

City of Niagara Falls

Bidder Information for Informal Request for Quotations

TERMS AND CONDITIONS

1. Request for Informal Request for Quotation (IRFQ)
 - a. The City may issue from time to time an Informal Request for Quotation to potential Bidders.
 - b. City may change or alter any IRFQ by way of a follow-up letter or e-mail.
2. Response to IRFQ
 - a. A Bidder receiving an IRFQ may respond to the IRFQ by providing prices for the goods and/or services enumerated in the IRFQ.
 - b. By submitting a quotation, the Bidder agrees to all the terms and conditions of the IRFQ, including these Terms and Conditions.
 - c. Bidder shall attach to its response to the IRFQ any warranty information as well as any other information that may be requested in the cover letter (if any) to the IRFQ.
 - d. The prices submitted in response to the IRFQ shall include all work and services described therein to complete the requirements of the IRFQ to the satisfaction of the City of Niagara Falls.
 - e. A quotation received later than the submission deadline will not be received or accepted.
3. Rejection of IRFQ

Any or all of the following events may disqualify a Bidder's quotation:

- a. Collusion between Bidders;
- b. Any attempt to bypass the IRFQ process;
- c. Any attempt to bribe a person to influence the IRFQ process or outcome;
- d. Any political or other lobbying with respect to the IRFQ, including seeking to influence the outcome of the IRFQ and subsequent procurement process through contact or communication with City staff, its elected and

appointed officers and officials and agents of the City;

- e. The quotation contains conditions or otherwise materially fails to conform to the requirements of the IRFQ;
 - f. The Bidder has an unsatisfactory record of compliance with the Occupational Health and Safety Act, R.S.O. 1990, c. O.1, as amended;
 - g. The Bidder is in arrears to the City of Niagara Falls, upon debt or contract, or Bidder is a defaulter, as surety or otherwise, upon any obligation to the City, or Bidder is deemed irresponsible or unreliable by the City;
 - h. The quotation contains materially false, incorrect or misleading information;
 - i. There is a real or perceived Conflict of Interest involving the Bidder;
 - j. Bidder identifies its entire quotation as confidential or is otherwise not reasonable in the designation of its own information in the quotation as confidential;
 - k. Bidder is deemed by the City not to have practical knowledge of the requirements stated in the IRFQ and cannot prove that it has the necessary financial resources to perform and complete the services outlined in the IRFQ;
 - l. Bidder is in a claim or litigation initiated by the City;
 - m. Bidder has misinterpreted the IRFQ or underestimated the hours or value of any services to be performed or has submitted unbalanced prices or fees, not accurately or realistically reflecting the services or goods requested.
4. City's Reserved Rights
- a. The City may make all necessary corrections to any quotation containing mathematical or extension errors. The corrected calculation will be considered the Bidder's quoted amount.
 - b. The City may cancel or amend the IRFQ process or reissue the IRFQ at any time and shall not be liable for any expense, cost, loss or damage incurred or suffered by the Bidder as a result.
 - c. The City reserves the right to reject or accept for consideration any quotation even if non-conforming; does not contain the content or form required by these Terms and Conditions or does not comply with the

process for submission set out in the IRFQ.

- d. The City reserves the right not to execute a Contract in response to any quotation.
 - e. The City reserves the right to negotiate price, terms, conditions or any matter whatsoever with a Bidder. Should negotiations with the Bidder not be successful, the City reserves the right to enter into negotiations with any other Bidder regardless of ranking.
 - f. The City reserves the right not to reveal the results of or reasons for its decision in selecting a Bidder's quotation for purposes of creating a Contract.
 - g. The City reserves the right not to provide any debriefing or any information regarding any quotation submitted by any Bidder or discuss reasons why any quotation submission was unsuccessful.
 - h. The City reserves the right to waive informalities and minor inconsistencies in a quotation at its sole discretion.
 - i. The City reserves the right of ownership of all documents submitted to the City by Bidder. All such documents become and are the property of the City upon submission and the City may, without restriction, make use of such documents and underlying concepts therein as it sees fit. The Bidder shall not be liable for any damage that may result from any use of said documents for purposes other than those described in an IRFQ.
 - j. The City reserves the right to not accept the lowest price or any quotation.
5. Submission of Questions
- a. Questions regarding the IRFQ must be submitted in writing only to the IRFQ Contact.
 - b. No City staff, whether an official, agent or employee, other than the IRFQ Contact is authorized to speak on behalf of the City with respect to an IRFQ.
 - c. If a Bidder receives any information, clarification or interpretation from any other source, the Bidder does so entirely at its own risk.
 - d. The submission deadline for providing the quotation shall not be modified or extended because of questions or unanswered questions. The City will provide responses to written questions received by Bidders to all potential Bidders that have received the IRFQ.

