

INSTRUCTIONS TO BIDDERS

Nantyr Shores Secondary School

Exterior Repairs

Tender No.

11878Q

1. INTRODUCTION

1.1 INVITATION

- 1.1.1 The Simcoe County District School Board (the “**Owner**”) is soliciting Bids from prequalified general contractors to perform the work described in the Bid Documents (the “**Work**”) at **Nantyr Shores Secondary School** located at **1146 Anna Maria Avenue, Innisfil, Ontario**. (the “**Place of the Work**”).

1.2 KEY INFORMATION

- 1.2.1 This Section provides a summary of some key information contained in the Bid Documents and is provided solely as a convenience. Bidders are urged to read all of the Bid Documents carefully and thoroughly to ensure they fully understand all of the terms and conditions, including all Contract requirements.
- (a) The Owner has scheduled a mandatory site meeting at **Nantyr Shores Secondary School** on **Thursday, November 5, 2020**, commencing at **3:00 PM**.
 - (i) Please note, due to policies in place for COVID 19, the SCDSB is asking that only one (1) representative from each Bidder attend the mandatory meeting. Attendees are required to take the self-assessment available at: <https://covid-19.ontario.ca/self-assessment/> the day of the mandatory meeting prior to arriving and must wear a face covering while in the building.
 - (b) The Owner requires that all Bidders attend the mandatory site meeting.
 - (c) The deadline for submitting questions (the “**Question Deadline**”) is 5 days before the Submission Deadline.
 - (d) Questions must be submitted through the online portal www.bidsandtenders.ca.
 - (e) Bids must be submitted online through the Portal BEFORE 1:30:00PM Local Time on **Tuesday, November 17, 2020** (the “**Submission Deadline**”).
 - (f) Bids must be irrevocable for a period of thirty (30) days starting from the day after the Submission Deadline (the “**Irrevocability Period**”).
 - (g) The form of bid security to be delivered as part of the Bid is a digital bond, no other form of bond is acceptable. Bids submitted without digital bond will be considered noncompliant.
 - (h) The successful Bidder is permitted to commence work on site as of:
 - (i) Phase 1: **Monday, November 30, 2020**.
 - (A) The successful Bidder will be permitted to work during normal working hours as well as after hours and weekends as required to complete the work of Phase 1.
 - (ii) Phase 2: **Monday, April 12, 2021**.
 - (A) The successful Bidder will be permitted to work during normal working hours as well as after hours and weekends as required to complete the **EXTERIOR** work of Phase 2.
 - (B) The successful Bidder will be required to work within the occupied building after hours; starting at 2:30 PM and must be clear of the building by 7:00

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AM and on weekends as required to complete the **INTERIOR** work of Phase 2.

- (iii) Health and Safety (COVID 19)
 - (A) During the course of working on/within the building, all contractor forces will be required to complete a self-assessment available at: <https://covid-19.ontario.ca/self-assessment/> each day prior to arriving on site and must wear a face covering at all times while in the building.
- (i) The successful Bidder will be required to achieve the following completion milestones:
 - (i) Phase 1: **Friday, January 8, 2021.**
 - (ii) Phase 2: **Friday, April 30, 2021** (Substantial Performance).
- (j) The Bid Coordinator is Lori McColman, Assistant Manager of Accounting and Purchasing, at "lmccolman@scdsb.on.ca".

1.3 PREQUALIFICATION

1.3.1 The following general contractors are prequalified to submit a Bid (each a "**Prequalified Contractor**"):

- (a) Anacond Contracting Inc.;
- (b) Aquicon Construction;
- (c) Bertram Construction (Ontario) Ltd.;
- (d) Brown Daniels Associates Inc.;
- (e) Deciantis Construction Ltd.;
- (f) Devlan Construction Ltd.;
- (g) Everstrong Construction Ltd.;
- (h) Gateman-Milloy Inc.;
- (i) Greystone Project Management Inc.;
- (j) JR Certus Construction Co. Ltd.;
- (k) Les Bertram & Sons (1985) Ltd.;
- (l) Lisgar Construction Company;
- (m) M.J. Dixon Construction Ltd.;
- (n) Percon Construction Ltd.;
- (o) Quad Pro Construction Inc.;
- (p) Quinan Construction Ltd.;

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- (q) R.J.B. Construction (1989) Ltd.;
- (r) Rutherford Contracting Ltd.;
- (s) Shertine Construction Ltd.;
- (t) Silver Birch Contracting Ltd.;
- (u) Steelcore Construction Ltd.;
- (v) Tambro Construction Ltd.;
- (w) W.E. Marshall Construction (1986) Ltd.;
- (x) W.S. Morgan Construction Ltd.

1.3.2 Reserved.

1.3.3 Reserved.

1.3.4 Reserved.

1.3.5 The Owner reserves the right to issue one or more addenda naming additional Prequalified Contractors and/or additional prequalified Subcontractors.

1.3.6 Only Prequalified Contractors are eligible to participate in this Bid Process and to submit a Bid. Submissions received from those who are not a Prequalified Contractor will not be considered.

