

## Part “B” Standard Terms and Conditions

### 1. Definitions

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| Bid             | The document issued by the County in response to which Quotations/Tenders/Proposals are invited for the performance of the work or supply of equipment.   |
| Bidder          | A person (s), firm(s) or corporation(s) who has submitted a bid.  |
| Company         | The person(s), firm(s) or corporation(s) to whom the County has awarded the contract.   |
| Contract        | The purchase order authorizing the company to do the work, the Quotation/Tender/Proposal, the bonds or security (if any), the company's Quotation/Tender/Proposal, and change notices, appendices, and addenda (if any), Formal contract. |
| County          | The County of Peterborough, its successors and assigns.   |
| Equipment       | The materials, machinery, assemblies, instruments, devices or articles as the case may be, or components thereof, which are the subject of the contract.  |
| Notice of Award | Notice provided to the successful bidder of contract award.   |
| Subcontractor   | A person(s), firm(s) or corporation(s) having a contract with the company for any part of the work.   |
| Work            | All materials, equipment fixtures, services, supplies, and acts required to be done, furnished and/or performed by the company.   |

### 2. Bid Closing Time

One copy of the bid document, or as otherwise requested herein, properly signed and sealed and **clearly marked with the bid number and name**, shall arrive at the office of the Clerk of the County, County Court House, 470 Water Street, Peterborough, Ontario, K9H 3M3 no later than the specified time and closing date indicated on the cover page of the document. Late bids shall not be accepted; however they shall be time and date stamped and returned to the Bidder unopened.

The Peterborough County Court House time mechanism will be considered the official time when determining exact time of submission.

### 3. Document Fees

When a document fee is applicable, the Bidder must have previously purchased the respective document.

See Part “A” Information to Bidders, which forms part of this bid document.

#### **4. Bid Requirements**

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

- a) Bids must be submitted on the bid form supplied by the County. Bid submissions must not be restricted by a statement added to the bid form or by a covering letter, or by alterations to the bid form supplied unless otherwise provided in the bid document.
- b) Bid submissions shall consist of "Part "D" Bid Form" and all other sections and requirements as requested within the bid document. See "Part "D" Bid Form" for all requirements requested within the bid document.
- c) The Bid Form shall be signed in the space(s) provided by a duly authorized official of the entity bidding. If a joint Bid is submitted, it shall be signed on behalf of each of the Bidders and if the signing authority for both Bidders is vested in one individual, he/she shall sign separately on their behalf. Signatures on behalf of non-incorporated bodies or by individuals shall be witnessed. In the case of an incorporated Company, the corporate seal should be affixed to the Bid Form adjacent to the authorized signature.
- d) Bids must be legible, written in ink or typewritten. Erasures, over-writing or strikeouts must be initialed by the person signing on behalf of the Company.
- e) Adjustments by telephone, facsimile (Fax), e-mail or letter to a bid already submitted will not be considered. A bidder desiring to make adjustments to a bid must withdraw the bid and/or supersede it with a later bid submission prior to the specified bid closing time.
- f) Bids must be submitted in individually sealed envelopes and must clearly identify the name of the company, address of company, and Bid number on the outside of the envelope. Quotation/Tenders/Proposals received after closing time specified in the bid document will not be considered.

#### **Faxed Bid Submissions are not acceptable**

- g) Delivery of the Bid submission through a Courier Service shall be the responsibility of the Bidder and shall result in the submission being rejected where:
  - i. Bid submission is delivered to a location other than which is stated on the submission and fails to be delivered to the County of Peterborough's Office of the Clerk prior to the closing date and time; and/or
  - ii. Bid submission which is enclosed in the Courier Envelope that does not state, "Bid Document Enclosed" and is not removed from the Courier's Envelope prior to the closing date and time; and/or
  - iii. Bid submission is delivered later than the closing date and time.

- h) Each item in the bid document shall be a reasonable price for such item. Bids that contain prices which appear to be unbalanced as to affect adversely the interest of the County may be rejected. The County will be the sole judge in this matter.

## **5. Bidder's Statement of Understanding**

It is understood that the Bidder has carefully examined all of the bid documents and have carefully examined the Work to be performed under the Contract if awarded. The Bidder also understands and accepts the said bid documents, and for the prices set forth in the Bid, hereby offers to furnish all labour, machinery, tools, apparatus and other means of implementation, and materials to complete the terms and conditions and requirements in strict accordance with the bid documents.

