



THE CORPORATION OF THE CITY OF NIAGARA FALLS

REQUEST FOR TENDER – SUPPLY

RFT29-2019

SUPPLY & DELIVERY OF ONE (1) LOADER, ONE (1) BACKHOE, ONE (1) EXCAVATOR

CLOSING DATE: Thurs., August 15, 2019, at 1:45 p.m. local time

INSTRUCTIONS TO BIDDERS

Tender submissions are invited for Supply and Delivery of **One (1) Loader, One (1) Backhoe, One (1) Excavator** to be delivered F.O.B. Municipal Service Centre, 3200 Stanley Ave., Niagara Falls, ON., L2E 6S4, all in accordance with this Request for Tender - Supply. This RFT is posted on the City of Niagara Falls web site at www.niagarafalls.ca/bids.

Questions Regarding this RFT

Questions regarding this RFT must be submitted in writing only to the Dave Butyniec, Manager of Procurement or e-mail: dbutyniec@niagarafalls.ca no later than **Thurs., July 25, 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. Addenda will not be posted until after the date for questions has closed. 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 will be rejected.

All Tenders, **including original and one copy**, must be sealed in an envelope using the attached mailing label and submitted to City Clerk, City of Niagara Falls, 4310 Queen St., 1st Floor, by **Thurs., August 15, 2019, at 1:45 p.m.** **If the required copies are not provided with the original document when submitted, the submission will not be accepted.** Binder submissions will not be accepted. (Coil binding is acceptable).

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1. Definitions

Throughout this Request for Tender - Supply, unless inconsistent with the subject matter or context:

- a) *City* and *Owner* shall mean The Corporation of Niagara Falls.
- b) *RFT* and *Request for Tender* shall mean the Request for Tender inclusive of all appendices, attachments and any addenda that may be issued by the City of Niagara Falls.
- c) The words *Tender* and Tender submission shall mean the Tender submission received from the Tenderer by the City, in response to the RFT.
- e) *Contract* means the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in this Request for Tender per the Purchase order issued by the City which shall include this RFT, the Tender submission, and all Addenda and represents the entire agreement between the parties.
- f) *Supplier* means the company to whom the City has issued a purchase order.

2. Named Parties

For the purposes of this Contract the following parties are identified:

Owner: The Corporation of the City of Niagara Falls, the “City”

City’s Contract Administrator: Rick Zabor, Manager of Fleet Operations

Contact for Inquiries: Dave Butyniec, Manager of Procurement, e-mail dbutyniec@niagarafalls.ca

TENDER SUBMISSION

The following policy regarding the submission of Tenders and the Tender opening procedures will be applicable. Tenderers must adhere strictly to the instructions concerning submission.

1. Tenders should include all required pages and must be signed by the Tenderer, in ink, where stated on *Appendix A: Form of Tender* page(s) and on any other pages so stated.
2. Tenders received without the signed *Appendix A: Form of Tender* completed and all signed Addenda as issued by the City may be rejected. The signed *Appendix A: Form of Tender* and any posted addenda to this RFT must be included in the Tender envelope.
3. Tenders will be opened at 2:00 p.m. the same day the Tender closes in a Tender opening meeting to be held in Committee Room #2, Lower Level, City Hall or an alternate room, location to be confirmed by City Clerk’s Department staff. The meeting is open to the public and Tenderers submitting Tenders are welcome to attend. The Total Tendered Price only (including HST) will be announced for each Tender opened.
4. Any erasures, alterations or cross-outs must be initialed in ink by the Tenderer. Failure to do so may result in the rejection of the Tenderer’s Tender submission by the City.

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5. Tender Submission Sequence

Submissions must be in the following sequence:

- a) *Appendix A: Form of Tender*
- b) Signed Addendum page if applicable
- c) Optional Supplementary Tenderer information (i.e. product information)

TENDERER REQUIREMENTS

1. Notification of Potential Tenderers Not Guaranteed

The City posts notification of all RFT and other opportunities on its Internet Web Page (www.niagarafalls.ca/bids). Tenderers are to review this Web Page to inform themselves of any requests for Tenders, etc. The City shall not guarantee that previous successful Tenderers or any potential Tenderers shall be notified by any means electronic or otherwise of any RFT or other opportunity. It is the responsibility of any potential Tenderer to check this Web Page to avail themselves of any RFT or other opportunity.

