

APPENDIX B – RFx PARTICULARS GUIDELINE

TABLE OF CONTENTS

OVERVIEW	2
A. THE DELIVERABLES	3
B. MATERIAL DISCLOSURES	8
C. MANDATORY SUBMISSION REQUIREMENTS	10
D. MANDATORY TECHNICAL REQUIREMENTS	12
E. PRE-CONDITIONS OF AWARD	14
F. EVALUATION CRITERIA	15
G. PRICE EVALUATION METHOD	18

OVERVIEW

- The purpose of this guideline to explain to the Drafter what each section of the RFX Particulars Template is used for, and to help provide some framework for what content should (or shouldn't) be considered in each section.
- Procurement Services will provide Appendix B – RFX Particulars Template, to the client for completion. Procurement Services will review, consult with client, and appropriate revisions will be made by the client and/or Procurement Services. Procurement Services will incorporate the approved Appendix B – RFX Particulars Template into the main RFX document before posting.
- The Procurement Lead will:
 - be the procurement subject matter expert;
 - provide Appendix B – RFX Particulars Template (“RFX Particulars Template”) to the Project Lead for completion;
 - review the completed RFX Particulars Template and consult with the Project Lead for appropriate revisions;
 - incorporate approved RFX Particulars Template into main RFX document before posting.
- The Project Lead will:
 - be the technical subject matter expert;
 - provide a completed RFX Particulars Template to the Procurement Lead;
 - consult with the Procurement Lead and update the RFX Particulars Template as/when required.
- Each section in this guideline (A through G) is separated intentionally for ease of reference. To jump directly to a particular section click the link below:
 - [A. THE DELIVERABLES](#)
 - [B. MATERIAL DISCLOSURES](#)
 - [C. MANDATORY SUBMISSION REQUIREMENTS](#)
 - [D. MANDATORY TECHNICAL REQUIREMENTS](#)
 - [E. PRE-CONDITIONS OF AWARD](#)
 - [F. EVALUATION CRITERIA](#)
 - [G. PRICE EVALUATION METHOD](#)

A. THE DELIVERABLES

Purpose: The Deliverables section of the solicitation document is where drafters should define the contract requirements that will ultimately be incorporated into the legal agreement in the awarded contract.

Drafting Deliverables: The following governing principles apply to the drafting of the Deliverables:

1. **Alignment with Pricing Form:** The categories of Deliverables should align with the pricing categories included in the pricing form where possible.
2. **Plain Language and Content Limits:** The description of Deliverables should typically be drafted in plain language and should not exceed 10 to 20 pages in length in the main appendix of your solicitation document. Where greater detail is required, including technical specifications, those more detailed requirements should be incorporated by reference and attached as separate technical annexes that align with the Deliverables categories identified in your description of Deliverables.
3. **Use Contract Terminology:** When drafting Deliverables, drafters should use the terminology that aligns with future contract performance under the tendering contract (e.g., “The supplier shall provide...” or “The contractor will design and build...”) instead of tendering terminology (e.g., “the selected proponent” or “the winning bidder”).
4. **Avoid Restrictive Requirements:** Drafters need to avoid incorporating biased or unnecessarily restrictive requirements into their description of the Deliverables. When challenged, public institutions bear the onus of defending their requirements and evaluation criteria against allegations of unfair advantage and improper restrictions. When drafting Deliverables and Evaluation Criteria, drafters should aim towards neutral specifications and avoid restrictive requirements (see *Using Neutral Specifications and Avoiding Restrictive Requirements*).
5. **Focus on What You Are Buying:** The Deliverables should describe what you are buying, rather than the conditions around performance. Material information about performance conditions (such as site conditions or other performance-related risk factors) should typically be included in the Material Disclosures section of the solicitation document. (see *Managing Material Disclosures*).
6. **No Intermingling of Deliverables and Evaluation Criteria:** Since the Deliverables section will survive beyond the bidding process and will form part of the awarded contract, drafters should avoid intermingling evaluation criteria into their description of Deliverables. Evaluation criteria should be kept separate and incorporated into the appropriate section of the evaluation section of the template. Drafters should also avoid intermingling since it causes significant interpretation risks and unnecessarily complicates the drafting process.