None of the conditions contained in the Bidder's (seller's) standard or general (printed) conditions of sale shall be of any effect unless explicitly agreed to by the County as set forth or specifically referred to therein.

The Bidder declares that his submission is not made in connection with any other bidder submitting an offer for the same commodity or commodities, and is in all respects fair and without collusion and fraud.

The contract shall be governed and interpreted in accordance with the laws of the Province of Ontario.

## **6. Clarification of Bid Documents**

No officer, agent or employee of the County is authorized to alter orally any portion of these documents. During the period prior to submission of Quotations/Tenders/Proposals, alterations will be issued to Bidders as written addenda. The Bidder shall list in its Bid all addenda that were considered when its Quotation/Tender/Proposal was prepared.

The County will issue all written addendum to the bid documents to each bidder or prospective Bidder via e-mail, Fax or electronic posting.

Bidders are required to confirm receipt of each addendum. Although the County will make every reasonable effort to ensure that each Bidder receives all addenda issued, it is each Bidder's ultimate responsibility to ensure all addenda have been received.

## **7. Bid Deposit Requirements**

Bidders may be required to submit a bid deposit with each bid, which must be in the same envelope as the bid.

See Part "A" Information to Bidders, which form part of this bid document.

## **8. Performance Surety Requirements**

Performance surety binding the Company faithfully to fulfill the obligations of his/her bid as accepted, may be required by the County within ten (10) working days from the date of request.

See Part "A" Information to Bidders, which form part of this bid document.

## **9. Insurance and Workplace Safety Insurance Board**

The successful bidder shall deliver a certified copy of the Firm's Public Liability and Property Damage Insurance, and where applicable the bidder shall carry standard automobile and non-owned automobile liability insurance Policy for the works, within ten (10) working days of receiving the Acceptance Notice. Coverage shall be at least \$2,000,000.00 per incident, with the County of Peterborough named as insured. Additional coverage may be required.

See Part "A" Information to Bidders, which form part of this bid document for additional requirements.

The successful bidder will be required to submit proof of Workplace Safety Insurance Board Coverage, within ten (10) working days of receiving the Acceptance Notice and shall provide additional certificates as often as is deemed necessary by the County during the term of the contract to ensure continued good standing with the Workplace Safety & Insurance Board.

Failure to provide such proof shall result in cancellation of the Contract.

## **10. Proof of Ability**

The Bidder may be required to show, in terms of experience and facilities, evidence of its ability, as well as that of any proposed subcontractor, to perform the work by the specified delivery date.

## **11. Document and Site Review**

Bidders may be required to attend a mandatory document and site visit with the Owner.

See Part "A" Information to Bidders, which form part of this bid document.

The Submission of a Bid shall indicate that the bidder agrees and warrants that he has examined the site and all conditions relevant thereto, and all the separate documents, drawings, specifications and addenda and that the bid submitted covers the cost of all the items required in the contract. No claims for extras will be entertained on account of conditions, which could be observed on the site at the time bids were submitted.

See Part "C" Specifications, which form part of this bid document.

## **12. Pricing Requirement**

Prices shall be in Canadian Funds, quoted separately for each item stipulated F.O.B. the point specified therein.

All prices bid shall include applicable taxes, customs duty, excise tax, freight, insurance and all other charges of every kind attributable to the work. Harmonized Sales Tax shall be shown as extra, unless otherwise specified. If the Bidder intends to manufacture or fabricate any part of the work outside of Canada, it shall arrange its shipping procedures so that its agent or representative in Canada is the Importer of record for customs purposes.

Except as may be provided in Part "C" Specifications, in the Quotation/Tender/Proposal document, the prices bid shall not be subject to adjustment for any cost of the work to the Company.

In the event of any discrepancy between the unit price and the extension, the unit price shall govern.

### **13. Terms of Payment**

Unless progress payments or any alternate payment terms are specified in the contract, the contract price may be invoiced after delivery and shall be payable 30 days from receipt of invoice. The effect of any alternative payment terms, stated clearly in the bid submission will be considered in the evaluation of bids. The County shall have the right to withhold from any sum otherwise payable to the Company such amount as may be sufficient to remedy any defect or deficiency in the work, pending correction of the same.

