



**THE CORPORATION OF THE CITY OF GUELPH**

**REQUEST FOR TENDERS FOR  
GUELPH PUBLIC LIBRARY WESTMINSTER  
BRANCH MAKER SPACE RENOVATION**

**Reference Number: 19-098**

**Electronic Tenders Only**

**Closes: Tuesday, May 21<sup>st</sup>, 2019 at 2:30:00 p.m. local time**

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## A. DEFINITIONS OF TERMS USED IN THIS RFT

### 1. DEFINITIONS

(1) In this RFT, capitalized terms other than those defined in this RFT have the meanings provided in the Procurement By-law.

(2) In this RFT, the following terms have the indicated meanings:

**"As Built Drawing"** means a drawing based solely on information provided by a third party reflecting the installed, constructed or commissioned conditions of a device, machine, equipment, apparatus, structure, system or other outcome of an engineering project;

**"Bidder"** means a person submitting a Tender;

**"City"** means The Corporation of the City of Guelph;

**"Closing Time"** means 2:30:00 p.m. local time on **Tuesday, May 21<sup>st</sup>, 2019** as determined by the City's electronic bidding system web clock;

**"Conflict of Interest"**, in respect of a Bidder, means a situation where the Bidder is an employee of the City, a spouse or child of an employee of the City, or a corporation or other business entity in which an employee of the City or his or her spouse or child has an interest or is a director or officer;

**"Procurement By-law"** means By-law Number (2018)-20259 of the City, as amended or replaced from time to time;

**"Purchasing Representative"** means the representative of the City designated by the City as the principal contact person in respect of this RFT, and particularly its procurement aspects;

**"Recorded Drawing"** means a drawing that shows accurately, as constructed or fabricated, all piping, process electrical, instrumentation, structural, architectural, site work, ducts and equipment, including services and concealed piping, which drawing has been sealed by a professional engineer verifying that it is accurate;

**"RFT"** means this Request for Tender and all related documents;

**"Successful Bidder"** means a Bidder that is awarded a Contract in respect of this RFT;

**"Tender"** means a Bid in response to this RFT; and

**"Total Acquisition Cost"** means the most cost efficient and effective manner and shall be the sum of all costs, including purchase price, all taxes, warranty,

life cycle cost, operating and disposal costs, incurred for determining the lowest acceptable Bid meeting the specifications and drawings.

## **B. GOODS AND SERVICES THE CITY IS SEEKING**

### **2. OVERVIEW**

- (1) The City is seeking Tenders to provide the following Goods and Services in respect of:
  - a) The renovation of Guelph Public Library, Westminster Branch, Maker Space.

## C. INFORMATION AND MATERIAL COMPRISING THIS RFT

### 3. DOCUMENTS

- (1) The documents comprising this RFT include:
  - a) The following documents, each in the version current as at the Closing Time, and as available in or through the Bids and Tenders portion of the City's website:
    - i. This Request for Tenders,
    - ii. Any Addenda to this Request for Tenders,
    - iii. CCDC 2 Stipulated Price Contract 2008
    - iv. Supplementary Conditions to the CCDC 2 – 2008 of The Corporation of the City of Guelph [Rev. March 2017 (minor edits Jan/2019)]
    - v. 19-098 Specifications,
    - vi. 19-098 Contract Drawings,
    - vii. If applicable, City of Guelph 2015 Facility Accessibility Design Manual, located at the following link: [http://guelph.ca/wp-content/uploads/Guelph\\_FADM\\_2015-06-30-FINAL.pdf](http://guelph.ca/wp-content/uploads/Guelph_FADM_2015-06-30-FINAL.pdf),
    - viii. If applicable, Contractor Safety Management Program located at the following link: <https://guelph.ca/city-hall/by-laws-and-policies-2/contractor-safety-management-program/>,
    - ix. The Procurement By-law,
    - x. Tender Submission Form posted online (**start your submission to view**),
    - xi. Any other applicable document referenced in any of the foregoing; and
  - b) The following other documents, each in the version current as at the Closing Time:
    - i. All applicable provisions of the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, S.O. 2005, c. 11, and regulations thereunder, all as amended or replaced.

### 4. PROCUREMENT REPRESENTATIVE

- (1) The procurement representative for this Tender is;
  - a. Casey Logel

### 5. QUESTIONS AND ANSWERS

- (1) The City shall not entertain any oral questions related to this RFT, and shall not provide any oral answers related to this RFT.
- (2) The Bidder shall be responsible for seeking, in writing, written clarification, through the online question portal for any discrepancies or omissions in the RFT.

