



THE CORPORATION OF THE CITY OF NIAGARA FALLS  
ON BEHALF OF  
THE NIAGARA PUBLIC PURCHASING COMMITTEE

REQUEST FOR TENDER  
RFT2-2019  
SUPPLY & DELIVERY OF ASPHALT PRODUCTS

**One Year Contract Period: April 1, 2019 to March 31, 2020**

**CLOSING DATE: Thurs., Mar. 7, 2019, at 1:45 p.m. local time**

Tender submissions are invited for the **Supply & Delivery of Asphalt Products** to be delivered F.O.B. to the participating Agencies of the Niagara Public Purchasing Committee, all in accordance with this Request for Tender. This RFT, for information purposes only, is posted on the City of Niagara Falls web site at [www.niagarafalls.ca/bids](http://www.niagarafalls.ca/bids).

**Questions Regarding this RFT**

Questions regarding this RFT must be submitted in writing only to the City Representative, Dave Butyniec, Manager of Supply and Services e-mail: [dbutyniec@niagarafalls.ca](mailto:dbutyniec@niagarafalls.ca) no later than **Thurs., Feb. 21, 2019 at 2:00 p.m. local time**. Questions received later than this stated time and date may not be acknowledged or answered.

**Addenda**

All addenda to this RFT will be posted on the City's Bid Opportunities Web Page: [www.niagarafalls.ca/bids](http://www.niagarafalls.ca/bids). It is the Tenderer's sole responsibility to check this Web Page to avail themselves of any posted addenda. Tenders submitted that do not include the first page, completed and signed, of all posted addenda may be rejected.

All Tenders, **including original and one copy**, must be submitted in a sealed 9" x 12" envelope using the attached mailing label provided by the City and submitted to Mr. Bill Matson, Acting City Clerk, City of Niagara Falls, 4310 Queen St., 1<sup>st</sup> Floor, by **Thurs., Mar. 7, 2019 at 1:45 p.m.**

The pricing submitted by the Tenderer is to be complete for all supplies as stated in this RFT and includes delivery F.O.B destination, all in accordance with this RFT including all attachments.

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**INSTRUCTIONS TO TENDERERS**

**1. Definitions**

- a) "N.P.P.C." means the Niagara Public Purchasing Committee.
- b) "Agencies" means the participating member Agencies of the N.P.P.C. stated herein and shall include all other Agencies of the Niagara Public Purchasing Committee.
- c) "N.P.P.C. Representative", for the purposes of this RFT, shall be Dave Butyniec, Manager of Supply & Services, City of Niagara Falls, Ontario.
- d) "RFT" means this Request for Tender.
- e) "Tenderers" mean the company submitting a tender in response to this RFT.
- f) "Tender" means the tender submission delivered in response to this RFT.
- g) "Supplier" means the successful Tenderer.

**2. General Description**

This RFT covers the supply and delivery of **Bituminous Patching Materials and Asphalt Emulsions** (Asphalt Products) to the participating Agencies of the Niagara Public Purchasing Committee (N.P.P.C.), at various locations, within the limits of the Regional Municipality of Niagara, as detailed herein. This RFT is being issued on behalf of the N.P.P.C. member Agencies by the City of Niagara Falls, Supply & Services Section.

**3. Participating N.P.P.C. Agencies**

The participating N.P.P.C. Agencies of this RFT are listed below:

- 1. The Regional Municipality of Niagara
- 2. The City of St. Catharines
- 3. The City of Niagara Falls
- 4. The City of Welland
- 5. The Town of Fort Erie
- 6. The Town of Niagara-On-The-Lake
- 7. The Town of Pelham
- 8. The Niagara Parks Commission

**4. Tender Submission Location**

- a) Tenders shall be received in the office of the Acting City Clerk, Bill Matson, or representative, at the City Hall, 4310 Queen Street, 1<sup>st</sup> Floor, Niagara Falls, ON L2E 6X5, up until **1:45 p.m. local time Thurs., Mar. 7, 2019.**
- b) Tenders received after 1:45 p.m. local time on the closing date will be returned unopened.
- c) Tenders will be opened **Thurs., Mar. 7, 2019 at 2:00 p.m.** at Niagara Falls City Hall, Committee Rm. #2 or other location in Niagara Falls City Hall.
- d) **The Tender Opening shall be for registration of Tender submissions only.** Only the **names** of the companies who have submitted a Tender shall be read out at this Tender Opening. No other information will be made available at the time of the Tender Opening. Refer to Item 16, Page 6.