### **14. Terms of Payment – For Construction Projects**

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, 1990, or its latest edition.

After performance acceptance of the work, and in accordance with the Construction Lien Act, 1990, or its latest edition, the holdback will be paid (after the hold back period and in the absence of no claims), to the Company upon receipt of a Statutory Declaration that all accounts and labour have been paid in full, receipt of a Workplace Safety & Insurance Certificate of Clearance and receipt of all "As Built" drawings and maintenance manuals, where applicable. Upon inspection and correction of any deficiencies at the end of the maintenance period, to the satisfaction of the Director or designate the Performance Sureties will be returned to the Company.

A two year warranty period will be in effect upon substantial completion of the works. Two and a half percent (2.5 %) of the 10% lien holdback will be retained by the Owner as warranty surety for the duration of the warranty period.

All payments will be made within thirty (30) days from receipt of an approved invoice. All invoices must be approved by the Director or designate.

### **15. Delivery**

Time shall be material and of the essence of the contract.

All bids shall be F.O.B. Destination, Peterborough, Ontario unless otherwise noted in the bid document. The Company shall be responsible for arranging its work so that completion shall be as specified in the contract.

## **16. Patents and Copyrights**

The Company shall at its expense, defend all claims, actions or proceedings against the County based on any allegations that the work or any part of the work constitutes an infringement of any patent, copyright or other proprietary right and shall pay to the County all costs, damages, charges and expenses, including its legal fees.

The Company shall pay all royalties and patent license fees required for the work.

If the work or any part thereof is in any action or proceeding held to constitute an infringement, the Company shall forthwith either secure for the County the right to continue using the work, or shall at the Company's expense, replace the infringing items with non-infringing work or modify them so that the work no longer infringes.

## **17. Assignment**

The Company shall not assign the contract or any portion thereof without the prior written consent of the County.

## **18. Occupational Health and Safety Act**

The successful bidder, 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 bidder has been referred to as the 'Company' in this and any other related document.

The Company acknowledges that he/she has read and understood the Occupational Health and Safety Act together with the County's Health and Safety Policies and Procedures.

The Company covenants and agrees to observe strictly and faithfully the provisions of the said Occupational Health and Safety Act and all regulations and rules promulgated there under together with the County's Health and Safety Policies and Procedures. The Company agrees to indemnify and save the County harmless for damages or fines arising from any breach or breaches of the said Occupational Health and Safety Act and/or the County's Health and Safety Policies and Procedures.

The Company agrees to assume full responsibility for the enforcement of the said Occupational Health and Safety Act and the County's Health and Safety Policies and Procedures and to ensure compliance therewith.

The Company further acknowledges and agrees that any breach or breaches of the Occupational Health and Safety Act and/or the County's Health and Safety Policies and Procedures whether by the Company or any of its sub-contractors may result in the Company 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 Company by the County.

The Company shall allow access to the work site on demand to representatives of the County to inspect work sites to ensure compliance with the Contract and the County's Policies and Procedures.

The Company agrees that any damages or fines that may be assessed against the County by reason of a breach or breaches of the Occupational Health and Safety Act by the Company or any of its sub-contractors will entitle the County to set-off the damages so assessed against any monies that the County may from time to time owe the Company under this contract or under any other contract whatsoever.

Where any portion of the work or services in this Contract is contracted to a sub-contractor, the Company agrees that the provisions of this section will apply to the sub-contractor and the Company will enforce said provisions.

The Company 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 agents 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.

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

The County 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.

## **19. Laws, Regulations, Permits, Fees and Licences**

The Company shall comply with relevant federal, provincial and municipal statutes, regulations and by-laws pertaining to the work and its performance. The Company shall be responsible for ensuring compliance by its suppliers and subcontractors.

The contract shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

The Company shall pay for all permits, licenses and fees, and give all notices and comply with all by-laws and regulations of the County and any other governing body.

