

THE CORPORATION OF THE CITY OF BRAMPTON

PROPOSAL TERMS & CONDITIONS

SCOPE:

These Terms and Conditions form a part of each Proposal, and contract and apply to contracts for the purchase of materials, supplies, equipment and services.

Any contracts issued by the Corporation further to this Request for Proposal will bind the Vendor to the terms and conditions herein set forth, except as specifically qualified in the Special Provisions issued in connection with any individual proposal and except as negotiated between the City and the Vendor.

DEFINITIONS:

As used herein as well as in all specifications, request for proposals, proposals, awards, contracts, etc., issued by the Corporation, the following definitions shall apply, unless otherwise indicated.

CORPORATION: The Corporation of the City of Brampton.

DIVISION: The Purchasing Division of the Corporation of the City of Brampton.

AGENCY: Any City Department.

VENDOR: Any Individual, Firm, Company, or Corporation submitting a bid on a request for proposals issued by the Corporation.

REQUEST FOR PROPOSAL: The documents comprising an invitation to submit Proposals to furnish commodities or services for the Corporation.

PROPOSAL: The offer of a Vendor to furnish commodities or services in response to a Request for Proposal.

CONTRACT: The acceptance by the Corporation of a contract further to a Proposal by a Vendor to furnish commodities or services.

CONTRACTOR: Any Individual, Firm, Company or Corporation to whom a contract is awarded against a bid submitted.

1. PROPOSAL REQUIREMENTS

Vendors are required to conform to the conditions listed below and those failing to do so may be subject to disqualification.

- a) The correct Proposal form, as supplied by the Corporation must be used and returned in the envelope provided, to the Purchasing Division, Second Floor, 2 Wellington Street West, Brampton, Ontario L6Y 4R2, on or before the specified Proposal Closing Date and Time.

PROPOSALS RECEIVED AFTER THE CLOSING DATE AND TIME WILL NOT BE CONSIDERED. THIS APPLIES TO PROPOSALS SENT BY MAIL OR DELIVERED IN PERSON. PROPOSALS RECEIVED BY FACSIMILE (FAX) WILL NOT BE CONSIDERED.

- b) All Proposals must be legibly written in ink or by typewriter and ALL REQUIRED ITEMS MUST BE COMPLETED, unless otherwise specified, with the unit price for every item and other entries clearly shown.
- c) The Proposal must not be restricted by a statement added to the Proposal form or a covering letter or alterations to the Proposal form provided by the Corporation (unless otherwise specified).
- d) Adjustments by telephone, telegram, facsimile (FAX) or letter to a Proposal already submitted will not be considered. A Vendor desiring to make adjustments to a Proposal must withdraw the Proposal and/or supersede it with a later Proposal submission prior to the specified Proposal closing time.
- e) The Official Envelope supplied by the Corporation must be used for bidding purposes without any extra exterior covering.
- f) The Vendor declares that the Proposal is NOT made in connection with any other Vendor submitting a bid for the same work and is in all respects fair and without collusion or fraud.

The Proposal form(s) must be signed in the space(s) provided on the form, with the signature of the Vendor or of a responsible official of the organization submitting a Proposal. If a joint Proposal is submitted, it must be signed on behalf of each of the Vendors and if the signing authority for both Vendors is vested in one (1) individual, he shall sign separately on behalf of each Vendor. In the case of an incorporated Company, the corporate seal must be affixed to the Proposal forms.

- 2. Erasures, overwriting or strike-outs must be initialed by the person signing on behalf of the organization submitting the Proposal.
- 3. All information required in the Proposal forms in connection with each item against which a Proposal is submitted must be given to constitute a valid Proposal.
- 4. INSURANCE REQUIREMENTS  
The Contractor covenants and agrees to carry such insurance as may be required by the Corporation, and to furnish satisfactory proof thereof when required by the Corporation within ten (10) days from the date of request.
- 5. GOODS AND SERVICES TAX  
The Corporation is required to pay the Goods and Services Tax on all goods, materials, labour, services and equipment. This tax must be shown separately and is not to be included in the unit prices.

6. ONTARIO RETAIL SALES TAX  
See Special Provisions which form part of this document.

7. OMISSIONS AND DISCREPANCIES  
Should a Vendor find discrepancies prior to the closing date or omissions from the documents, or should he be in doubt as to their meaning, he should notify the Purchasing Agent as soon as possible, who may send a written instruction or an addendum to all Vendors.

