



London
CANADA

Standard Terms and Conditions



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1. **Definitions**

“Request for Bids” is used in place of Request for Tender, Quote, Proposal, and Information in the appropriate context.

“Bid” is used in place of quote, proposal or tender response.

“Bidder” is a person, corporation or other entity that responds, or intends to respond to a Request for Bids.

“Successful Bidder” is a person, corporation or other entity that is awarded the contract or purchase order resulting from a Request for Bids.

2. **Additional General Conditions**

Terms and Conditions dealing with the specific requirements of the Request for Bids are included in the Request for Bid documents.

3. **Access to Information**

The information submitted in response to this Bid will be treated in accordance with the relevant provisions of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and in accordance with the City’s Procurement of Goods and Services Policy. By submission of a response, the Bidder accepts that information will be treated accordingly.

4. **Personal Information**

In accordance with MFIPPA, the Successful Proponent, its directors, officers, employees, agents, volunteers and persons for whom it is at law responsible will hold confidential and will not disclose or release to any person at any time during or following the term of this contract, except where required by law, any information or document without obtain the written consent of the individual/organisation concerned prior to the release or disclosure of such information or document and shall comply with the requirements regarding Personal Information and Confidentiality.

5. **Approved Forms – Collection of Personal Information**

When collecting personal information under this contract, the Successful Proponent or subcontractor shall use only the forms approved by the City for that purpose.

6. **Bid Submission to be Considered an Offer**

The submission of a Bid through bids&tenders to the City shall be deemed to

constitute an "Offer" which may be accepted, at the option of the City by:

- a) written acknowledgement of acceptance, OR
- b) the issuance of a "purchase order".

Upon such acceptance the terms, conditions and specifications herein set forth shall be confirmed and binding upon the City and the Bidder. Upon acceptance of the Bid, both parties hereto agree to do everything necessary to ensure that the terms of this agreement take effect.

The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect their right thereafter to enforce such provision or to seek damages for the breach thereof. It is agreed between the parties that neither party shall be held responsible for damages caused by delay or failure to perform their undertakings hereunder when such delay or failure is due to fires, strikes, floods, Acts of God or the Queen's enemies, lawful acts of public authorities or delays or defaults caused by common carriers, which cannot reasonably be foreseen or provided against.

7. Acceptance/Award

The award of this Bid may not necessarily be based on price. The City will review Bids to determine which response most clearly meets the City's requirements.

8. Qualifying of Bids

Bidders are cautioned against qualifying their response in any manner whatsoever as this may result in their Bid being rejected.

9. Reservations for Rejection and Award

The City reserves the right to accept or reject any or all Bids or parts of Bids, to waive irregularities and technicalities and to request re-bids on the required material(s). It further reserves the right to award the contract on split-order basis, lump sum or individual item basis or such combination as shall best serve the interests of the City in the opinion of the Manager of Purchasing and Supply Division and the applicable Department, unless otherwise stated.

The City also reserves the right to waive minor variations to specifications (interpretation of minor variances will be made by the applicable Department personnel).

10. One Bid Response Received

In the event that only 1 Bid is received at time of closing, the Manager of Purchasing and Supply or designate will delay opening of the Bid and will consult with the

respective Managing Director/City Manager as to whether to open or reject the Bid. A decision to re-bid will be made respectively by the Manager of Purchasing and Supply and the respective Managing Director/City Manager.

11. Laws

It is agreed that the goods and services supplied shall comply with all Federal laws, applicable municipal by-laws and other Province of Ontario laws applying thereto.

The parties acknowledge that performance of the obligations required may be affected by changes in applicable laws of the Province of Ontario. In the event of a change in applicable legislation that results in a material impact on the performance of any act required by this contract, the parties shall renegotiate the provisions of this contract to achieve mutually acceptable terms for the performance of acts required. If the parties are unable to agree on the revised terms and conditions either party may submit the dispute to arbitration in accordance with the provisions of the Arbitration Act S.O. 1991, C. 17.

12. Oral Instructions or Suggestions

The City will assume no responsibility for oral instruction or suggestions. All official correspondence in regard to the specifications should be directed to and will be issued by the City's Purchasing and Supply Division.

13. Specifications

No Successful Bidder is relieved from supplying all components necessary to render the material(s) and/or service(s) fit for the use specified in the governing documents merely because detailed specifications on the various components are not set out in the documents.

14. Variations to Specifications

For purposes of evaluation, Bidders MUST indicate any variances from our specifications, terms and/or conditions, no matter how slight. If variations are not stated or referenced it will be assumed the product or service fully complies with the City's specifications, terms and conditions.