## **20. Substitutes and Alternates**

Unless qualified by the provision "No Substitute", the use of the name of a manufacturer, brand, make or catalogue designation in specifying an item does not restrict bidders to that manufacturer, brand, make or catalogue designation identification. This is used simply to indicate the character, quality and/or performance of the goods and/or services desired, but the goods and/or services 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 goods and/or services other than as specified, the bidder must furnish complete data and

identification with respect to the alternate goods and/or services he/she proposes to furnish.

Consideration will be given to bids submitted on alternate goods and/or services to the extent that such action is deemed to serve the best interests of the County. If the bidder does not indicate that the goods and/or services he/she proposes to furnish is other than specified, it will be construed to mean that the bidder proposes to furnish the exact goods and/or services as described in the bid document.

## **21. Quantities**

Where quantities are shown as approximate, they are not guaranteed to be accurate and are furnished without any liability on behalf of the County and shall be used as a basis for comparison only.

## **22. Samples**

Samples when required must be submitted strictly in accordance with instructions. If samples are requested subsequent to the opening of the bid, they shall be delivered within three (3) working days following request, unless additional time is granted. Samples must be submitted free of charge and will be returned at the bidder's expense, if so requested, provided they have not been destroyed by tests, or provided they are not required for comparison purposes.

The acceptance of samples by the County shall be at its sole discretion and any such acceptance shall in no way be construed to imply relief of the Company from its obligations under the contract.

## **23. Quotation/Tender/Proposal Procedures**

Quotation/Tender/Proposal will be called, received, evaluated, accepted and processed in accordance with the County's Purchasing Policies.

## **24. Contract Award**

The County reserves the right to award by item, or part thereof, groups of items, or parts thereof, or all items of the bid, and to award contracts to one or more bidders submitting identical Bids as to price; to accept or reject any Bids in whole or in part; to waive irregularities and omissions. The County also reserves the right to enter into negotiations with the lowest compliant bidder if the price bid is over the budgeted amount of the project. Should the County be unable to reach an agreement with the lowest compliant bidder, the County reserves the right to enter into negotiations with the next lowest compliant bidder, or to cancel the call. If in so doing, the best interests of the County will be served. No liability shall accrue to the County for its decision in this regard.

The lowest or any bid may not necessarily be accepted as the County of Peterborough reserves the right to reject any or all bids. Bids shall be irrevocable for 90 days after the official closing time and the County may at any time within that period without notice, accept a Bid whether any other Bid has been previously accepted or not.

All Bids are prepared at the sole risk and cost of the bidders. No payments shall be made to any bidder regarding the preparation and submission of Bids.



Award of this contract is subject to appropriate funding acceptable to the County.

The Notice of Award to the successful bidder shall constitute notice of acceptance of contract. This acceptance shall be conditional on the bidder providing all documentation, security and certifications as required by the Bid Document within ten (10) working days of the date that the notice of award is placed in the mail or delivered to the bidder. The bidder to whom the contract is awarded will be issued a purchase order, or a blanket purchase order may be required to execute a contract in triplicate within ten (10) working days from the date of notice of award by the County.

Notwithstanding and without restricting the generality of the statements above, the County of Peterborough shall not be required to award or accept a tender, and may choose to either cancel the call for tenders or recall the tenders at a later date

- a) When only one Bid has been received as the result of a tender call;
- b) Where the lowest responsive and responsible bidder exceeds the available project budget for the supplies or services;
- c) When all Bids received fail to comply with the specifications of the tenders terms and conditions;
- d) When a change in the scope of work or specifications is required

## **25. Contract Cancellation**

The County shall have the right, which may be exercised from time to time to cancel any uncompleted or unperformed portion of the work or part thereof. In the event of such cancellation, the County and the Company shall negotiate a settlement.

- a) If the Company; commits any act of bankruptcy; or if a receiver is appointed on account of its insolvency or in respect of any of its property; or if the Company makes a general assignment for the benefit of its creditors; then, in any such case, the County may, without notice; terminate the contract.
- b) If the Company; fails to comply with any request, instruction or order of the County; or fails to pay its accounts; or fails to comply with or persistently disregard statutes, regulations, by-laws or directives of relevant authorities relating to the work; or fails to prosecute the work with the skill and diligence; or assigns or sublets the contract or any portion thereof without the County's written consent; or refuses to correct defective work; or is otherwise in default in carrying out its part of any of the terms, conditions and obligations of the contract, then, in any such case, the County may, upon expiration of ten (10) days from the date of written notice to the Company, terminate the contract.
- c) Any termination of the contract by the County, as aforesaid, shall be without prejudice to any other rights or remedies the County may have.
- d) If the County terminates the contract, it is entitled to:
  - i. Take possession of all of the work in progress and finish the work by whatever means the County may deem appropriate under the circumstances;