2. Questions Regarding Possible Discrepancies

If a Tenderer finds discrepancies, ambiguities or omissions in the Contract Documents, or should be in doubt as to their meaning, they shall notify the Owner at once, who will have prepared and posted on the website a written addendum to all Tenderers. All addenda are to be incorporated in the Tender and will become part of the Contract. The Owner will not be responsible for any other explanations or interpretations of the proposed Contract Documents.

3. Tender Submission and Correspondence in English

Tender submissions and all subsequent documents, invoices, reports, schedules and correspondence of any kind 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.

4. Form of Tender - Appendix A

- a) Tenderers must complete all required spaces and sign where indicated on the *Appendix A: Form of Tender*.
- b) Tenderers must attach all required documents to *the Appendix A: Form of Tender pages*.
- 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.
- d) All taxes to be extra to the unit prices stated on the price schedule.
- e) By submitting a Tender in response to this RFT, the Tenderer thereby acknowledges that offers contained within its Tender shall be irrevocable and remain open for acceptance by the City for a period of not less than ninety (90) days from the closing date and time specified in this RFT.

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5. Adherence to Requirements

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

6. Liability for Errors

While the City 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 guide for Tenderers. The information is not guaranteed or warranted to be accurate by the City, 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.

7. Collusion

By submitting a Tender, a Tenderer certifies that the Tender has been prepared independently and without collusion with any other Tenderer.

8. Conflicts of Interest

- a) In its Tender, the Tenderer must disclose to the City any potential conflict of interest that might compromise the performance of the service. If such a conflict of interest does exist, the City may, at its discretion, refuse to consider the said Tender.
- b) The Tenderer must also disclose whether it is aware of any City employee, City Council member or member of a City agency, or commission thereof, having a financial interest in the Tenderer and the nature of that interest. If such an interest exists or arises during the evaluation process or the negotiation of the Contract, the City may, as its discretion, refuse to consider the Tenderer's submission or withhold the award of any Contract to the Tenderer until the matter is resolved to the City's sole satisfaction.

9. Anti-Lobbying Restrictions and Required 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 City Staff and elected Council members of the City.
- b) In the event of any such lobbying, the City shall 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 City must be directly and only with the Contact for Inquiries 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 City formally awards the Contract. Any lobbying undertaken during this time frame by any Tenderer or the Tenderer's company staff members, or anyone involved with their Tender submission may result in immediate disqualification from the

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process. This anti-lobbying restriction is not meant to affect the day-to-day operations of the City, its Staff and the elected Council of the City that may necessarily include contact with potential Tenderer 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 City, its authorized Staff, the City's representative for this work or their authorized designates.

10. Tenderers Expenses

Tenderers are solely responsible for their own expenses in preparing a Tender and for subsequent negotiations with the City, if any. If the City elects to reject all Tenders received, the City will not be liable to any Tenderer for any claims, whether for costs or damages incurred by any Tenderer in preparing their Tender, loss of anticipated profit in connection with any final contract, or any other matter whatsoever.

11. Erasures and Alterations

Any erasures, alterations or cross-outs must be initialed in ink by the Tenderer. Failure to do so shall result in the rejection of Tenderer's Tender submission by the City.

12. Public Comment or Promotion of Tender Submission

Except for Tenderer's interviews, meetings or presentations specifically authorized or arranged by the City contact person or authorized designate, neither Tenderers nor their representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to publicly promote or advertise their submission, or their interest or participation in the Tender and subsequent procurement processes (if any) without the City's prior written consent, which consent may be arbitrarily withheld or delayed.

