

STANDARD TERMS AND CONDITIONS FOR TENDERS, PROPOSALS, CONTRACTS AND QUOTATIONS

SCOPE

The following Standard Terms and Conditions forms part of each Tender, Proposal, Contract, Quotation (TPCQ) and they apply in like force for the purchase of materials, supplies, equipment and services. All bid documents called for by the City of Thunder Bay (CTB) will bind bidders to the terms and conditions herein set forth. Any alleged oral agreement or arrangement made by a bidder or contractor with any City department or an employee of the Materials Management Division will be disregarded.

SUBMISSION OF TENDERS/PROPOSALS/CONTRACTS/QUOTATIONS

1. Submissions shall be submitted on and in accordance with forms supplied by the Materials Management Division of the CTB. **Facsimile, Telephone and Electronic** submissions will **NOT** be accepted unless otherwise specified.
2. TPCQ submissions are to be sealed in the preprinted CTB Tender envelopes when supplied, and should be properly addressed to the Materials Management Division, Victoriaville Civic Centre, 111 Syndicate Avenue South, P.O. Box 800, Thunder Bay, Ontario, P7C 5K4. Envelopes should clearly indicate the contents, the name and address of the bidder.
3. Submissions received by Materials Management later than the closing date and time specified will **NOT** be considered.
4. By submission of a clear and detailed written notice, the proponent may amend or withdraw its submission prior to the closing date and time. Upon closing time all submissions become irrevocable.
5. All information required on the TPCQ forms is to be included in your offer. Failure to do so may result in disqualification of your offer. Submissions must be signed by an authorized official of the bidder's organization. Unsigned submissions will not be considered. Minor omissions may be accepted at the sole discretion of the CTB.
6. Unless stated "**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 may be used simply to indicate the character, quality, and/or performance equivalent of the commodity desired, but the commodity on which offers are submitted must be of such character, quality, and/or performance equivalent that it will serve the purpose for which it is to be used equally as well as that specified. In submitting a TPCQ on a commodity other than as specified, the bidder must furnish complete data and identification with respect to the alternate commodity he proposes to furnish. Consideration will be given to offers submitted on alternate commodities to the extent that such action is deemed to serve the best interests of the CTB. If the bidder does not indicate that the commodity he proposes to furnish is other than as specified, it will be construed to mean that the bidder proposes to furnish the exact commodity as described in the TPCQ specifications.
7. Prices indicated shall be net prices, including delivery charges prepaid by the vendor to the specified delivery location. Terms of payment/prompt payment discount (cash discount) will be taken into consideration as part of the award. Prices quoted must be in accordance with the specified unit of measure.
8. The City of Thunder Bay is subject to the payment of sales and excise taxes imposed by the Federal and Provincial Government, and such taxes must be shown as separate costs unless otherwise specified.
9. In the event of any discrepancy between the unit price and the extension, the unit price shall govern.
10. 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.
11. Tenders and Contracts which are received by the stated closing date and time will be opened and read publicly, and are subject to public inspection after opening. Bidders may be present or be represented at such openings. Proposals are not subject to public inspection; bidders' names only will be released.
12. Performance Surety binding the contractor faithfully to fulfill the obligations of his/her submission may be required. Such surety, when requested, should be submitted in the form of a performance bond, satisfactory to the CTB, or certified cheque as stated in the document.
13. Alterations, erasures, or modification by any means to this original document is not permitted under any circumstances. Tampering with these documents will result in your submission being disqualified.
14. The City of Thunder Bay is not responsible for any cost incurred by the proponents in the preparation of their response to the TPCQ or attendance at any selection interviews.

SAMPLES

15. Samples, when required, are to be submitted strictly in accordance with instructions; otherwise the offer may not be considered. If samples are requested subsequent to the opening of submissions, they shall be delivered within three (3) working days following the request unless additional time is granted. Samples must be furnished free of charge and be accompanied by a letter advising whether the bidder desires their return, provided they have not been used or made useless by tests. Samples may be held for comparison with deliveries.
16. Deliveries must have the same identity and quality as the accepted sample submitted, unless approved by the CTB prior to delivery. The CTB reserves the right to reject any materials that differ from our specifications or differ from the samples submitted. Rejected materials will be returned at the supplier's expense.
17. When the TPCQ indicates that an item to be purchased is to be equivalent to a sample, failure on the part of the bidder to examine samples shall not entitle him to any relief from the conditions imposed by the bid.

