



**Infrastructure
Ontario**

Ontario Infrastructure and Lands Corporation

Vendor Performance Program

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1.0 PREAMBLE AND PURPOSE

Ontario Infrastructure and Lands Corporation (“**Infrastructure Ontario**” or “**IO**”) is committed to ensuring that the procurement of goods, non-consulting services, and consulting services is undertaken in the most economical and efficient manner, taking into account the public interest, through processes that are fair, open, transparent, geographically neutral, and accessible to all qualified Vendors.

The purpose of the Vendor Performance Program (the “**Program**”), which is established pursuant to, subject to and consistent with the principles of such a program as set out in Section 7.1 of IO’s Procurement Policy (the “**Policy**”), is to institute IO’s programmatic approach to identifying, tracking and considering a bidding Vendor’s past performance in the evaluation and scoring of current and future procurement processes.

In accordance with the Policy, the existence of the Program does not prevent or preclude IO from including evaluation criteria in a procurement that takes into consideration past performance or other reference checking based on past experience, provided that such criteria satisfy the requirements of evaluation criteria generally set out in Section 7.1 of the Policy.

2.0 OBJECTIVES

The objectives of the Program are as follows:

- (a) The ongoing development of poor performance definitions based on critical delivery values;
- (b) The fair assessment of Vendor performance against well-defined and objective definitions of poor performance;
- (c) The accurate reporting of assessments to Vendors on a scheduled basis;
- (d) The creation of effective ties between chronic poor performance and a decreased likelihood being awarded work with Infrastructure Ontario; and
- (e) To drive Program improvement through a regular and scheduled Vendor outreach process.

3.0 APPLICATION

The Program applies to only to VPP Participants as described in this Article 3.0.

Not all Vendors are VPP Participants.

3.1 Vendors who are VPP Participants

Infrastructure Ontario Vendor Performance Program

The application of the Program is mandatory for Vendors who have entered into a Contract at the conclusion of a procurement process issued by IO or its PMSPs, either on its own behalf or on behalf of an entity other than IO, and:

- a) In respect of a P3 Project Agreement arising from an IO RFP Process, meet the definition of “Construction Contractor” or equivalent in the Project Agreement;
 - b) In respect of a Contract for General Contracting Services procured through an IO Bid Call Process or IO RFP Process, meet the definition of “Contractor”;
 - c) In respect of a Contract for:
 - (i) General Contracting services;
 - (ii) Architectural services or Interior Design services;
 - (iii) Engineering Consulting services; or
 - (iv) Security Consultant services,procured through a PMSP SSR Process, meet the definition of “Contractor” or “Prime Consultant”;
 - d) In respect of a Contract for:
 - (i) General Contracting services;
 - (ii) Architectural services or Interior Design services;
 - (iii) Engineering Consulting services; or
 - (iv) Security Consultant services,procured through a PMSP Bid Call Process or PMSP RFP Process (and not through a PMSP SSR Process), meet the definition of “Contractor” or “Prime Consultant”;
or
 - e) In respect of a P3 Project Agreement arising from an IO RFP Process, meet the definition of “Service Provider” or equivalent in the Project Agreement and, where Contracting Authority is not IO, such Contracting Authority and IO have elected, in their sole discretion, to extend the application of the Program to such Project;
- (collectively, the “VPP Participants” and each a “VPP Participant”).

3.2 Application to Sub-Contracted Entities of VPP Participants

- (a) A VPP Participant's VPP Score shall reflect any instance of poor performance by its sub-contracted entity provided that:
 - (i) such instance of poor performance occurs during the delivery of a Contract pursuant to Section 3.1, and
 - (ii) such instance of poor performance satisfies the conditions precedent of an Infraction Criterion and its associated annotation(s) as set out in Subsection 4.3.1.
- (b) The VPP Score of a VPP Participant who participates in a procurement process solely as a sub-contracted entity to another VPP Participant or Vendor shall not be applied during the evaluation and scoring of any submission made in response to that procurement process.

3.3 Application to Multi-Party Vendors

In the Program, an Infraction issued in respect of a Contract shall be issued against every VPP Participant counterparty to that Contract.

3.4 Contracts Entered into Prior to the Effective Date

A Vendor to a Contract entered into prior to the Effective Date is subject to the Program, provided that Section 3.1 applies to such Vendor, and provided that the Contract meets the reporting conditions set out in Appendix F – Reporting Conditions.

4.0 PERFORMANCE ASSESSMENT AND REPORTING

Assessments of the performance of VPP Participants shall be conducted in accordance with this Article 4.0.

4.1 Principles of Performance Assessments

- (a) Assessments of the performance of VPP Participants shall occur on an ongoing basis;
- (b) Documents issued as part of a procurement process shall include disclosure to bidding Vendors that:
 - (i) the performance of the successful bidding Vendor under the resulting Contract to such procurement process will be assessed and reported on in accordance with the Program, and
 - (ii) any Infraction imposed on a VPP Participant shall impact the evaluation and scoring of that VPP Participant in any future procurement process, provided that such action is permitted by the Policy and the Program.
- (c) The date assigned to an Infraction shall be the date that IO's documentation demonstrates that the condition(s) precedent to the imposition of the Infraction was satisfied;

- (d) IO shall communicate performance assessments of VPP Participants through the issuance of Monthly Reports.

4.2 Monthly Reports

4.2.1 Information Included in Monthly Reports

Monthly Reports issued as part of the Program shall include the following information for each VPP Participant:

- (a) A list of Contracts for which performance assessment is ongoing;
- (b) The date of all Unexpired Infractions, if any, together with supporting information and/or analysis, as required, and
- (c) A VPP Score.

Sample Monthly Reports are attached as Appendix K.

4.2.2 Information Not Included in Monthly Reports

Infractions identified for Contracts which are not Ongoing Contracts shall not be reported to VPP Participants, included in a Monthly Report or impact a VPP Participant's VPP Score, but a record of such Infractions may be retained by IO in accordance with Article 7.

4.2.3 Monthly Reports Deemed Correct and Complete

If a VPP Participant identifies an administrative error in a Monthly Report the VPP Participant may submit a review request in accordance with Article 10. In the event that IO confirms the existence of such an administrative error, IO will issue an updated Monthly Report which supersedes the previously-issued version.

In no event shall a Monthly Report be updated retroactively, except in accordance with this Section 4.2.3.

4.3 Infractions

The performance of a VPP Participant shall be assessed against the Infraction Criteria pertaining to the Contract to which it is a counterparty. An instance of poor performance by a VPP Participant shall only be considered an Infraction if such instance of poor performance satisfies the conditions precedent of an Infraction Criterion and its associated annotation(s) for a Contract as set out in Subsection 4.3.1.

4.3.1 Infraction Criteria

- (a) Vendors who are counterparties to Contracts entered into pursuant to a procurement process described in Subsections 3.1(a), (b), (c)(i) and (d)(i) shall be assessed against the Infraction Criteria set out in Appendix B – Infraction Criteria:

Construction Contractors and General Contractors, as annotated in Appendix C – Annotations to Appendix B Infraction Criteria.

- (b) Vendors who are counterparties to Contracts entered into pursuant to a procurement process described in Subsection 3.1(c)(ii), (c)(iii), (c)(iv), (d)(i), (d)(ii), or (d)(iv) shall be assessed against the Infraction Criteria set out in Appendix D – Infraction Criteria: Architects, Interior Designers, Engineers and Security Consultants, as annotated in Appendix E – Annotations to Appendix D Infraction Criteria.
- (c) Vendors who are counterparties to Contracts entered into pursuant to a procurement process described in Subsection 3.1(e) shall be assessed against the Infraction Criteria set out in Appendix L – Infraction Criteria and Annotations: Service Providers.

4.3.2 Expired Infractions

- (a) Infractions shall expire in accordance with Appendix F – Reporting Conditions.
- (b) Expired Infractions shall cease to affect a VPP Participant’s VPP Score.

4.3.3 Transposed Infractions

- (a) Transposed Infractions for Vendors who are counterparties to Contracts entered into pursuant to a procurement process described in Subsections 3.1(a), (b), (c)(i) and (d)(i) shall be applied in accordance with Appendix B – Infraction Criteria: Construction Contractors and General Contractors, and
- (b) Transposed Infractions for Vendors who are counterparties to Contracts entered into pursuant to a procurement process described in Subsections 3.1(c)(ii), (c)(iii), (c)(iv), (d)(i), (d)(ii), or (d)(iv) shall be applied in accordance with Appendix D – Infraction Criteria: Architects, Interior Designers, Engineers and Security Consultants.

4.4 VPP Score

4.4.1 Calculation of VPP Scores

A VPP Participant’s VPP Score shall be calculated using the net number of Unexpired Infractions attributable to Contracts to which the VPP Participant is a counterparty in accordance with Article 4.4.

- (a) The VPP Score of Vendors who are counterparties to Contracts entered into pursuant to a procurement process described in Subsections 3.1(a), (b), (c)(i) and (d)(i) shall be based on the net number of infractions from each Contract, including Transposed Infractions.

- (b) The VPP Score of Vendors who are counterparties to Contracts entered into pursuant to a procurement process described in Subsections 3.1(c)(ii), (c)(iii), (c)(iv), (d)(i), (d)(ii), or (d)(iv) shall be calculated using the net number of infractions from each Contract, including Transposed Infractions.
- (c) The VPP Score of Vendors who are counterparties to Contracts entered into pursuant to a procurement process described in Subsections 3.1(e) shall be based on the net number of infractions from each Contract.

4.4.2 Application of VPP Scores

Subject to Article 4, a VPP Score shall be applied as a Deduction to the score of any submission of a bidding VPP Participant made in response to a procurement process in accordance with Article 5.0.

5.0 DEDUCTIONS

5.1 Calculation of Deductions

Deductions shall be calculated using a data-driven statistical model built using all scoring inputs applicable to the specific procurement process to which the bidding Vendor has submitted a submission, which calculation is referred to herein as a Calibration.

- (a) In respect of an RFQ Process issued by IO, Deductions will be Calibrated in accordance with Appendix G – Deduction Calibration Methodology: IO Processes.
- (b) In respect of a procurement process described in Subsections 3.1(c) and (d), Deductions will be Calibrated in accordance with Appendix I – Deduction Calibration Methodology: PMSP Processes.
- (c) Deductions applied for Infractions whose numbers fall between;
 - (i) the Lowest Possible Deduction and the Low Inflection Point, or
 - (ii) the Low Inflection Point and the High Inflection Point,shall be calculated using non-linear interpolation.

5.2 Application of Deductions

The following evaluation categories, subcategories, sections, or subsections to are subject to the application of Deductions:

- (a) In respect of P3 RFQ Submissions and for VPP Participants seeking prequalification as construction Prime Team Members, the “construction Team Member Capability and Experience” section or equivalent;

- (b) In respect of IO DBB RFQ Submissions, the aggregate of all scoring categories save those allotted to the evaluation of the Submission’s financial component, if any;
- (c) In respect of PMSP SSR Submissions, the aggregate of all PMSP SSR scoring categories save those allotted to the evaluation of the SSR Submission’s financial component;
- (d) In respect of a PMSP RFQ submissions, the aggregate of all scoring categories save those allotted to the evaluation of the RFQ Submission’s financial component, if any;
- (e) In respect of a PMSP RFP Submission, the aggregate of all scoring categories save those allotted to the evaluation of the RFP Submission’s financial component, if any; and
- (f) In respect of P3 RFQ Submissions and for VPP Participants seeking prequalification as facilities management Prime Team Members, the “facilities management Team Member Capability and Experience” section or equivalent.