13. Adjustments to Tender Submissions after Closing Date

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

14. Withdrawal of Tender

Tenderers shall be permitted to withdraw their unopened Tender after the Tender has been delivered to the City Clerk at any time up to the official **closing time** by submitting a written request from the Tenderer to the City Clerk, prior to the time specified for the Tender closing. The City reserves the right to withdraw, at its discretion, this RFT at any time and shall not be liable for any expense, cost, loss or damage incurred or suffered by any Tenderer as a result of such withdrawal.

15. Conditional Tenders

Tenders which are incomplete, conditional, obscure, contain additions not called for, or contain agreements, contracts or obligations from the Tender's company or parent company, erasures, or contain alterations irregularities of any kind, shall be rejected.

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16. Irrevocability and Firm Prices

Tender submissions received from Tenderers are to be irrevocable and open for acceptance for a period of not less than ninety (90) days after the closing date stated in this RFT. The prices stated on the Form of Tender shall remain firm for the duration of the Contract period.

17. Escalation Clauses

Tenders containing an escalation clause of any kind shall be rejected.

18. Harmonized Sales Tax

The Harmonized Sales Tax shall be shown as a separate item on the Form of Tender and be included in the total Tendered price. The Harmonized Sales Tax registration number must also be shown on the Form of Tender, at the designated location, below the Tenderer's signature. The Supplier will be required to pay Harmonized Sales Tax on purchases which he/she makes under any Contract resulting from this RFT. Tenderers are instructed to include this tax in the prices Tendered herein.

19. New Goods and Materials Only

Unless otherwise stated all goods supplied as a result of this RFT shall be new only, never used, of the latest manufacture and not re-manufactured.

20. Goods and Materials Suitable for Use

The Tenderer warrants that any goods, materials, articles or equipment to be supplied under or pursuant to any Contract resulting from this RFT, that is or are to be made or used for a particular purpose, will be fit and suitable for that purpose.

21. Origin of Goods and Materials

Wherever possible, the goods, materials, articles or equipment, specified or called for in or under this RFT shall be of Canadian origin and manufacture.

22. Warranties and Covenants

The Contractor will represent, warrant and covenant to the City, and acknowledge that any service or supply, as a result of this RFT, will be strict accordance with the functional and technical requirements set out in this RFT.

23. W.H.M.I.S. Requirements

As applicable the Supplier must supply a supplier label and appropriate Material Safety Data Sheet under the W.H.M.I.S. legislation and Hazardous Protection Act for all controlled products to be supplied per this RFT. Any controlled good supplied without appropriate data sheet and proper labeling will not be accepted and will be returned at the sole cost to the Supplier.

24. Third Party Software

Where the City is in possession of software containing or constituting confidential proprietary information belonging to third parties, the successful Tenderer shall not, except

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in the usual incidental manner genuinely necessary for the intended use of such software on the equipment of the City;

- a) analyse, copy, decompile, disassemble, translate, convert, reverse engineer or duplicate any physical embodiment or part thereof, or permit any person to do so; or
- b) divulge to any unauthorized person the ideas, concepts or techniques, or make any other improper use, of such software.
- c) The successful Tenderer shall fully defend, save harmless and indemnify the City from and against any loss or damages suffered by the City as a result of any failure by the successful Tenderer, its officers, directors, partners, contract personnel, agents and employees or any of them to comply with the provisions hereof.
- d) Should the successful Tenderer include third party components within the documents, expertise, design and any other aspect of the Tender submitted to the City, the successful Tenderer must secure the rights to use and repackage third party components and pass on those rights to the City without additional charges.
- e) The City will own all intellectual property rights, including (without limitation) copyright, in and to all deliverables provided by the successful Tenderer and its sub-consultants.