1.4 THE BID CONTRACT

1.4.1 The Bidders and the Owner acknowledge it is their intention to create a process contract, sometimes referred to as "Contract A" (the "**Bid Contract**"), between the Owner and each Bidder whose Bid meets all Mandatory Requirements. The Bidders and the Owner further acknowledge that if a Bid Contract is created between the Owner and one or more Bidders, the terms of the Bid Contract are represented by the Bid Documents and include an obligation on the successful Bidder, if any, to sign the Contract.

1.5 BIDDERS' EXPENSES

1.5.1 Bidders shall bear all costs and expenses incurred by them in any way related to any aspect of their participation or intended participation in this Bid Process including, without limitation, all costs and expenses related to a Bidder's involvement in:

- (a) due diligence, investigations, and information gathering processes;
- (b) attendances and/or participation at any and all site visits and/or meetings;
- (c) the preparation and submission of a Bid and responding to Requests for Additional Information.

2. DEFINITIONS

Capitalized terms used in the Instructions to Bidders and not otherwise defined in this Article or elsewhere in these Instructions to Bidders shall have the meanings ascribed to them in the Definitions to the Contract.

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All references in the Instructions to Bidders to “Article”, “Section” or “paragraph” shall, unless specifically indicated otherwise, refer to an Article, Section or paragraph of these Instructions to Bidders.

- 2.1.1 **“Adjusted Bid Price”** has the meaning set out in the table in paragraph 10.4.1.
- 2.1.2 **“Bid”** means all documents and information submitted through and/or uploaded to the Portal by a Bidder in response to and in accordance with these Instructions to Bidders, together with the documents and information specified in Section 9.4 and Section 10.2, where applicable.
- 2.1.3 **“Bidder”** means a Prequalified Contractor that participates in this Bid Process, whether or not it submits a Bid. The term **“Bidder”** also includes a Prequalified Contractor prior to the submission of its Bid.
- 2.1.4 **“Bid Contract”** means the contract described in paragraph 1.4.1 for the evaluation of Bids and the execution of the Contract, if any.
- 2.1.5 **“Bid Coordinator”** is the person identified as such in paragraph 1.2.1(i).
- 2.1.6 **“Bid Documents”** means the documents listed in paragraph 3.2.1.
- 2.1.7 **“Bid Price”** has the meaning set out in paragraph 9.2.1.
- 2.1.8 **“Bid Process”** means the procurement process described in the Bid Documents which commences with the issuance of these Instructions to Proponents and ends on the earliest of the following:
 - (a) the date on which the Contract is signed;
 - (b) the date on which the Bid Process is cancelled;
 - (c) the day after the expiry of the Irrevocability Period.
- 2.1.9 **“Board”** means the Board of Trustees of the Owner.
- 2.1.10 **“Conflict of Interest”** has the meaning set out in paragraph 13.2.1.
- 2.1.11 **“Contract”** means the written agreement to be signed between the Owner and the successful Bidder, in the form of CCDC 2 – 2008 stipulated price contract, as amended by Supplementary Conditions.
- 2.1.12 Reserved.
- 2.1.13 **“Irrevocability Period”** has the meaning set out in paragraph 1.2.1(f).
- 2.1.14 **“Local Time”** means the time measured and recorded on the Portal.
- 2.1.15 **“Mandatory Requirements”** means the mandatory requirements listed in paragraph 10.3.1.
- 2.1.16 **“MFIPPA”** means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario).
- 2.1.17 **“Owner”** means Simcoe County District School Board and includes its employees, agents, trustees, officers and directors, whether involved with the Bid Process or not, and includes the Board.
- 2.1.18 **“Place of the Work”** has the meaning set out in paragraph 1.1.1.
- 2.1.19 **“Portal”** has the meaning set out in paragraph 3.1.1.
- 2.1.20 **“Prequalified Contractor”** has the meaning set out in paragraph 1.3.1.
- 2.1.21 **“Question Deadline”** is the date identified as such in paragraph 1.2.1(c).
- 2.1.22 **“Reports”** has the meaning set out in paragraph 4.1.1.
- 2.1.23 **“Request for Additional Information”** has the meaning set out in paragraph 10.2.1.

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- 2.1.24 “**Security Documents**” has the meaning set out in paragraph 9.3.1.
- 2.1.25 “**Submission Deadline**” is the date and time identified as such in paragraph 1.2.1(e).
- 2.1.26 “**Supplementary Conditions**” means the Supplementary Conditions for the CCDC 2 – 2008 stipulated price contract included on the Portal.
- 2.1.27 “**Work**” means the total construction and related services described in the Bid Documents.

3. BID DOCUMENTS

3.1 ACCESS TO THE BID DOCUMENTS

- 3.1.1 The Bid Documents will be made available to Bidders through the online digital bidding system established for this Bid Process on the website hosted by eSolutions Group Limited at “www.bidsandtenders.ca” (the “**Portal**”). The Portal will include all Bid Documents as well as Reports and other relevant notices, information and communications.
- 3.1.2 Each Bidder is solely responsible to ensure that it:
 - (a) registers with and obtains access to the Portal; and
 - (b) has the appropriate software to access, input, download and upload contents from and to the Portal; and
 - (c) visits and reviews the Portal as frequently as is necessary to ensure that it has the most current information, documents and addenda.

Bidders are solely responsible for visiting and checking the Portal for new content and the Owner accepts no responsibility for any Bidder lacking any documents or information posted to the Portal.
- 3.1.3 If there is a conflict or inconsistency between an electronic version of any document included or posted to the Portal and any other version of the same document, whether in electronic or paper form, the electronic version on the Portal shall govern.