Using Neutral Specifications and Avoiding Restrictive Requirements: When drafting Deliverables and Evaluation Criteria, drafters should aim towards neutral specifications and avoid restrictive requirements due to the following reasons:

1. **Neutrality is a Core Standard:** Using neutral specifications and avoiding unnecessarily restrictive requirements is one of the core global principles of public procurement.
2. **Increasing Supplier Challenges:** Suppliers are becoming increasingly vigilant in their pursuit of a level playing field and are launching an increasing number of bid protests challenging the government's specifications on the grounds that they are unnecessarily restrictive to competition and contrary to governing open procurement rules.
3. **No Local Preferences:** Local preferences are a form of restrictive requirements that need to be avoided in public sector procurement when open tendering procedures are used. Examples of local preference can include imposing local labour, local warranties, or local production requirements.
4. **Avoiding Restrictive Requirements:** Other restrictive requirements that should be avoided include overly restrictive past experience requirements, branded requirements, onerous specifications or performance terms that are not tied to the legitimate operational requirements of the purchasing institution, and unnecessarily restrictive bidding procedures that create unfair barriers to competition.
5. **The Onus to Defend:** When challenged, public institutions bear the onus of defending their requirements against allegations of unfair advantage and improper restrictions.

Considerations: The Deliverables section should provide a complete description of what is being procured from the supplier. Whether it is a good and/or service, construction services, consulting or professional services, etc., everything we require the supplier to provide, or that the supplier will be responsible for while under contract, belongs in the Deliverables section. Think of this section as the Specifications or Scope of Work.

You can add sub-sections (A.1, A.2, A.3, etc) with additional sub-headings as needed, but DO NOT delete or modify the main heading.

Describe all information material to the Deliverables – provide an accurate description of the goods and services (including anticipated quantities) using neutrally drafted specifications.

Specifications may include any or all of the following:

- i. Physical characteristics;
- ii. Functional, performance or expected results characteristics;
- iii. Quality characteristics defined by recognized, third-party standards bodies; and/or
- iv. Intended use descriptors such as consumer grade, industrial grade, medical or laboratory grade, or suitable for use under extreme conditions.

It is essential that the business requirements and specifications in a solicitation document be clear and comprehensive as they represent the “blueprint” that suppliers will use to develop proposals and pricing. The requirements and specifications should answer the questions:

- i. What is required? (complete details of the goods and/or the full scope of services)
- ii. When is it required? (delivery dates and/or timelines for performance)
- iii. Where is it required? (location for delivery and/or performance)
- iv. Why is it required? (intended use or purpose)

Specifications cannot be written in a way that unduly restricts suppliers from bidding, and should encourage open, fair and transparent competition. All specifications must be generic and non-branded whenever possible.

Include references to associated documents when necessary, including the document #, document title, and revision:

- Drawings;
- Standards;
- Specifications;
- Data sheets;
- Etc

Information in this section should be categorized into sub-sections wherever possible. Examples of sub-sections could be as follows (these are just examples and not necessarily suited for all projects):

- A.1 BACKGROUND INFORMATION
- A.2 SCOPE OF WORK
- A.3 EXPECTED DELIVERABLES
- A.4 WORK LOCATION
- A.5 WORKING HOURS
- A.7 ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES (AODA)
- A.6 OUT OF SCOPE

A.x ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES (AODA)

[If there are no applicable AODA considerations, type “This section intentionally left blank” and provide an explanation as to why there are no applicable AODA considerations. Forms which do not comply with this requirement will be returned to the author and the RFx process will be put on hold until a compliant form is provided]

The Accessibility for Ontarians with Disabilities Act, 2005 (AODA) was enacted with the goal of developing enforceable accessibility standards that would prevent and remove barriers in Ontario and ensure accessibility for all Ontarians.

Section 5 of the AODA requires the College to incorporate accessibility criteria and features when procuring or acquiring goods, services or facilities, except where it is not practicable to do so. As such, completion of this section is **mandatory**, and in circumstances where it is not possible to complete this section an explanation as to why is required.

Describe all information material to developing, implementing and enforcing accessibility standards in order to achieve accessibility for Ontarians with disabilities with respect to:

- goods
- services
- facilities
- accommodation
- employment
- buildings
- structures
- premises

When procuring goods, services and facilities, the College is required to incorporate accessibility criteria and features into the purchasing criteria. Where applicable, solicitation documents must specify the desired accessibility criteria to be met and provide guidelines for the evaluation of bids in respect of those criteria. When developing its requirements and specifications for a procurement project, the Department must research the product(s) or service(s) and consider appropriate accessibility criteria and features. Think about any barriers the product or service might present for people with different types of disabilities and how the barriers can be avoided. Consider the following general principles of accessibility:

- **Accessible:** Can a person with a disability use the good/service at all?
- **Equitable:** Can someone with a disability use the facility as quickly and easily as a person without a disability?
- **Adaptable:** Can a user configure the item to meet their specific needs and preferences and will it work with common assistive technologies?