Subject to Article 4.0, a VPP Score (or VPP Weighted Score, as applicable) included in a Monthly Report in one calendar month shall be applied as a Deduction during the evaluation of any submission made by a bidding Vendor in response to a procurement process no earlier than the immediately following calendar month.

5.3 Recalibration of Deductions

IO shall conduct Recalibrations of Deductions twice per calendar year, and otherwise in its sole discretion.

6.0 PROGRAM UPDATES

- (a) In addition to Recalibrations of Deductions in accordance with Section 5.4, Infrastructure Ontario shall conduct a Program review twice per calendar year and otherwise from time to time in its sole discretion. The Program may be amended as a result of any such reviews. Amendments may include, but are not limited to:
 - (i) Updating Reporting Guidelines,
 - (ii) Updating Infraction Criteria and associated annotations, and/or
 - (iii) Expanding the application of the Program.

7.0 RECORDS

Records of a Vendor’s past performance may be retained indefinitely by IO, including any event of poor performance that was not assessed as an Infraction, included in a Monthly Report, impacted a VPP Score and/or not applied as a Deduction.

8.0 CONFIDENTIALITY

- (a) IO shall not disclose a VPP Score to any party other than the VPP Participant, a co-sponsor to a procurement process (if applicable) or any Governmental Authority without the prior written consent of the VPP Participant.
- (b) IO shall not be required to obtain the prior written consent of a VPP Participant to disclose any information about a VPP Participant's record in the Program in compliance with Applicable Law.

9.0 EFFECTIVE DATE

March 1, 2020

10.0 ENQUIRIES

- (a) Please direct all communications with respect to the Program to the following email address: **VPP@infrastructureontario.ca**.
- (b) A VPP Participant who wishes to formally identify the presence of an administrative error within their Monthly Report may do so via the email address provided in subsection (a).

11.0 DEFINITIONS

Unless otherwise defined in Appendix A – Definitions, all defined terms shall have the meaning given to them in the Policy.

12.0 UPDATES AND AMENDMENTS

September, 2020 - Program application extended to Security Consultants and Service Providers.

May, 2021 – Scheduled recalibration of Deduction tables found in Appendices H and J. Updates to reporting conditions for PMSP-procured Contracts and Assignments, see Appendix F. Updates to Infraction Criteria and their annotations.

APPENDIX A – DEFINITIONS

“Applicant” means any Vendor submitting a response to an RFQ in an RFQ Process.

“Architect” or **“Interior Designer”** means those Qualified Vendors making up the Architectural Services and Interior Design Services VOR List, or equivalent.

“Assignment” means a Project or a Study.

“BF” or **“Build Finance”** means a Build-Finance project procured by IO pursuant to a P3 RFP Process.

“Bid Call” means an invitation issued to prequalified Vendors to submit bids to, in the case of General Contractors, perform Work for a whole or a portion of a Project, or, in the case of Architects, Interior Designers, and Engineers, provide Services in relation to an Assignment.

“Bid Call Documents” means the procurement documents issued by a Requestor to initiate the selection process and in connection with a Bid Call.

“Bid Call Process” means a competitive procurement process that follows the RFQ Process and is intended to result in the identification of a successful prequalified General Contractor, Architect, Interior Designer, or Engineer.

“Bid Call Submission” means any Vendor’s submission to the Bid Call Process.

“Calibration” means the process by which the nonlinear correlations between Infractions and Deductions are established.

“Prime Team Member” has the meaning given to it in the applicable P3 RFQ.

“construction Prime Team Member” or **“CPTM”** is the Prime Team Member with responsibility for a significant percentage of the construction work associated with a P3 Project, as described in each case in the definition of “Prime Team Member” in the P3 RFQ.

“Construction Contractor” is the entity, partnership or joint venture named in a P3 Project Agreement who prequalified as construction Prime Team Members in the P3 RFQ Process for the applicable P3 Project.

“Construction Team Score” means the sum of the scores received by the Applicant for those RFQ Scoring Categories germane to the evaluation of construction Prime Team Members.

“Consultant” has the meaning given to it in the applicable Contract.

“Contract Price” means the total value of the Contract less all applicable taxes.

“Contracting Authority” means the owner party or parties to a P3 Project Agreement, and excludes the successful bidding Vendor.

“**DBB**” means a Design-Bid-Build project procured by IO pursuant to an IO Bid Call Process or procured by a PMSP pursuant to a PMSP Bid Call Process or a PMSP RFP Process.

“**DBF**” means a Design-Build-Finance project procured by IO pursuant to a P3 RFP Process.

“**DBFM**” means a Design-Build-Finance-Maintain project procured by IO pursuant to a P3 RFP Process.

“**DBFOM**” means a Design-Build-Finance-Operate-Maintain project procured by IO pursuant to a P3 RFP Process.

“**Deduction**” means the number of points deducted from the applicable scoring category in the evaluation of a submission made in response to an IO Process or a PMSP Process.

“**Deduction Table**” means the table included in each Monthly Report which outlines the correlation between number of Infractions and Deductions.

“**Delay Event**” has the meaning given to it in the applicable P3 Project Agreement.

“**Engineer**” means those Qualified Vendors making up the Engineering and Technical Services VOR List, or equivalent.

“**Expired Infraction**” means an Infraction which satisfies the condition(s) precedent for expiry described in Appendix F – Reporting Conditions.

“**facilities maintenance Prime Team Member**” or “**FMPTM**” is the Prime Team Member with responsibility for a significant percentage of the facilities maintenance work associated with a P3 Project, as described in each case in the definition of “Prime Team Member” in the P3 RFQ.

“**Failure Points**” has the meaning given to them in the applicable P3 Project Agreement.

“**General Contractor**” means those Qualified Vendors making up the General Contractor Services VOR List, or equivalent, or any Applicant to the DBB RFQ Process.

“**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over Contracting Authority, a PMSP and/or a Vendor, to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.

“**High Inflection Point**” has the meaning given to it in Appendix G – Deduction Calibration Methodology: P3 RFP Process/IO Bid Call Process.

“**Infraction**” has the meaning given to it in Article 4.

“Infraction Criteria” means the criteria against which the performance of a Vendor is assessed in the Program, as set out in Appendix B – Infraction Criteria: Construction Contractors and General Contractors and Appendix D – Infraction Criteria: Architects, Interior Designers, and Engineers. An individual criterion is an **“Infraction Criterion”**.

“Infrastructure Ontario” or **“IO”** means the Ontario Infrastructure and Lands Corporation.

“IO Procurement Process” means those procurement processes which are i) subject to Deductions and ii) have IO as their Requestor.

“Interior Designer” or **“Architect”** means those Qualified Vendors making up the Architectural Services and Interior Design Services VOR List, or equivalent.

“Key Individual” has the meaning given to it in the applicable P3 Project Agreement.

“Letter of Award” means the piece of correspondence issued to the Vendor by the Requestor which outlines the conditions of award, if any.

“Low Inflection Point” has the meanings given to it in Appendix G – Deduction Calibration Methodology: IO Processes and Appendix I – Deduction Calibration Methodology: IO Processes.

“Lowest Possible Deduction” has the meanings given to it in Appendix G – Deduction Calibration Methodology: IO Processes and Appendix I – Deduction Calibration Methodology: IO Processes.

“Maintenance Period” has the meaning given to it in the applicable P3 Project Agreement.

“Maintenance Work” has the meaning given to it in the applicable P3 Project Agreement.

“Minimum Technical Threshold” means the minimum scoring threshold for the evaluated sections outlined in Section 5.2, or equivalent, as identified in the procurement documents.

“Minor Deficiency” or **“Minor Deficiencies”** has the meaning given to it in the applicable P3 Project Agreement.

“Monitoring Notice” has the meaning given to it in the applicable P3 Project Agreement.

“Monthly Report” means the report sent by IO to VPP Participants each calendar month containing the information described in Section 4.2.

“Monthly Service Payment” has the meaning given to it in the applicable P3 Project Agreement.

“Ongoing Contract” means any Contract whose delivery falls within the timelines outlined in Appendix F – Reporting Conditions.

“P3” means a public-private partnership.

“P3 Project Agreement” means the contract entered into with the successful bidding Vendor to a P3 procurement process.

“Performance Audit” has the meaning given to it in the applicable P3 Project Agreement.

“Place of the Work” has the meaning given to it in the applicable Contract.

“Prequalification Submission” or **“RFQ Submission”** means any Applicant submission received by a Requestor in connection to an RFQ Process.

“Prequalified Party” or **“Prequalified Parties”** means those Applicants who have been identified as eligible participants in an RFP Process or Bid Call Process.

“Prime Consultant” has the meaning given to it in the applicable Contract.

“Program” has the meaning given to it in Section 1.0.

“Proceeding at Risk” has the meaning given to it in the applicable P3 Project Agreement.

“Policy” has the meaning given to it in Section 1.0.

“Project” has the meaning given to it in the applicable Contract.

“Project Management Service Provider” or **“PMSP”** means any project management service provider retained by IO to provide project management services.

“Project Management Service Provider Procurement” or **“PMSP Procurement”** means the PMSP department responsible for the execution of procurements.

“PMSP Procurement Process” means those procurement processes which are i) subject to Deductions and ii) have a PMSP as their Requestor.

“Qualified Vendor” means any Vendor that has been prequalified by IO for future eligibility to participate in an SSR Process.

“Recalibration” means a Calibration conducted to adjust previous Calibrations to account for current data.

“Reimbursement Event” has the meaning given to it in the applicable P3 Project Agreement.

“Remedial Right” has the meaning given to it in the applicable P3 Project Agreement.

“Requestor” means IO, a PMSP, or any Person(s) authorized by IO to issue procurement documents.

“RFP Process” means either a competitive procurement process that follows the RFQ Process or a standalone and independent procurement process, each intended to result in the identification of a Vendor following successful negotiation of a Contract.

“Record Drawing” or **“Record Drawings”** has the meaning given to it in the applicable Contract.

“Request for Qualifications” or **“RFQ”** has the meaning given to it in the Policy.

“RFQ Documents” has the meaning given to it in the applicable RFQ.

“RFQ Process” means a standalone and independent stage beginning with issuance of RFQ Documents and ending with the identification of shortlisted parties.

“Scheduled Substantial Completion Date” has the meaning given to it in the applicable P3 Project Agreement.

“Security Consultant” means those Qualified Vendors making up the Security Consultant Services VOR List, or equivalent.

“Service Provider” is the entity, partnership or joint venture named in a P3 Project Agreement who prequalified as facilities management Prime Team Members, or equivalent, in the P3 RFQ Process for the applicable P3 Project.

“SSR” means an invitation issued to Qualified Vendors to submit bids to, in the case of General Contractors, perform Work for a whole or a portion of a Project, or, in the case of Architects, Interior Designers, and Engineers, provide Services in relation to an Assignment.

“SSR Documents” means the procurement documents issued by a Requestor to initiate an SSR Process.

“SSR Process” means the second-stage procurement process whose invitees are Qualified Vendors from a VOR List.

“SSR Submission” means any Qualified Vendor’s submission in response to an SSR Process.

“Service” or **“Services”** mean the whole or a portion of the goods and services to be provided by the Qualified Vendor pursuant to the applicable Contract.

“Study” means a review, analysis and resulting recommendations, if applicable, related to real property, facilities planning, design and/or construction procured pursuant to an SSR Process.

“Substantial Completion” has the meaning given to it in the applicable P3 Project Agreement.

“Substantial Completion Countdown Notice” has the meaning given to it in the applicable P3 Project Agreement.

“Substantial Performance of the Work” has the meaning given to it in the Contract.

“Subcontractor” means any subcontractor of the VPP Participant engaged to perform any of the Work or Service, including any of the Contractors, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.