25. Patents, Intellectual Property Rights, Copyright, Trademarks, Technology Rights

By submitting a Tender, the Tenderer warrants that the information contained in its Tender does not infringe any Patents, intellectual property rights, Copyright, Trademarks, Technology Rights of any third party and agrees to defend The Corporation of the City of Niagara Falls at the Tenderer's own expense, in all suits, actions or proceedings in which the City of Niagara Falls is 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 City of Niagara Falls's 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 City of Niagara Falls. The Tenderer agrees to indemnify and hold harmless the City of Niagara Falls from any and all license, royalty and proprietary fees or costs, including legal costs, which may arise out of the City of Niagara Falls's 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.

26. Compliance with Laws and Acts

The Supplier shall comply with all Federal, Provincial and Municipal Laws, statutes, regulations and bylaws, relevant to this RFT including but not limited to:

- *The Construction Lien Act*, R.S.O. 1990, c. C.30
- *The Occupational Health and Safety Act*, R.S.O. 1990, c. 0.1, as amended.

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- *Workplace Safety and Insurance Act*, effective January 1, 1998, as amended
- *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended.
- *Accessibility for Ontarians with Disabilities Act (AODA) 2005*. Third party suppliers who deliver goods and services on behalf of the City are required to ensure they meet the legislative requirements of the AODA's Integrated Accessibility Standard, as per Ontario Regulation 191/11, Section 7.

27. Freedom of Information

Any information including all work as described in this RFT, service or product details, prices, statements, and any other information provided by the Tenderer shall be kept strictly confidential and release of same, except for any details regarding this Tender document stated in a Report to the Council of the City, shall only be granted in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 as amended.

28. Omission & Mis-statements

- a) All pages of this RFT and the Contract, shall be taken together to explain each other, and to make the whole consistent; and if it is 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 Supplier shall, at the Supplier's 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 works hereby contracted for; nor shall such decision or correction entitle the Supplier to any extension of time for the completion of the Contract.
- b) It is to be understood that the complete RFT containing all documents and drawings as posted on the City's Bid Opportunities Web Page (www.niagarafalls.ca/bids) shall constitute the RFT. Any Tenders received that have clauses or any wording or figures, statistics, numbers, quantities or any other items that have been changed or altered in any way shall be rejected and not accepted by The Corporation of the City of Niagara Falls.

29. 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 invalidate the Tender and the Tenderer's delivered Tender submission will be rejected.

30. Waiver of Rights in Tender Submission and Indemnity

- a) Each Tenderer acknowledges and agrees that the City is likely to receive, and be required to deal with, multiple Tender submissions, all of which may contain or disclose information considered by their Tenderers to be of special, unique, secret or proprietary nature, and that such information and the manner in which the City may use it may be

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entitled or subject to protection under any of Canada's intellectual property laws, the Competition Act, Municipal Freedom of Information and Privacy Protection Act or the common law relating to unfair competition.

- b) The City will not accept any Tender submission that is subject to a reservation by the Tenderer of any such rights, and each Tenderer, by virtue of submitting a Tender submission pursuant to this RFT, expressly waives any and all protection to which the Tenderer might otherwise be entitled in respect of that Tender submission under all of the foregoing laws, and expressly releases the City and its staff, as well as the qualified Tenderers from any claims, actions, suits and proceedings whatsoever for the infringement of any intellectual property right or for the use of any secret or proprietary information disclosed to the City in that Tender submission.
- c) Each Tenderer shall indemnify and save harmless The Corporation of the City of Niagara Falls and its 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 in connection with their Tender submission, including any and all costs incurred by the City.

31. Rights of the City

- (a) The City reserves the right, in its absolute discretion to accept a Tender which it deems most advantageous to itself and the right to reject any Tenders, in each case without giving any notice. The lowest or any Tender will not be accepted. In no event will the City be responsible for the costs of the preparation of the submission of a Tender.
- (b) Tenders which contain conditions or otherwise fail to conform to the Instructions to Tenderers may be disqualified or rejected. The City may, however, in its sole discretion, reject or retain for its consideration Tenders, which are non-conforming because they do not contain the content or form required by the Instructions to Tenderers or for the failure to comply with the process for submission set out in these instructions to the Tenderers.
- (c) 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 RFT process and by submitting a Tender each Tenderer shall be deemed to have agreed that it has no claim.
- (d) The awarding of a Purchase Order to a Supplier shall not be a guarantee of exclusivity. The City of Niagara Falls reserves the right to issue a Purchase Order to one Supplier, or to two or more Suppliers or to cancel this RFT for reasons that are in the best interest of and provide the City the best value for the City. The Tenderer by submitting a Tender in response to this RFT acknowledges that the City has these rights.