Consider the following examples of accessibility criteria for different types of purchases:

For Goods:

- Can the product be used by someone in a seated position?
- Can the product be used by someone with limited upper body strength, or limited fine motor skills; with vision loss or low vision; with hearing loss?

- Does the product meet ergonomic standards and can it be customized to meet a variety of needs?
- Are support materials, such as manuals, training or service calls, available in accessible formats at no additional charge?

For Services:

- Can the service provider accommodate the needs of people of all abilities? For example, if you're hiring someone to conduct research, do their surveys and interviews accommodate people with different types of disabilities?
- Will the company use accessible signage, audio and/or print materials? For example, if you're hiring an event coordinator, will they use high contrast signage for the event?

For Facilities:

- Can someone using a mobility aid, like a wheelchair or walker get around the facility?
- Are signs placed at an accessible height?
- Does the facility have emergency procedures to assist people with disabilities?

If you need further assistance in completing this section, you can refer to the following information on the [Purchasing Website](#), or contact the Accessibility Facilitator:

- (1) [the AODA Information for Procurement](#);
- (2) [the AODA Overview Presentation](#);
- (3) [the AODA Procurement Toolkit](#); and/or
- (4) contact the College's Accessibility Facilitator.

B. MATERIAL DISCLOSURES

Purpose: Material Disclosures are the "known-unknowns": the information that the purchasing institution knows, or should know, but that proponents may not. Material Disclosures should include information about the contemplated contract that could influence a proponent's decision to bid or quote a price, including unusual, dangerous, or onerous conditions relating to the contemplated contract that could impact the timing and cost of performance. See Managing Material Disclosures.

Managing Material Disclosures: Disclose all information material to the contract that could affect the proponent's decision to bid or the proponent's submitted pricing, including but not limited to: unusual site conditions; unusual processes or procedures; delivery or performance restrictions; any uncommon risks.

Purchasing institutions are subject to strict transparency obligations during a tendering process and should ensure that they disclose material information about the tendered contract to all potential bidders. The following governing principles are recognized by the courts as applying to the issue of material disclosures:

1. **Disclose All Material Information:** The purchaser institution must disclose all material information about the contemplated contract, including information that could influence a bidder's decision to bid or influence the price the bidder quotes in its tender.
2. **Unusual or Dangerous Conditions:** The purchasing institution must disclose any unusual or dangerous conditions that it is aware of and cannot typically avoid these duties by creating internal policies against disclosure.
3. **Work Volumes are Material:** Work volumes are recognized as material to a bidder's ability to properly quote price.
4. **Intended Audience is the Average Bidder:** Tender call information should be correct and complete and be provided with the average bidder in mind.
5. **Clear Specifications:** Tender call specifications should be drafted clearly and coherently.
6. **Disclaimers:** The purchasing institution should clearly disclaim any information that may be unreliable. However, disclaimers may not guard against inaccuracies or misrepresentations.
7. **Errors Interpreted Against Drafting Institution:** Any errors in the tender documents will typically be interpreted against the purchasing institution since the purchasing institution is the drafter of the document.
8. **Disclosure Duty Continues After Close:** The disclosure duty continues to apply to the purchasing institution throughout the tendering process.
9. **Purchaser's Representations:** A purchasing institution will be expected to honour the representations it makes during the tendering process, including the representations it makes regarding its roles and responsibilities during contract performance.

Considerations: In order to solicit competitive and responsive pricing during a competitive process, it is essential that bidders know all material information relating to the Procurement Project.

Only the Department's subject area experts will be able to know what information should be disclosed in the material disclosures section of the solicitation document. The material disclosures section should be reviewed for every Procurement Project since failure to do so could expose the College to legal, financial and reputational risk.

