

THE CORPORATION OF THE CITY OF BRAMPTON
TENDER TERMS & CONDITIONS - CONSTRUCTION

SCOPE:

These Tender Terms and Conditions form a part of each tender, and contract and apply to contracts for the performance of the required work. 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 & 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 perform the work required by the Corporation.
BID:	The offer of a tenderer to perform the required work.
CONTRACT:	The acceptance by the Corporation of a bid by a tenderer to perform the required work.
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 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. DEPOSIT REQUIREMENTS

- a) The Bid shall be accompanied by an Agreement to Bond and **MUST BE ENCLOSED IN THE SAME ENVELOPE AS THE BID.**
- b) The bid shall be accompanied by a bid deposit in the form of a bid bond, certified cheque, bank draft, money order or irrevocable letter of credit made payable to the Corporation, equal to or greater than the amount specified in the Tender and **MUST BE ENCLOSED IN THE SAME ENVELOPE AS THE BID.**
- c) The bid deposit for this contract will be in an amount equal to ten (10%) percent of the Bid Price.

3. PERFORMANCE SECURITY

The successful tenderer will be required to supply a Performance and Maintenance Bond based on the following schedule or any other amount so required, issued by an approved Surety Company in a form identical to the Performance and Maintenance Bond form attached to these documents, for the faithful performance of this contract, including the maintenance guarantee for the time period specified. A cash deposit or an irrevocable letter of credit based on the following schedule or any other amount so required is acceptable in lieu of a Performance and Maintenance Bond.

TOTAL LUMP SUM PRICE OF TENDER
\$100,000.00 or less
\$100,001.00 and over

PERFORMANCE SECURITY REQUIREMENTS
50% of Total Lump Sum Price of Tender
100% of Total Lump Sum Price of Tender

4. **INSURANCE REQUIREMENTS**

The successful tenderer will be required to supply Commercial General Liability in an amount not less than \$3,000,000.00 all inclusive or any other amount so required in a form identical to the Certificate of Insurance attached.

5. **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 any 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 6 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.

6. **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.

7. **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.

8. **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.

9. **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 and/or the Commissioner or his authorized designate as soon as possible, who may send a written instruction or an addendum to all tenderers.

10. **SITE EXAMINATION**

The tenderer must visit the site of the work before submitting his bid and must satisfy himself by personal examination as to the local conditions to be met with during the performance and conduct of the work. He shall make his own estimate of the facilities and difficulties to be encountered, including the nature of the sub-surface materials and conditions. He is not to claim at any time after submission of his bid that there was any misunderstanding of the terms and condition of the Contract relating to site conditions.

No responsibility is assumed by the City for the exactness of soil data shown on the drawings.

11. **SUBSTITUTES AND ALTERNATES**

All specifications are based on the minimum standards acceptable. 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.

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 and must be furnished free of charge.

12. **AWARD OF CONTRACT**

- a) The Corporation reserves the right to reject any and all bids in whole or in part 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.
- 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.

13. **EXECUTION OF CONTRACT**

The tenderer to whom this contract is awarded will be required to execute the contract within ten (10) days from the date of mailing of the notice of award by the Corporation and must return within the ten (10) days mentioned above, the following items:

- a) Three (3) copies of the executed contract documents.
- b) A Performance and Maintenance Bond or Cash Deposit as described above, and
- c) A certified copy of the Contractor's insurance policy which shall be a minimum of \$3,000,000.00 all inclusive or any other amount as so required in a form identical to the Certificate of Insurance attached.

14. **COMMENCEMENT DATE**

Contractor shall commence work upon receipt of a purchase order from the Corporation to commence work. The date specified therein shall constitute the official commencement date with respect to calculating the completion date and liquidated damages, as specified in the tender if applicable.

15. **FAIR WAGE AND HOURS**

All persons employed by the contractor and his Sub-Contractors or in connection with the work shall be paid fair wages and shall have hours in conformity with the latest Fair Wage Schedule of the Province of Ontario, Toronto Zone in accordance with the Ministry of Labour.

16. **WORKPLACE SAFETY & INSURANCE**

The Contractor will be required to furnish the Corporation with a Workplace Safety & Insurance Certificate of Clearance.

17. **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 & 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 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.
- e) The Corporation reserves the right to cancel any contract for non compliance with the terms set out herein, health and safety regulations, the Environmental Protection Act, associated regulations and other applicable legislation.

18. **DISPOSAL OF MATERIALS AND WASTE**

The Contractor agrees to assume full responsibility to procure and obtain all permits and documentation necessary to effect the proper disposal of materials and/or waste removal from the Corporation's premises.

19. **RESTORATION**

The Contractor shall repair all damages caused to adjacent property, public or private, such as sidewalks, roadways, grassed areas, trees and shrubs and any structures, at his own expense before acceptance of the work by the Corporation. The restoration work shall be governed by a record of existing conditions filed with the Commissioner or his authorized designate.