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**5. Appendix A: Form of Tender**

- a) Tenders must be submitted on the *Appendix A: Form of Tender* and enclosed in a sealed 9" x 12" envelope affixing the attached mailing label provided by the City. The Corporation of the City of Niagara Falls will not be responsible for any Tender which is lost or misplaced as a result of failure to use the said mailing label.
- b) All unit prices must be clearly indicated and all extensions and lump sum prices written in figures. The Tender must not be restricted by a statement added to the *Appendix A: Form of Tender* or by a covering letter, or by alterations to the *Appendix A: Form of Tender*, as issued by the Corporation of the City of Niagara Falls, unless otherwise provided herein. Tenderers will be allowed to attach descriptive literature with the sole purpose of providing additional product information. Adjustments by fax or a letter to a Tender already submitted **will not** be considered.
- c) The *Appendix A: Form of Tender* pages must be signed by an Officer of the Tenderer's Company who has authority to bind the Company.

**6. Contract Period**

Contract(s) will be awarded for the normal asphalt production season, generally between **Apr. 1, 2019 and Dec. 31, 2019 and to Mar. 31, 2020** for Emulsified Asphalt Patching Materials. These dates are subject to changes depending on climatic conditions. All Tenderers must advise on the attached *Appendix A: Form of Tender* the time for the start-up and anticipated shut down of their plants. **Notice of the date for the termination of production must be given to each participating Agency at least thirty days in advance of such termination.**

**7. Requirements**

All material will be supplied on demand, as required by each participating N.P.P.C. Agency. Each participating member Agency will be responsible for ordering their requirements. Materials will be picked up from the supplier's plant closest to the job site. The supplier must have staff on site to assist in loading materials on Purchaser's equipment. Equipment and procedures utilized in loading must meet all recognized safety standards. No specific estimates for any participating Agency including the Regional Municipality of Niagara are given. The estimates on the *Appendix A: Form of Tender* are for the guidance of the Tenderer only and are not intended as an indication of quantities for future orders that may result from this RFT.

**8. Pricing**

Tenderers are to state pricing for Asphalt Products on the *Appendix A: Form of Tender*. Pricing for the supply of asphalt products during the duration of the contract period will be on a monthly basis with prices per the posted Ontario Ministry of Transportation MTO Asphalt Price Index and as adjusted per the following pricing statement:

*Increase/Decrease in Hot Mix Asphalt Prices*

The member Agencies of the N.P.P.C. will adjust the payment to the Contractor based on changes to the Ministry of Transportation's performance graded asphalt cement price index. The price index will be published monthly in the MTO Contract Bulletin and displayed on the OHMPA

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(www.ohmpa.org) and MTO website (www. mto.gov.on.ca). The price index will be used to calculate the amount of the payment adjustment per tonne of asphalt cement accepted into the work.

The price index will be based on the price, excluding taxes, FOB the depots in the Toronto area, of asphalt cement grade PG 58-28 or equivalent. One index will be used to establish and calculate the payment adjustment for all grades.

A payment adjustment per tonne of asphalt cement will be established for each month in which paving occurs when the price index for the month differs by more than \$15.00/tonne from the AC price index for the month prior to the tender opening. When the price index differential is less than \$15.00/tonne, there will be no payment adjustment for that month. Payment adjustments due to changes in the price index are independent of any other payment adjustments made to hot mix tender items. Tax adjustment should be applied to the adjustment.