- (3) All questions must be submitted through the City's Electronic Bidding System using the "Submit a Question" link associated with this bid opportunity. Questions submitted in any other manner will be unaddressed until they are properly submitted via the "Submit a Question" function in the City's Electronic Bidding System.
- (4) The City shall not accept any questions during the five (5) days prior to the Closing Time, to allow the City adequate time to send any required responses to all Bidders as addenda.

## **6. ADDENDA**

- (1) The City shall issue any answers to questions or changes/additions/deletions to the Specifications and/or terms and conditions of this RFT by way of addenda. Any and all addenda issued prior to the Closing Time form part of this RFT. The City shall not issue any addenda after 12:00 noon the day before the Closing Time, unless they include an extension of the Closing Time.
- (2) The City recommends that after submitting a Tender, the Bidder should check for addenda up until the Closing Time.

## **7. EXCLUSIVE SOURCE OF INFORMATION AND MATERIAL**

- (1) The information and material indicated here are the only information and material comprising this RFT. No other information or material, written or oral, from the City or any other person forms part of this RFT.

## **8. HEADINGS**

- (1) The division of this RFT into sections, the insertion of headings and the provision of a Table of Contents are for convenience of reference only and are not to affect the construction or interpretation of this RFT.

## **9. ACCURACY, COMPLETENESS AND APPLICABILITY OF INFORMATION AND MATERIAL**

- (1) Except as expressly provided in this RFT, the City does not represent or warrant the accuracy, completeness or applicability of any information:
  - a) Set out in the documents comprising this RFT;
  - b) Made available by the City to any Bidder; or
  - c) Obtained by any Bidder from any other source.
- (2) Any Bidder that obtains, uses or relies upon such information, does so at the Bidder's own sole risk, and without recourse against the City.

## **10. MANDATORY SITE VISITS**

- (1) The City will provide a single **mandatory** site visit for potential Bidders to view the site location, located at 31 Farley Drive, in Guelph, ON. This site visit will take place on **Tuesday, May 7<sup>th</sup>, 2019 at 1:00 p.m. SHARP**. No other site visits will be provided. The City will reject any Bid from any Bidder that does not attend this site visit. Appropriate personal protective equipment must be worn for the site visit.



## **D. RULES GOVERNING THIS RFT**

### **11. ELECTRONIC TENDERS ONLY**

- (1) This RFT requires submission of Tenders only by electronic means, and therefore is open only to Bidders who have created vendor accounts in the City's electronic bidding system.
- (2) The City reserves the right, in case of problems with its electronic bidding system, to change, at any time, to a paper-based bidding system in respect of part or all of this RFT process.

### **12. WITHDRAWAL OF RFT**

- (1) The City may, at its discretion, withdraw, cancel or amend this RFT at any time either before or after the Closing Time. The City shall not be liable for any risk, expense, cost, loss or damage incurred or suffered by any Bidder or any other person as a result of such withdrawal, cancellation or amendment.

### **13. PROCUREMENT BY-LAW**

- (1) The City's Procurement By-law applies to this RFT.
- (2) Each Bidder shall abide by the Procurement By-law.
- (3) Without limiting the generality of the foregoing, the City reminds Bidders of the following provisions of the Procurement By-law:
  - a) Section 4.5.3.3. Opposing Parties.
  - b) Schedule "F" Performance Evaluation of Suppliers.

### **14. OBTAINING INFORMATION AND MATERIAL COMPRISING THIS RFT**

- (1) Each Bidder shall be solely responsible for:
  - a) Obtaining all information and material comprising this RFT, whether in or through the Bids and Tenders portion of the City's website or elsewhere;
  - b) Ensuring that it obtains and considers the version of such information and material that is current as at the Closing Time;
  - c) Reporting any missing, inaccessible or incomplete RFT information or material to the Purchasing Representative; and
  - d) Ensuring that any drawings, sketches or other information or material for which format or scale is important, are printed or produced in the proper format or scale.

- (2) The only information and material relevant to this RFT is the information and material set out or referred to in this RFT. For purposes of this RFT, Bidders shall not rely upon, nor shall the City be bound by, any information or material other than the information and material set out or referred to in this RFT.