- a) Material disclosures include information such as:
 - i. Reports relating to the Procurement Project, including engineering, consulting, environmental or site reports;
 - ii. Unusual conditions that may affect price (e.g. unusual site conditions, soil conditions, presence of asbestos, delivery requirements, restrictions, or timing/deadlines.);
 - iii. Contractual performance terms; and
 - iv. Specific or unusual processes or procedures expected of the successful bidder that are outside standard industry practice, or any uncommon risks.

If there are no material disclosures, insert N/A

C. MANDATORY SUBMISSION REQUIREMENTS

Purpose: Mandatory Submission Requirements are the requirements that are assessed on a pass-fail basis that all proponents must meet prior to having their proposals evaluated for scored criteria and price.

To prevent proponents from being unnecessarily eliminated, ensure that Mandatory Submission Requirements are as minimal as possible.

Managing Mandatory Submission Requirements: Under the law of tenders, a submission that does not meet a threshold eligibility requirement is legally incapable of acceptance and must be disqualified as non-compliant. While some types of solicitations (negotiated RFPs) may include Rectification Periods, proponents that fail to rectify within that cure period must also be disqualified.

Institutions that award contracts to non-compliant proponents face potential legal challenges by competing proponents. They also face legal challenge from rejected bidders who have the right to challenge a non-compliance assessment. To reduce legal exposure and promote a transparent and clear evaluation process, these threshold requirements should be objective, clear, and defensible. They should be structured in adherence to the following general principles:

1. **Clear Identification:** Threshold eligibility requirements should be clearly identified as mandatory evaluation requirements and should be consolidated in one part of the solicitation document.
2. **Essentials Only:** Threshold eligibility requirements should be used sparingly for compulsory requirements that are significant enough to actually disqualify a proponent, rather than for desirable but non-essential requirements.
3. **Clear Litmus Test:** Those factors that are not genuinely capable of a pass/fail assessment (e.g., grey areas requiring judgment calls) cannot safely operate as threshold eligibility requirements and should be either removed from the solicitation document or re-categorized as scored non-price rated requirements. For example, a third-party technical testing certificate could be a Mandatory Submission Requirement, but the series of technical standards that informed that third party certification process are too complex to lend themselves to an easily defensible pass-fail assessment during bid evaluations.
4. **Verification of Technical Requirements:** If evaluators need to actively and independently confirm a technical standard as part of their evaluation process, those requirements should be included in Mandatory Technical Requirements and should be incorporated in accordance with instructions set out in that section.
5. **Timing of Adherence:** Those requirements that relate to the post-award contract performance phase, but will not be independently verified, should not be included in the evaluation section. Rather, they should be organized in a separate schedule and should be incorporated directly or by reference into the Deliverables section of your solicitation. Other mandatory requirements (such as proof of insurance)

may only apply to the top-ranked bidder. Those should be included as Pre-Conditions of Award as described under *Inserting Pre-Conditions of Award*.

6. **Self-Declarations:** Proponent self-assessment and compliance declarations (e.g., where bidders “swear an oath” by attesting to their own compliance) are inadvisable. The purchasing entity is under a duty to disqualify non-compliant bidders and should therefore take positive steps to screen proponents for each threshold eligibility requirement. Those requirements that cannot be screened and independently verified should be removed from the evaluation. To give legal effect to the proponent’s agreement to abide by the standards defined in your Deliverables section, ensure that they sign the offer form since it already contains a general representation referring back to the Deliverables.

Considerations: Insert other mandatory submission requirements, such as licences, certificates or other required forms or documents. Items should be included here only if they are essential to the evaluation process. Many potential mandatory submission requirements, e.g. proof of insurance, can be treated as pre-conditions of award instead, and be required only of the selected proponent.

If there are no other mandatory submission requirements, insert N/A.

D. MANDATORY TECHNICAL REQUIREMENTS

Purpose: Mandatory Technical Requirements are also assessed on a pass/fail basis and should relate specifically to the ability of proponents to provide the Deliverables, like a specific type of functionality or specification that must be actively demonstrated during the evaluation process and confirmed by your evaluation team.

To prevent proponents from being unnecessarily eliminated, ensure that Mandatory Technical Requirements are limited to those requirements that are absolutely necessary.