6. Acceptance of Quote

- a. The Bidder's quotation is subject to acceptance by the City. The City reserves the right, in its absolute discretion, to accept a quotation that it deems to be most advantageous to itself and reserves the right to reject any or all quotations in each case without giving any notice or justification. In no event will the City be responsible for the Bidder's costs of the preparation or the submission of a quotation.
- b. A quotation is not a Contract until it is accepted. Acceptance of a quotation does not occur unless and until the City executes a legal agreement or issues a Purchase Order to the Bidder indicating that the Bidder's quotation has been accepted. If the City accepts the quotation, a contract is formed through issuance of a Purchase Order or legal agreement and the Bidder will fulfill the Contract in accordance with the terms of the quotation and these Terms and Conditions.
- c. The acceptance of Bidder's quotation is not a guarantee of exclusivity for the supply of the goods or services specified in the IRFQ.

7. Irrevocable Offer

By submitting a quotation in response to an IRFQ, the Bidder acknowledges that their offer is irrevocable and shall remain open for acceptance by the City for a period of not less than ninety (90) days following the submission deadline.

8. Withdrawal of Quotation

A Bidder may withdraw its submitted quotation at any time prior to the submission deadline. To withdraw a quotation, a notice of withdraw must be sent to the IRFQ Contact and must be signed by an authorized representative of the Bidder.

9. Confidentiality of Information

9.1 Confidential Information of the City

- a. All information provided by or obtained from the City in any form in connection with this IRFQ either before or after the issuance of this IRFQ
 - i. is the sole property of the City and must be treated as confidential;
 - ii. is not to be used for any purpose other than replying to this IRFQ and the performance of any subsequent contract for the Deliverables;
 - iii. must not be disclosed without prior written authorization from the City; and

- iv. must be returned by the Bidder to the City immediately upon the request of the City.

9.2 Confidential Information of Bidder

A Bidder should identify any information in its quotation or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by the City. The confidentiality of such information will be maintained by the City, except as otherwise required by law or by order of a court or tribunal, including the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, as amended ("MFIPPA"). Bidders are advised that their quotations will, as necessary, be disclosed, on a confidential basis, to advisers retained by the City to advise or assist with the IRFQ process, including the evaluation of quotations. If a Bidder has any questions about the collection and use of personal information pursuant to this IRFQ, questions are to be submitted to the IRFQ Contact.

10. Infringement

Bidder shall indemnify and save harmless the City and its Council members and staff against all claims, actions, suits and proceedings brought by any person in respect of the infringement or alleged infringement of any patent, copyright, trademark or industrial design or the use or misuse or misappropriation of intellectual property in connection with its quotation, including any and all costs incurred by the City.

11. Liability of the City

While the City has attempted to ensure an accurate representation of information in each IRFQ, the information contained in such IRFQ may not be accurate, comprehensive or exhaustive. Nothing in an IRFQ is intended to relieve Bidder from forming its own opinions and conclusions with respect to the matters addressed in an IRFQ.

12. Bidder's Expenses

Bidders are solely responsible for their own expenses in preparing a quotation and for subsequent negotiations with the City, if any. If the City elects to reject any or all quotations received, the City will not be liable to Bidder for any claims, whether for costs or damages incurred by Bidder in preparing its quotation, loss of anticipated profit in connection with any Contract, or any other matter whatsoever.

