

THE CORPORATION OF THE CITY OF BRAMPTONTENDER TERMS & CONDITIONSSCOPE:

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

All tenders issued by the Corporation will bind the tenderers to the terms and conditions herein set forth, except as specifically qualified in the Special Provisions issued in connection with any individual tender.

DEFINITIONS:

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

CORPORATION:	The Corporation of the City of Brampton.
SECTION:	The Purchasing and Materials Management Section of the Corporation of the City of Brampton.
AGENCY:	Any City Department.
TENDERER:	Any Individual, Firm, Company, or Corporation submitting a bid on a tender issued by the Corporation.
TENDER:	The documents comprising an invitation to tender to furnish commodities or services required by the Corporation.
BID:	The offer of a tenderer to furnish commodities or services in response to a tender.
CONTRACT:	The acceptance by the Corporation of a bid by a tenderer to furnish commodities or services.
CONTRACTOR:	Any Individual, Firm, Company or Corporation to whom a contract is awarded against a bid submitted.

1. TENDER REQUIREMENTS

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

- a) The correct tender form, as supplied by the Corporation must be used and returned in the tender envelope provided, to the Purchasing and Materials Management Section, Second Floor, 2 Wellington Street West, Brampton, Ontario L6Y 4R2, on or before the specified Tender Closing Date and Time.
BIDS RECEIVED AFTER THE CLOSING DATE AND TIME WILL NOT BE CONSIDERED.
THIS APPLIES TO BIDS SENT BY MAIL OR DELIVERED IN PERSON.
BIDS RECEIVED BY FACSIMILE (FAX) WILL NOT BE CONSIDERED.
- b) All bids must be legibly written in ink or by typewriter and ALL ITEMS MUST BE BID, unless otherwise specified, with the unit price for every item and other entries clearly shown.
- c) The bid must not be restricted by a statement added to the tender form or a covering letter or alterations to the tender form provided by the Corporation (unless otherwise specified).
- d) Adjustments by telephone, telegram, facsimile (FAX) or letter to a bid already submitted will not be considered. A tenderer desiring to make adjustments to a bid must withdraw the bid and/or supersede it with a later bid submission prior to the specified tender closing time.
- e) The Official Tender Envelope supplied by the Corporation must be used for bidding purposes without any extra exterior covering.
- f) The tenderer declares that the bid is NOT made in connection with any other tenderer submitting a bid for the same work and is in all respects fair and without collusion or fraud.
- g) The tender form(s) must be signed in the space(s) provided on the form, with the signature of the tenderer or of a responsible official of the organization bidding. If a joint bid is submitted, it must be signed on behalf of each of the tenderers and if the signing authority for both tenderers is vested in one (1) individual, he shall sign separately on behalf of each tenderer. In the case of an incorporated company, the corporate seal must be affixed to the tender forms.
- h) Erasures, overwriting or strike-outs must be initialled by the person signing on behalf of the organization bidding.
- i) All information required in the tender forms in connection with each item against which a bid is submitted must be given to constitute a valid bid.

2. PERFORMANCE SECURITY REQUIREMENTS

Performance security binding the Contractor faithfully to fulfil the obligations of his bid as accepted, may be required. Such security, when requested, shall be submitted in the form of a performance bond satisfactory to the Corporation or certified cheque within ten (10) days from the date of request.

3. 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.

4. 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.

5. ONTARIO RETAIL SALES TAX

See Special Provisions which form part of this contract document.

6. OMISSIONS AND DISCREPANCIES

Should a tenderer 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 tenderers.

7. WITHDRAWAL OF BIDS PRIOR TO TENDER OPENING

A tenderer who has submitted a bid on a tender may request that his bid be withdrawn (adjustments or corrections to bid submitted will not be allowed). The withdrawal shall be allowed if the request is made before the closing time for this tender. 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 tender closing time will not be allowed. The party concerned shall be informed by letter that the withdrawal request arrived too late for consideration.

However, when the bid is read out at a tender opening, and if it is the lowest bid on a tender, the tenderer may then proceed in accordance with Item 8 of the Tender Terms and Conditions.

NOTE: The withdrawal of a bid does not disqualify a tenderer from submitting another bid on the same tender prior to the specified tender closing time.

8. WITHDRAWAL OF BIDS DURING A TENDER OPENING

During a tender opening at the conclusion of the reading out of bids on a tender, a low tenderer may withdraw any of his remaining bids on other tenders. Bids withdrawn under this procedure cannot be reinstated.

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

9. TENDER OPENING

All bids will be opened publicly by the Tender Opening Committee under the chairmanship of the Purchasing Agent. Tenderers may be present or represented at tender openings.

After opening, all bids 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 tender, the unit prices tendered shall govern and the extensions(s) and additions(s) shall be corrected accordingly. The lowest or any bid need not necessarily be accepted.

10. UNBALANCED BID

Each item in the bid sheet shall be reasonably priced for such item. Bids that contain prices which appear to be unbalanced as to effect adversely the interest of the Corporation may be rejected.

11. 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 tenderers 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 bids 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 bid on a commodity other than as specified, the tenderer must furnish complete data and identification with respect to the alternate commodity he proposes to furnish.
- 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 Corporation. If the tenderer does not indicate that the commodity he proposes to furnish is other than specified, it will be construed to mean that the tenderer proposes to furnish the exact commodity as described in the tender.
12. SAMPLES
- a) All specifications are based on the minimum standards acceptable. Accepted bid samples do not supersede specifications for quality unless the bid 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 bid may not be considered. If samples are requested subsequent to the opening of bids, 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 tenderer 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 tenderer's risk and subject to his expense.
- c) When the tender 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 tenderer to examine the sample shall not entitle him to any relief from the conditions imposed by the tender.
13. 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 tender, and to award contracts to one or more tenderers submitting identical bids as to price; to reject any and all bids 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 bids are opened, unless otherwise specified in the tender, during which period the bid shall not be withdrawn unless the tenderer distinctly states in his bid that acceptance thereof must be made in a shorter specified time.
- c) A tenderer 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 tender.
- 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.
14. CONTRACT
- a) Each bid 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 tenderer and the Corporation, which shall bind the tenderer on his part to furnish and deliver the commodities at the prices given and in accordance with conditions of said accepted tender and specifications and TENDER TERMS AND CONDITIONS, and the Corporation on its part to take delivery of and pay for the commodities at the contract prices.
- 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 bid or delivery of a notice of award to a tenderer will constitute notice of acceptance of tender. 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 tenderers, for an indeterminate period, the name of any tenderer for failure to accept a contract, or the name of any Contractor for unsatisfactory performance of contract.

15. CONTRACT GUARANTEE

Tenderer hereby covenants and agrees:

- a) To perform the contract in accordance with the specifications and tender 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 tenderer 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 bid 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.

16. DELIVERY

- a) All bids shall be F.O.B. Destination, Brampton, Ontario unless otherwise noted on the tender forms.
- b) Any equipment delivered must be standard new equipment or material of the latest model except as otherwise specifically stated in the tender. 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 tender.
- d) Delivery must be made as ordered and in accordance with the tender. 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 tender.

- 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.

17. 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 tenderer.

18. 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.

19. OCCUPATIONAL HEALTH & SAFETY ACT

- a) The successful tenderer, 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 tenderer 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 thereunder 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 and 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 and 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 tenderer 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 tenderer shall ensure that the requirements of the Ontario Occupational Health & Safety Act and associated regulations are complied with.

20. **SPECIAL PROVISIONS**

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