3.2 THE BID DOCUMENTS

- 3.2.1 Bidders should ensure they have and/or have access to all of the documents listed below (collectively the “**Bid Documents**”). A Bid will be deemed to have been prepared on the basis of all Bid Documents issued and posted to the Portal prior to the Submission Deadline, and the Owner accepts no responsibility for any Bidder lacking or not being able to access any part of the Bid Documents.
 - (a) Instructions to Bidders (this document).
 - (b) Supplementary Conditions.
 - (c) Specifications.
 - (d) Drawings.
 - (e) Addenda, if any.
- 3.2.2 Bidders should inform the Bid Coordinator immediately if any documents are missing or incomplete and/or upon finding any discrepancies or omissions in the Bid Documents.

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3.2.3 The Bid Documents are made available only for the purpose of submitting Bids for the Work. Availability and/or use of the Bid Documents does not confer a license or grant for any other purpose.

4. BIDDERS' DUE DILIGENCE

4.1.1 In addition to the Bid Documents, the Portal may include the Owner's information, data and environmental, geotechnical or other reports prepared or obtained with respect to the Place of the Work (collectively the "**Reports**"). The Reports should not be considered a representation of the conditions of the entire Place of the Work and are provided for general information and guidance purposes only. The Owner does not guarantee the accuracy or completeness of the Reports nor assumes any responsibility for any interpretations or conclusions that Bidders may make or draw from the Reports.

4.1.2 Nothing in this Bid Process or in the Bid Documents or in the Reports is intended to relieve Bidders from undertaking their own research, investigations or other due diligence, or forming their own opinions and conclusions with respect to the Work, the Place of the Work, the Bid Documents, the Contract, and all other matters related to this Bid Process. The Owner (a) does not accept or assume any responsibility for any interpretations or conclusions that Bidders may make or draw from the Bid Documents or the Reports, (b) does not represent, warrant or guarantee that the Bid Documents or the Reports are complete, accurate or comprehensive or exhaustive, and (c) assumes no responsibility for the completeness or accuracy of the Bid Documents or the Reports, or anything else provided or made available by the Owner during this Bid Process.

4.1.3 No allowances will be made for additional costs and no claims will be entertained in connection with:

- (a) conditions which could reasonably have been ascertained by the Bidders through investigation or other due diligence undertaken prior to the Submission Deadline; and/or
- (b) Work which is required and which is reasonably inferable from the Bid Documents and/or the Reports as being necessary.

5. COMMUNICATIONS, QUESTIONS AND ADDENDA

5.1 COMMUNICATIONS

5.1.1 Except as may be permitted in the Bid Documents, Bidders are not to communicate with or otherwise contact the Owner regarding this Bid Process at any time before execution of the Contract, if any. A Bidder's failure to comply with this paragraph may result in the disqualification of the Bidder and the rejection of its Bid.

5.1.2 Except where provided otherwise in these Instructions to Bidders, all communications (including questions) with the Owner permitted by this Bid Process are to be in writing and are to be submitted online through the Portal

5.2 BIDDERS' QUESTIONS

5.2.1 Bidders are encouraged to ask questions or request clarification with respect to any part of this Bid Process or any Bid Documents which do not appear to be clear. Questions received by the Question Deadline will be reviewed and if the Owner believes that a response is warranted, it will include the question and its answer in an addendum. Questions received after the Question

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Deadline may not be considered and may not be answered, although the Owner reserves the discretion, but has no obligation, to consider and respond to questions received after the Question Deadline. In responding to questions the Owner may answer similar questions from different Bidders only once, may edit or rephrase the questions, and may ignore questions which, in the Owner's opinion, do not require a response. All questions must be submitted through the Portal.

5.3 ADDENDA

5.3.1 This Bid Process and the Bid Documents may be amended only by written addendum posted to the Portal. Answers, responses, clarifications, instructions or any other information provided by any other means, by any person, in whatever context or setting, will not in any way bind the Owner or amend this Bid Process or any Bid Documents, and are not to be relied upon by any Bidder, unless and until they are posted to the Portal in the form of an addendum.

5.3.2 Addenda will be posted on the Portal only and will not be sent or otherwise distributed to the Bidders. Bidders are solely responsible:

- (a) to visit and review the Portal for addenda, and the Owner shall not be responsible if any addenda are not obtained by a Bidder;
- (b) to ensure they have received and that their Bid incorporates all addenda issued and posted to the Portal before the Submission Deadline and takes into account all resulting costs.

Bidders will be required to confirm their Bid incorporates all addenda by so indicating in their Bid.

6. MANDATORY SITE MEETING

6.1 MANDATORY ATTENDANCE

6.1.1 The Owner has scheduled a mandatory site meeting at the location, date and time specified in paragraph 1.2.1(a). The purpose of the meeting is to review the Bid Process and to provide those in attendance an opportunity to ask questions and tour the Place of the Work.

6.1.2 Attendance at the site meeting is mandatory:

- (a) for Bidders;
- (b) Reserved.

All persons attending the site meeting will be required to sign an attendance log to confirm their attendance.