Managing Mandatory Technical Requirements: Project teams should consider the following factors before incorporating any Mandatory Technical Requirements:

1. **Technical Criteria:** Mandatory Technical Requirements are criteria of a technical nature that must be demonstrated before the proposal will be considered further and are assessed on a pass/fail basis.
2. **Active Demonstration:** These types of requirements should relate specifically to the ability of proponents to provide the Deliverables, like a specific type of functionality or specification that must be actively demonstrated during the evaluation process.
3. **Active Proof Not Paperwork:** For greater clarity, bidder self-declarations confirming that their offering will meet a required standard should not be included in Mandatory Technical Requirements. Those standards should be included in the Deliverables and the standard representation in the submission form will confirm their legal commitment to meet that standard under the awarded contract.
4. **Essential Minimums Requiring Active Confirmation:** Purchasing institutions should limit technical eligibility requirements to essential minimum standards that the purchasing institution can independently verify prior to proceeding with subsequent stages of the evaluation process.

Considerations: Insert mandatory technical requirements that the proponent must demonstrate with respect to the Deliverables before rated criteria can be considered. These must be capable of assessment on a pass/fail basis and should not be confused with performance requirements that the successful proponent must perform if awarded the contract. Failure to adequately meet these requirements may result in disqualification of the proposal.

Mandatory Technical Requirements may include:

- specific experience in a certain field/discipline
- specific licensing/certification – eg. Electrical Safety Authority (ESA)
- specific technical or functional requirements – eg. operating range of a temperature control chamber; minimum or maximum size/weight of equipment, etc.

If there are no mandatory technical requirements, insert N/A.

E. PRE-CONDITIONS OF AWARD

Purpose: Pre-Conditions of Award are assessed on a pass/fail basis and are required only from the selected proponent and must be met as a pre-condition to signing and awarding the tendered contract.

Inserting Pre-Conditions of Award: Drafters should consider the following factors when including Pre-Conditions of Award:

1. **Used to Avoid Unnecessary Administrative Burden:** Pre-Conditions of Award are not required from all bidders at bid submission. Rather, to avoid unnecessary administrative burdens on bidders and evaluators, some mandatory requirements, such as proof of insurance, should typically only be required from the top-ranked bidder upon selection for contract award as part of the contract award process.
2. **Consider Timing Issues:** Given the urgency of tendering timeframes, drafters and evaluators should consider incorporating mandatory requirements as Pre-Conditions of Award for any factors that may result in the unnecessary disqualification of bidders if the timing for proof by the bid submission deadline is overly onerous.
3. **Disclosure of Pre-Conditions:** For transparency and legal defensibility purposes, drafters should disclose any pre-conditions of award that must be met by the selected bidder before the contract can be awarded.
4. **Use of Terminology:** Since these requirements only apply to the top-ranked proponent, bidder, or respondent selected for contract award, as opposed to all proponents, bidders, or respondents, the terminology here should refer to the “selected proponent,” “selected bidder,” or “selected respondent” to align with the terminology used for this stage in the process in the templates.

Considerations: Disclose any pre-conditions of award that must be met by the selected proponent before the contract can be awarded. For example, it is recommended that proof of insurance be required only of the selected proponent as part of the contract award process, rather than being a mandatory submission requirement required of all proponents.

If there are no pre-conditions of award, insert N/A

F. EVALUATION CRITERIA

Purpose: Evaluation criteria should be directly related to the Deliverables and to assessing a proponent's capability to provide those Deliverables.

Establishing Evaluation Criteria: The non-price scored criteria should be drafted in accordance with the following governing principles:

1. **No Intermingling of Deliverables and Evaluation Criteria:** Since the Deliverables section will survive beyond the bidding process and form part of the awarded contract, but the evaluation criteria will not, drafters should avoid intermingling evaluation criteria into their description of Deliverables. Evaluation criteria should be kept separate and incorporated into the non-price evaluation section of the template. Drafters should also avoid intermingling since it causes significant interpretation risks and unnecessarily complicates the drafting process.
2. **Full Disclosure of Criteria and Sub-Criteria:** To meet the required standards of transparency and enhance the defensibility of a contract award decision, drafters should disclose the main evaluation categories and weightings, as well as the sub-criteria and sub-weightings, they intend to rely on to arrive at the final score and ranking for each proponent. The number of points available for all criteria should be out of 100, so that one point is worth one percent for transparency and ease of calculating. Further, the weighting of each sub-criteria should be disclosed and should be weighted at no more than one percent (or one point of the 100 total points available).
3. **No Hidden Criteria:** Evaluators do not have the discretion to apply hidden criteria when making evaluation and award decisions. Drafters should ensure that they do not include details in internal evaluator guidebooks that are not also disclosed in their solicitation documents.
4. **Establish Your Main Categories and Weightings First:** Drafters should establish the main evaluation criteria categories and weightings first, since this will inform the level of detail required at the sub-criteria level. Knowing the overall weightings within an evaluation criteria category before drafting the sub-criteria will help avoid drafting sub-criteria that are too vague or unnecessarily detailed.
5. **Identify Overall Weighting for Price:** As part of this initial design-planning exercise, drafters should also determine the allocation of total weightings as between their non-price scored criteria and price.
6. **Avoid Complicated Numbering Schemes:** Drafters should avoid unnecessarily complicated numbering schemes and should allocate their overall weightings out of 100 points so that each point in the main evaluation categories equals one percent of the total evaluation. This point-per-percentage approach should also be used to sub-divide the main evaluation category into sub-criteria and sub-weightings.
7. **Balance Non-Price and Price Weightings:** In low bid formats, price will be the sole factor for evaluating compliant bids. However, when using tendering formats