“Transposed Infraction” means those Infractions which have been applied to the VPP Participant’s VPP Score pursuant to the terms outlined in Appendices B, D and F.

“Transposition” means the process of applying a VPP Participant’s performance record across delivery models and service categories pursuant to Appendices B, D and F.

“Unexpired Infraction” means those Infractions that are not yet Expired Infractions.

“VOR Documents” means the RFP, schedules, and any addenda made public by IO as a part of the VOR Process.

“VOR List” means a listing of Qualified Vendors that been prequalified by IO for future eligibility to provide Services or perform the Work.

“VOR Process” means a standalone and independent stage beginning with the issuance of VOR Documents and ending with the formation of a VOR List.

“VPP Score” means the score for Projects, expressed as a percentage, disclosed to VPP Participants, in the Monthly Report sent by Infrastructure Ontario.

“VPP Weighted Score” means, where an Applicant is a joint venture or partnership, the score expressed as a percentage calculated pursuant to the following formula:

$$VPP\ Weighted\ Score = \sum_{i=1}^n JVI_i D_i$$

where JVI_i is the joint venture or partnership interest of a Vendor in the construction Prime Team Member or facilities management Prime Team Member, and D_i is that VPP Participant’s VPP Score.

“Warning Notice” has the meaning given to it in the applicable P3 Project Agreement.

“Warranty Period” has the meaning given to it in the applicable Contract.

“Work” means the total scope of construction and services detailed in the call documents.

“Working Day” means any day other than a Saturday, Sunday, a statutory holiday in the Province of Ontario, or any day on which banks are not open for business in the City of Toronto.

APPENDIX B – INFRACTION CRITERIA: CONSTRUCTION CONTRACTORS AND GENERAL CONTRACTORS

Infraction Criteria	Construction Contractors	General Contractors
1. Contracting Authority has exercised a Remedial Right due to a Vendor breach of Contract.	Applies, non-transposable to General Contractors.	Does not apply.
2. Contracting Authority has sought indemnification under the Contract due to a Vendor breach of Contract.	Applies, non-transposable to General Contractors.	Does not apply.
3. Contracting Authority has made a direct claim for, or set off of, proceeds from payments due as a result of a Vendor breach of Contract.	Applies, transposable to General Contractors	Applies, transposable to Construction Contractors
4. Contracting Authority has issued a notification to the Vendor stating that the Work has been performed in a manner that will result in the Vendor being unable to meet completion requirements.	Applies, transposable to General Contractors	Applies, transposable to Construction Contractors
5. Contracting Authority has exercised its right to uncover work and said work has been found to be defective.	Applies, transposable to General Contractors	Applies, transposable to Construction Contractors
6. Contracting Authority has remedied defective work attributable to the Vendor.	Applies, non-transposable to General Contractors.	Does not apply.

Infraction Criteria	Construction Contractors	General Contractors
7. Pursuant to its legislative or regulatory power, a Governmental Authority has issued an order to the Vendor which has resulted in a follow-on notice of violation, fine, or other disciplinary action against the Vendor.	Applies, transposable to General Contractors	Applies, transposable to Construction Contractors
8. Contracting Authority has drawn upon deposited or withheld amounts in respect of the rectification of Minor Deficiencies.	Applies, transposable to General Contractors	Applies, transposable to Construction Contractors
9. The Vendor's performance security has been enforced against and/or drawn upon.	Applies, transposable to General Contractors	Applies, transposable to Construction Contractors
10. Contracting Authority has requested a rectification plan and the Vendor has failed to deliver said plan in a timely manner.	Applies, transposable to General Contractors	Applies, transposable to Construction Contractors
11. Contracting Authority has requested a rectification plan and the plan delivered by the Vendor fails to meet the prescribed requirements of such plan.	Applies, transposable to General Contractors	Applies, transposable to Construction Contractors
12. The Vendor has failed to deliver the Project in a timely manner.	Applies, transposable to General Contractors	Applies, transposable to Construction Contractors
13. The Project was delivered later than that date set out by the first Substantial Completion Countdown Notice.	Applies, non-transposable to General Contractors.	Does not apply.

Infraction Criteria	Construction Contractors	General Contractors
14. Vendor personnel were not made available to perform their agreed upon role.	Applies, transposable to General Contractors	Applies, transposable to Construction Contractors
15. Vendor personnel were substituted without obtaining prior written consent of Contracting Authority.	Applies, transposable to General Contractors	Applies, transposable to Construction Contractors
16. Recommendations to rectify health and safety infractions have not been implemented or addressed in a timely manner.	Applies, transposable to General Contractors	Applies, transposable to Construction Contractors
17. The Vendor has failed to notify Contracting Authority of critical discoveries in a timely manner.	Does not apply.	Applies, non-transposable to Construction Contractors
18. The Vendor has been notified of necessary work within the Warranty period and failed to complete such work.	Does not apply.	Applies, non-transposable to Construction Contractors
19. The Vendor has failed to notify Contracting Authority of a critical health and safety incident within prescribed timelines.	Does not apply.	Applies, non-transposable to Construction Contractors
20. The Vendor has failed to deliver closeout documents in a timely manner.	Does not apply.	Applies, non-transposable to Construction Contractors
21. The Vendor has failed to adhere to the security protocols necessary to perform the work.	Does not apply.	Applies, non-transposable to Construction Contractors

Infraction Criteria	Construction Contractors	General Contractors
22. The Vendor failed to deliver a baseline schedule within a timely manner.	Does not apply.	Applies, non-transposable to Construction Contractors

APPENDIX C – ANNOTATIONS TO APPENDIX B INFRACTION CRITERIA

Annotation	Construction Contractors Annotation	General Contractors Annotation
All	Any Contracting Authority exercise of rights will occur under, and in accordance with, the relevant Contract.	
Criterion No. 1	<ul style="list-style-type: none"> a. This criterion is only recorded in respect to the “Remedial Rights” section of a Project Agreement. b. No infraction shall be recorded on account of this criterion where the exercise of a Remedial Right falls under the definition of a “Reimbursement Event” under a Project Agreement. 	N/A
Criterion No. 2	<ul style="list-style-type: none"> a. An Infraction will be assessed if the claim for indemnification by Contracting Authority exceeds \$100,000. 	N/A
Criterion No. 3	<ul style="list-style-type: none"> a. An Infraction will be assessed if the claim or set-off amount by Contracting Authority exceeds \$100,000. b. No Infraction shall be recorded should the underlying matter relate to Contracting Authority’s exercise of indemnification rights. c. No infraction shall be recorded as a result of the requirement of a contractor to pay liquidated damages to Contracting Authority due to the failure to achieve Substantial Completion by the Scheduled Substantial Completion Date. 	<ul style="list-style-type: none"> a. An Infraction will be assessed if the claim or set-off amount is greater than \$50,000 or 8% of the Contract Price, whichever is less. b. No Infraction shall be recorded should the underlying matter relate to Contracting Authority’s exercise of indemnification rights.

Annotation	Construction Contractors Annotation	General Contractors Annotation
Criterion No. 4	<ul style="list-style-type: none"> a. Notification will be issued pursuant to the Proceeding at Risk protocol of the Contract. b. The completion requirements will be those defined by Substantial Completion as set out in the Contract. c. No Infraction shall be recorded until such time as the Independent Certifier (DBF, DBFM, or DBFOM) or Consultant (BF) has opined that the completion requirements are at risk. 	<ul style="list-style-type: none"> a. The completion requirements will be those defined by Substantial Performance of the Work per the Contract. b. No Infraction shall be recorded until such time as the Consultant has opined that the completion requirements are at risk.
Criterion No. 5	None.	None.
Criterion No. 6	a. No Infraction shall be recorded for Contracting Authority's remediation of Minor Deficiencies.	N/A
Criterion No. 7	None.	None.
Criterion No. 8	None.	None.
Criterion No. 9	a. An Infraction will be assessed if the enforced amount exceeds \$100,000.	None.

Annotation	Construction Contractors Annotation	General Contractors Annotation
<p>Criterion No. 10</p>	<p>a. This criterion is not related to, and no infraction shall be recorded on account of, general review of works schedules pursuant to the “Review Procedure” or the “Work Scheduling Requirements” schedules to a Project Agreement or any other general request for a works schedule that is not part of the “failure to maintain schedule” section of a Project Agreement.</p> <p>Multiple infractions, as a general matter, will not be recorded in respect of the same failure to provide a requested rectification plan pursuant the "failure to maintain schedule" provisions of a Project Agreement.</p> <p>If, however:</p> <ul style="list-style-type: none"> i. Contracting Authority makes a second request for a rectification plan pursuant the prescribed requirements of the failure to maintain schedule" provisions of a Project Agreement, either after a resolution of the previous rectification plan or relating to a materially different set of circumstances that has caused a project to fall behind schedule, and the construction contractor fails to deliver such rectification plan; or ii. the contractor, in response to a rectification plan request delivers a plan that did not meet the prescribed requirements of a Project Agreement, provides another response that still does not meet the prescribed requirements of a Project Agreement, <p>then in each case of a non-responsive or unsatisfactory rectification plan that does not meet the requirements</p>	<ul style="list-style-type: none"> a. Infractions shall not be recorded at a rate exceeding once per forty-five calendar days. b. No Infraction shall be recorded for plans received within five (5) Working Days from the date of the request.

Annotation	Construction Contractors Annotation	General Contractors Annotation
	<p>of a Project Agreement, an additional infraction will be recorded in respect of each additional failure up to a maximum rate of once per calendar year quarter.</p> <p>b. No Infraction shall be recorded for plans delivered within a timeframe twice the length of that prescribed by the Contract.</p>	
Criterion No. 11	See Annotation No. 10(a) for Construction Contractors.	See Annotation No. 10(a) for General Contractors.
Criterion No. 12	<p>a. No infraction shall be recorded until all claims related to Delay Events have been finally resolved.</p> <p>b. Timeliness shall be determined against the Scheduled Substantial Completion Date per the Contract.</p> <p>c. Timelines shall be reconciled against resolved Delay Events and any adjustment of the Scheduled Substantial Completion Date in accordance with the Project Agreement.</p> <p>d. An Infraction will be assessed if Substantial Completion is reached more than ninety (90) days following the Scheduled Substantial Completion Date.</p>	<p>a. No Infraction shall be recorded until all claims affecting Contract Time have been finally resolved.</p> <p>b. The date Substantial Performance of the Work is achieved shall be the date used for determining project delivery.</p> <p>c. Timelines shall be reconciled against any and all adjustment of Contract Time.</p> <p>d. An Infraction will be assessed if Substantial Performance is reached more than twenty (20) Working Days following the date stipulated by the Contract for Substantial Performance.</p>
Criterion No. 13	<p>a. No Infraction shall be recorded until all claims related to Delay Events have been finally resolved.</p> <p>b. The Scheduled Substantial Completion Date shall be the date used for determining project delivery.</p> <p>c. Timelines shall be reconciled against resolved Delay Events and any adjustment of the Scheduled</p>	N/A