6.2 CONSEQUENCES OF FAILING TO ATTEND THE MANDATORY SITE MEETING

6.2.1 Bids received from Bidders who fail to attend the mandatory site meeting, as determined from the attendance log, will not be considered.

6.2.2 Where the Owner has required that prequalified Subcontractors attend the mandatory site meeting, as indicated in paragraph 6.1.2(b), then, Bids that fail to carry a prequalified Subcontractor that attended the mandatory site meeting, as determined from the attendance log, will not be considered.

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6.3 INFORMATION OBTAINED AT THE MANDATORY SITE MEETING

6.3.1 Each Bidder acknowledges and agrees that:

- (a) notwithstanding the Owner may give answers and may provide information during the site meeting, such answers and information, whether in verbal or in written form, will not in any way bind the Owner or amend this Bid Process or any Bid Documents, and are not to be relied upon in any way by a Bidder, except and only to the extent expressly confirmed in an addendum;
- (b) anything said, written or done by the Owner or any other person, and any views or comments expressed in response to anything said or done during the site meeting, will not in any way bind the Owner or amend this Bid Process or any Bid Documents, and are not to be relied upon in any way by a Bidder except and only to the extent expressly confirmed in an addendum.

7. SITE INVESTIGATION BY BIDDERS

7.1.1 Each Bidder is solely responsible, at its own cost and expense, to carry out its own independent research and due diligence and to perform any investigations considered necessary by the Bidder to satisfy itself as to the existence and/or locations of utilities and underground services and all other existing conditions, circumstances and limitations affecting the Place of the Work, the Work, the Bid Documents, the Contract, and all other matters related to this Bid Process. The Bidders' obligations set out in this paragraph apply irrespective of the information contained in the Bid Documents or the Reports or that is made available to the Bidders during this Bid Process.

7.1.2 Bidders shall not undertake any investigation activities at the Place of the Work except as provided in this Article 7.

7.1.3 Bidders who would like an opportunity to undertake an investigation of the Place of the Work must submit an e-mail request to the Bid Coordinator. Such request must be received at least 2 business days before the Bidder's proposed date for the proposed investigation, provided that all investigations must be completed by the Question Deadline. The request must include:

- (a) the proposed date and time and alternate date and time for the proposed investigation;
- (b) the anticipated duration of the proposed investigation;
- (c) names, titles and contact information of who will be attending;
- (d) details of the proposed investigation, including who is proposed to carry out the investigation;
- (e) area(s) of the Place of the Work for which access is requested;
- (f) such other information as the Owner may reasonably require.

A Bidder's request will not be complete and an appointment for the investigation will not be scheduled until all of the required information has been provided.

7.1.4 If the Owner approves a Bidder's request to investigate the Place of the Work, the Owner will issue a written notification of the date and time on which the Bidder may attend at the Place of the Work, as well as the investigation activity(ies) which the Bidder is authorized to undertake, and the duration of such activity(ies). A representative of the Owner may attend to monitor the Bidder's activities.

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- 7.1.5 Bidders acknowledge that unforeseen circumstances may arise and the Owner may, in its sole discretion, cancel, reschedule and/or modify the Bidder's visit and/or investigation activities on short notice or no notice to the Bidder.
- 7.1.6 Each Bidder acknowledges and agrees:
- (a) that anything said, written or done by the Owner or its representatives, and any views or comments expressed in response to anything said or done during the investigation of the Place of the Work will not in any way bind the Owner or amend this Bid Process or any Bid Documents, and are not to be relied upon by any Bidder;
 - (b) to waive any and all right to contest, claim, complain, protest and/or dispute this Bid Process based on the fact that findings, information, results or data may have been obtained by another Bidder as a result of that Bidder's investigation of the Place of the Work, that were not obtained by, shared with, or provided to other Bidders.
- 7.1.7 Bidders shall, for their own forces and for their agents, consultants, contractors, subcontractors and all others attending at the Place of the Work with them or on their behalf:
- (a) assume overall responsibility for compliance with all aspects of the applicable workers' compensation and health and construction safety legislation and all related rules, regulations and practices, and shall ensure that appropriate occupational health and safety instruction and training are provided to all those attending the Place of the Work;
 - (b) perform only investigations authorized by the Owner;
 - (c) avoid disturbing and take all reasonable steps necessary to promote and maintain the safety of the occupants of the Place of the Work and any adjacent properties and the public in general;
 - (d) respect and comply with local regulations and the Owner's requirements regarding permitted work hours and noise levels;
 - (e) indemnify and save the Owner harmless from, and be responsible for, all claims, demands, losses, costs or damages related to or arising from any activities performed by the Bidder or anyone attending with or on behalf of the Bidder at the Place of the Work, whether or not authorized by the Bidder or the Owner.

8. DESIGNATED SUBSTANCES

- 8.1 Without limiting the obligations of the bidders set out in Article 5, where the Place of the Work is within or part of an existing building, bidders should note they may encounter designated substances such as lead, mercury, silica, asbestos-containing material ("ACM"), benzene, arsenic, etc. If applicable, a list of designated substances present at the Place of the Work has been provided to all bidders and, if ACM is included in the list of designated substances, a report has also been provided indicating the condition and location of any ACM that may be present at the Place of the Work (collectively the "OHS Reports").
- 8.2 In carrying out the Work under the Contract, bidders shall ensure they do not handle, deal with, disturb or remove any designated substance whether identified in the OHS Reports or not, unless included in the Work required by the Bid Documents. Should a bidder determine, prior to the Closing Date, that the Work cannot be completed without handling, dealing with, disturbing or removing any designated substance identified in the OHS Reports (and the Work does not otherwise require the bidder to handle, deal with, disturb and/or remove such substance), it shall

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immediately notify the Owner and the Consultant in writing so that, if necessary, instructions and/or clarifications may be issued in the form of an addendum.