AWARDS

18. The CTB, unless it otherwise states, reserves the right to award by item, or part thereof, groups of items, or all items of the Tender/Quotations, and to award contracts to one or more bidders submitting identical Proposals as to price; to waive informalities in or reject any or all submissions or accept the submissions deemed most favourable based upon the greatest value of quality, service and price, if in so doing, the best interests of the CTB will be served.
19. TPCQs shall not be withdrawn unless the bidder distinctly states in the submission that acceptance thereof must be made within a specified time. Otherwise, the offer is irrevocable for a period of sixty (60) days from the closing date of the TPCQ.
20. A bidder must be prepared, if requested, to present evidence of experience, ability, service facilities and financial standing necessary to meet satisfactorily the requirements set forth or implied in the TPCQ specifications.
21. The CTB shall not be obligated to any bidder whatsoever until a written agreement in the form of a Contract or Purchase Order has been executed relating to an approved submission.

CONTRACT

22. Each submission will be received with the understanding that a Purchase Order or Contract which states acceptance of the offer to furnish all or any part of the commodities/services described therein shall constitute a contract between the bidder and the CTB. This contract shall bind the bidder on his part to furnish and deliver the commodities at the prices given and in accordance with the conditions and specifications of said accepted offer, and these Standard Terms and Conditions as provided with the TPCQ, and the CTB on its part to take delivery of and pay for the commodities at the contract price.
23. The placing in the mail to the address given in his submission or delivery of a notice of award to a bidder shall constitute notice of acceptance of contract. When so requested by the CTB, the contractor shall execute a formal contract with the CTB for the complete performance specified therein.
24. No alterations or variations of the terms of the contract shall be valid or binding upon the CTB unless authorized in writing.
25. It is mutually agreed and understood that the contractor shall not assign, transfer, convey, sublet or otherwise dispose of his contract or his right, title or interest therein, or his power to execute such contract, to any other person, firm, company or corporation without the previous written consent of the CTB.
26. The contract may be cancelled by the CTB upon non-performance of contract terms or failure of the contractor to furnish satisfactory performance surety within seven (7) days from date of request, unless otherwise stated in the TPCQ documents.
27. Failure of a contractor to deliver within the time specified, or failure to make replacements of rejected commodities when so requested, will constitute authority for the CTB to immediately purchase in the open market to replace the commodities rejected or not delivered. On all such purchases the contractor agrees to promptly reimburse the CTB for excess costs occasioned by such purchases. Such purchases will be deducted from contract quantities. However, should public necessity demand it, the CTB reserves the right to use or consume commodities which are sub-standard in quality, subject to an adjustment in price to be determined by the CTB.
28. When commodities are rejected, they must be removed by the contractor from the premises of the City within five (5) days after notification by the City unless public health and safety requires immediate destruction or other disposal of such rejected delivery in which case the CTB may take such actions as it deems necessary. Rejected items left longer than five (5) days will be considered as abandoned, and the CTB shall have the right to dispose of them as its own property.
29. Shipment of goods or commencement of work shall be at risk of the proponent, if undertaken in advance of his receipt of a properly executed Purchase Order or Contract.

CONTRACT (continued)

30. The CTB reserves the right to remove from eligibility to submit TPCQs for an indeterminate period, the name of any bidder for failure to accept a contract, or the name of any contractor for unsatisfactory performance of contract.
31. If at any time during the contract period, the supplier should sell or offer for sale to any other customer, an equal or less quantity of similar contract products of like or better quality, at a lower net price(s) than provided herein, supplier agrees to notify the CTB and sell same product(s) at the lower price(s) on all deliveries made during the period in which such lower price(s) is effective.
32. The supplier must comply with relevant federal, provincial and municipal statutes, regulations and by-laws pertaining to the work and its performance. The contract shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

CONTRACT GUARANTEES

33. The contractor hereby covenants and agrees:
 - (a) To perform Contract in accordance with the specifications under which the Contract is awarded;
 - (b) To save the CTB, its agents, or employees harmless from liability of any kind for the use of any composition, secret process, invention, article or appliance furnished or used in the performances of the contract of which the contractor is not the patentee, assignee or licensee;
 - (c) To guarantee his products against defective material or workmanship and to repair or replace any damage or marring occasioned in transit;
 - (d) To furnish adequate protection from damage for all work and to repair damage of any kind for which he or his workers are responsible, to the premises or equipment, to his own work or the work of other contractors;
 - (e) To pay for all permits, licenses and fees, and to give all notices and comply with all by-laws and regulations of the CTB, unless otherwise specified;
 - (f) To carry such insurance as may be required by the CTB, and to furnish satisfactory proof thereof when required by the CTB.