8. WITHDRAWAL OF PROPOSAL PRIOR TO OPENING  
A Vendor who has submitted a Proposal on a Request for Proposal may request that its Proposal be withdrawn (adjustments or corrections to Proposal submitted will not be allowed). The withdrawal shall be allowed if the request is made before the closing time for this Proposal. Withdrawal requests may be directed to the official receiving the bids, by telegram, letter, facsimile (FAX) or in person. Telephone requests will not be considered.

Withdrawal requests received after the closing time will not be allowed. The party concerned shall be informed by letter that the withdrawal request arrived too late for consideration.

NOTE: The withdrawal of a Proposal does not disqualify a Vendor from submitting another Proposal on the same Request for Proposal prior to the specified Proposal closing time.

9. WITHDRAWAL OF PROPOSALS DURING A PROPOSAL OPENING  
During a proposal opening, a Vendor may withdraw any of his remaining Proposals. Proposals withdrawn under this procedure cannot be reinstated.

If more than one Proposal is read out under the same name for the same Vendor, and no withdrawal notice has been received, the Proposal contained in the envelope bearing the latest date and time stamp shall be considered the intended Proposal. The first Proposal received shall be considered withdrawn and returned to the Vendor in the usual manner.

10. PROPOSAL OPENING  
All Proposals will be opened publicly by the Proposal Opening Committee under the chairmanship of the Purchasing Agent. Vendors may be present or represented at Proposal openings.

After opening, all Proposals will be checked by City Officials for arithmetic errors, correct deposits, if required, and any other irregularities. If arithmetic errors are found in a unit price Proposal, the unit prices proposed shall govern and the extensions(s) and additions(s) shall be corrected accordingly. The lowest or any proposal need not necessarily be accepted.

11. UNBALANCED PROPOSAL  
Each item in the Proposal sheet shall be reasonably priced for such item. Proposals that contain prices which appear to be unbalanced as to effect adversely the interest of the Corporation may be rejected.

12. SUBSTITUTES AND ALTERNATES

Unless qualified by the provision "NO SUBSTITUTE", the use of the name of a manufacturer, brand, make or catalogue designation in specifying an item does not restrict Vendors to that manufacturer, brand, make or catalogue designation identification. This is used simply to indicate the character, quality and/or performance of the commodity desired, but the commodity on which Proposals are submitted must be of such character, quality and/or performance that it will serve the purpose for which it is to be used as well as that specified. In submitting a Proposal on a commodity other than as specified, the Vendor must furnish complete data and identification with respect to the alternate commodity he proposes to furnish.

Consideration will be given to Proposals submitted on alternate commodities to the extent that such action is deemed to serve the best interests of the Corporation. If the Vendor does not indicate that the commodity he proposes to furnish is other than specified, it will be construed to mean that the Vendor proposes to furnish the exact commodity as described in the Request for Proposal.

13. SAMPLES

- a) All specifications are based on the minimum standards acceptable. Accepted samples do not supersede specifications for quality unless the sample is superior, in which case deliveries must have the same identity and quality as the accepted sample.
- b) Samples, when required, must be submitted strictly in accordance with instructions; otherwise the Proposal may not be considered. If samples are requested subsequent to the opening of Proposals, they shall be delivered within three (3) working days following the request unless additional time is granted.

Samples must be furnished free of charge and must be accompanied by descriptive memorandum invoices indicating if the Vendor desires their return, provided they have not been used or made useless by tests. Samples may be held for comparison with deliveries. Samples will be returned at the Vendor's risk and subject to his expense.

- c) When the Proposal indicates that an item to be purchased is to be an approved alternate or equivalent to a sample, such samples will be on display in the Section, unless another location is specified. Failure on the part of the Vendor to examine the sample shall not entitle him to any relief from the conditions imposed by the Request for Proposal.

14. AWARD

- a) The Corporation reserves the right to award by item, or part thereof, groups of items, or parts thereof, or all items of the Request for Proposal, and to award contracts to one or more Vendors; to reject any and all Proposals in whole or in part; to waive technical defects, irregularities and omissions if, in so doing, the best interests of the Corporation will be served.
- b) The Corporation reserves the right to make awards within sixty (60) days from the date Proposals are opened, unless otherwise specified in the Request for Proposals, during which

period the Proposal shall not be withdrawn unless the Vendor distinctly states in his Proposal that acceptance thereof must be made in a shorter specified time.