- 8.3 All information provided to or obtained by bidders in connection with this bid process, including all Reports, Data and the OHS Reports, are and shall remain the property of the Owner and must be treated as confidential whether or not a contract is awarded, and which confidentiality obligations shall survive termination of the bid process. Such information is not to be used for any purpose other than submitting a Bid.

9. INSTRUCTIONS FOR BID COMPLETION

9.1 BID COMPLETION

- 9.1.1 Bids which are completed and/or submitted by any means other than as set out in this Article 9 will not be considered.

- 9.1.2 Bidders shall:

- (a) provide, input, post and/or upload all requested information and shall fill in all spaces and blanks on the Portal, as provided in Section 9.2; and
- (b) submit the Security Documents described in Section 9.3 in accordance with and as provided in Section 9.4.

- 9.1.3 Bidders shall ensure all required information and documents are submitted through and uploaded / posted to the Portal BEFORE the Submission Deadline. Bidders who fail to do so before the Submission Deadline will be unable to submit their Bid.

9.2 INSTRUCTIONS

- 9.2.1 Bid Price. Bidders shall input in the space provided on the Portal the fixed, all-inclusive lump sum price for the Work (the "**Bid Price**"). The Bid Price shall exclude the Harmonized Sales Tax (HST) but shall include all other applicable taxes and duties.

- 9.2.2 Listing Subcontractors.

- (a) If required, Bidders shall input a list of the Subcontractors proposed to perform or supply an item of the Work identified on the Portal. Failure to do so may result in the Bid being declared non-compliant.
- (b) Where the Owner has prequalified one or more Subcontractors to perform or supply an identified item of the Work, Bidders shall select only a prequalified Subcontractor to perform or supply that item of Work. Failure to do so may result in the Bid being declared non-compliant.
- (c) Where the Owner has required that prequalified Subcontractors attend the mandatory site meeting, as indicated in paragraph 6.1.2(b), Bidders shall select and carry only a prequalified Subcontractor that attended the mandatory site meeting, as determined from the attendance log. Failure to do so will result in the Bid being declared non-compliant.
- (d) Where a Bidder lists "own forces" in place of a Subcontractor, the Bidder shall perform such item of the Work with its own forces. In such case the Owner reserves the right to obtain information from the Bidder and from third parties respecting the qualifications and experience of the Bidder's own forces for such item of the Work. If the Owner determines,

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acting reasonably, that the Bidder's own forces are not qualified or experienced to perform such item of the Work, the Owner may declare the Bid non-compliant.

9.2.3 Unit, Separate, Itemized and Alternative Prices. If required, Bidders shall submit the following prices, all of which shall exclude the Harmonized Sales Tax (HST) but shall include all other applicable taxes and duties:

- (a) unit prices;
- (b) separate prices for work, if any, which is not included in the Bid Price and which the Owner may add for the amount(s) indicated;
- (c) itemized prices for Work, if any, which is included in the Bid Price and which the Owner may delete for the amount(s) indicated;
- (d) alternative prices for work, if any, which is not included in the Bid Price and which the Owner may substitute for Work which is included in the Bid Price for the amount(s) indicated.

The Owner reserves the right to accept or reject any or all unit, separate, itemized and alternative prices submitted, and such prices shall remain in effect for the duration of the Contract.

9.3 SECURITY DOCUMENTS

9.3.1 Each Bidder shall submit the form of bid security specified or permitted in paragraph 1.2.1(g), as further described in paragraph 9.3.2. Where applicable, Bidders shall also submit the agreement to bond / surety's consent specified in paragraph 9.3.3 (the bid security and, where applicable, the agreement to bond / surety's consent are collectively referred to as the "**Security Documents**").

9.3.2 Bid Security.

The bid security specified in paragraph 1.2.1(g) is a digital bid bond, the digital bid bond shall be in the amount of 10% of the Bid Price in the form CCDC 220 – 2002 naming "Simcoe County District School Board" as obligee and issued by a surety licensed to conduct surety and insurance business in Canada. The bid bond shall remain valid for at least the duration of the Irrevocability Period. No other form of bid bond is acceptable.

The bid security of the successful Bidder will be retained by the Owner as compensation towards the damages the Owner will suffer should the successful Bidder fail to sign the Contract and/or fail to provide the specified performance security and/or otherwise breach the Bid Contract.

9.3.3 Agreement to Bond / Surety's Consent. Each Bidder that submits bid security in the form of a digital bid bond shall also submit an agreement to bond or surety's consent issued by the same surety that provides the digital bid bond, undertaking to provide a performance bond and a labour and material payment bond, each in the amount of fifty percent (50%) of the Bid Price. The agreement to bond / surety's consent shall remain valid for at least the duration of the Irrevocability Period.