- ii. Withhold any further payments to the Company until its liability to the County is ascertained;
- iii. Recover from the Company loss, damage and expense incurred by the County by reason of the Company's default (which may be deducted from any monies due or becoming due to the Company, any balance to be paid by the Company to the County).

The County shall not be liable to the Company for loss of anticipated profit on the cancelled portion or portions of the work.

## **26. Availability of Labour and Escalation**

The bidder shall fully inform himself regarding availability of labour in the area relative to the requirements of the schedule. The bidder shall make his own assessment of escalation in costs and increased labour costs and include all of these costs in his bid.

## **27. Correction of Defects**

If at any time prior to one year (or specified warranty/guarantee period if longer than one year) after the actual delivery date of the equipment any part of the equipment becomes defective or is deficient or fails due to defect in design, material or workmanship, or otherwise fails to meet the requirements of the contract, then the Company, upon request, shall make good every such defect, deficiency or failure without cost to the County. The Company shall pay all transportation costs for parts and/or equipment both ways between the Company's factory or repair depot and the point of use.

## **28. Disclosure**

The names of bidders and total bid prices will be made available at the public Quotation/Tender opening. After the Quotation/Tender opening, requests may be submitted to the County for the results, and only the names of bidders and total bid prices as read out at the Quotation/Tender opening will be given in the reply.

Request for Proposals are formally opened in public and only the name of the bidders submitting responses to the Request for Proposal will be read. Details of the proposals or any financial information will not be publicly disclosed at the opening.

## **29. Freedom of Information**

All information obtained by the Company in connection with this bid is the property of the County of Peterborough and must be treated as confidential. It may not be used for any purpose other than for replying to this bid, and for fulfillment of any subsequent contract. Any Company who requires that the information in its bid be kept confidential must explicitly advise the County of that fact.

The Company may declare confidentiality of their bid; however, the County is required by law to adhere to the requirements of the Municipal Freedom of Information and Protection of Privacy Act, as amended.

Personal information contained on this bid form is collected under the authority of Section 29(2) of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.M.56 as amended and will be used to purchase goods and/or services and for the execution of contractual documents. If you have any questions about the

collection, use or disclosure of this information by the County of Peterborough, please contact the CAO or Clerk, County of Peterborough, 470 Water Street, Peterborough, Ontario K9H 3M3 (705-743-0380).

### **30. Complaints**

Any complaint on the process and procedures as outlined in the County's Purchasing Bylaw (as amended) to define the procedures with respect to the procurement of goods and services by the Corporation of the County of Peterborough shall be in writing and shall be submitted to the Director, Procurement, Facilities and Communication for review and response.

A complaint on the process and procedures related to the award of a tender, proposal or quotation must be submitted within seven (7) working days of the date of the award.

### **31. Accessibility**

The County of Peterborough is committed to the accessibility principles of preventing and removing barriers in accessing goods and services for people with disabilities and is bound by the Standards under the Accessibility for Ontarians with Disabilities Act, 2005 as may be amended from time to time.

Regulations enacted under the Act apply to every designated public sector organization and other third parties that provide goods and services to the members of the public.

The consultant/contractor, and all sub-contractors hired by the consultant/contractor in the completion of its work, will meet or exceed compliance with all applicable regulations under the Accessibility for Ontarians with Disabilities Act, 2005 as may be amended from time to time.

It is the consultant/contractor's responsibility to ensure they are fully aware of, and meet all requirements under the Act. A Declaration of Accessibility Compliance will be required by the successful bidder.

### **32. Video Surveillance**

While on County of Peterborough property visitors, guests, and service providers may be recorded by video surveillance equipment installed throughout the premise. The Personal Information recorded by such equipment is the property of the County of Peterborough and will be collected, stored, and destroyed in accordance with all appropriate provincial and federal laws and in accordance with the County's Video Surveillance Systems Policy.