that also score non-price factors, drafters should avoid diluting the weighting for price.

8. **Use Minimum Technical Thresholds Instead of Diluting Price:** Rather than unnecessarily lowering the overall weighting for price when drafters are concerned about receiving technically low quality bids that may win due to unreasonably low pricing, these technical concerns should be addressed by setting minimum scoring thresholds for technical evaluation categories so that weak technical bids are screened out through the evaluation process before price becomes a factor. This way, bidders with weak technical offerings cannot distort the evaluation outcome and “buy the business” through artificially low bids, while allowing you to maintain competitive cost competition among the better technical bids. Drafters should avoid setting minimum technical scoring thresholds too high to avoid creating unnecessarily restrictive barriers to competition. Minimum scoring thresholds should typically be set at no more than 50 to 60 percent of the specific technical evaluation category.
9. **Avoid Restrictive Requirements:** Drafters should avoid introducing overly restrictive evaluation criteria that unnecessarily limits competition. For example, the required levels of prior experience or technical functionality should not be overstated and should be rationally connected to the actual requirements of the anticipated contract (see *Using Neutral Specifications and Avoiding Restrictive Requirements*).
10. **Distinguishing Firms from Individuals:** Drafters should exercise caution when defining past experience requirements to clearly identify whether that past experience requirement will be scored at the firm level (scoring the bidder’s prior experience as a corporate entity) and when that experience will be scored based on the bidder’s proposed project team member experience (by assessing the individuals and their specific experience).
11. **Use Caution with References:** Drafters should exercise caution in determining whether references will be used as part of the past experience scoring and, if they do take references into account in the past experience scoring, should be careful defining what information will be collected from references and how that information will be integrated into the overall scoring process, both of which must be disclosed in the solicitation document.
12. **Managing Technical Scoring:** When incorporating other technical evaluation factors, drafters should ensure that the project team will include technical evaluators with the necessary knowledge and experience to properly score those categories.
13. **Avoid Ambiguity:** Drafters should avoid incorporating vague scoring criteria that leave subjective scoring discretion to evaluators. For example, vague references to “best value assessment” or open-ended requests for “value-adds” are no substitute for disclosing detailed evaluation criteria and sub-criteria for all scored categories. Since many evaluation and award decisions turn on small differences in overall scoring, an open-ended or vague evaluation category, even if only

allocated a small percentage of the overall weighting, may be sufficient to undermine the defensibility of an evaluation and award decision.

G. PRICE EVALUATION METHOD

Note to Client: Procurement will determine the Price Evaluation Method, based on the Deliverables outlined in Section A.)

Purpose: The pricing structure is an integral element of your solicitation document that must be aligned with the Deliverables categories and payment stages under the future contract.

Establishing the Price Evaluation Method: The pricing structure needs to be properly aligned with the description of contract requirements in order to: (i) achieve a clear, transparent, and defensible evaluation process; and (ii) inform how billing and payment will be managed under the awarded contract.