Annotation	Construction Contractors Annotation	General Contractors Annotation
	<p>Substantial Completion Date in accordance with the Project Agreement.</p> <p>d. No Infraction shall be recorded in the event that Substantial Completion is achieved within fifteen (15) calendar days of the Anticipated Substantial Completion Date specified in the Notice.</p>	
Criterion No. 14	<p>a. Death, injury, departure, dismissal, or other removal of a Key Individual does not automatically result in an Infraction to be recorded under this criterion. However, in all cases, consent must be obtained for any replacement or substituted Key Individual in accordance with a Project Agreement.</p>	<p>a. Infractions shall only be recorded if the Vendor’s appointed representatives have been substituted.</p> <p>b. Death, injury, departure, dismissal, or other removal of an appointed representative does not automatically result in an Infraction to be recorded under this criterion. However, in all cases, consent must be obtained for any replacement or substituted appointed personnel in accordance with a Contract.</p>
Criterion No. 15	See Annotation No. 14 for Construction Contractors.	See Annotation No. 14 for General Contractors.
Criterion No. 16	<p>a. Such recommendations shall be the result of independent health and safety inspection reports.</p> <p>b. How health and safety matters are addressed by Vendors will be taken into consideration in determining whether an Infraction has occurred.</p>	<p>a. Such recommendations shall be the result of:</p> <ul style="list-style-type: none"> i. Independent health and safety inspection reports; or ii. Inspections conducted by PMSP personnel designated to conduct such inspections. <p>b. How health and safety matters are addressed by Vendors will be taken into consideration in determining whether an Infraction has occurred.</p>

Annotation	Construction Contractors Annotation	General Contractors Annotation
Criterion No. 17	N/A	<ul style="list-style-type: none"> a. Such discoveries may include materials, substances, articles, species, or structures of an environmental, archeological, toxic, hazardous, or heritage nature. b. No Infraction shall be recorded for those items brought to the Place of the Work by the Vendor, provided said items were disclosed to Contracting Authority in accordance with the Contract. c. Timeliness of the notification shall be taken into consideration in determining whether an Infraction has occurred.
Criterion No. 18	N/A	<ul style="list-style-type: none"> a. No Infraction shall be recorded until the warranty period has elapsed.
Criterion No. 19	N/A	<ul style="list-style-type: none"> a. No Infraction shall be recorded should such damage or injury occur. b. An Infraction will be assessed if more than two (2) calendar days elapse between the incident and the Vendor's notification to Contracting Authority. c. Criticality shall be determined by Infrastructure Ontario, acting in its sole discretion.
Criterion No. 20	N/A	<ul style="list-style-type: none"> a. An Infraction will be assessed if more than fifty (50) calendar days elapse between Substantial Performance of the Work or the Vendor's final

Annotation	Construction Contractors Annotation	General Contractors Annotation
		application for payment (whichever is earlier) and the complete delivery of documents.
Criterion No. 21	N/A	<ul style="list-style-type: none"> a. No Infraction shall be recorded as a result of an individual being denied security clearance. b. No Infraction shall be recorded for access required for the Vendor's participation in the SSR Process.
Criterion No. 22	N/A	<ul style="list-style-type: none"> a. An Infraction will be assessed if more than fifteen (15) Working Days elapse between the date of the Letter of Award and the delivery of the baseline schedule.

APPENDIX D – INFRACTION CRITERIA: ARCHITECTS, INTERIOR DESIGNERS, ENGINEERS, AND SECURITY CONSULTANTS

Infraction Criteria	Architects and Interior Designers	Engineers	Security Consultants
1. The Vendor has failed to report matters of a materially significant nature.	Applies, transposable to Engineers and Security Consultants	Applies, transposable to Architects and Interior Designers and Security Consultants	Applies, transposable to Architects and Interior Designers and Engineers
2. Vendor personnel were not made available to perform their agreed upon role.	Applies, transposable to Engineers and Security Consultants	Applies, transposable to Architects and Interior Designers and Security Consultants	Applies, transposable to Architects and Interior Designers and Engineers
3. Vendor personnel were substituted without obtaining prior written consent of Contracting Authority	Applies, transposable to Engineers and Security Consultants	Applies, transposable to Architects and Interior Designers and Security Consultants	Applies, transposable to Architects and Interior Designers and Engineers
4. The Vendor has failed to provide Record Drawings in a timely manner.	Applies, transposable to Engineers and Security Consultants	Applies, transposable to Architects and Interior Designers and Security Consultants	Applies, transposable to Architects and Interior Designers and Engineers
5. Contracting Authority has made a direct claim for, or set off of, proceeds from payments due as a result of a Vendor breach of Contract	Applies, transposable to Engineers and Security Consultants	Applies, transposable to Architects and Interior Designers and Security Consultants	Applies, transposable to Architects and Interior Designers and Engineers

Infraction Criteria	Architects and Interior Designers	Engineers	Security Consultants
6. The Vendor has failed to adhere to the security protocols necessary to perform the work.	Applies, transposable to Engineers and Security Consultants	Applies, transposable to Architects and Interior Designers and Security Consultants	Applies, transposable to Architects and Interior Designers and Engineers
7. The Vendor has failed to provide Contract deliverables in a timely manner.	Applies, transposable to Engineers and Security Consultants	Applies, transposable to Architects and Interior Designers and Security Consultants	Applies, transposable to Architects and Interior Designers and Engineers
8. Contracting Authority has rejected Contract deliverables on qualitative grounds.	Applies, transposable to Engineers and Security Consultants	Applies, transposable to Architects and Interior Designers and Security Consultants	Applies, transposable to Architects and Interior Designers and Engineers
9. The Vendor has spent cash allowances prior to Contracting Authority's approval.	Applies, transposable to Engineers and Security Consultants	Applies, transposable to Architects and Interior Designers and Security Consultants	Applies, transposable to Architects and Interior Designers and Engineers
10. The Vendor has undertaken Additional Services and/or revised the required services prior to Contracting Authority's approval.	Applies, transposable to Engineers and Security Consultants	Applies, transposable to Architects and Interior Designers and Security Consultants	Applies, transposable to Architects and Interior Designers and Engineers

APPENDIX E – ANNOTATIONS TO APPENDIX D INFRACTION CRITERIA

Annotation	Architects and Interior Designers	Engineers	Security Consultants
All	Any Contracting Authority exercise of rights will occur under, and in accordance with, the governing Contract.		
Criterion No. 1	a. Material significance shall be defined as those defects, deficiencies, errors, and/or omissions in the Work which, if left unremedied, would result in a failure to achieve Substantial Performance of the Work within the Contract Time.	See Annotation No. 1 for Architects and Interior Designers	See Annotation No. 1 for Architects and Interior Designers
Criterion No. 2	a. Death, injury, departure, dismissal, or other removal of Vendor personnel shall not automatically result in an Infraction.	See Annotation No. 2 for Architects and Interior Designers	See Annotation No. 2 for Architects and Interior Designers
Criterion No. 3	See Annotation No. 2 for Architects and Interior Designers	See Annotation No. 2 for Architects and Interior Designers	See Annotation No. 2 for Architects and Interior Designers
Criterion No. 4	a. Vendors may only receive one Infraction under this criterion per Contract. b. An Infraction will be assessed if more than twenty (20) calendar days elapse between the Vendor’s receipt of as-built drawings and the delivery of Record Drawings to Contracting Authority.	See Annotation No. 4(a) and 4(b) for Architects and Interior Designers	See Annotation No. 4(a) and 4(b) for Architects and Interior Designers

Annotation	Architects and Interior Designers	Engineers	Security Consultants
Criterion No. 5	<ul style="list-style-type: none"> a. An Infraction will be assessed if the claim or set-off amount exceeds \$50,000 or 8% of the Contract Price, whichever is less. b. If the claim or set-off relates to Contracting Authority's exercise of indemnification rights, no Infraction will be assessed pursuant to this criterion. 	See Annotation No. 5(a) and 5(b) for Architects and Interior Designers	See Annotation No. 5(a) and 5(b) for Architects and Interior Designers
Criterion No. 6	<ul style="list-style-type: none"> a. No Infraction shall be recorded as a result of an individual being denied security clearance. b. No Infraction shall be recorded for access required for the Vendor's participation in the SSR Process. 	See Annotation No. 6(a) and 6(b) for Architects and Interior Designers	See Annotation No. 6(a) and 6(b) for Architects and Interior Designers
Criterion No. 7	<ul style="list-style-type: none"> a. An Infraction will be assessed if the deliverable is not received by Contracting Authority within ten (10) Working Days of its deadline per the Design Schedule, or equivalent. b. Vendors may only receive one Infraction per deliverable pursuant to this criterion. c. No Infraction shall be recorded as a result of the late delivery of Record Drawings. 	See Annotation No. 7(a) and 7(b) for Architects and Interior Designers	See Annotation No. 7(a) and 7(b) for Architects and Interior Designers

Annotation	Architects and Interior Designers	Engineers	Security Consultants
Criterion No. 8	a. Vendors may only receive one Infraction per deliverable pursuant to this criterion.	See Annotation No. 8 for Architects and Interior Designers	See Annotation No. 8 for Architects and Interior Designers
Criterion No. 9	None.	None.	None.
Criterion No. 10	None.	None.	None.

APPENDIX F – REPORTING CONDITIONS

Program Reporting Element		IO P3 Projects (Construction Contractors)	IO DBB Projects	PMSP DBB Projects (General Contractors)	PMSP DBB Projects or Services (Architects, Interior Designers, Engineers, and Security Consultants)	IO P3 Projects (Service Providers)
Monthly Report Receipt		Vendor has at least one (1) Ongoing Contract.	Vendor has at least one (1) Ongoing Contract.	Vendor has i) at least one (1) Ongoing Contract and ii) at least one (1) Unexpired Infraction	Vendor has i) at least one (1) Ongoing Contract and ii) at least one (1) Unexpired Infraction	Vendor has at least one (1) Ongoing Contract.
Ongoing Contract	Contract Reporting Initiation	Project Agreement has reached Financial Close.	Contract execution.	Contract execution.	Contract execution.	Maintenance Period has begun.
	Contract Reporting Expiry	The current date is greater than twenty-four (24) months from the date on which Final Completion was achieved.	The current date is greater than twenty-four (24) months from the date on which the Contract expired.	The current date is greater than twenty-four (24) months from the date on which the Contract expired.	The current date is greater than twenty-four (24) months from the date on which the Contract expired.	The current date is greater than thirty-six (36) months from the date on which the Maintenance Period ended.
Infraction Expiry		More than twenty-four (24) calendar months have elapsed from the date of the Infraction.	More than twenty-four (24) calendar months have elapsed from the date of the Infraction.	More than twenty-four (24) calendar months have elapsed from the date of the Infraction.	More than twenty-four (24) calendar months have elapsed from the date of the Infraction.	More than thirty-six (36) calendar months have elapsed from the date of the Infraction.