DELIVERY

34. Any equipment delivered must be standard new equipment of the latest model except as otherwise specifically stated in the TPCQ. Where any part or nominal appurtenances of equipment is not described, it shall be understood that all the equipment and appurtenances which are usually provided in the manufacturer's stock model shall be furnished.
35. Materials and supplies must be new except as otherwise specifically stated in the specifications.
36. Delivery must be made as ordered and in accordance with the TPCQ. If no delivery instructions appear on an order, it will be interpreted to mean prompt delivery. Burden of proof of delay in receipt of order shall rest with the contractor.
37. Commodities shall be securely and properly packed for shipment according to accepted commercial practice, without extra charge for packing materials or containers, the containers to remain the property of the City unless otherwise stated in the specifications.
38. Where materials are furnished for a specified price per unit of weight, the CTB reserves the right to require such materials to be weighed on scales designated by it, in which case payment shall be made on the basis of the net weight of the materials furnished.

INSPECTIONS AND TESTS

39. The inspection of all commodities and the making of chemical and physical tests to determine whether or not the specifications are being complied with shall be made in the manner prescribed by the CTB.
40. Any item which fails in any way to meet the terms of the contract is subject to rejection or on an adjusted price basis, upon mutual agreement.

PAYMENT

41. Where there is a question of non-performance involved, payment in whole or in part against which to charge back any adjustment required will be withheld. In the event a cash discount is involved, the withholding of payment as provided **herein shall not deprive the City from taking such discount.**
42. All charges against a contractor shall be deducted from current obligations that are due or may become due. In the event that collection is not made in this manner the contractor shall pay the CTB, on demand, the amount of such charges. Such obligations may include returned products, invoice adjustments, taxes, utilities or any other arrears owed to the CTB.

FORCE MAJUEURE

- 43. It is understood and agreed that the contractor shall not be held liable for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any other cause not within the control of the contractor and which by the exercise of reasonable diligence, the contractor is unable to prevent. Should the performance of any contract be delayed or prevented herein set forth, the contractor agrees to give immediate written notice and explanation of the cause and probable duration of any such delay and to provide written notice as to when Contract obligations resume. In any case, such delay shall not exceed the length of time of the interruption/disruption.

OCCUPATIONAL HEALTH & SAFETY

- 44. All work performed under this contract shall be in conformity with the Occupational Health & Safety Act, Regulation 691, R.R.O. 1980 – Chapter 321 and latest revisions thereof and with the Corporate Safety Standards and Policies of the City of Thunder Bay.

WORKPLACE HAZARDOUS MATERIALS INFORMATION SYSTEM

- 45. All shipments must comply with WHMIS Classification, Labeling and MSDS Requirements, all in strict accordance with the WHMIS Legislation or shipments will be refused by the City of Thunder Bay.

FAIR WAGE POLICY - ICI Construction over \$100,000.00

- 46. The City of Thunder Bay has a Fair Wage Policy which is a condition of contract for all ICI (Industrial Commercial, Institutional) construction activities greater than \$100,000.00. The Policy states that all employees of any Contractor and Sub-contractors working on City ICI contracts with an estimated value of \$100,000.00 or more is subject to paying labour rates as per the published The Fair Wage Schedule. The Schedule can be viewed on the City of Thunder Bay Materials Management’s website – www.thunderbay.ca/materials, or contact the Materials Management Division for further detail with respect to the Policy or Fair Wage Schedule.

NO SWEAT SHOP POLICY

- 47. The following condition of contract is included in all TPCQ documents relating to the purchase of linens, textiles, uniforms, shoes or any other product where possible exploitation of children in Sweat Shops exists.

Condition of Contract

The Bidders declares that in bidding for work and offering to enter into Contract with The City of Thunder Bay, he and his subcontractors conduct their respective business in accordance with established international codes as they relate to child labour as embodied in United Nations and International Labour Organization conventions.

The Contractor shall forfeit all claims under the Contract as well as refund to The City of Thunder Bay monies paid to him, beyond his actual proven expenses for work done, if this declaration is shown to be false.

Bidder to State Name and Address of Manufacturer:

Acknowledged: _____
(Bidder to Sign)

TAILGATING

- 48. Upon mutual agreement, the vendor agrees to offer the same privileges extended to the CTB to members of the Lakehead Purchasing Consortium (LPC).

SECURITY CLEARANCES

- 49. The successful contractors and sub-contractors will be required to provide a list of employees who will be working on or within the premises of the facilities noted below, for this contract. These individuals will be subject to a security review. Only employees screened through the security review will be permitted on the premises. No work shall commence prior to the completion of the security review. The cost of the security review will be borne by the contractor or sub-contractor. Security reviews are required for work performed at the following locations; Police Station or sub stations, all Day Care Centres.