The payment adjustment per tonne will apply to the quantity of asphalt cement in the hot mix accepted into the Work during the month for which it is established. The payment adjustment for the month will be calculated by the following means:

1. When AC Prices are Rising by more than \$15.00/tonne: the payment adjustment to be paid to Supplier is the result of subtracting the price index for the month prior to the Tender opening from the price index in effect when paving takes place, minus the \$15.00 float, multiplied by the number of tonnes of PGAC incorporated in the mix(s) as determined by the job mix formula. HST on the adjustment will be added.
2. When AC Prices are Falling by more than \$15.00/tonne: the payment adjustment made in favour of the Owner is the result of subtracting the price index in effect when paving takes place, plus the \$15.00 float from the price index for the month prior to the tender opening, multiplied by the number of tonnes of PGAC incorporated in the mix(s) as determined by the job mix formula. HST on the adjustment will be added.

The quantity of new asphalt cement includes all grades of asphalt cement provided by the Supplier with and without polymer modifiers. For each month in which a payment adjustment has been established, the quantity of the escalation/de-escalation will be calculated using the hot mix quantity accepted into the work and its corresponding asphalt cement content as required by the job mix formula.

**9. F.O.B. Point**

All materials tendered must be available F.O.B. Supplier's plant, and loaded on Purchaser's equipment, **unless otherwise specified**. Plant location may be a consideration deciding upon any award resulting from this RFT.

**10. Records of Products Purchased**

The successful Tenderer must provide a Report of all items purchased by each participating N.P.P.C. Agency. Upon request by any N.P.P.C. Agency, this Report, which shall detail the quantity and description of each item purchased by each N.P.P.C. member Agency, shall be sent in a printed

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or digital format to the N.P.P.C. representative or designate who issued the RFT on behalf of the said Agencies. The Report should include description, quantity, date shipped, ship to address and total cost. It is anticipated that this Report will be requested on an annual basis and will cover those purchases for the just completed annual time period. Any supplier who refuses to submit a usage Report may, at the discretion of the said Agencies, be ineligible to submit Tenders on future contracts.

**11. Clarification**

It will be the Tenderer's responsibility to clarify any details in question before submitting a Tender. All official correspondence in regard to the specifications must be directed to and will be issued by the Manager of Supply & Services for The Corporation of the City of Niagara Falls, Finance Department, Municipal Service Centre, 3200 Stanley Avenue, Niagara Falls, Ontario, L2E 6S4, dbutyniec@niagarafalls.ca. The Agencies of the Niagara Public Purchasing Committee will assume no responsibility for any oral instruction or suggestion.

**12. Withdrawal of Tender**

A Tender submission may only be withdrawn unopened after it has been deposited if a request in writing from the Tenderer is received by the Manager of Supply & Services prior to the time of the RFT closing as stated herein. Address requests to: Manager of Supply & Services, City of Niagara Falls, Municipal Service Centre, 3200 Stanley Avenue, Niagara Falls, Ontario, L2E 6S4

**13. Disqualification of Tenderers**

More than one Tender from an individual firm, partnership, corporation or association under the same or different names will not be considered. Collusion between Tenderers will be sufficient cause for rejection of all tenders so affected. Also tenders will only be received from individual firms only. Joint Tender submissions will not be accepted

**14. Error and Correction**

The Agencies of the N.P.P.C. will make all necessary corrections to any Tender submission which is in error through addition or extension; the corrected value prevailing.

**15. Announcement**

No announcement concerning the Tender award will be made until complete reports are approved by the participating Agencies of the Niagara Public Purchasing Committee.

**16. Summary of Tenders Received**

As has been the practice for several years, the summary of all tenders received including total and unit pricing shall be posted on the City of Niagara Falls Bid Opportunities Internet Web page: [www.niagarafalls.ca/bids](http://www.niagarafalls.ca/bids) no later than seven days following the tender opening. By submitting a tender in response to this Request for Tender, the Tenderer thereby agrees to have this summary posted.

