor upon Contract Completion. (See attached Attachment #2 – "Contract Performance Appraisal" form for format of this report). Interim "Contract Performance Appraisal" reports may be issued, as deemed appropriate by Metrolinx's Representative, at any time during the term of the Contract.

6.12.2 The overall history of the Contractor in performing work for Metrolinx will be considered in the evaluation of future bids from the Contractor.

6.12.3 Metrolinx reserves the right in future Tender Processes to reject any bid submitted by a company with an unsatisfactory performance history with Metrolinx.

6.12.4 Non-compliance with Contract requirements will be identified to the Contractor.

6.12.5 The information contained in the "Contract Performance Appraisal" may be provided to the Ministry of Transportation and other government agencies and such performance reviews may be relied upon to disqualify a company from providing a bid on any further request by such entity.

## 7.0 Tender

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7.1 The undersigned Contractor is informed of the conditions relating to the Work and is thoroughly familiar with the specifications, and all terms and covenants of the Contract.

7.2 The successful Contractor hereby undertakes to supply and deliver the Work in strict accordance with the full intent of the terms and conditions set forth in the following documents which are attached hereto and which form part of the Tender Documents:

7.2.1 Request for Tender

7.2.2 Any Addenda Issued Hereto

7.2.3 Attachment #1 – Contract Prices

7.2.4 Attachment #2 – Contract Performance Appraisal

### 7.2.5 Vendor Q & A

- 7.3 The Total Contract Price shall be in Canadian Funds and includes customs, duties, royalties, handling, transportation, overhead, profit, and all other charges.
- 7.4 The Total Contract Price is hereby submitted on the full understanding that it is an irrevocable offer by the Contractor for a period of one hundred and twenty (120) days from the Closing. The Contractor hereby covenants that it will complete the Work at the Total Contract Price if it is selected as the successful Contractor and notified of award by Metrolinx Purchase Order within one hundred and twenty (120) days of the Closing.

### 7.5 Delivery

7.5.1 Required Delivery Date: Within two (2) weeks of contract award

7.5.2 If unable to meet, specify proposed delivery date: \_\_\_\_\_

Failure to meet any promised delivery date may result in cancellation of any resulting order(s).

7.5.3 Shipping Address: 277 Front Street West, Toronto, ON, M5V 2X4

### 7.6 Warranty

State Warranty details: (if the Manufacturer's Warranty applies, details should be listed below or a copy should be attached to Tender Submission.)

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### 7.7 Question(s)

Any questions concerning the Tender Documents, the contents herein, or the Work contemplated herein are to be directed to the person identified in Section 1.4 herein no later than 2:00 P.M. (Eastern Standard Time) **August 31<sup>st</sup>, 2017**. No questions or requests for clarifications, changes or amendments of Tender Documents will be entertained after this time regardless of reason.

## 8.0 Attachment # 1 – Contract Prices

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### 8.1 Contract Prices

8.1.1 The Contract Prices “Rates” are hereby submitted on the full understanding that they form part of the Contractor’s Submission and as such constitute an irrevocable offer by the Contractor for a period of one hundred and twenty (120) calendar days from the Closing and the Contractor hereby covenants that it shall perform and execute the Work in accordance with the Contract Prices quoted herein if it is notified, in writing, by Metrolinx within one hundred and twenty (120) calendar days that it is the successful Contractor.

8.1.2 Payment for services rendered and goods supplied in accordance with the terms and conditions of the Contract shall be based on the following:

- (a) The Rates quoted shall be all inclusive costs associated with performance of the work defined herein.
- (b) The Rates quoted shall include all costs related to the work including any and all disbursements, travel, supervision, equipment, tools, supplies and supervision as required in this Tender Document.
- (c) Any Environmental Fees that may apply.

### 8.2 Completion of Pricing Schedules

8.2.1 Contractors shall fully complete the Excel file entitled Attachment # 1 – Contract Prices and insert a Unit Price into each space provided under the Contract Unit Price column.

8.2.2 Attachment #1 – Contract Prices, must be returned as a separate file preferably in Excel format and may not be retyped or recreated. Failure to follow the submission instructions or format requirements may result in the Submission being found non-responsive and disqualified.

8.2.3 It is Metrolinx preference that Contractors submit the pricing using the appended Excel file format to facilitate the Metrolinx pricing evaluation process.

8.2.4 If a “0” is entered in any of the spaces where price information is to be provided, it shall be interpreted as meaning the Contractor shall provide the specified service to Metrolinx at no charge.

8.2.5 If any space is left blank or an entry of “N/C” or “N/A” or “—” is entered where price information should be entered then the Submission may be found non-responsive and disqualified consistent with the provisions of the Instructions to Contractors.

8.2.6 The products must be supplied by an authorized Canadian reseller.

## 9.0 Attachment #2 –Contract Performance Appraisal

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Appended to this tender document.