## **15. COSTS OF TENDER**

- (1) The City shall not be responsible for any risk, expense, cost, loss or damage incurred or suffered by any Bidder or any other person in:
  - a) Obtaining the information and material comprising the RFT;
  - b) Carrying out any site visit;
  - c) Carrying out or attending at any invasive site testing;
  - d) Preparing a Tender;
  - e) Revising a Tender;
  - f) Submitting a Tender or revised Tender; or
  - g) Submitting any samples and/or descriptive literature in relation to goods forming part of this RFT.

## **16. ACKNOWLEDGMENT OF ADDENDA**

- (1) In its Tender, each Bidder shall acknowledge, in the form and manner specified in each addendum, receipt of each addendum.
- (2) If an addendum is issued after a Bidder has submitted a Tender, the City, through its electronic bidding system, shall change the bid submission to an INCOMPLETE STATUS for that Tender and the Bidder shall be solely responsible to:
  - a) Make any required adjustments to the Tender;
  - b) Acknowledge the addendum; and
  - c) Resubmit the Tender.

## **17. EFFECTS OF SUBMITTING A TENDER**

- (1) By submitting a Tender under this RFT, the Bidder:
  - a) Agrees to all provisions of this RFT.
  - b) Represents and warrants that:
    - i. No person other than the Bidder has any interest in the Tender;
    - ii. All information submitted in the Tender is true, complete and accurate;
    - iii. The Tender is made without fraud, collusion, connection, knowledge, comparison of figures or arrangement with any other person submitting a Tender;

- iv. No employee or member of Council of the City is or will become interested, directly or indirectly, as a contracting party or otherwise in the provision of the Goods and Services to be provided pursuant to this RFT, or in any portion of the monies or profits to be derived from the Tender.
- c) Submits an "Offer", the acceptance of which will not be binding on the City until both parties have executed a contract.
- d) Agrees that it has no, and shall have no, claim for any expense, cost, loss or damages of any kind whatsoever, against the City, arising from participating in any way in this RFT process.
- e) Releases, to the City, all rights to all information and material comprising its Tender.

## **18. STATUS OF INFORMATION AND MATERIAL SUBMITTED**

- (1) All information and material submitted by a Bidder forms part of the Bidder's Tender and, upon submission, becomes the property of the City.

## **19. TENDER IRREVOCABLE**

- (1) Each Tender will be irrevocable and will remain open for acceptance by the City for a period of ninety (90) calendar days after the Closing Time. The City may at any time within this ninety (90) day period accept any Tender whether or not any other Tender has previously been accepted.

## **20. VARIATION OF TENDER PRICING AFTER SUBMISSION**

- (1) No variation in any unit price, commission rate, or total price proposed will be permitted after the Closing Time, except in the instance of variation due solely to an increase or decrease in the rate of exigible taxes, beyond the control of the Bidder, occurring after the time of submission of the Tender. Such an increase or a decrease in the rate of exigible taxes will affect the Tender only to the extent of the tax increase or decrease.
- (2) All prices identified in a Tender which is accepted will be firm for the term of the Contract.

## **21. SUBCONTRACTOR CHANGES**

- (1) The City reserves the right:
  - a) For reasonable cause, to request a change of any subcontractor named in a Tender;
  - b) To permit the Bidder to change a subcontractor after the Closing Time only if the Bidder submits:
    - i. A written request for the change;
    - ii. A full explanation of the reasons for the requested change; and

- iii. A letter from the previously-named subcontractor, agreeing to withdraw that subcontractor's sub-bid with no recourse against the City.
- (2) If a subcontractor is changed in accordance with the foregoing, the Bidder shall propose an alternate subcontractor without changing the Tender price, and shall provide all the information concerning the newly-proposed subcontractor as was required concerning the previously-proposed subcontractor. If the subcontractor proposed to be changed was prequalified by the City, only another prequalified subcontractor may be proposed.

## **22. WAIVER BY CITY**

- (1) The City may, by express written notice, waive some of its rights, powers or remedies under this RFT.
- (2) None of the following constitutes a waiver by the City of any of its rights, powers or remedies under this RFT:
- a) The failure of the City to exercise any of its rights, powers or remedies under this RFT;
  - b) The delay of the City in exercising any of its rights, powers or remedies under this RFT;
  - c) The condoning, excusing or overlooking by the City of any default, breach or non-observance by a Bidder at any time or times in respect of any provision of this RFT; or
  - d) Anything done or omitted by the City other than by way of express written waiver.
- (3) A single or partial exercise by the City of a right, power or remedy under this RFT does not prevent the City from subsequently exercising that right, power or remedy or any other right, power or remedy.
- (4) Despite the City taking any action which is the responsibility of a Bidder under this RFT, the Bidder shall remain obligated to take such action.