**17. Award by Individual N.P.P.C. Agencies**

The individual Agencies of the Niagara Public Purchasing Committee, as generally described but not

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limited to those Agencies named herein may, at their own discretion, award all or a portion of the

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products described herein to one or more Tenderers. **No single award contract or purchase order will be issued covering all Agencies.** Each individual Agency will make their own decision (if any) to award all or a portion of the products described herein to one or more Tendering companies for reasons that are in their best interests or provide the best value for each Agency. Individual Agencies will, at their own discretion, place orders (if any) for some or all (but not necessarily all) of the products listed herein with any successful Tenderers. Successful Tenderers must accept orders (if any) from the said Agencies and invoice the individual said Agencies per the orders placed by these Agencies. Tenderers are particularly requested to note that compliance with Item 10, Page 5, of the Instructions to Tenderers, ***Records of Products Purchased*** is a condition of any contract award.

**18. Acceptance or Rejection of Tenders**

The Agencies of the Niagara Public Purchasing Committee reserve the right, in their absolute discretion to accept a Tender which it deems most advantageous to them and the right to reject any or all Tenders, in each case without giving any notice. The lowest or any Tender will not necessarily be accepted. In no event, will any member Agency of the N.P.P.C. be responsible for the costs of the preparation or the submission of a Tender.

Tenders which contain conditions or otherwise fail to conform to the Instructions to Tenderers may be disqualified or rejected. The member Agencies of the N.P.P.C. may, however, in their sole discretion, reject or retain for their consideration Tenders, which are non-conforming because they do not contain the content or form required by the Instruction to Tenderers or for failure to comply with the process for submission set out in these Instructions to Tenderers.

Except as expressly and specifically permitted in the Instructions to Tenderers, no Tenderer shall have any claim for any compensation of any kind whatsoever, as a result of participating in this Request for Tender, and by submitting a Tender, each Tenderer shall be deemed to have agreed that it has no claim.

**19. Taxes**

The Harmonized Sales Tax shall be extra on unit prices tendered.

**20. Estimated Quantity**

All quantities indicated on the *Appendix A: Form of Tender*, are estimates only and shall be used as a basis for calculation upon which the award will be made. The quantities are not guaranteed to be accurate and are furnished without any liability on behalf of the member Agencies of the Niagara Public Purchasing Committee

**21. Freedom of Information and Protection of Privacy Acts**

Any documentation submitted in respect to this RFT shall be subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O.1990, c. M.56, as amended and the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended.

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**22. Confidentiality**

The Tender submitted must not be restricted by any statement, covering letter or alteration by the

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Tenderer in respect of confidential or proprietary information. The Agencies of the Niagara Public Purchasing Committee will treat all Tenders submitted as confidential in respect to proprietary or confidential information **but not including unit or total prices**. *The Municipal Freedom of Information and Protection of Privacy Act R.S.O. 1990, c.M. 56*, as amended and *The Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31*, as amended, shall apply in respect to all Tenders received.

**23. Restrictive Statements, Modified, Changed or Altered Tender Submissions**

a) The participating N.P.P.C. Agencies reserves the right to reject any Tender submission which is restricted by any wording, sentences, clauses, copies or agreements or contract samples included by the Tenderer in their Tender submission. The said Agencies shall make the sole determination of which of the above constitutes a restriction. Also, Tender submissions which are incomplete, conditional or obscure, or which contain additives not called for, erasures, alterations or irregularities of any kind, may be rejected.

b) The participating N.P.P.C. Agencies reserve the right to waive informalities at their sole discretion.

**24. Informal Tenders**

Tender submissions which are incomplete, conditional or obscure, or which contain additives not called for, erasures, alterations or irregularities of any kind, may be rejected as informal. The Niagara Public Purchasing Committee Agencies reserve the right to waive informalities at their sole discretion.

**25. Adherence to Requirements**

The Tenderer is requested to adhere strictly to all requirements and complete all sections of this RFT including all appendices and addenda. Failure to do so may be sufficient cause for rejection of the Tender submission.

**26. Agreement in Writing Only**

No verbal arrangement or agreement, relating to the goods, materials, articles, equipment, work or services, specified or called for under this RFT, will be considered binding, and every notice, advice or other communication pertaining thereto, must be in writing and signed by a duly authorized person.

**27. Irrevocable Tenders**

Tenders submitted shall be irrevocable and shall be open for acceptance for a period of not less than ninety (90) days from the stated closing date for Tender submissions.