15. Brand Names and Alternative Products

If and wherever in the specification a brand name, make, name of any manufacturer, trade name or vendor catalogue number is mentioned, it is for the purpose of establishing a grade or quality of material only, unless specified otherwise or indicated with "NO SUBSTITUTION". The City does not wish to rule out other competition and equal brands or makes, the phrase "OR APPROVED EQUAL" may be added. Equivalent is described as a good or service equal to another in

value or measure or force or effect or significance. The City, in its absolute sole discretion, shall deem what is an approved equivalent.

If a product other than what is specified, it is the Bidder's responsibility to name such product and to prove to the City that said product is equal to the specifications and to submit brochures, samples and/or specifications in detail on item(s) bid. The City shall be the judge concerning the merits of Bids submitted.

Consideration will be given to Bids submitted on alternate commodities to the extent that such action is deemed to serve the best interests of the City. If the Bidder does not indicate that the commodity they propose to furnish is other than specified, it will be construed to mean that the Bidder proposes to furnish the exact commodity as requested. However, descriptive literature may be included as long as its sole purpose is only to illustrate and simplify the Bid.

16. Samples and Demonstrations

Evidence in the form of samples may be requested. Such samples are to be furnished when requested, unless otherwise stated in the document. If samples are requested, samples must be received by the City no later than 7 days after formal request is made. When required, the City may request full demonstrations of any unit(s) bid prior to the award of any contract. Samples, when requested, must be furnished free of expense to the City and, if not used in testing, or destroyed, will, upon request within 30 days of award, be returned at the Bidder's expense.

When requested, samples are to be mailed to, Purchasing & Supply, 267 Dundas Street, London, Ontario N6A 4L9.

17. Quality

All materials used for the manufacture or construction of any supplies, materials or equipment covered by this Request for Bids shall be new. The items must be new, the latest model, of the best quality and highest grade workmanship.

18. Copyrights or Patent Rights

The Bidder warrants that there has been no violation of copyrights or patent rights in manufacturing, producing or selling the goods shipped or ordered as a result of this Bid and seller agrees to hold the purchaser harmless from any and all liability, loss or expense occasioned by any such violation.

19. Date Compliance

All products and services should be free from defects with regards to date processing. This includes, but is not limited to, the transition from a year to another, the transition from a century to another and the occurrence of leap years.

20. Warranties for Usage

Whenever requests for Bids are issued, seeking a source of supply for materials or services, the quantities or usage shown are estimated only unless otherwise stated. No guarantee or warranty is given or implied by the City as to the total amount that may or may not be purchased from any resulting contracts. These quantities are for Bidder's information only and will be used for tabulation and presentation of Bid prices and the City reserves the right to increase or decrease quantities as required.

21. Acceptance of Material

The material delivered under this Request for Bids shall remain the property of the seller until a physical inspection and actual usage of this material and/or service is made and thereafter accepted to the satisfaction of the City and must comply with the terms herein and be fully in accord with the specifications and of the highest quality. In the event the material and/or service supplied to the City is found to be defective or does not conform to specifications, the City reserves the right to cancel the order upon written notice to the seller and return the product to the seller at the seller's expense.

22. Safety Standards

The Bidder warrants that the product supplied to the City conforms in all respects to the standards set forth by Federal and Provincial agencies and failure to comply with this condition will be considered a breach of contract.

23. Manufacturer's Certification

The City reserves the right to request from the Bidder separate manufacturer's certification of all statements made in the Bid document.

24. Ownership of Materials, Reports, Designs, Specifications & Training Materials

Any work completed at the City's expense, on-site or remotely during the course of the project, including training materials, reports, designs, custom applications, specifications or otherwise shall become the exclusive property of the City.

25. Delivery

Time will be of the essence for any orders placed as a result of this Request for Bids. The City reserves the right to cancel such orders, or any part thereof, without obligations if delivery is not made at the time(s) specified.

26. Code of Conduct

The Successful Bidder is required to adhere to the [City of London Respectful Workplace Policy](#).

27. Designated Substances Including Asbestos Requirements

Where applicable, the Successful Bidder is required to understand and comply with the [Designated Substances](#) – Standard Contract Clauses.