To meet these due diligence standards, drafters should ensure that the pricing structure is clearly aligned to the described Deliverables and integrated with a scoring formula that lends itself to the consistent and transparent evaluation of competing bids. When designing and drafting the pricing structure, drafters should consider the following factors:

1. **Balance the Weighting for Price:** In low bid formats, price will be the sole factor for evaluating compliant bids. However, when using tendering formats that also score non-price factors, drafters should avoid diluting the weighting for price.
2. **No Loose Ends:** There should be no loose ends in the pricing information collected from bidders. All the pricing information requested from bidders should be integrated into the price evaluation.
3. **Capture the Full Contract Scope:** The price evaluation should capture the full scope of the contract requirements. There should be no outlier categories. For greater certainty, there should be no contract categories that fall within the scope of the Deliverables and ultimate payment obligations that are not integrated into the pricing form.
4. **Pricing Should Capture Total Cost:** All pricing information should be integrated into the scoring of price to ultimately arrive at a total contract cost that can be used with the relative pricing formula included in the tendering template.
5. **Disclose Sub-Calculations:** The total cost used with the relative pricing formula should be able to be calculated without reliance on any hidden formulas or steps. All of the calculations and sub-formulas that will be used to calculate the total price for the relative pricing formula should be disclosed to all bidders within the solicitation documents.
6. **Dealing with Extensions:** Contract extension options should also be included in the price evaluation form unless the drafters incorporate a standard formula to allow for pre-defined cost increases to the bid price for the extension period.
7. **Avoided Artificially Blending and Averaging Rates:** Drafters should avoid artificial price evaluations caused by factors such as the blending or averaging of hourly rates across multiple work categories or the averaging of unit prices in

multiple category contracts, since a blending or averaging of hourly rates or unit prices may not be reflective of actual contract costs and may lead to indefensible evaluation and award decisions made based on distorted price assessments.

8. **Disclose Anticipated Volumes:** Anticipated work volumes should be transparently incorporated into the price evaluation plan whenever hourly rates or unit prices form part of the basis for price evaluation. Anticipated work volumes may also be material and require disclosure for other pricing formats, including fixed-fee bids.
9. **Establish Milestone Payments:** Reverting to monthly payments under fixed fee contracts (such as, stipulated sum, lump sum, and the like) is high risk since a contractor's level of effort in any given month will not necessarily correspond with the results achieved by the contractor during that period. When monthly "progress payments" run ahead of actual progress, the risk of downstream payment disputes or non-performance increases significantly. When establishing a pricing structure for a fixed-fee contract that will involve interim payments, drafters should therefore avoid monthly progress payments and should instead establish a payment sequence in their pricing form that is based on milestone payments that are aligned with clear performance benchmarks contained in the Deliverables section of the solicitation.
10. **Guard Against Front-Loaded Bids:** When establishing a milestone payment schedule for a fixed fee contract, drafters should define the percentage of the overall contract cost that will be paid in each milestone payment. Do not leave it open to bidders to decide on the percentage of each milestone payment since that will expose the bidding process to unbalanced bids where bidders disproportionately "front-load" the payment schedule to the early stages of contract performance and leave your contract managers with no leverage to hold back sufficient funds to incent payment for the later stages of contract.
11. **Complex Contracts May Require Multiple Pricing Formats:** Drafters should note that more complex contracts may include more than one pricing format for different parts of the same contract (e.g., milestone payments for up-front system integration work along with annual licensing fees for ongoing cloud software and hourly fees for maintenance).
12. **Select the Pricing Structure that Fits:** Drafters should select the appropriate pricing structure for each category of their Deliverables from a range of different formats that could include the following:
 - **Fixed-Price or Lump Sum (Stipulated Sum):** Fixed-price or lump Sum (also referred to as "flat fee," "firm price," "total price," or "stipulated sum") means a total price for all items in the Deliverable category. This model is only appropriate where all specifications are known in advance, all conditions affecting price are known, and the terms of the contract are clear.
 - **Unit Price:** Unit price means a per-item price for the required goods or services, which is then multiplied by the number of items or units acquired. Similar to the fixed-fee or lump sum pricing structure, this pricing structure

requires exact specifications for the goods or services required, along with clear metrics (e.g., price per kilogram). If the exact unit volumes are not known, then drafters should rely on historical data to set reasonable total cost calculation assumptions and should disclose those assumptions in their solicitation document.

- **Hourly, Daily, or Annual Rates:** Hourly, daily, and annual rates are different measures of unit price. As with unit prices, clear specifications are necessary. Hourly or daily rates may be used in conjunction with unit prices for “Time and Materials” pricing models. As with unit pricing, the assumptions for the total units of time that will be required under the contract should be stated in the solicitation document to better ensure transparent and reasonable price calculations.