**28. Payment in Canadian Funds**

Unless otherwise indicated herein, the prices stated are payable in Canadian Funds.



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**29. Erasures and Alterations**

Any erasures, alterations or cross-outs must be initialled in ink by the Tenderer. Failure to do so may result in the rejection of the Tender submission.

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**30. Notification of Potential Tenderers Not Guaranteed**

The issuing Agency for this RFT, The City of Niagara Falls, posts notification of all RFTs on its Internet Web Site. Tenderers are to review this Web Site to inform themselves of any RFT opportunities. The Agencies of the Niagara Public Purchasing Committee shall not guarantee that previous successful Tenderers or any potential Tenderers shall be notified by any means electronic or otherwise of any RFT. It is the responsibility of any potential Tenderer to check the Web Site of the issuing Agency regarding any current RFT opportunity. The said Web Site is: [www.niagarafalls.ca/bids](http://www.niagarafalls.ca/bids)

**31. Limitation and Waiver of Damages**

The Tenderer, by submitting a Tender, agrees that it will not claim damages, for whatever reason, relating to the Contract or in respect of the competitive process. Also the Tenderer, by submitting a Tender, also waives any claim for loss of profits if no agreement is made between the Tenderer and the Agencies of the Niagara Public Purchasing Committee.

**32. Cancellation of Contract**

Failure by any contractor, following award of contract, to supply or deliver the products within an agreed period or to deliver or to supply any product that fails to meet the specifications contained herein or failure to honour the prices stipulated in the contract will result in the cancellation of the contract between the contractor and the Agencies listed in this RFT. Such cancellation shall be at the sole discretion of the Agencies of the Niagara Public Purchasing Committee.

**33. Sub Contract**

The successful Tenderer will not without the written consent of the participating Agencies, make any assignment or sub contract for the execution of any product hereby tendered.

**34. Standards and Legislation: Failure to Comply**

The successful Tenderer may be required to provide written documentation that all materials and services offered in the Tenderer's submission meet Municipal, Provincial and Federal Government standards, legislation and laws. Failure by the successful Tenderer to comply with these laws, legislation, regulations and provisions shall be just cause for the Agencies of the Niagara Public Purchasing Committee, at their discretion, to stop performance of this contract, until such times as the successful Tenderer complies with these laws etc. Also these Agencies may, at their discretion, award the contract to any other supplier or may re-issue the RFT. These Agencies may also assess against the supplier any damages whatsoever as a result of failure to comply.

**35. Failure to Comply With All Terms of this RFT**

Failure to comply with all terms, specifications, requirements, conditions and provisions of this RFT, to the satisfaction of the said Agencies, shall be just cause for the cancellation of the contract award. The Agencies of the Niagara Public Purchasing Committee shall then have the right to award this contract to any other supplier or to re-issue the RFT. These Agencies shall assess against the said

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supplier any damages whatsoever as a result of failure to comply.

**36. Goods and Materials Suitable For Use**

The Tenderer warrants that any goods, materials, articles or equipment to be supplied under or

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pursuant to any official order or contract based on this RFT, that is or are to be made or used for a particular purpose, will be fit and suitable for that purpose.

**37. Protection of the Agencies of the Niagara Public Purchase Committee**

The successful Tenderer(s) shall at all times well and truly save, defend, keep harmless and fully indemnify the Agencies of the Niagara Public Purchasing Committee and their servants, employees and agents, from and against all actions, suits, claims, demands, loss, costs, charges, damages and expense, brought or made against or incurred by these Agencies, their servants, employees or agents, including the payment of all legal fees by the successful Tenderer(s) in any way relating to goods, materials, articles or equipment, supplied, or the supplying thereof, or work or services, performed, or the performing thereof, pursuant to this RFT, or relating to inventions, copyrights, trademarks or patents, or rights thereto, used in supplying such goods, materials, articles, equipment, or in performing such work or services or arising out of the subsequent use or operation of such goods, materials, articles, equipment or work.

**38. Additional Requirements**

The Agencies of the Niagara Public Purchasing Committee reserve the right to add or delete items listed herein following award of any contract(s) or purchase order(s) resulting from this RFT. Unit prices stated by the Tenderer shall apply.