## **23. GOVERNING LAW**

- (1) This RFT and any Tender submitted in response to it and the process contemplated by this RFT including any ensuing contract shall be governed by the laws of the Province of Ontario. Any disputes arising out of this RFT or this RFT process will be determined by a court of competent jurisdiction in the Province of Ontario.

## **24. QUASI-CRIMINAL/CRIMINAL ACTIVITY OF A PROPONENT**

- (1) The City may reject a Tender or Bidder if the City:

- a) Confirms that the Bidder or any individual that owns, directs, or controls the Bidder has been charged with or convicted of an offence under the *Criminal Code of Canada*, an offence under any other applicable statute or regulations in the Province of Ontario, or an offence pursuant to similar laws outside of the Province of Ontario, or has been named in an order or similar enforcement measure by a regulatory authority; and
- b) Determines that this charge, conviction or order is material to the given procurement; and
- c) Determines that, in light of this charge, conviction or order, awarding to that Bidder could compromise the delivery of the goods and services or would otherwise undermine the business reputation of the City of the public's confidence in the integrity of the RFT process.

## **25. UNBALANCED TENDERS**

- (1) The City may reject a Tender if it determines, in its sole discretion, that the Tender is materially imbalanced. A Tender is materially imbalanced when:
  - a) It is based on prices what are significantly less than cost for some items of work and prices which are significantly overstated in relation to cost for other items of work; and
  - b) The City had determined that the Tender may not result in the lowest overall cost to the City even though it may be the lowest submitted Tender; and
  - c) It is so unbalanced as to be tantamount to allowing an advance payment.

## **26. CONFIDENTIALITY OF INFORMATION**

- (1) The City shall use the information collected under this RFT solely for the purposes of this RFT.
- (2) All information contained in each Tender will be subject to the *Municipal Freedom of Information and Protection of Privacy Act*.
- (3) The City shall release each Bidder's name and price.
- (4) The City may release details of a Tender which the Bidder has not specifically requested to remain confidential.

## **27. PROOF OF ABILITY**

- (1) In order for the City to determine the ability of each Bidder, the Bidder must complete the Reference section and the Subcontractor section posted on the City's Electronic Bidding System, if applicable, as part of the bid submission. The Reference section should list three (3) similar-in-content projects that have been completed in the past three (3) years.

- (2) The City will review all Tenders and will be the sole judge of the merit of each Tender submitted and the City reserves the right to award based on the Bidder's proof of ability.

## **28. BRAND NAME AND EQUAL PRODUCTS**

- (1) Any manufacturer's names, trade names, brand names or product numbers mentioned are for the purpose of establishing and describing general performance and quality levels, unless specified otherwise. Such references are not intended to be restrictive and bids are invited on approved generic no-name equals and comparable equipment of any manufacturer. However, if a product other than the one specified is wanting to be bid, it is the Bidder's responsibility to request pre-approval of the proposed alternate product and to prove to the City that the said product is equal to or exceeds the specifications required. Bidders are to request approval for their alternate product by email to Casey Logel, [purchasing@guelph.ca](mailto:purchasing@guelph.ca) and include the brand name, if any, make and model number and product information, including full specifications, brochures, drawings, etc. and if necessary, samples on item(s) to be bid. The deadline to notify the above-named City contact for approval for an alternative product is **Monday, May 13th, 2019**.
- (2) If an equal product is submitted for approval, it will be the Bidder's responsibility to prove to the City that the said product is in fact equal to the specifications. The Bidder must provide all information required to complete a review of the alternate product, and if required, must provide a full demonstration at the request of the City of Guelph.
- (3) The City will review the submitted alternatives to confirm whether the product offered is deemed a suitable substitute and able to meet performance expectations. The City will issue an addendum indicating which alternate products, if any, are approved. The City shall be the sole judge concerning the merits of the product equals submitted.
- (4) Tenders received for alternate products that have not been pre-approved will be deemed non-compliant.