- c) A Vendor must be prepared, if requested, to present evidence of experience, ability, service facilities and financial standing necessary to meet satisfactorily the requirements set forth or implied in the Request for Proposals.
- d) All things being equal, preference will be given to purchases firstly to supplies and services of local manufacturers, secondly to supplies and services offered by local suppliers and thirdly to supplies and services of Canadian owned companies.

15. CONTRACT

- a) Each Proposal will be received with the understanding that the acceptance in writing by the Corporation of the offer to furnish all or any part of the commodities described therein shall constitute a contract between the

Vendor and the Corporation, which shall bind the Vendor on his part to furnish and deliver the commodities at the prices given and in accordance with conditions of said accepted Proposal and specifications and PROPOSAL TERMS AND CONDITIONS, and the Corporation on its part to take delivery of and pay for the commodities at the contract prices, unless the contract is negotiated or the Vendor withdraws his Proposal.

- b) No alterations or variations of the terms of the contract shall be valid or binding upon the Corporation unless authorized in writing.
- c) It is mutually agreed and understood that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his contract or his right, title or interest therein, or his power to execute such contract, to any other person, firm Company or corporation without the previous written consent of the Corporation.
- d) The placing in the mail to the address given in his Proposal or delivery of a notice of award to a Vendor will constitute notice of acceptance of a Proposal. When so requested by the Corporation the Contractor shall execute a formal contract with the Corporation for the complete performance specified therein.
- e) The contract may be cancelled by the Corporation upon non-performance of contract terms or failure of the Contractor to furnish satisfactory performance security within the (10) days from date of request.
- f) Failure of the Contractor to deliver within the time specified or within reasonable time as interpreted by the Corporation, or failure to make replacements of rejected commodities when so requested, will constitute authority for the Corporation to purchase in the open market to replace the commodities rejected or not delivered. On all such purchases, the Contractor agrees to promptly reimburse the Corporation for excess costs occasioned by such purchases. Such purchases will be deducted from the contract quantities.

However, should public necessity demand it, the Corporation reserves the right to use or consume commodities which are substandard in quality, subject to an adjustment in price to be determined by the Corporation.

- g) When commodities are rejected, same must be removed by the Contractor from the premises of the Corporation within forty eight (48) hours after notification unless public health and safety require immediate destruction or other disposal of such rejected delivery, in which case the Corporation may take such action as it deems necessary.

Rejected items left longer than forty-eight (48) hours will be considered as abandoned and the Corporation shall have the right to dispose of them as its own property.

- h) The Corporation reserves the right to remove from the list of Vendors, for an indeterminate period, the name of any Vendor or Contractor for unsatisfactory performance of contract.

16. CONTRACT GUARANTEE

Contractor hereby covenants and agrees:

- a) To perform the contract in accordance with the specifications under which the contract is awarded.
- b) To save the Corporation, its agents, or employees, harmless from liability of any kind for the use of any composition, secret process, invention, article or appliance furnished or used in the performance of the contract of which the Contractor is not the patentee, assignee or licensee.
- c) To guarantee his work against defective materials or workmanship and to replace any damage or marring occasioned in transit. This guarantee to be in writing with his Proposal stating period of guarantee.
- d) To furnish adequate protection from damage for all work and to repair damage of any kind, for which he or his workmen are responsible, to the premises or equipment, to his own work or the work of other Contractors.
- e) To pay for all permits, licences and fees, and to give all notices and comply with all by-laws and regulations of the Corporation.

17. DELIVERY

- a) All bids shall be F.O.B. Destination, Brampton, Ontario unless otherwise noted on the Proposal forms.
- b) Any equipment delivered must be standard new equipment or material of the latest model except as otherwise specifically stated in the Proposal. Where any part or nominal appurtenances of equipment is not described, it shall be understood that all the equipment and appurtenances which are usually provided in the manufacturer's stock model shall be furnished.