**39. Omission & Mis-Statements**

The several parts of this RFT shall be taken together to explain each other, and to make the whole consistent; and if it be found that anything has been omitted or misstated, which is necessary for the proper performance and completion of any part of the work contemplated, the successful Tenderer company shall, at its own expense, and without making any extra claim, therefore, execute the same as if it has been properly described, and the correction of any such omission or mis-statement shall not be deemed to be an addition to, or deviation from the services that may be awarded as a result of this RFT.

**40. Agreement With Terms**

By submitting a Tender, the Tenderer agrees to all the terms and conditions of this RFT. Tenderers who have obtained this RFT and any addenda electronically must not alter any portion of this RFT. To do so will result in the rejection of the Tender submission.

**41. Order of Precedence**

In the event of any inconsistency or conflict in the contents of the following documents, such documents shall take precedence and govern in the following descending order:

- Purchase Order or Contracts from any Participating N.P.P.C. Agency
- Addendums (if any) as issued

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- Instructions to Tenderers
- Appendix A: Form of Tender
- Specifications
- Any drawings, plans or photographs attached to this RFT.

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**42. Anti-Lobbying Restrictions and Require Disclosure**

- a) Tenderers, their company staff members, or anyone involved in preparing their Tender submission must not engage in any form of political or other lobbying whatsoever with respect to this project or seek to influence the outcome of the RFT and subsequent procurement process. This anti-lobbying restriction extends to all staff and elected Board Council members of all Agencies of the Niagara Public Purchasing Committee.
- b) In the event of any such lobbying, the said Agencies may reject any Tender submission by that Tenderer without further consideration and terminate that Tenderer's right to continue in the RFT and any subsequent procurement process. All correspondence or contact by interested parties with the said Agencies must be done directly and only with the issuing Agency's contact person identified in this RFT. It should be duly noted by all Tenderers that this anti-lobbying restriction extends from the release date of this RFT through to the date and time when the said Agencies formally award the contract by a Purchase Order or other means. Any lobbying undertaken during this time frame by any Tenderer or their company staff members, or anyone involved with their Tender submission may result in immediate disqualification from the process. This anti-lobbying restriction is not meant to affect the day-to-day operations of the said Agencies, their staff and the elected Board or Council of these Agencies that may necessarily include contact with potential Tenderers to this RFT regarding other business.
- c) This section shall not be intended to disallow any meetings, interviews or clarifications requested or authorized by the said Agencies, their authorized staff, the issuing Agency's contact person or their authorized designates

**43. Tender Submission in English**

Tender submissions must be prepared in English and Tenderers must be able to converse and correspond fluently in English directly or through an interpreter supplied by and at the total cost to the Tenderer.

**44. Liability for Errors**

While the Agencies of the Niagara Public Purchasing Committee has used considerable efforts to ensure an accurate representation of information in this RFT, the information contained in this RFT is supplied solely as a guideline for Tenderers. The information is not guaranteed or warranted to be accurate by the said Agencies, nor is it necessarily comprehensive or exhaustive. Nothing in this RFT is intended to relieve Tenderers from forming their own opinions and conclusions with respect to the matters addressed in this RFT.

**45. Final Date for Questions from Tenderers Relating to this RFT**

Due to the time constraints required to issue addenda (if any), Tenderers must submit any questions

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relating to this RFT, no later than the question period date on page one.

**46. Rights to Tender Submission**

Upon receipt of any tender submission in response to this RFT, the participating N.P.P.C. Agencies shall retain the right to determine the use of the Tender submission for its own purposes. Tenderers shall not use their Tender submission for any other purposes, whatsoever, including revealing any

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content of their tender submission or making copies for other Agencies, firms or companies not a legal part or division of the Tenderer's company, unless permission for any such use is receiving in writing by the Tenderer from the N.P.P.C. representative. Tenderers must make a request in writing to the N.P.P.C. representative for the intended use of their Tender submission for any other purposes than as stated herein.