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- (e) The City reserves the sole and unfettered right to enter into negotiations with any Tenderer who has submitted a Tender in response to this RFT for any terms, conditions or any other matters the City deems necessary. The receipt of any Tender in response to this RFT shall not be understood as a process directly leading to the issuance of a Purchase Order by the City.

32. Rights to Tender Submission

Upon receipt of the Tenderer's Tender submission, the City shall retain the right to determine the use of the said submission for its own purposes. Tenderers shall not use their Tender submission for any other purposes whatsoever, including revealing any content of their Tender submission or making copies for other agencies, firms or companies not being a legal part or division of the Tenderer's company, unless permission for any such use is received in writing by the Tenderer from the Corporation of the City of Niagara Falls. Tenderers must make a request in writing to the City for the intended use of their Tender submission for any other purposes than as stated herein.

33. Ownership and Disclosure of Tender Submission

The documentation comprising any Tender submitted in response to this RFT, along with all correspondence, documentation and information provided to the City by any Tenderer in connection with, or arising out of this RFT, once received by the City:

- a) Shall become the sole and unfettered property of the City and may be appended to the Agreement with the Successful Tenderer;
- b) Shall become subject to the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"), and may be released, pursuant to that Act.

Because of *MFIPPA*, prospective Tenderers are advised to identify in their Tender submission any scientific, technical, commercial, proprietary or similar confidential information, the disclosure of which could cause them injury.

34. Limitation and Waiver of Damages

The Tenderer, by submitting a Tender, agrees that it will not claim damages, for whatever reason, relating to the RFT or any resulting Contract or in respect of the competitive process. The Tenderer, by submitting a Tender, also waives any claim for loss of profits if no Agreement is made between the Tenderer and the City.

35. Confidentiality of Information

Except as noted, all communications between the Tenderers and the City regarding this Request for Tender shall be treated as confidential, commencing the date of issuance of the Request for Tender to and after the receipt and opening of Tenders. The City, in its sole and unfettered discretion, may at any time reject any Tender from a Tenderer without further consideration and terminate that Tenderer's right to continue in the Request for Tender process in the event of any breach of confidentiality by the Tenderer.

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36. Protection of the City

The successful Supplier shall at all times well and truly save, defend, keep harmless and fully indemnify the City and its 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 the City, its servants, employees or agents, 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.

EVALUATION AND AWARD

1. 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 as issued by the City including all attachments thereto.
- Addenda to the RFT (if any)
- The RFT including all appendices and attachments.
- The Tender's submission.

2. Reasons for Rejection of the Tenderers Submission:

- a) All Form of Tender pages not completed and not signed by the Tenderer in the stated place.
- b) All required pricing and information not stated on the Form of Tender pages and any other pages of this RFT.
- c) Any erasures, alterations or cross-outs must be initialed in ink by the Tenderer.
- d) All Addenda requirements not included.
- e) The first page of all Addenda, completed and signed by the Tenderer, not included.
- f) All other reasons as stated in this Request for Tender – Supply.

3. Vendor Performance

The Corporation may, in its sole discretion, reject a Tender submission if a Tenderer:

- a) has, at any time, threatened, commenced or engaged in legal claims or litigation against the Corporation;
- b) is involved in a claim or litigation initiated by the Corporation;
- c) previously provided goods or services to the Corporation in an unsatisfactory manner;
- d) has failed to satisfy an outstanding debt to the Corporation;
- e) has a history of illegitimate, frivolous, unreasonable or invalid claims;
- f) provides incomplete, unrepresentative or unsatisfactory references; or
- g) has engaged in conduct that leads the Corporation to determine that it would not be in the Corporation/s best interests to accept the Tender submission.