13. Conforming with all Laws

Bidder agrees to abide by all applicable laws, regulations and administrative rulings of Canada, Ontario, and the City, including securing all necessary licenses and permits in connection with the quotation.

14. Insurance

Bidder shall be required to purchase and maintain in force, at its own expense (including the payment of all deductibles) and for the duration of this Contract, the following policies of insurance, which policies shall be in a form and with an insurer acceptable to the City. Bidder shall deliver certificates of these policies:

- a. Comprehensive General Liability, with coverage of not less than five million dollars (\$5,000,000) per occurrence, with provisions for broad form contractual liability, owner's/contractor's protective liability, contingent employer's liability and personal injury liability, non-owned automobile coverage; and
- b. Standard Automobile Liability coverage for owned and leased vehicles with limits of not less than two million (\$2,000,000) per occurrence for bodily injury, including accident benefits as may be required by applicable laws. Five million dollars (\$5,000,000) per occurrence is required if Heavy Equipment is to be used to complete the services or project.

The policies shall not contain exclusions for damage or loss from the removal or weakening of support of any property, building or land whether such support be natural or otherwise or from blasting or vibration from pile driving or caisson work.

15. Workplace Safety & Insurance Board Clearance (WSIB)

The selected Bidder shall provide:

- a. A valid, current Clearance Certificate declaring that the selected Bidder is registered with Workplace Safety and Insurance Board ("WSIB"), and has an account in good standing; or
- b. A Letter of Good Standing issued by WSIB.

If WSIB coverage is not required by law to be carried by the selected Bidder, the selected Bidder shall provide one of the following (as the case may be):

- a. An Exemption Letter from WSIB, satisfactory to the City's Solicitor;
- b. An independent Operators Status Certificate issued by WSIB; or
- c. Such further and other evidence as may be satisfactory to the City's Solicitor.

16. No Assignment/Subcontracting

The Bidder shall not assign any part of its obligations in any Contract which may be issued to it. The Bidder shall be solely responsible for the payment of every sub-contractor or service provider employed, engaged, or retained by Bidder for fulfillment of the Contract and shall be liable to the City for all costs or damages arising from acts, omissions, negligence or willful misconduct of its sub-contractors and service providers.

17. Payment

The City shall pay the Bidder against Bidder's invoices for goods and services delivered under the Contract in accordance with the cover letter for the IRFQ or in accordance with the City's customary practice, if payment is not dealt with in the cover letter. The Bidder's invoices shall contain such detail as may be required by the City, and the City reserves the right to require further proof or documentation from the Bidder in respect of services performed or pass-through expenses incurred by the Bidder and the Bidder shall provide, without delay, such further proof or documentation.

18. Termination for Convenience of the City

The City, upon giving 30 days' written notice may terminate any Contract, in whole or in part, when it is in the best interest of the City of Niagara Falls. To the extent that the Contract is for services and is so terminated, the City shall be liable only for payment in accordance with the payment provisions of the Contract for services rendered prior to the effective date of termination.

19. Work Completion Schedule

If requested by the IRFQ Contact, the Bidder may be required to submit a complete work completion schedule.

20. Other Conditions

The Bidder shall not have any claim for any compensation of any kind whatsoever, as a result of responding to an IRFQ, and by submitting a quotation the Bidder shall be deemed to have agreed that it has no claim. Unless otherwise stated all goods supplied under a Contract shall be new only, never used, of the latest manufacture and not re-manufactured. All work performed under a Contract must be carried out in accordance with the terms and conditions of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1, the Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, and the Human Rights Code, R.S.O. 1990, c. H.19.

21. Communications in Writing Only

No verbal arrangement or agreement, relating to the goods, materials, articles, equipment, work or services specified or called for under a Contract will be considered binding, and every notice, advice or other communication pertaining thereto, must be delivered by email by a duly authorized person or via the City's secure, web-enabled procurement portal.

22. Budget Limitations

The issuance of a Contract resulting from an IRFQ is subject to the limits of the City of Niagara Falls budget and bidders shall have no claim if the City cancels due to budgetary constraints and limitations.