## **E. PROVISIONS OF EVENTUAL CONTRACT**

### **29. CONTRACT PROVISIONS**

- (1) The contract documents shall include the following:
  - a) Supplementary Conditions to the CCDC 2 – 2008 of The Corporation of the City of Guelph [Rev. March 2017 (minor edits Jan/2019)]
  - b) CCDC 2 Stipulated Price Contract 2008 and the Contract Documents referenced therein, and,
  - c) Such other relevant documents specified in Part C, Section 3.

(the "Contract Documents").

- (2) The Contract for this RFT will be created upon the execution by both parties of the CCDC 2 Stipulated Price Contract 2008 between the City and the Successful Bidder.

## F. CONTENTS OF TENDER

### 30. TENDER CONTENTS

- (1) Each Bidder shall submit its Tender on the tender submission form provided on the City's bidding system.
- (2) Each Bidder shall include the following in the Bidder's Tender:
  - a) Costs:
    - i. Pricing, including unit pricing, for the requirements as per the online form. All prices must be identified in the Tender in their entirety unless otherwise stated. Prices shall be in Canadian dollars and be inclusive of all incidental costs, including, but not limited to labour, equipment, expenses, materials, travel time, mileage, customs duty, excise tax, freight, delivery, handling, insurance, fuels, energy costs, overhead, profit, etc. However, HST shall be shown separately.
  - b) Information and Material about Proposed Subcontractors:
    - i. The name and address of every subcontractor that the Bidder proposes to retain, and the Goods and Services for which each subcontractor will be responsible;
    - ii. Confirmation that only one subcontractor is named as responsible for each part of the Goods and Services to be subcontracted out;
    - iii. Confirmation that all subcontractors have been selected, determined, and included in the Tender;
    - iv. The portion of the Goods and Services that the Bidder proposes that each subcontractor will provide;
    - v. Confirmation in respect of each subcontractor that the subcontractor:
      - a. Has experience, and is actively engaged, in the provision of Goods and Services of the types to be provided by the subcontractor under this RFT;
      - b. Has submitted the subcontractor's prices in strict accordance with this RFT; and
      - c. Will provide the subcontractor's Goods and Services competently and within the required time frame. Each Bidder shall include, in its total lump sum Tender price, any anticipated additional cost to obtain Goods or Services within the time limits required under this RFT. No Bidder shall include in its Tender any extra or separate cost for packaging, packing or containers for goods, unless otherwise specifically provided in this RFT.
- (3) Upon submitting a Tender through the City's Electronic Bidding System, each Bidder shall specify its payment terms, which shall be at least net thirty (30) days. The Bidder may specify discounts offered for prompt payment of less than thirty (30) days.



### **31. CONFIDENTIALITY**

- (1) The Bidder shall clearly mark as confidential any information or material in the Bidder's Tender which the Bidder wishes to remain confidential.

### **32. AGREEMENT TO BOND**

- (1) Each Bidder shall upload to the City's Electronic Bidding System with its Tender an Agreement to Bond which:
  - a) Is in a form satisfactory to the City;
  - b) Provides that if the City accepts the Bidder's Tender, the agreeing party shall guarantee that the Bidder shall carry out the Bidder's obligations under this RFT to provide a 50% Performance Bond and a 50% Labour and Material Payment Bond or a Standby Irrevocable Letter of Credit; and
  - c) Is for a term of at least ninety (90) calendar days after the Closing Time.

## **G. PROCEDURES FOR SUBMITTING A TENDER**

### **33. SUBMISSION OF TENDER**

- (1) A Bidder with a vendor account must register as a recipient of this RFT on the Bids and Tenders portion of the City's website.
- (2) For this RFT, unless an addendum provides otherwise, the City shall accept only electronic Tenders submitted on the Tender Submission Form provided, and through the City's electronic bidding system on the Bids and Tenders portion of the City's website.
- (3) A Bidder may withdraw the Bidder's Tender prior to the Closing Time and either:
  - a) Keep the Tender out of the RFT; or
  - b) Edit and re-submit the Tender before the Closing Time.
- (4) The City shall accept only those electronic Tenders received by the City's electronic bidding system no later than the Closing Time. The City's electronic bidding system will not accept Tenders received after the Closing Time. The date and time that the electronic Tender was sent by the Bidder is of no consequence.
- (5) Each Bidder shall allow sufficient time to upload the Tender and applicable attachments and to resolve any uploading and transmission issues, such as "Internet traffic jams", file transfer size and transmission speed.
- (6) It is recommended that Bidders submit their Tender:
  - a) More than twenty-four (24) hours before the Closing Time, in order to allow time for the Bidder to contact the City's Purchasing Representative if:
    - i. The Bidder encounters any problems in submitting the Tender; or
    - ii. The Bidder fails to receive an email confirming receipt of the Tender; and
  - b) Not more than forty-eight (48) hours before the Closing Time, to allow for the receipt of any addenda.