APPENDIX G – DEDUCTION CALIBRATION METHODOLOGY: IO PROCESSES

Terminology	Number of Infractions in a Monthly Report	Procurement-Based Statistical Function
Lowest Possible Deduction	1	N/A
Low Inflection Point	5	The Deduction necessary to make a VPP Participant statistically more likely of moving from last qualifying position into a non-qualifying position
High Inflection Point	8+	The Deduction necessary to make a VPP Participant statistically less likely of reaching the Minimum Technical Threshold

APPENDIX H – DEDUCTION TABLE: IO PROCESSES

Delivery Model	DBB		BF			DBF		DBFM (Social) – Construction Contractors			DBFM (Civil) – Construction Contractors			DBFM – Service Providers	
RFQ Construction Points	Range:	100	Range:	90	95	Range:	40	Range:	20	30	Range:	25	30	Range:	25
Number of Infractions	Deduction from RFQ per Section 5.2														
1	1.0%	1.0	1.0%	0.9	.95	1.0%	0.4	1.0%	0.2	0.3	1.0%	0.25	0.3	1.0%	0.25
2	1.4%	1.4	1.3%	1.1	1.2	1.5%	0.6	2.0%	0.4	0.6	2.1%	0.5	0.6	2.0%	0.49
3	2.2%	2.2	1.8%	1.6	1.7	2.6%	1.0	4.1%	0.8	1.2	4.4%	1.1	1.3	3.9%	0.96
4	3.9%	3.9	2.5%	2.3	2.4	4.2%	1.7	7.3%	1.5	2.2	7.7%	1.9	2.3	6.7%	1.68
5	6.4%	6.4	4.2%	3.8	4.0	8.5%	3.4	14.0%	2.8	4.2	15.0%	3.8	4.5	12.9%	3.23
6	11.2%	11.2	8.2%	7.4	7.8	10.0%	4.0	16.1%	3.2	4.8	17.0%	4.2	5.1	15.3%	3.83
7	21.1%	21.1	16.2%	14.6	15.4	16.8%	6.7	20.3%	4.1	6.1	20.9%	5.2	6.3	20.1%	5.03
8 or more	36.4%	36.	34.2%	30.8	32.5	32.3%	12.9	29.8%	6.0	8.9	29.9%	7.5	9.0	30.9%	7.74

APPENDIX I – DEDUCTION CALIBRATION METHODOLOGY: PMSP PROCESSES

Terminology	Number of Infractions upon a Monthly Report	Procurement-Based Statistical Function
Lowest Possible Deduction	1	N/A
Low Inflection Point	5	None; the deduction is a mathematically derived point which is proportionally related to the Lowest Possible Deduction and the High Inflection Point
High Inflection Point	8+	The Deduction necessary to make a VPP Participant statistically less likely of reaching the Minimum Technical Threshold

APPENDIX J – DEDUCTION TABLE: PMSP PROCESSES

Service Category	General Contractors		Architects & Interior Designers		Engineers		Security Consultants	
Total Available Technical Points	Range:	30	Range:	40	Range:	40	Range:	50
Number of Infractions	Deduction from SSR Submission pursuant to Section 5.2							
1	1.0%	0.3	1.0%	0.4	1.0%	0.4	1.0%	0.50
2	1.8%	0.5	1.8%	0.7	1.8%	0.7	1.8%	0.91
3	3.3%	1.0	3.5%	1.4	3.5%	1.4	3.5%	1.74
4	5.7%	1.7	6.0%	2.4	6.0%	2.4	6.0%	2.98
5	11.9%	3.6	12.7%	5.1	12.7%	5.1	10.1%	5.05
6	14.5%	4.3	15.4%	6.2	15.4%	6.2	11.2%	5.59
7	19.6%	5.9	20.9%	8.4	20.9%	8.4	13.3%	6.67
8 or more	31.1%	9.3	33.2%	13.3	33.2%	13.3	16.6%	8.29

APPENDIX K – SAMPLE MONTHLY REPORTS

[See attached]

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[Date]

[Company Name]
[Street Address]
[City, Province Postal Code]

Attention: [Recipient Name]

delivered via email

Re: IO Vendor Performance Program – Monthly Report for [Company Name] (the “**Company**”)

Dear [Recipient Name]:

In March 2020, Infrastructure Ontario updated its vendor past performance program (the “**Vendor Performance Program**”, or “**Program**”). This Program superseded past versions and applies to both Public-Private Partnership (“P3”) and Design-Bid Build (“DBB”) projects. In September 2020, the Program was updated once more. This update extends Program application to those vendors providing Security Consulting services as well as those operating as Service Providers on P3 Projects within the Maintenance Phase.

Unless otherwise explicitly defined herein, all capitalized terms herein have the definitions given to them in the Program. A copy of the Program can be found [here](#).

The Vendor Performance Program’s goals are to ensure the public interest is maintained by monitoring, tracking and holding vendors accountable for performance Infractions during the construction phase of a project. We will apply performance data in a fair and transparent manner to vendors’ participation in future IO and PMSP Procurement Processes.

You are receiving this Monthly Report because your Company is an active VPP Participant who satisfies the conditions for such receipt pursuant to Appendix F of the Program. In accordance with the Program, your Company has been assessed against specific contract criteria, each of which constitute a discrete performance Infraction. Below you will find the Company’s aggregated performance record, including all Transposed Infractions.

As of [Date 1: Month Day, Year], the total number of Infractions accumulated and recorded on Ongoing Contracts preceding [Date 1: Month Day, Year] in which the Company has participated as a Construction Contractor is ONE (1) and as a General Contractor is ZERO (0).

As of the dates outlined above, the Company’s aggregated and transposed Infraction record for the purposes of P3 RFQs is ONE (1) and for all DBB procurements is ONE (1).

A detailed summary of the performance criteria and the Company’s infraction record with respect to all projects is shown in Appendices A and B to this letter. If you believe there is an administrative error regarding the tabulation of performance infractions please contact vpp@infrastructureontario.ca. Any dispute in respect of an administrative or clerical error shall be resolved only with respect to such error. In all other circumstances for the purposes of this program, the recording of infractions and application of deductions against the Company is not eligible for dispute.

As a result of the Company's performance Infraction record and to the extent that the Company seeks:

- i) To prequalify as an Applicant construction Prime Team Member and/or General Contractor under an IO RFQ; and/or**
- ii) Award of a Contract for General Contracting services under a PMSP Procurement Process**

IO, or its Project Management Service Providers, will automatically deduct, from any Company Submission to the above submitted and received between [Date 2: Month Day, Year] and [Date 3: Month Day, Year [NTD: Dates 2 and 3 shall be the beginning and end of the next month in which Date 1 occurs] inclusive, the following number of points:

For IO Procurement Processes:

- [U]% for a Design-Bid-Build RFQ
- [V]% for a Build-Finance RFQ
- [W]% for a Design-Build-Finance RFQ
- [X]% for a Design-Build-Finance-Maintain RFQ (Social/Building Infrastructure Asset Class)
- [Y]% for a Design-Build-Finance-Maintain or Design-Build-Finance-Operate-Maintain RFQ (Civil Transit/Transportation Asset Class)

For PMSP Procurement Processes:

- [Z]% for a PMSP Second-Stage Request or Bid Call

Refer to Section 5.2 of the Program for an explicit outline of deductions as they relate to the evaluation of Submissions.

Infractions will be reviewed and updated by IO on a monthly basis. Deductions based on Infractions will apply until such time as the Infractions expire per Appendix F of the Program. Point deductions will be applied in accordance with the calibration table as disclosed in Appendix C. The calibration table in Appendix C has been developed using a data-driven statistical model which was built using scoring data from all IO RFQs in all asset classes since 2008 and from PMSP SSRs since 2019. Further questions regarding the mathematical inputs that contributed to the calibration model can be directed by email to: ypp@infrastructureontario.ca.

If the Company has elected to enter into a joint venture or partnership with any other construction contractor, the deduction applied to the joint venture/partnership Construction Prime Team Member in the applicable RFQ will be the weighted average (by joint venture or partnership interest) of the deductions applicable against all members of the joint venture/partnership. The formula to calculate the deduction is as follows:

$$\text{Construction Prime Team Member Deduction} = \sum_{i=1}^n JVI_i D_i$$

Where JVI_i is the joint venture or partnership interest of a company, and D_i is that company's P3 Vendor Performance Program deduction.

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**Infrastructure
Ontario**

*For example, if as of March 1, 2018, Contractor ABC's point deduction for Build-Finance RFQs is minus 2.0% (based on having accumulated two infractions in the last 24 months) and Contractor XYZ does not have any record of infractions (and thus a 0% deduction), and Contractor ABC and XYZ are in a 50/50 joint venture bidding to an RFQ, then for any prequalification submission received up until April 30, 2018 in which Contractor ABC and Contractor XYZ are acting as 50/50 joint venture partners, the total deduction applied to the score of the joint venture will be **minus 1.00% of the Construction Team Member Capability and Experience available points**, according to the pre-disclosed calibration table.*

Please also note that if the Company enters into a joint venture or partnership with another construction contractor and ultimately is the successful winning vendor under that procurement, any performance infractions that occur on the project will be equally recorded against the individual performance record of all constituent members of the joint venture or partnership.

More information regarding the purpose, objectives, design, methodology and administration of the Vendor Performance Program is available [here](#).

Yours truly,

[SIGNED]

Senior Vice-President, Procurement
Infrastructure Ontario

APPENDIX A – Detailed Company Construction Contractor Infraction Record as of [Date 1: Month Day, Year]

Infraction Criteria (Numbers per Appendix B of the Program)	Applicable to DBB Procurements	Project A	Project B	Project C
1. The Contracting Authority has exercised remedial rights due to a Vendor breach of Contract.	Not Applicable			
2. The Contracting Authority has sought indemnification under the Contract which is due to a Vendor breach of Contract.	Not Applicable			
3. The Contracting Authority has made a direct claim for, or set off of, proceeds from payments due as a result of a Vendor breach of Contract.	Applicable			
4. The Contracting Authority has issued a notification to the Vendor stating that the Work has been performed in a manner that will result in the Vendor being unable to meet completion requirements.	Applicable		Date: 2018.12.14 Expiry: 2020.12.14 Description: X	
5. The Contracting Authority has exercised its right to uncover work and said work has been found to be defective.	Applicable			

Infraction Criteria (Numbers per Appendix B of the Program)	Applicable to DBB Procurements	Project A	Project B	Project C
6. The Contracting Authority has had to remedy defective work attributable to the Vendor.	Not Applicable			
7. Pursuant to its legislative or regulatory power, a Governmental Authority has issued an order to the Vendor which has resulted in a follow-on notice of violation, fine, or other disciplinary action against the Vendor.	Applicable			
8. The Contracting Authority has drawn upon deposited or withheld amounts in respect of the rectification of Minor Deficiencies.	Applicable			
9. The Contracting Authority has enforced against and/or drawn upon performance security.	Applicable			
10. The Contracting Authority has requested a rectification plan and the Vendor has failed to deliver said plan in a timely manner.	Applicable			

Infraction Criteria (Numbers per Appendix B of the Program)	Applicable to DBB Procurements	Project A	Project B	Project C
11. The Contracting Authority has requested a rectification plan and the plan delivered by the Vendor fails to meet the prescribed requirements of such plan.	Applicable			
12. The Vendor has failed to deliver the Project in a timely manner.	Applicable			
13. The Project was delivered later than that date set out by the first Substantial Completion Countdown Notice.	Not Applicable			
14. Vendor personnel were not made available to perform their agreed upon role.	Applicable			
15. Vendor personnel were substituted without obtaining prior written consent of the Contracting Authority.	Applicable			
16. Recommendations to rectify health and safety infractions have not been implemented or addressed in a timely manner.	Applicable			
TOTAL COUNT OF INFRACTIONS	1		1	

APPENDIX B – Detailed Company General Contracting Infraction Record as of [Date 1: Month Day, Year]

Infraction Criteria (Numbers per Appendix B of the Program)	Applicable to P3 Procurements	Project D	Project E	Project F
<p>3. The Contracting Authority has made a direct claim for, or set off of, proceeds from payments due as a result of a Vendor breach of Contract.</p>	Applicable			
<p>4. The Contracting Authority has issued a notification to the Vendor stating that the Work has been performed in a manner that will result in the Vendor being unable to meet completion requirements.</p>	Applicable			
<p>5. The Contracting Authority has exercised its right to uncover work and said work has been found to be defective.</p>	Applicable			
<p>7. Pursuant to its legislative or regulatory power, a Governmental Authority has issued an order to the Vendor which has resulted in a follow-on notice of violation, fine, or other disciplinary action against the Vendor.</p>	Applicable			

Infraction Criteria (Numbers per Appendix B of the Program)	Applicable to P3 Procurements	Project D	Project E	Project F
8. The Contracting Authority has drawn upon deposited or withheld amounts in respect of the rectification of Minor Deficiencies.	Applicable			
9. The Vendor's performance security has been enforced against and/or drawn upon.	Applicable			
10. Contracting Authority has requested a rectification plan and the Vendor has failed to deliver said plan in a timely manner.	Applicable			
11. Contracting Authority has requested a rectification plan and the plan delivered by the Vendor fails to meet the prescribed requirements of such plan.	Applicable			
12. The Vendor has failed to deliver the Project in a timely manner.	Applicable			
14. Vendor personnel were not made available to perform their agreed upon role.	Applicable			