**47. Suspension of Activity**

a) All Tenderers are advised and put on notice that notwithstanding anything else contained in this RFT that all Tenderers are forewarned and advised that if the Agencies of the Niagara Public Purchasing Committee choose not to proceed with this RFT process or any subsequent procurement process or any stage including, without limitation, the completion of the RFT process, the commencement, implementation or completion of any RFT process or other procurement process and/or the award, negotiation or the finalization of any agreement or contract and that accordingly, all Tenderers acknowledge and agree that if any such processes are suspended, terminated or cancelled at any time or times during any stage of the RFT or subsequent procurement process (if any) by the said Agencies, then the Tenderers shall have no claim against the said Agencies for any costs, expenses, losses including loss of profits, liabilities or damages whatsoever.

b) The said Agencies reserve the right to exercise complete and unfettered discretion in all aspects of the conduct of the RFT and any subsequent procurement process, the assessment and evaluation of tender submissions, including the determination of criteria and the selection, if any, of successful Tenderer(s), without incurring any liability whatsoever to any Tenderer, including any liability for costs, expenses, losses or damages, and without giving any reasons therefore.

c) Without limiting the generality of the foregoing, the said Agencies, in their sole and unfettered discretion, reserve the right to change the dates, schedules and deadlines set out in this RFT, or to change the scope of the project, or to cancel the RFT, without stating reasons therefore. The said Agencies also reserve the right to accept or to reject any or all of the Tender submissions received. Also, the said Agencies reserve the right to proceed as, in their sole and unfettered discretion, following receipt of the Tender submissions, including, without limitation, issuing a second or more, or a modified RFT or entering into contract negotiations with any Tenderer.

d) The lowest priced Tender submission(s) received will not necessarily be accepted.

e) The issuance of this RFT and the receipt of any Tender submission from any Tenderer does not commit the said Agencies to award a contract or purchase order or to pay any costs incurred in the preparation of any Tender by any Tenderer, or in any Tenderer's attendance at any meetings

**THE CORPORATION OF THE CITY OF NIAGARA FALLS  
ON BEHALF OF THE NIAGARA PUBLIC PURCHASING COMMITTEE  
REQUEST FOR TENDER – RFT2-2019  
SUPPLY & DELIVERY OF ASPHALT PRODUCTS**

that may be called by the said Agencies.

**48. Adjustments to Tender Submissions after the Closing Date**

No adjustments by any Tenderer to their tender submission will be permitted after the stated closing date for this RFT, except as otherwise provided herein.

**INSTRUCTIONS TO TENDERERS**

**49. Patents, intellectual Property Rights, Copyright, Trademarks, and Technology Rights**

By submitting a Tender, the Tenderer warrants that the information contained in the Tender does not infringe any Patents, intellectual property rights, Copyright, Trademarks, and Technology Rights of any third party and agrees to defend the member Agencies of the N.P.P.C. at the Tenderer's own expense, in all suits, actions or proceedings in which the said Agencies are made a defendant for actual or alleged infringement of any Canadian or foreign letters patent, intellectual property rights, copyright trademarks, technology rights or any other related rights to the above resulting from the said Agencies' contractual relationship with the Tenderer and the Tenderer's use of any or all technologies, methodologies, strategies in providing the services required herein. The Tenderer further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding against the said Agencies. The Tenderer agrees to indemnify and hold harmless the said Agencies from any and all license, royalty and proprietary fees or costs, including legal costs, which may arise out of the said Agencies' contractual relationship with the Tenderer and the Tenderer's use of any or all technologies, methodologies, strategies in providing the services required herein. It is expressly agreed by the Tenderer that these covenants are irrevocable and perpetual.

**50. Litigation with N.P.P.C. Member Agencies**

No tender submission will be accepted from any Tenderer including individuals employed by or associated with the Tenderer's company or associated or related companies of the tendering company and individuals employed by same who have/has a claim or has instituted a legal proceeding against the member Agencies of the N.P.P.C. or against whom the said Agencies have a claim or has instituted a legal proceeding, without the prior approval of elected Boards or Councils of the said Agencies. This applies whether the legal proceeding is related or unrelated to the subject matter of this RFT.