9.3.4 Bidders shall include the costs of all Security Documents in their Bid Price.

9.4 DELIVERY OF THE SECURITY DOCUMENTS

9.4.1 Each Bidder that intends to submit bid security in the form of a digital bid bond shall:

- (a) upload or post the digital bond described in paragraph 9.3.2 to the Portal; and

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- (b) upload or post to the Portal a scanned copy (in “pdf” format) of the agreement to bond or surety’s consent described in paragraph 9.3.3.

9.4.2 Reserved.

9.4.3 Bids that do not comply with this Section 9.4 will be declared non-compliant.

9.5 BID IRREVOCABILITY

9.5.1 Each Bid shall be irrevocable and shall remain open for consideration by the Owner for the duration of the Irrevocability Period.

10. EVALUATING BIDS

10.1 GENERAL

10.1.1 Bids will be reviewed and evaluated by the Owner in private.

10.1.2 Notwithstanding anything else contained in the Bid Documents, the award of the Contract, if any, shall be subject to the approval of the Board, in its sole and unfettered discretion. Bidders shall have no claims whatsoever against the Owner or the Board arising out of the exercise of authority by the Board, and/or in the event the Owner, in its sole and unfettered discretion, and for any or no reason, decides not to award the Contract.

10.2 REQUESTS FOR ADDITIONAL INFORMATION

10.2.1 The Bid Coordinator, on behalf of the Owner, may contact any one or more Bidders to request clarification of any information or documents submitted as part of a Bid, or to request supplementary information (collectively, “**Request for Additional Information**”), without any obligation to make the same or any Request for Additional Information of any other Bidder. Notwithstanding the preceding sentence, the Owner has no obligation to make any Request for Additional Information.

10.2.2 Bidders shall respond to all Requests for Additional Information within the time and in the manner stipulated in each Request for Additional Information, and any response received will form an integral part of a Bidder’s Bid. If a Bidder fails to respond to a Request for Additional Information, its Bid will be considered and evaluated based solely on the original Bid contents submitted.

10.2.3 A Bidder’s response to a Request for Additional Information shall not be an opportunity for the Bidder to either correct errors or to change its Bid in any substantive manner. Subject to that, information, prices, rates and documents submitted in response to a Request for Additional Information shall form part of a Bidder’s Bid.

10.3 MANDATORY REQUIREMENTS

10.3.1 Subject to paragraph 10.3.2, only Bids which are submitted through the Portal before the Submission Deadline and which meet all of the mandatory requirements listed below (collectively, the “**Mandatory Requirements**”) on a “pass/fail” basis will be eligible for evaluation and award of the Contract:

- (a) the Bidder is a Prequalified Contractor; and

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- (b) the Bidder attended the mandatory site meeting, as determined from the attendance log; and
- (c) where the Owner has required that prequalified Subcontractors attend the mandatory site meeting, as indicated in paragraph 6.1.2(b), the Bid includes prequalified Subcontractor(s) that attended the mandatory site meeting, as determined from the attendance log;
- (d) the Bid includes the specified Security Documents and complies with Section 9.4; and
- (e) the Bid substantially complies with the requirements of the Bid Documents. In this respect, the Owner reserves the right, in its sole and unfettered discretion, to waive minor errors and matters of non-compliance contained in a Bid.

10.3.2 If all Bids fail at least one of the Mandatory Requirements the Owner, in its sole discretion, may:

- (a) evaluate one or more Bids and proceed with the Bid Process and treat such Bid(s) as having met all of the Mandatory Requirements; and/or
- (b) negotiate a Contract for the whole or any part of the Work with any Bidder; and/or
- (c) take any action in accordance with paragraph 12.2.1.

10.4 EVALUATION

10.4.1 Only Bids which pass all of the Mandatory Criteria or that are selected in accordance with paragraph 10.3.2(a) will be evaluated.

10.4.2 Reserved

10.4.3 It is the intent of the Simcoe County District School Board that a compliant bid submitted by a Bidder with the lowest base bid price be awarded the contract.

10.4.4 If there is a tie in the evaluation of two or more Bids, the tie will be broken by a coin toss or by the drawing of lots performed by the Owner in the presence (in person or virtually) of the tied Bidders.

11. AWARD OF THE CONTRACT, DOCUMENTS TO BE DELIVERED, AND SIGNING THE CONTRACT

11.1 AWARD OF THE CONTRACT

11.1.1 Subject to receiving the approval of the Board, and subject to the other provisions of the Bid Documents, if the Owner decides to award the Contract it will issue an award letter to the Bidder that submitted the Bid which received the highest Evaluation Score.

11.2 DOCUMENTS TO BE DELIVERED

11.2.1 Within 10 business days of receiving an award letter from the Owner the successful Bidder shall deliver to the Owner:

- (a) where the Bidder submitted an agreement to bond / surety's consent, the Bidder shall deliver the performance bond and the labour and material payment bond described in the Bid Documents, the forms of such bonds to comply with the requirements of the Contract;
- (b) certified true copies of the insurance policies required by the Contract or certificates of insurance, at the option of the Owner;

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- (c) the Bidder's current WSIB clearance certificate;
- (d) the Bidder's health and safety policy for the Work; and
- (e) a copy of the notice of project issued by the Ministry of Labour naming the Bidder as the "constructor" for the Work.