Infraction Criteria (Numbers per Appendix B of the Program)	Applicable to P3 Procurements	Project D	Project E	Project F
15. Vendor personnel were substituted without obtaining prior written consent of the Contracting Authority.	Applicable			
16. Recommendations to rectify health and safety infractions have not been implemented or addressed in a timely manner.	Applicable			
17. The Vendor has failed to notify the Contracting Authority of critical discoveries in a timely manner.	Not Applicable			
18. The Vendor has been notified of necessary work within the Warranty period and failed to complete such work.	Not Applicable			
19. The Vendor has failed to notify the Contracting Authority of a critical health and safety incident within prescribed timelines.	Not Applicable			
20. The Vendor has failed to deliver closeout documents in a timely manner.	Not Applicable			

Infraction Criteria (Numbers per Appendix B of the Program)	Applicable to P3 Procurements	Project D	Project E	Project F
21. The Vendor has failed to adhere to the security protocols necessary to perform the work.	Not Applicable			
22. The Vendor failed to deliver a baseline schedule within a timely manner.	Not Applicable			
TOTAL COUNT OF INFRACTIONS	0	0		

Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
All	Any Contracting Authority exercise of rights will occur under, and in accordance with, the governing Contract.	
Criterion No. 1	<ul style="list-style-type: none"> a. This criterion is only recorded in respect to the “Remedial Rights” section of a Project Agreement. b. No infraction shall be recorded on account of this criterion where the exercise of a Remedial Right falls under the definition of a “Reimbursement Event” under a Project Agreement. 	N/A
Criterion No. 2	<ul style="list-style-type: none"> a. An Infraction will be assessed if the claim for indemnification by Contracting Authority exceeds \$100,000. 	N/A
Criterion No. 3	<ul style="list-style-type: none"> a. An Infraction will be assessed if the claim or set-off amount by Contracting Authority exceeds \$100,000. b. No Infraction shall be recorded should the underlying matter relate to Contracting Authority’s exercise of indemnification rights. c. No infraction shall be recorded as a result of the requirement of a contractor to pay liquidated damages to Contracting Authority due to the failure to achieve Substantial Completion by the Scheduled Substantial Completion Date. 	<ul style="list-style-type: none"> a. An Infraction will be assessed if the claim or set-off amount is greater than \$50,000 or 8% of the Contract Price, whichever is less. b. No Infraction shall be recorded should the underlying matter relate to Contracting Authority’s exercise of indemnification rights.

Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
Criterion No. 4	<ul style="list-style-type: none"> a. Notification will be issued pursuant to the Proceeding at Risk protocol of the Contract. b. The completion requirements will be those defined by Substantial Completion as set out in the Contract. c. No Infraction shall be recorded until such time as the Independent Certifier (DBF, DBFM, or DBFOM) or Consultant (BF) has opined that the completion requirements are at risk. 	<ul style="list-style-type: none"> a. The completion requirements will be those defined by Substantial Performance of the Work per the Contract. b. No Infraction shall be recorded until such time as the Consultant has opined that the completion requirements are at risk.
Criterion No. 5	None.	None.
Criterion No. 6	<ul style="list-style-type: none"> a. No Infraction shall be recorded for Contracting Authority's remediation of Minor Deficiencies. 	N/A
Criterion No. 7	None.	None.
Criterion No. 8	None.	None.
Criterion No. 9	<ul style="list-style-type: none"> a. An Infraction will be assessed if the enforced amount exceeds \$100,000. 	None.

<p>Criterion No. 10</p>	<p>a. This criterion is not related to, and no infraction shall be recorded on account of, general review of works schedules pursuant to the “Review Procedure” or the “Work Scheduling Requirements” schedules to a Project Agreement or any other general request for a works schedule that is not part of the “failure to maintain schedule” section of a Project Agreement.</p> <p>Multiple infractions, as a general matter, will not be recorded in respect of the same failure to provide a requested rectification plan pursuant the "failure to maintain schedule" provisions of a Project Agreement.</p> <p>If, however:</p> <ul style="list-style-type: none"> i. Contracting Authority makes a second request for a rectification plan pursuant the prescribed requirements of the failure to maintain schedule" provisions of a Project Agreement, either after a resolution of the previous rectification plan or relating to a materially different set of circumstances that has caused a project to fall behind schedule, and the construction contractor fails to deliver such rectification plan; or ii. the contractor, in response to a rectification plan request delivers a plan that did not meet the prescribed requirements of a Project Agreement, 	<ul style="list-style-type: none"> a. Infractions shall not be recorded at a rate exceeding once per forty-five calendar days. b. No Infraction shall be recorded for plans received within five (5) Working Days from the date of the request.
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Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
	<p>provides another response that still does not meet the prescribed requirements of a Project Agreement, then in each case of a non-responsive or unsatisfactory rectification plan that does not meet the requirements of a Project Agreement, an additional infraction will be recorded in respect of each additional failure up to a maximum rate of once per calendar year quarter.</p> <p>b. No Infraction shall be recorded for plans delivered within a timeframe twice the length of that prescribed by the Contract.</p>	
Criterion No. 11	See Annotation No. 10(a) for Construction Contractors.	See Annotation No. 10(a) for General Contractors.

Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
<p>Criterion No. 12</p>	<ul style="list-style-type: none"> a. No infraction shall be recorded until all claims related to Delay Events have been finally resolved. b. Timeliness shall be determined against the Scheduled Substantial Completion Date per the Contract. c. Timelines shall be reconciled against resolved Delay Events and any adjustment of the Scheduled Substantial Completion Date in accordance with the Project Agreement. d. An Infraction will be assessed if Substantial Completion is reached more than ninety (90) days following the Scheduled Substantial Completion Date. 	<ul style="list-style-type: none"> a. No Infraction shall be recorded until all claims affecting Contract Time have been finally resolved. b. The date Substantial Performance of the Work is achieved shall be the date used for determining project delivery. c. Timelines shall be reconciled against any and all adjustment of Contract Time. d. An Infraction will be assessed if Substantial Performance is reached more than twenty (20) Working Days following the date stipulated by the Contract for Substantial Performance.

Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
<p>Criterion No. 13</p>	<ul style="list-style-type: none"> a. No Infraction shall be recorded until all claims related to Delay Events have been finally resolved. b. The Scheduled Substantial Completion Date shall be the date used for determining project delivery. c. Timelines shall be reconciled against resolved Delay Events and any adjustment of the Scheduled Substantial Completion Date in accordance with the Project Agreement. d. No Infraction shall be recorded in the event that Substantial Completion is achieved within fifteen (15) calendar days of the Anticipated Substantial Completion Date specified in the Notice. 	<p>N/A</p>

Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
Criterion No. 14	<p>a. Death, injury, departure, dismissal, or other removal of a Key Individual does not automatically result in an Infraction to be recorded under this criterion. However, in all cases, consent must be obtained for any replacement or substituted Key Individual in accordance with a Project Agreement.</p>	<p>a. Infractions shall only be recorded if the Vendor's appointed representatives have been substituted.</p> <p>b. Death, injury, departure, dismissal, or other removal of an appointed representative does not automatically result in an Infraction to be recorded under this criterion. However, in all cases, consent must be obtained for any replacement or substituted appointed personnel in accordance with a Contract.</p>
Criterion No. 15	See Annotation No. 14 for Construction Contractors.	See Annotation No. 14 for General Contractors.
Criterion No. 16	<p>a. Such recommendations shall be the result of independent health and safety inspection reports.</p> <p>b. How health and safety matters are addressed by Vendors will be taken into consideration in determining whether an Infraction has occurred.</p>	<p>a. Such recommendations shall be the result of:</p> <ul style="list-style-type: none"> i. Independent health and safety inspection reports; or ii. Inspections conducted by PMSP personnel designated to conduct such inspections. <p>b. How health and safety matters are addressed by Vendors will be taken into consideration in determining whether an Infraction has occurred.</p>

Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
Criterion No. 17	N/A	<ul style="list-style-type: none"> a. Such discoveries may include materials, substances, articles, species, or structures of an environmental, archeological, toxic, hazardous, or heritage nature. b. No Infraction shall be recorded for those items brought to the Place of the Work by the Vendor, provided said items were disclosed to Contracting Authority in accordance with the Contract. c. Timeliness of the notification shall be taken into consideration in determining whether an Infraction has occurred.
Criterion No. 18	N/A	<ul style="list-style-type: none"> a. No Infraction shall be recorded until the warranty period has elapsed.
Criterion No. 19	N/A	<ul style="list-style-type: none"> a. No Infraction shall be recorded should such damage or injury occur. b. An Infraction will be assessed if more than two (2) calendar days elapse between the incident and the Vendor's notification to Contracting Authority. c. Criticality shall be determined by Infrastructure Ontario, acting in its sole discretion.

Infraction Criteria Reference	Construction Prime Team Member Annotations	General Contractor Annotations
Criterion No. 20	N/A	a. An Infraction will be assessed if more than fifty (50) calendar days elapse between Substantial Performance of the Work or the Vendor's final application for payment (whichever is earlier) and the complete delivery of documents.
Criterion No. 21	N/A	a. No Infraction shall be recorded as a result of an individual being denied security clearance. b. No Infraction shall be recorded for access required for the Vendor's participation in the SSR Process.
Criterion No. 22	N/A	a. An Infraction will be assessed if more than fifteen (15) Working Days elapse between the date of the Letter of Award and the delivery of the baseline schedule.

APPENDIX B – Point Calibration Deduction Table Effective May 4, 2021

Delivery Model	DBB				P3											
	PMSP Procurement Processes		IO Procured Request for Qualifications		BF		DBF		DBFM (Social)			DBFM (Civil)				
Construction Points or Equivalent	Range: 30		Range: 100		Range: 90 95		Range: 40		Range: 20 30			Range: 25 30				
Number of Infractions	Deduction from Company's Submissions															
1	1.0%	0.3	1.0%	1.0	1.0%	0.9	.95	1.0%	0.4	1.0%	0.2	0.3	1.0%	0.25	0.3	
2	1.8%	0.5	1.4%	1.4	1.3%	1.1	1.2	1.5%	0.6	2.0%	0.4	0.6	2.1%	0.5	0.6	
3	3.3%	1.0	2.2%	2.2	1.8%	1.6	1.7	2.6%	1.0	4.1%	0.8	1.2	4.4%	1.1	1.3	
4	5.7%	1.7	3.9%	3.9	2.5%	2.3	2.4	4.2%	1.7	7.3%	1.5	2.2	7.7%	1.9	2.3	
5	11.9%	3.6	6.4%	6.4	4.2%	3.8	4.0	8.5%	3.4	14.0%	2.8	4.2	15.0%	3.8	4.5	
6	14.5%	4.3	11.2%	11.2	8.2%	7.4	7.8	10.0%	4.0	16.1%	3.2	4.8	17.0%	4.2	5.1	
7	19.6%	5.9	21.1%	21.1	16.2%	14.6	15.4	16.8%	6.7	20.3%	4.1	6.1	20.9%	5.2	6.3	
8 or more	31.1%	9.3	36.4%	36.4	34.2%	30.8	32.5	32.3%	12.9	29.8%	6.0	8.9	29.9%	7.5	9.0	

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[Date]

[Company Name]
[Street Address]
[City, Province Postal Code]

Attention: [Recipient Name]

delivered via email

Re: IO Vendor Performance Program – Scorecard for [Company Name] (the “**Company**”)

Dear [Recipient Name]:

In March 2020, Infrastructure Ontario updated its vendor past performance program (the “**Vendor Performance Program**”, or “**Program**”). This Program superseded past versions and applies to both Public-Private Partnership (“P3”) and Design-Bid Build (“DBB”) projects. In September 2020, the Program was updated once more. This update extends Program application to those vendors providing Security Consulting services as well as those operating as Service Providers on P3 Projects within the Maintenance Phase.