28. Compliance with the Accessibility for Ontarians with Disabilities Act, 2005

The Successful Bidder shall ensure that all its employees, agents, volunteers, or others for whom the Successful Bidder is legally responsible receive training regarding the provision of the goods, services and facilities contemplated herein to persons with disabilities in accordance with the Integrated Accessibility Standards Regulation Ontario Regulation 191/11 (the "Regulation") made under the Accessibility for Ontarians with Disabilities Act, 2005, as amended the "Act"). The Successful Bidder shall ensure that such training includes, without limitation, a review of the purposes of the Act, the requirements of the Regulation, and the Human Rights Code as it pertains to persons with disabilities as well as instruction regarding all matters set out in Part IV.2 Customer Service Standards of the Regulation. The Successful Bidder shall submit to the City, as required from time to time, documentation describing its Integrated Accessibility Standards, Human Rights Code and Customer Service training policies, practices and procedures, and a summary of its training program, together with a record of the dates on which training was provided and a list of the employees, agents volunteers or others who received such training. The City reserves the right to require the Successful Bidder to amend its training policies to meet the requirements of the Act and the Regulation.

29. Bid Attachments

A response to a Request for Bid which has attached a condition of sale or any other attachment which alters the specifications, conditions or terms, or makes it subordinate, may be cause for rejection.

30. Assignment and Successors

Following award of the contract, the Successful Bidder shall not, without written consent of the Manager of Purchasing and Supply or designate make any assignment or any subcontract for the execution of any service or product hereby quoted on. The consent of the Manager of Purchasing and Supply or designate may be arbitrarily withheld. The contract shall apply to and be binding on the parties hereto and their successors, administrators, executors and assigns and each of them.

31. Assignment and Sub-Contracts

The Successful Bidder shall not, without the written consent of the City, make any assignment or sub-contract for the provision of any goods or services hereby Bid on.

32. Records Retention

In the event that the Successful Proponent ceases operation, it is agreed that the Successful Proponent will not dispose of any records related to this agreement without the prior written consent of the City, but when requested by the City shall return the records to the City forthwith.

33. Warranty

In supplement of, and not by way of substitution for the terms and conditions or any warranty stipulated or implied by law and notwithstanding prior acceptance by the City, the Successful Bidder will at any time within 3 months of delivery thereof, and at their expense replace any goods which are or become defective as a result of faulty or inefficient manufacture, materials or workmanship.

34. Non-Resident Withholding Tax

Non-residents of Canada are subject to a withholding tax of 15% as per paragraph 153(1) (g) of the Canadian Income Tax Act and Section 105(1) of the Income Tax Regulations. As required by law, the City will withhold 15% on all amounts payable to a non-resident vendor for services rendered in Canada. A Canada Revenue Agency approved waiver/reduction form must be submitted prior to payment processing in order to exempt/reduce the vendors required withholding tax amount. The withholding tax does not apply to GST or HST charged as well as any reimbursable costs (e.g. airfare, meals) provided they are itemized on the invoice.

The City's withholding of tax under this section does not relieve the non-resident vendor of its obligation to withhold tax on payments to non-resident subcontractors nor does it necessarily relieve the vendor of its total Canadian tax liability. Vendors should apprise themselves of the non-resident withholding tax rules prior to bidding on City requirements. Further information can be found on the Canada Revenue Agency website at: [Canada Revenue](#)

35. Default Provision

In cases of default by the Successful Bidder, the City may take such action as it deems appropriate, including the procurement of the articles or services from other sources and holding the Successful Bidder responsible for any excess costs occasioned or incurred thereby.

36. Disputes

In cases of disputes as to whether or not the service quoted meets the conditions in the accepted quotation, the decision of the Manager of Purchasing and Supply or Designate for the City shall be final and binding on all parties.

37. Exclusion of Bidders in Litigation

The City may, in its absolute discretion, reject a Bid submitted by a Bidder if the Bidder, or any officer or director of the Bidder is or has been engaged, either directly or indirectly through another corporation, in a legal action against the City, its elected or appointed officers and employees in relation to:

- a) Any other contract or services; or
- b) Any matter arising from the City's exercise of its powers, duties, or functions.

In determining whether or not to reject a Bid under this clause, the City will consider whether the litigation is likely to affect the Bidder's ability to work with the City, its consultants and representatives, and whether the City's experience with the Bidder indicates that the City is likely to incur increased staff and legal costs in the administration of the contract if it is awarded to the Bidder.

38. Exclusion of Bidders Due to Poor Performance

The Managing Director/City Manager shall document evidence and advise Purchasing and Supply in writing where the performance of a supplier has been unsatisfactory in terms of failure to meet contract specifications, terms and conditions or for Health and Safety violations.

The City Treasurer may, in consultation with the City Solicitor, prohibit an unsatisfactory supplier from bidding on future Contracts for a period of up to 3 years.