11.2.2 A Bidder's failure to comply with paragraph 11.2.1 will constitute a breach of the Bid Contract.

11.3 SIGNING THE CONTRACT

11.3.1 The successful Bidder shall sign the Contract and shall deliver the signed original to the Owner within 10 business days of the Bidder's receipt of the execution copy of the Contract. A Bidder's failure to comply with this paragraph will constitute a breach of the Bid Contract.

12. OWNER'S RIGHTS

12.1 GENERAL

12.1.1 In addition to any other express rights contained in the Bid Documents or any other rights which may be implied in the circumstances, the Owner reserves the right to exercise any or all or a combination of the rights described in this Article. The Owner shall not be liable for any costs, expenses or damages incurred or claimed by a Bidder resulting from the Owner's exercise of any of its rights.

12.1.2 A Bidder's submission or the Owner's evaluation of any Bid, even where only one Bid is submitted before the Submission Deadline and even where only one Bid meets all Mandatory Requirements, will not obligate the Owner to accept any Bid, award the Contract, or proceed further with this Bid Process.

12.2 THE OWNER'S RIGHTS

12.2.1 The Owner may, in its sole discretion, and for any or no reason:

- (a) reject any or one or more or all Bids, even if only one Bid is received;
- (b) reject the whole or any part of any Bid;
- (c) accept the whole or any part of a Bid;
- (d) if only one Bid meets all of the Mandatory Requirements, elect to accept or reject all or any part of it;
- (e) cancel this Bid Process at any time before the award of the Contract;
- (f) cancel this Bid Process at any time before the award of the Contract and issue a new procurement process for work which is same or similar to the Work, with the same or different participants.

12.2.2 The Board reserves the right to disqualify a Bidder and reject a Tender on the basis of: (I) past performance on previous Contracts awarded by the Simcoe County District School Board; (II) other relevant information that arises during this RFT Process, or (III) information provided by references.

12.2.3 The Owner reserves the right to:

- (a) waive minor errors and matters of non-compliance contained in a Bid;

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- (b) adjust an Evaluation Score or reject a Bid on the basis of information received in response to a Request for Additional Information;
- (c) disqualify any Bidder whose Bid contains misrepresentations or any other inaccurate or misleading information relating to matters which the Owner, in its sole discretion, considers material;
- (d) Reserved.

13. GENERAL

13.1 PROHIBITION ON LOBBYING AND COLLUSION

13.1.1 Bidders and their directors, officers, employees, consultants, agents, advisors and other representatives are strictly prohibited from engaging in conduct which is or could reasonably be considered as any form of political or other lobbying, or as an attempt to influence the outcome of this Bid Process. Without limiting the generality of the foregoing, and except as provided in the Bid Documents, no such person shall contact, communicate with or attempt to contact or communicate with, directly or indirectly and in any manner whatsoever, any staff, personnel or representative of the Owner or the Board in connection with this Bid Process, including for the purpose of:

- (a) commenting on, or attempting to influence the views on, the merits of the Bidder's Bid, or in relation to the Bids of other Bidders;
- (b) influencing or attempting to influence the evaluation of the Bids;
- (c) promoting the Bidder or its interests, including in preference to that of other Bidders;
- (d) commenting on or criticizing aspects of this Bid Process, the Bid Documents, the Work, or the Contract, including in a manner which may give the Bidder a competitive or other advantage over other Bidders;
- (e) criticizing other Bidders or the Bids of other Bidders.

13.1.2 Bidders and their directors, officers, employees, consultants, agents, advisors and other representatives are prohibited from communicating with or attempting to contact or communicate with, directly or indirectly and in any manner whatsoever, any information whatsoever regarding the preparation of a Bid to any other Bidder.

13.1.3 Failure of a Bidder to comply with this Section may result in the disqualification of the Bidder and the rejection of its Bid.

13.2 CONFLICT OF INTEREST

13.2.1 Bidders shall disclose all perceived, potential and actual Conflicts of Interest. For the purposes of this Bid Process, "**Conflict of Interest**" includes:

- (a) any situation or circumstances where, in relation to this Bid Process, the Work, and/or the Contract, the Bidder's other commitments, relationships or financial interests could or could be perceived to exert an improper influence over the objective, unbiased and impartial exercise of independent judgment by any member or representative of the Owner or the Board;
- (b) any situation or circumstances where any person employed by the Owner in any capacity:
 - (i) has a direct or indirect financial or other interest in any Bidder;

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- (ii) is an employee or a consultant to or under contract to any Bidder;
- (iii) is negotiating or has an arrangement concerning future employment or contracting with any Bidder;
- (iv) has an ownership interest in or is an officer or director or partner of any Bidder.

13.2.2 If a Bidder discovers, before or after the Submission Deadline, any perceived, potential or actual Conflict of Interest, the Bidder shall immediately send a written statement to the Bid Coordinator describing the perceived, potential or actual Conflict of Interest, along with a written proposal that, if implemented, would address the identified perceived, potential or actual Conflict of Interest. The Owner will review the Bidder's written statement and proposal and, without limiting the generality of Article 12, the Owner may, in its sole discretion:

- (a) disqualify the Bidder from participating in this Bid Process and reject its Bid;
- (b) waive any and all perceived, potential or actual Conflict of Interest upon such terms and conditions as the Owner, in its sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately managed, mitigated and minimized.