Unless otherwise explicitly defined herein, all capitalized terms herein have the definitions given to them in the Program. A copy of the Program can be found [here](#).

The Vendor Performance Program’s goals are to ensure the public interest is maintained by monitoring, tracking and holding vendors accountable for performance Infractions during the construction phase of a project. We will apply performance data in a fair and transparent manner to vendors’ participation in future PMSP Procurement Processes.

You are receiving this Monthly Report because your Company is an active VPP Participant who satisfies the conditions for such receipt pursuant to Appendix F of the Program. In accordance with the Program, your Company has been assessed against specific contract criteria, each of which constitute a discrete performance Infraction. Below you will find the Company’s aggregated performance record.

As of [Date 1: Month Day, Year], and per the reporting conditions outlined within Appendix F of the Program, the total number of Infractions accumulated and recorded on projects preceding [Date 1: Month Day, Year] in which the Company has participated as an Architect, Engineer, Interior Designer, or Security Consultant is THREE (3) infractions.

A detailed summary of the performance criteria and the Company’s Infraction record with respect to all Ongoing Contracts is shown in Appendix A to this letter. If you believe there is an administrative error regarding the tabulation of performance infractions please contact vpp@infrastructureontario.ca. Any dispute in respect of an administrative or clerical error shall be resolved only with respect to such error. In all other circumstances for the purposes of this program, the recording of Infractions and application of Deductions against the Company is not eligible for dispute.

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As a result of the Company's Infraction record, to the extent that the Company seeks award of a Contract under a PMSP Procurement Process, IO's Project Manager Service Providers will automatically deduct, from any Company PMSP Procurement Process Submission submitted and received between [Date 2: Month Day, Year] and [Date 3: Month Day, Year [NTD: Dates 2 and 3 shall be the beginning and end of the next month in which Date 1 occurs] inclusive, the following number of points:

- [Y]% for a PMSP Procurement Process for Architectural, Interior Design, or Engineering services
- [Z]% for a PMSP Procurement Process for Security Consulting services

Infractions will be reviewed and updated by Infrastructure Ontario on a monthly basis. All Deductions will be applied using a rolling twenty-four (24) months of Infraction data. Point Deductions will be applied in accordance with the calibration table as disclosed in Appendix B. The calibration table in Appendix B has been developed using a data-driven statistical model which was built using scoring data from all relevant Second-Stage Requests since 2019. Further questions regarding the mathematical inputs that contributed to the calibration model can be directed by email to: ypp@infrastructureontario.ca.

More information regarding the purpose, objectives, design, methodology and administration of the Vendor Performance Program is available [here](#).

Yours truly,

[SIGNED]

SVP, Procurement
Infrastructure Ontario

APPENDIX A – Detailed Company Infraction Record as of [Date 1: Month Day, Year]

Infraction Criteria	Project A	Project B	Project C
1. The Vendor has failed to report matters of a materially significant nature.			
2. Vendor personnel were not made available to perform their agreed upon role.	Date: 2019.9.10 Description: X		
3. Vendor personnel were substituted without obtaining prior written consent of Contracting Authority			
4. The Vendor has failed to provide Record Drawings in a timely manner.		Date: 2019.12.14 Description: X	
5. Contracting Authority has made a direct claim for, or set off of, proceeds from payments due as a result of a Vendor breach of Contract			Date: 2019.11.01 Description: X
6. The Vendor has failed to adhere to the security protocols necessary to perform the work.			
7. The Vendor has failed to provide Contract deliverables in a timely manner.			
8. Contracting Authority has rejected Contract deliverables on qualitative grounds.			

Infraction Criteria	Project A	Project B	Project C
9. The Vendor has spent cash allowances prior to Contracting Authority's approval.			
10. The Vendor has undertaken Additional Services and/or revised the required services prior to Contracting Authority's approval.			
TOTAL COUNT OF INFRACTIONS	3		

Infraction Criteria Reference	Architects and Interior Design Firm Annotations	Engineering Consultant Annotations	Security Consultants
All	Any Contracting Authority exercise of rights will occur under, and in accordance with, the governing Contract.		
Criterion No. 1	a. Material significance shall be defined as those defects, deficiencies, errors, and/or omissions in the Work which, if left unremedied, would result in a failure to achieve Substantial Performance of the Work within the Contract Time.	See Annotation No. 1 for Architects and Interior Designers	See Annotation No. 1 for Architects and Interior Designers
Criterion No. 2	a. Death, injury, departure, dismissal, or other removal of Vendor personnel shall not automatically result in an Infraction.	See Annotation No. 2 for Architects and Interior Designers	See Annotation No. 2 for Architects and Interior Designers
Criterion No. 3	See Annotation No. 2 for Architects and Interior Designers	See Annotation No. 2 for Architects and Interior Designers	See Annotation No. 2 for Architects and Interior Designers
Criterion No. 4	a. Vendors may only receive one Infraction under this criterion per Contract. b. An Infraction will be assessed if more than twenty (20) calendar days elapse between the Vendor's receipt of as-built drawings and the delivery of Record Drawings to Contracting Authority.	See Annotation No. 4(a) and 4(b) for Architects and Interior Designers	See Annotation No. 4(a) and 4(b) for Architects and Interior Designers

Infraction Criteria Reference	Architects and Interior Design Firm Annotations	Engineering Consultant Annotations	Security Consultants
Criterion No. 5	<ul style="list-style-type: none"> a. An Infraction will be assessed if the claim or set-off amount exceeds \$50,000 or 8% of the Contract Price, whichever is less. b. If the claim or set-off relates to Contracting Authority's exercise of indemnification rights, no Infraction will be assessed pursuant to this criterion. 	See Annotation No. 5(a) and 5(b) for Architects and Interior Designers	See Annotation No. 5(a) and 5(b) for Architects and Interior Designers
Criterion No. 6	<ul style="list-style-type: none"> a. No Infraction shall be recorded as a result of an individual being denied security clearance. b. No Infraction shall be recorded for access required for the Vendor's participation in the SSR Process. 	See Annotation No. 6(a) and 6(b) for Architects and Interior Designers	See Annotation No. 6(a) and 6(b) for Architects and Interior Designers
Criterion No. 7	<ul style="list-style-type: none"> a. An Infraction will be assessed if the deliverable is not received by Contracting Authority within ten (10) Working Days of its deadline per the Design Schedule, or equivalent. b. Vendors may only receive one Infraction per deliverable pursuant to this criterion. c. No Infraction shall be recorded as a result of the late delivery of Record Drawings. 	See Annotation No. 7(a) and 7(b) for Architects and Interior Designers	See Annotation No. 7(a) and 7(b) for Architects and Interior Designers

Infraction Criteria Reference	Architects and Interior Design Firm Annotations	Engineering Consultant Annotations	Security Consultants
Criterion No. 8	a. Vendors may only receive one Infraction per deliverable pursuant to this criterion.	See Annotation No. 8 for Architects and Interior Designers	See Annotation No. 8 for Architects and Interior Designers
Criterion No. 9	None.	None.	None.
Criterion No. 10	None.	None.	None.

APPENDIX B – Point Calibration Deduction Table Effective May 4, 2021

Service Category	Architectural Services and Interior Design Firms		Engineering Consultants		Security Consultants	
Technical Points or Equivalent	Range:	40	Range:	40	Range: 50	
Number of Infractions	Deduction from Company's Submissions					
1	1.0%	0.4	1.0%	0.4	1.0%	0.50
2	1.8%	0.7	1.8%	0.7	1.8%	0.91
3	3.5%	1.4	3.5%	1.4	3.5%	1.74
4	6.0%	2.4	6.0%	2.4	6.0%	2.98
5	12.7%	5.1	12.7%	5.1	10.1%	5.05
6	15.4%	6.2	15.4%	6.2	11.2%	5.59
7	20.9%	8.4	20.9%	8.4	13.3%	6.67
8	33.2%	13.3	33.2%	13.3	16.6%	8.29
9	1.0%	0.4	1.0%	0.4	1.0%	0.50
10 or more	1.8%	0.7	1.8%	0.7	1.8%	0.91

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[Date]

[Company Name]
[Street Address]
[City, Province Postal Code]

Attention: [Recipient Name]

delivered via email

Re: IO Vendor Performance Program – Monthly Report for [Company Name] (the “**Company**”)

Dear [Recipient Name]:

In March 2020, Infrastructure Ontario updated its vendor past performance program (the “**Vendor Performance Program**”, or “**Program**”). This Program superseded past versions and applies to both Public-Private Partnership (“P3”) and Design-Bid Build (“DBB”) projects. In September 2020, the Program was updated once more. This update extends Program application to those vendors providing Security Consulting services as well as those operating as Service Providers on P3 Projects within the Maintenance Phase.

Unless otherwise explicitly defined herein, all capitalized terms herein have the definitions given to them in the Program. A copy of the Program can be found [here](#).

The Vendor Performance Program’s goals are to ensure the public interest is maintained by monitoring, tracking and holding vendors accountable for performance Infractions during the construction phase of a project. We will apply performance data in a fair and transparent manner to vendors’ participation in future IO and PMSP Procurement Processes.

You are receiving this Monthly Report because your Company is an active VPP Participant who satisfies the conditions for such receipt pursuant to Appendix F of the Program. In accordance with the Program, your Company has been assessed against specific contract criteria, each of which constitute a discrete performance Infraction. Below you will find the Company’s aggregated performance record.

As of [Date 1: Month Day, Year], the total number of Infractions accumulated and recorded on Ongoing Contracts preceding [Date 1: Month Day, Year] in which the Company has participated as a Service Provider is ONE (1).

A detailed summary of the performance criteria and the Company’s infraction record with respect to all projects is shown in Appendices A and B to this letter. If you believe there is an administrative error regarding the tabulation of performance infractions please contact vpp@infrastructureontario.ca. Any dispute in respect of an administrative or clerical error shall be resolved only with respect to such error. In all other circumstances for the purposes of this program, the recording of infractions and application of deductions against the Company is not eligible for dispute.

As a result of the Company's performance Infraction record and to the extent that the Company seeks to prequalify with an Applicant Team under an P3 RFQ as a facilities management Prime Team Member, IO will automatically deduct, from any RFQ Prequalification Submission submitted and received between [Date 2: Month Day, Year] and [Date 3: Month Day, Year] [NTD: Dates 2 and 3 shall be the beginning and end of the next month in which Date 1 occurs] inclusive, the following number of points:

- **[X]% for a Design-Build-Finance-Maintain RFQ (Social/Building Infrastructure Asset Class)**

Refer to Section 5.2 of the Program for an explicit outline of deductions as they relate to the evaluation of Submissions.

Infractions will be reviewed and updated by IO on a monthly basis. Deductions based on Infractions will apply until such time as the Infractions expire per Appendix F of the Program. Point deductions will be applied in accordance with the calibration table as disclosed in Appendix C. The calibration table in Appendix C has been developed using a data-driven statistical model which was built using scoring data from all IO RFQs in all asset classes since 2008. Further questions regarding the mathematical inputs that contributed to the calibration model can be directed by email to: ypp@infrastructureontario.ca.

Please note that between September 1, 2020 and August 31, 2021, the point deductions indicated on the table in Appendix B will be reduced by 50% as part of the phasing in of the Program for Service Providers. On September 1, 2021, the point deductions shown in Appendix B will apply at the full weighting.