## H. EVALUATION OF TENDERS

### 34. DISQUALIFICATION OF TENDERS

- (1) The City shall disqualify a Tender if, in the sole, final, binding opinion of the City:
  - a) It is one of two or more Tenders submitted by the same Bidder, whether under the same or different names, unless the Tenders make it clear that the work in the extra Tender(s) shall be performed under a "joint" agreement;
  - b) It was submitted by a Bidder that colluded with one or more other Bidders;
  - c) It was submitted by a Bidder that has a Conflict of Interest;
  - d) It was submitted by a Bidder that is not a Responsible Bidder;
  - e) It was submitted by a Bidder that:
    - i. Is an Opposing Party,
    - ii. Proposes an Opposing Party as a subcontractor, or
    - iii. Is not at arm's length from an Opposing Party;
  - f) It is incomplete, conditional, illegible, obscure or qualified in any way;
  - g) It contains additions not called for, erasures, alterations or irregularities of any kind;
  - h) Its prices appear to be so unreasonable and/or unbalanced as to be likely to affect adversely the interest of the City;
  - i) It is received after the Closing Time, regardless of the circumstances which resulted in the late submission;
  - j) It is not executed or is executed by a person who does not have authority to bind the Bidder;
  - k) It fails to acknowledge all addenda.
  - l) Unless an addendum provides otherwise, the Tender is submitted in any way other than through the City's electronic bidding system website.
  - m) It was submitted by a Bidder, or any person on behalf of a Bidder, who has initiated communication about this RFT after it was issued and before it is terminated or before one or more Contracts are entered in respect of the Goods and Services which are its subject, with any:
    - i. Elected official of the City, except in a public deputation in a meeting open to the public,
    - ii. Member of City staff other than the Purchasing Representative, or
    - iii. Media; or
  - n) It fails to meet any mandatory criteria.
  - o) It contains a limitation or qualification on the City's right to publicly disclose the name of any Successful Bidder and, if applicable, any Bid price.

### 35. REVIEW OF TENDERS

- (1) In evaluating Tenders, the City may, in its sole, final, binding discretion, consider:

- a) Price;
- b) Delivery;
- c) Payment terms;
- d) Any special or extra costs;
- e) Quality of Goods and Services;
- f) Past performance of the Bidder;
- g) Reputation of the Bidder;
- h) Qualifications of the Bidder;
- i) Proof of Ability;
- j) Reliability of the Bidder; and
- k) Enhancements above the minimum Specifications.

- (2) In evaluating Tenders, the City may use the unit prices for computing the pricing that would result from additions to, or deductions from, the quantities contained in the Specifications.
- (3) If, in a Tender, the extended price shown for an item is not the product of the estimated quantity and the tendered unit price, and the difference is more than a minor mathematical error, then the unit price shall govern and the City may change the extended price for the item to the product of the estimated quantity and the tendered unit price, and may change the total Tender price accordingly.
- (4) If, in a Tender, the Bidder has not included a price for an item, then the City may, unless the Bidder has specifically stated to the contrary in the Tender, conclude that the Bidder has included the price elsewhere in the Tender, and that the price has already been included in the total Tender price.
- (5) If, in a Tender, the total Tender price is not the same as the total of the component item prices, and the difference is more than a minor mathematical error, then the City may treat the total of the component item prices as the total Tender price.
- (6) If, after a Tender has been submitted, an increase in an applicable tax occurs, the Bidder shall prove, to the City's satisfaction that the Bidder will not benefit in any way by reason of the tax increase.

## **I. AFTER EVALUATION OF TENDERS**

### **36. RIGHT TO ACCEPT**

- (1) The City reserves the right to accept any Tender or Tenders or any portion or portions of any Tender or Tenders that the City determines is/are in the City's best interests, even if the total acquisition cost is not the lowest. Such decisions of the City are final and binding.

### **37. RIGHT TO REJECT**

- (1) The City reserves the right to reject any or all Tenders or any portions of Tenders for any reason whatever, including any non-approval or unavailability of budgeted funding. Such decisions of the City are final and binding.