13.2.3 Failure of a Bidder to comply with this Section may result in the disqualification of the Bidder and the rejection of its Bid.

13.3 CONFIDENTIALITY, DISCLOSURE AND MFIPPA

13.3.1 All information provided by or obtained from the Owner in connection with this Bid Process, the Work, and/or the Contract, including all Reports, is and shall remain the property of the Owner and must be treated as confidential, and such confidentiality obligations shall survive the Bid Process. Such information is not to be used for any purpose other than responding to this Bid Process and, upon conclusion of this Bid Process, if requested by the Owner, Bidders shall return all such information.

13.3.2 Bidders acknowledge that the contents of their Bids will be disclosed within the Owner's organization and/or to the Owner's consultants and advisors. The Owner will use reasonable efforts to protect sensitive and confidential information provided by the Bidders, however, the Owner shall not be liable in any way whatsoever if such information, or any part of it, is disclosed, even if the Owner, its consultants, advisors, staff or any other person associated with them may have been negligent with respect to such disclosure. By submitting a Bid each Bidder agrees to such disclosure and releases the Bid Coordinator and the Owner from any liability for the same.

13.3.3 The Owner may be required to disclose parts or all of a Bid pursuant to the provisions of MFIPPA or other legislation. Subject to the provisions of such legislation, the Owner will use reasonable efforts to safeguard the confidentiality of any information identified by a Bidder as confidential, however, the Owner shall not be liable in any way whatsoever if such information is disclosed based on an order or decision made under such legislation or any other applicable law. By submitting a Bid each Bidder agrees to such disclosure and releases the Bid Coordinator and the Owner from any liability for the same.

13.4 DEBRIEFING

13.4.1 Following the conclusion of this Bid Process, and provided the Contract has been signed, the Owner will offer separate debriefings to unsuccessful Bidders, but only if requested in accordance with paragraph 13.4.2. Debriefings will be held in person or by telephone conference call, at the

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Owner's discretion, and will be scheduled on a date and time and for a duration to be confirmed by the Owner.

13.4.2 If an unsuccessful Bidder desires a debriefing it shall submit a written e-mail request to the Bid Coordinator within sixty (60) days after the expiry of the Irrevocability Period, failing which no debriefing will be provided.

13.4.3 Evaluations and scoring of Bids are confidential and during a debriefing the Owner will not provide critiques or discuss the scores or the merits of any Bid other than the Bid submitted by the Bidder that requested the debriefing.

13.5 PUBLIC STATEMENTS

13.5.1 Bidders shall not publish, issue, advertise, distribute or make any statements, postings, blogs or releases, electronic or otherwise, concerning their or any other Bid, the Bid Process, the Contract, the evaluation of Bids, or the award of the Contract, without the Owner's prior express written consent. A Bidder's failure to comply with this paragraph may result in the disqualification of the Bidder and the rejection of its Bid.

13.6 AWARD DOES NOT CONSTITUTE ENDORSEMENT

13.6.1 The Owner's award of the Contract, if any, does not constitute a general endorsement of the successful Bidder's work or services.

13.7 LIMIT OF LIABILITY

13.7.1 Each Bidder agrees that the liability of the Owner to any Bidder and the aggregate amount of damages recoverable against the Owner for any and all claims relating to or arising from this Bid Process including:

- (a) claims arising from negligence, wilful misconduct or other conduct; and/or
- (b) claims arising from a breach of the Bid Contract or any other contractual or other relationship or obligation that may arise as a result of a Bidder's participation in this Bid Process and/or submission of a Bid,

shall be limited to the Bidder's reasonable demonstrated costs of preparing its Bid.

13.8 DISPUTES

13.8.1 If a dispute arises in connection with this Bid Process including, without limitation, a dispute concerning the existence of the Bid Contract or a breach of the Bid Contract, or a dispute as to whether a Bid meets the Mandatory Requirements, the parties to the dispute agree:

- (a) to use their best efforts to resolve the dispute through amicable and good faith negotiations for a period of at least fifteen (15) days, having such written and oral communications and meetings as appropriate;
- (b) if the dispute is not resolved through negotiations the Owner, in its unqualified subjective discretion, may refer the dispute to confidential final binding arbitration before a single arbitrator, selected by the Owner, to be held at Barrie, Ontario pursuant to the *Arbitration Act, 1991* (Ontario), as amended. If the Owner refers the dispute to arbitration, each Bidder agrees that it is bound to arbitrate such dispute. Unless the Owner refers such dispute to arbitration, there shall be no arbitration of such dispute.

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- 13.8.2 The Owner may give notice of a dispute to one or more Bidders, each of whom shall be a party to and shall be entitled to participate in the negotiation and/or arbitration, as the case may be and, in the case of arbitration, each of whom shall be bound by the arbitrator's award, whether or not they participated in the arbitration.

- 13.8.3 If the Owner refers a dispute to arbitration, the parties to the arbitration shall exchange brief statements of their respective positions on the dispute, together with the relevant documents, and submit to an arbitration hearing which shall last no longer than two (2) days, subject to the discretion of the arbitrator to increase such time. The parties to the arbitration further agree that the arbitrator's award shall be final and binding and shall not be subject to appeal. The costs of the arbitrator and the venue shall be shared equally among the parties to the arbitration.

END OF DOCUMENT