If the Company has elected to enter into a joint venture or partnership with any other construction contractor, the deduction applied to the joint venture/partnership facilities management Prime Team Member in the applicable RFQ will be the weighted average (by joint venture or partnership interest) of the deductions applicable against all members of the joint venture/partnership. The formula to calculate the deduction is as follows:

$$\text{facilities management Prime Team Member Deduction} = \sum_{i=1}^n JVI_i D_i$$

Where JVI_i is the joint venture or partnership interest of a company, and D_i is that company's Vendor Performance Program deduction.

*For example, if as of March 1, 2021, Vendor ABC's point deduction for Design-Build-Finance-Maintain RFQs is 1.0% (based on having accumulated one infraction in the last 36 months) and Vendor XYZ does not have any record of infractions (and thus a 0% deduction), and Vendors ABC and XYZ are in a 50/50 joint venture bidding to an RFQ, then for any prequalification submission received up until April 30, 2021 in which Vendor ABC and Vendor XYZ are acting as 50/50 joint venture partners, the total deduction applied to the score of the joint venture will be **0.50% of the facilities management Team Member Capability and Experience available points**, according to the pre-disclosed calibration table.*

Please also note that if the Company enters into a joint venture or partnership with another Service Provider and ultimately is the successful winning vendor under that procurement, any performance infractions that occur

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on the project will be equally recorded against the individual performance record of all constituent members of the joint venture or partnership.

More information regarding the purpose, objectives, design, methodology and administration of the Vendor Performance Program is available [here](#).

Yours truly,

[SIGNED]

SVP, Procurement
Infrastructure Ontario

APPENDIX A – Detailed Company Service Provider Infraction Record as of [Date 1: Month Day, Year]

Infraction Criteria	Project A	Project B	Project C
1. Contracting Authority has exercised a Remedial Right due to a Vendor breach of Contract.			
2. Contracting Authority has sought indemnification under the Contract due to in excess of three (3) Vendor breaches of Contract within the previous twelve (12) months or has sought indemnification in excess of \$250,000 for any one such breach.			
3. The Vendor has accumulated the number of Failure Points needed to warrant the issuance of a Warning Notice in any one-month period.			
4. The Vendor has accumulated the number of Failure Points needed to warrant the issuance of a Monitoring Notice in any three-month period.		Date: 2018.12.14 Expiry: 2020.12.14 Description: X	
5. Vendor personnel were substituted without obtaining prior written consent of Contracting Authority.			

Infraction Criteria	Project A	Project B	Project C
<p>6. Contracting Authority has conducted a Performance Audit pursuant to the Contract and has determined the Vendor has not performed its obligations in any material respect.</p>			
<p>7. The Vendor has failed to perform rectifications or Maintenance Work identified by a Performance Audit.</p>			
<p>8. The Vendor has performed rectifications or Maintenance Work identified by a Performance Audit contrary to its obligations associated with the Performance Audit.</p>			
<p>9. The Vendor has been issued a direction pursuant to the Contract and has failed to respond within the timelines prescribed by the Contract, or the Vendor has been issued a direction by a Governmental Authority related to labour, employment and/or human resources matters, and has failed to respond within the timelines required by such Governmental Authority.</p>			

Infraction Criteria	Project A	Project B	Project C
10. The Vendor has been issued a direction pursuant to the Contract and its response to such direction does not comply with Contracting Authority's requirements, or the Vendor has been issued a direction by a Governmental Authority related to labour, employment and/or human resources matters, and fails to comply with the Governmental Authority's requirements.			
11. The Vendor has failed to comply with a material reporting requirement.			
TOTAL COUNT OF INFRACTIONS	1		

Infraction Criteria Reference	Service Provider Annotations
All	Any Contracting Authority exercise of rights will occur under, and in accordance with, the governing Contract.
No. 1	<ul style="list-style-type: none"> a. Infractions under this criterion shall only recorded in respect to the “Remedial Rights” section of a Project Agreement. b. No infraction shall be recorded on account of this criterion where the exercise of a Remedial Right falls under the definition of a “Reimbursement Event” under a Project Agreement.
No. 2	<ul style="list-style-type: none"> a. Breaches leading to Contracting Authority seeking indemnification in excess of \$250,000 shall not be counted towards the Vender’s three (3) breach limit. b. No Infraction shall be recorded on account of this criterion for deferred, withheld, or set off Monthly Service Payments.
No. 3	<ul style="list-style-type: none"> a. An Infraction shall be assessed irrespective of Contracting Authority issuing such Notice.
No. 4	<ul style="list-style-type: none"> a. An Infraction shall be assessed irrespective of Contracting Authority issuing such Notice.
No. 5	<ul style="list-style-type: none"> a. Death, injury, illness, departure, dismissal, promotion, leave or other removal of a Key Individual does not automatically result in an Infraction to be recorded under this criterion. However, in all cases, consent must be obtained for any replacement or substituted Key Individual in accordance with a Project Agreement.

Infraction Criteria Reference	Service Provider Annotations
No. 6	a. Materiality shall be determined by Infrastructure Ontario, acting in its sole discretion.
No. 7	a. Failures to perform shall be determined by Infrastructure Ontario, acting in its sole discretion.
No. 8	a. Failure to comply with the Vendor's obligations associated with a Performance Audit shall be determined by Infrastructure Ontario, acting in its sole discretion.
No. 9	<p>a. Infractions shall be assessed against those directions made by or pursuant to any of:</p> <ul style="list-style-type: none"> i. Schedule 22 of the Contract, ii. Schedule 26 of the Contract, iii. Schedule 27 of the Contract, or iv. Any Governmental Authority related to labour, employment and/or human resources matters. <p>b. Failure to respond within the timelines prescribed by the Contract or required by a Governmental Authority shall be determined by Infrastructure Ontario, acting in its sole discretion.</p>
No. 10	<p>a. See Annotation No. 9(a)</p> <p>b. Failure to comply with Contracting Authority or Governmental Authority requirements shall be determined by Infrastructure Ontario, acting in its sole discretion.</p>

Infraction Criteria Reference	Service Provider Annotations
<p>No. 11</p>	<ul style="list-style-type: none"> a. Infractions shall be assessed against those requirements found within the Output Specifications in Schedule 15 of the Project Agreement. b. An infraction shall be assessed if such failure to comply consists of either: <ul style="list-style-type: none"> i. A submitted report whose quality has been deemed materially insufficient by Infrastructure Ontario, acting in its sole discretion; or ii. A failure to meet the submission deadlines for a report in accordance with the Contract. c. Materiality shall be determined by Infrastructure Ontario, acting in its sole discretion.

APPENDIX B – Point Calibration Deduction Table Effective May 4, 2021

Delivery Model	DBFM (Social)	
Facilities Management Points or Equivalent	Range:	25
Number of Infractions	Deduction from Company's Submissions	
1	1.0%	0.25
2	2.0%	0.49
3	3.9%	0.96
4	6.7%	1.68
5	12.9%	3.23
6	15.3%	3.83
7	20.1%	5.03
8 or more	30.9%	7.74

APPENDIX L – INFRACTION CRITERIA AND ANNOTATIONS: SERVICE PROVIDERS

Infraction Criteria	Annotation
<p>Any Contracting Authority exercise of rights will occur under, and in accordance with, the governing Contract.</p>	
<p>1. Contracting Authority has exercised a Remedial Right due to a Vendor breach of Contract.</p>	<ul style="list-style-type: none"> a. Infractions under this criterion shall only recorded in respect to the “Remedial Rights” section of a Project Agreement. b. No infraction shall be recorded on account of this criterion where the exercise of a Remedial Right falls under the definition of a “Reimbursement Event” under a Project Agreement.
<p>2. Contracting Authority has sought indemnification under the Contract due to in excess of three (3) Vendor breaches of Contract within the previous twelve (12) months or has sought indemnification in excess of \$250,000 for any one such breach.</p>	<ul style="list-style-type: none"> a. Breaches leading to Contracting Authority seeking indemnification in excess of \$250,000 shall not be counted towards the Vender’s three (3) breach limit. b. No Infraction shall be recorded on account of this criterion for deferred, withheld, or set off Monthly Service Payments.
<p>3. The Vendor has accumulated the number of Failure Points needed to warrant the issuance of a Warning Notice in any one-month period.</p>	<ul style="list-style-type: none"> a. An Infraction shall be assessed irrespective of Contracting Authority issuing such Notice.

Infraction Criteria	Annotation
<p>4. The Vendor has accumulated the number of Failure Points needed to warrant the issuance of a Monitoring Notice in any three-month period.</p>	<p>a. An Infraction shall be assessed irrespective of Contracting Authority issuing such Notice.</p>
<p>5. Vendor personnel were substituted without obtaining prior written consent of Contracting Authority.</p>	<p>a. Death, injury, illness, departure, dismissal, promotion, leave or other removal of a Key Individual does not automatically result in an Infraction to be recorded under this criterion. However, in all cases, consent must be obtained for any replacement or substituted Key Individual in accordance with a Project Agreement.</p>
<p>6. Contracting Authority has conducted a Performance Audit pursuant to the Contract and has determined the Vendor has not performed its obligations in any material respect.</p>	<p>a. Materiality shall be determined by Infrastructure Ontario, acting in its sole discretion.</p>
<p>7. The Vendor has failed to perform rectifications or Maintenance Work identified by a Performance Audit.</p>	<p>a. Failures to perform shall be determined by Infrastructure Ontario, acting in its sole discretion.</p>

Infraction Criteria	Annotation
<p>8. The Vendor has performed rectifications or Maintenance Work identified by a Performance Audit contrary to its obligations associated with the Performance Audit.</p>	<p>a. Failure to comply with the Vendor’s obligations associated with a Performance Audit shall be determined by Infrastructure Ontario, acting at its sole discretion.</p>
<p>9. The Vendor has been issued a direction pursuant to the Contract and has failed to respond within the timelines prescribed by the Contract, or the Vendor has been issued a direction by a Governmental Authority related to labour, employment and/or human resources matters, and has failed to respond within the timelines required by such Governmental Authority.</p>	<p>a. Infractions shall be assessed against those directions made by or pursuant to any of:</p> <ul style="list-style-type: none"> i. Schedule 22 of the Contract, ii. Schedule 26 of the Contract, iii. Schedule 27 of the Contract, or iv. Any Governmental Authority related to labour, employment and/or human resources matters. <p>b. Failure to respond within the timelines prescribed by the Contract or required by a Governmental Authority shall be determined by Infrastructure Ontario, acting at its sole discretion.</p>

Infraction Criteria	Annotation
<p>10. The Vendor has been issued a direction pursuant to the Contract and its response to such direction does not comply with Contracting Authority’s requirements, or the Vendor has been issued a direction by a Governmental Authority related to labour, employment and/or human resources matters, and fails to comply with the Governmental Authority’s requirements.</p>	<ul style="list-style-type: none"> a. See Annotation No. 9(a) b. Failure to comply with Contracting Authority or Governmental Authority requirements shall be determined by Infrastructure Ontario, acting in its sole discretion.
<p>11. The Vendor has failed to comply with a material reporting requirement.</p>	<ul style="list-style-type: none"> a. Infractions shall be assessed against those requirements found within the Output Specifications in Schedule 15 of the Project Agreement. b. An infraction shall be assessed if such failure to comply consists of either: <ul style="list-style-type: none"> i. A submitted report whose quality has been deemed materially insufficient by Infrastructure Ontario, acting in its sole discretion; or ii. A failure to meet the submission deadlines for a report in accordance with the Contract. c. Materiality shall be determined by Infrastructure Ontario, acting in its sole discretion.