20. **MAINTENANCE AND REPAIR**
The Contractor shall at his own expense maintain all of the work for the duration of the maintenance period as specified in the Special Provisions. All work requested by the Commissioner or his authorized designate during the maintenance period must be carried out in the time period set, at the discretion of the Commissioner, at the time of request in writing. If the request is not complied with the Corporation shall have the option to carry out the work and collect all expenditures from the maintenance bond held until the end of the maintenance period.
21. **PAYMENT**
Payment for materials supplied and work completed shall be on a monthly basis at the rate of 90%, providing for a 10% holdback in accordance with the Construction Lien Act, 1983.
After performance acceptance of the work, and in accordance with the Construction Lien Act, 1983 the holdback will be paid to the contractor upon receipt of a Statutory Declaration that all accounts and labour have been paid in full, receipt of a Workers' Compensation Board Certificate of Clearance and receipt of all "As Built" drawing and maintenance manuals.
Upon inspection and correction of any deficiencies at the end of the maintenance period, to the satisfaction of the Commissioner or his authorized designate the Performance and Maintenance Bond will be returned to the Contractor.
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.
22. **EXTRA WORK**
If the work to be carried out is such that it is considered an extra to the contract a Change Order shall be processed. This Extra Work must be approved by the Commissioner or his authorized designate or no payment will be made.
Work should not proceed until the Contractor has a signed Change Order, or in the case of an emergency, approval is given by the Commissioner or his authorized designate. All claims for Extra Work must be substantiated by showing all time for labour, equipment and material incorporated in the work.
23. **PERMITS, FEES AND LICENCES**
The Contractor shall pay for all permits, licences and fees, and give all notices and comply with all by-laws and regulations of the Corporation and any other governing body.
24. **SUBLETTING**
It shall be a condition of this contract that the Contractor shall be required to carry out, using his own forces, the minimum amount of 50% of the total contract price; that is, the prime Contractor shall not sublet any portion of the work, without first obtaining written approval from the Commissioner or his authorized designate to do so. This requirement does not include the supply of materials.
25. **SUB-CONTRACTOR APPROVAL**
All known sub-contractors must be listed in the form of tender at the time of bidding. Sub-contractors not listed in the form of tender must be approved by the Commissioner or his authorized designate prior to moving onto the job.
26. **ONTARIO RETAIL SALES TAX**
The Corporation is required to pay the Ontario Retail Sales Tax on all goods and materials. The retail sales tax paid by contractors on items which they incorporate into real property is part of the contractor's cost. This tax should not be quoted or billed separately. Ontario Retail Sales Tax does not apply to labour to construct real property or to labour to install items that become part of real property upon installation.
27. **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.
28. **DELIVERY**
- a) All equipment or material 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.
 - b) Materials and supplies must be new items except as otherwise specifically stated in the tender.
 - c) 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.
29. **INSPECTIONS & TESTS**
- a) The inspection of all materials or work and the asking 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.

30. **SETTING OUT**
It will be the Contractor's responsibility to supply all of the necessary lines and grades for the construction of the work and to check the lines and grades given against the plans. These will be verified by an Ontario Land Surveyor where required. The Contractor is responsible for verifying the location of existing, water, gas, Bell, hydro and sewer lines and obtaining the necessary stake outs.
31. **CLEAN-UP**
The Contractor will be responsible for the cleaning up of all dirt, debris, and any other rubbish from his operations and shall proceed with such clean up forthwith when requested by the Commissioner or his authorized designate. In case of undue delay, the Commissioner or his authorized designate will carry out these operations with the Corporation or other forces, and deduct all costs incurred from monies due to the Contractor.
32. **HOLDBACK REDUCTION**
In the event that all items in the Contract cannot be completed before the current construction season ends, the Commissioner or his authorized designate may, at his sole discretion allow a reduction in the holdback amount, provided that, in the opinion of the Commissioner or his authorized designate, sufficient work has been completed to justify such a reduction. Whether or not a reduction in holdback will be allowed and the amount of the holdback reduction if any shall be determined by the Commissioner or his authorized designate and his decision shall be final. Should a reduction in holdback be approved, the provisions contained in Item 21 would apply.
33. **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 work described therein shall constitute a contract between the Tenderer and the Corporation.
 - 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 execute satisfactorily the contract documentation within ten (10) days from date of request.
 - f) The Corporation reserves the right to remove from the list of tenderers, for an undetermined period, the name of any tenderer for failure to accept a contract, or the name of any Contractor for unsatisfactory performance of contract.
34. **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.
35. **INTERPRETATION**
Where the words Commissioner, Inspector, Engineer, and/or Site Service Authority (S.S.A.) are used, it is understood to mean the Commissioner of the using department or his authorized designate.
36. **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.