- c) Materials and supplies must be new items except as otherwise specifically stated in the Proposal.
- d) Delivery must be made as ordered and in accordance with the Proposal. If no delivery instructions appear on an order it will be interpreted to mean prompt delivery. Burden of proof of delay in receipt shall rest with the Contractor.
- e) Commodities shall be securely and properly packed for shipment according to accepted standard commercial practice, without extra charge for packing materials or containers, the containers to remain the property of the Corporation unless otherwise stated in the Proposal.
- f) Where materials are furnished for a specified price per unit of weight, the Corporation reserves the right to require such materials to be weighed on scales designated by it, in which case payment shall be made on the basis of the net weight of the materials furnished.

18. INSPECTIONS & TESTS

- a) The inspection of commodities and the making of chemical and physical tests to determine whether or not the specifications are being complied with shall be made in the manner prescribed by the Corporation.
- b) Any material or work which fails in any way to meet the terms of the contract is subject to rejection or to be paid for on an adjusted price basis. The decision of the Corporation shall be final.
- c) All costs associated with the inspection or testing of any material or work shall be borne by the Contractor.

19. PAYMENT

- a) All payments will be made within thirty (30) days from receipt of an approved invoice. All invoices must be approved by the Commissioner or his authorized designate.
- b) Where there is a question of non-performance involved, payment in whole or in part against which to charge back any adjustments required, will be withheld.
- c) All charges against the Contractor shall be deducted from current obligations that are due or may become due. In the event that collection is not made in this manner the Contractor shall pay the City, on demand, the amount of such charges.

20. OCCUPATIONAL HEALTH & SAFETY ACT

- a) The successful Contractor, for purposes of the Ontario Occupational Health and Safety Act, shall be designated as the Constructor for this project and shall assume all of the responsibilities of the Constructor as set out in that Act and its regulations. The foregoing shall apply notwithstanding that the successful Vendor/Contractor has been referred to as the Contractor' in this and any other related document.

- b)
- (i) The Contractor acknowledges that he has read and understood the Occupational Health and Safety Act together with the Corporation's Health and Safety Policies and Procedures.
  - (ii) The Contractor covenants and agrees to observe strictly and faithfully the provisions of the said Occupational Health and Safety Act and all regulations and rules promulgated there under together with the Corporation's Health and Safety Policies and Procedures.
  - (iii) The Contractor agrees to indemnify and save the Corporation harmless for damages or fines arising from any breach or breaches of the said Occupational Health and Safety Act and/or the Corporation's Health & Safety Policies and Procedures.
  - (iv) The Contractor agrees to assume full responsibility for the enforcement of the said Occupational Health and Safety Act and the Corporation's Health and Safety Policies and Procedures and to ensure compliance therewith
  - (v) The Contractor further acknowledges and agrees that any breach or breaches of the Occupational Health and Safety Act and/or the Corporation's Health & Safety Policies and Procedures whether by the Contractor or any of its sub-contractors may result in the Contractor and/or sub-contractor being removed from the site and in the immediate termination of this contract herein and the forfeiture of all sums owing to the Contractor by the Corporation.
  - (vi) The Contractor shall allow access to the work site on demand to representatives of the Corporation to inspect work sites to ensure compliance with the Occupational Health and Safety Act and the Corporation's Health and Safety Policies and Procedures.
  - (vii) The Contractor agrees that any damages or fines that may be assessed against the Corporation by reason of a breach or breaches of the Occupational Health and Safety Act by the Contractor or any of its sub-contractors will entitle the Corporation to set-off the damages so assessed against any monies that the Corporation may from time to time owe the Contractor under this contract or under any other contract whatsoever.
  - (viii) Where any portion of the work or services in this Contract is contracted to a sub-contractor, the Contractor agrees that the provisions of this section will apply to the sub-contractor and the Contractor will enforce said provisions.
- c) The successful Contractor shall provide a list of all controlled hazardous materials or products containing hazardous materials, all physical agents or devices or equipment producing or omitting physical agent and any substance, compound, product or physical agent that is deemed to be or contains a designated substance in accordance with the Workplace Hazardous Materials Information System (WHMIS) as defined under the Ontario Occupational Health & Safety Act and shall provide appropriate Ontario Material Health &

Safety Data Sheets for these substances used for the performance of the required work, all prior to the performance of said work.

- d) Where hazardous materials, physical agents and/or designated substances are used in the performance of the required work, the successful Contractor shall ensure that the requirements of the Ontario Occupational Health & Safety Act and associated regulations are complied with.

21. SPECIAL PROVISIONS

Where special provisions are contained herein, it should be noted that these special provisions supercede any of the foregoing Proposal Terms and Conditions.