### **38. RIGHT TO DISCLOSE**

- (1) After Closing Time, the City may release publicly, in any format, the names of all Bidders and their respective prices.
- (2) Upon awarding any Contract, the City may release publicly, in any format, the name of any Successful Bidder and, if applicable, any lump sum Bid price submitted by such Successful Bidder.

### **39. RIGHT TO NEGOTIATE**

- (1) The City reserves the right to negotiate one or more contracts with one or more Bidders, regardless of whether the Bidder(s) has/have the lowest price(s).
- (2) Should the City not receive any Tender satisfactory to the City as a result of the RFT process, the City reserves the right to negotiate a contract for all or part of the Goods and Services with one or more Bidders without becoming obligated to offer to negotiate with all Bidders.

## **J. AFTER ACCEPTANCE OF A TENDER**

### **40. PERFORMANCE BOND**

- (1) If the City accepts a Tender of a Bidder, then, prior to the execution of the resulting agreement or the issuance of a Purchase Order, whichever is applicable, and prior to commencement of any work under the contract, the Bidder shall provide a Performance Bond to the City.
- (2) The Bidder shall ensure that the said Performance Bond is:
  - a) In the Bidder's own legal name;
  - b) In the amount of fifty percent (50%) of the total contract price;
  - c) In the form of a certified cheque, an Irrevocable Stand-by Letter of Credit or a Performance of Contract bond; and
  - d) Payable to the City.
- (3) If the Performance Bond is in the form of an Irrevocable Stand-by Letter of Credit, then the Bidder shall ensure that:
  - a) It is in a form and from a provider satisfactory to the City; and
  - b) It clearly provides that the provider agrees not to notify the Bidder of any demand by the City for payment under it until after such payment has been made to the City.
- (4) If the Performance Bond is in the form of a Performance of Contract Bond, then the Bidder shall ensure that it is in a form and from a provider satisfactory to the City.
- (5) If a certified cheque is submitted as the security, the cheque will be cashed immediately. After the contract has been completed to the satisfaction of the City, and any warranty period has expired, the successful Bidder will be refunded the amount of the cheque without interest.

### **41. LABOUR AND MATERIAL PAYMENT SURETY**

- (1) If the City accepts a Tender of a Bidder, then, prior to the execution of the resulting agreement or the issuance of a Purchase Order, whichever is applicable, and prior to commencement of any work under the contract, the Bidder shall provide a Labour and Material Payment Bond to the City.
- (2) The Bidder shall ensure that the said Labour and Material Payment Bond is:
  - a) In the Bidder's own legal name;
  - b) In the amount of fifty percent (50%) of the total contract price;
  - c) In the form of a certified cheque, an Irrevocable Stand-by Letter of Credit or a Performance of Contract bond; and
  - d) Payable to the City.

- (3) If the Labour and Material Payment Bond is in the form of an Irrevocable Stand-by Letter of Credit, then the Bidder shall ensure that:
  - a) It is in a form and from a provider satisfactory to the City; and
  - b) It clearly provides that the provider agrees not to notify the Bidder of any demand by the City for payment under it until after such payment has been made to the City.
- (4) If the Labour and Material Payment Bond is in the form of a Performance of Contract bond, then the Bidder shall ensure that it is in a form and from a provider satisfactory to the City.
- (5) If a certified cheque is submitted as the security, the cheque will be cashed immediately. After the contract has been completed to the satisfaction of the City, and any warranty period has expired, the Successful Bidder will be refunded the amount of the cheque without interest.

#### **42. INSURANCE**

- (1) If the City accepts a Tender of a Bidder, then prior to the execution of an agreement or the issuance of a Purchase Order, and prior to commencement of any work under the contract, the Bidder shall provide to the City proof of insurance satisfactory to the City and Library of the insurance coverages required under CCDC 2 Stipulated Price Contract 2008 section GC 11.1, as amended by City of Guelph Supplementary Conditions section 1.49.

#### **43. FAILURE TO PROVIDE BONDS OR INSURANCE OR TO EXECUTE THE AGREEMENT**

- (1) If the City accepts a Tender of a Bidder, but the Bidder fails to provide the required Performance Bond and Labour and Material Payment Bond or proof of insurance, or to execute the agreement, if required, within ten (10) calendar days after the City's acceptance of the Tender, then the City may cancel the award to the Bidder, and the City may engage any other Bidder in contract execution. The Bidder shall be responsible for any costs, losses or damages suffered by the City due to such failure.