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4. 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 City chooses not to proceed with the 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 Tender 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 City, then the Tenderers shall have no claim against the City for any costs, expenses, losses including loss of profits, liabilities or damages whatsoever.
- b) The City reserves 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 a successful Tenderer, 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 City, in its sole and unfettered discretion, reserves 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 or the project, without stating reasons therefore and, accordingly, the City also reserves the right to accept or to reject any or all of the Tender submissions and the City reserves the right to proceed as, in its sole and unfettered discretion, following receipt of the Tender submissions, including, without limitation, issuing a second or more, or a modified RFT for the project or entering into contract negotiations with any Tenderer.
- d) The lowest priced Tender submission received will not necessarily be accepted.
- e) The issuance of this RFT and the receipt of any Tender submission by any Tenderer do not commit the City to award a Contract or to pay any costs incurred in the preparation of any Tender by any Tenderer, or in any Tenderer's attendance at any meetings with the City.

5. Tender Opening Results

No Tender contract information will be provided prior to the issuance of a City staff report to the elected Council of the City recommending an award (if any) for the work stated in this RFT.

6. Inducements

Any Tenderer who offers any kind of a reward to any person having influence over the administration of this Tender during the administration of the Tender shall have their Tender disqualified.

**THE CORPORATION OF THE CITY OF NIAGARA FALLS
REQUEST FOR TENDER – SUPPLY
RFT29-2019 – SUPPLY & DELIVERY OF
ONE (1) LOADER, ONE (1) BACKHOE, ONE (1) EXCAVATOR**

INSTRUCTIONS TO TENDERERS

7. Tender Award

The award of this Tender is subject to the Owner obtaining approval from the City of Niagara Falls City Council. If approved by City of Niagara Falls City Council, a Purchase Order will be issued by the City to the awarded supplier.

8. Announcement by the City

No announcement concerning information about any Tender submission received by the City or about the evaluation process of the City in determining a successful Tenderer (if any) will be made until a Report is issued to City Council recommending an award. Any notification of award shall be in accordance with the *Municipal Freedom of Information and Protection of Privacy Act* R.S.O. 1990, c. M.56 as amended.

9. 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 Contact for Enquiries.

10. Time is of the Essence

The City shall have the right to cancel at any time any purchase order or any part of any purchase order resulting from this RFT in respect to the SUPPLY covered thereby, not delivered or performed by the specified time in this RFT, without incurring any liability whatsoever in respect hereto.

11. Decision by City

The Tenderer agrees by submitting a Tender submission in response to this RFT that the City has no obligation to reveal its decision in selecting a successful Tenderer.

12. Delivery Information

a) The prices stated in this RFT cover the goods, materials, work, services, articles or equipment, referred to herein, being delivered F.O.B. destination, freight, express, duty and all other charges prepaid, unless otherwise indicated herein. A detailed delivery ticket or piece tally, showing the exact quantity of goods, materials, articles or equipment, shall accompany each delivery thereof. A storekeeper's or other receiver's receipt shall not bind the City to accept the goods, materials, articles or equipment covered thereby, or the particulars of the delivery ticket or piece tally therefor.

b) In the event that goods, materials, articles or equipment, specified or called for herein, are to be furnished from a point outside Canada at a price which is expressly not to include importation charges into Canada or delivery in the Niagara Falls area, the Canada Customs Invoice in quadruplicate, with Bill of Lading, Export Entry form, Express receipt of advice of shipment by Parcel Post, shall be delivered to the Finance Department, P.O. Box 1023, Niagara Falls, Ontario, Canada, L2E 6X5.

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INSTRUCTIONS TO TENDERERS

- c) Should an additional tax or duty or any variation in any tax or duty, become directly applicable to goods, materials, articles or equipment, specified or called for in this RFT, subsequent to its submission by the Tenderer and before the delivery of the goods, materials, articles or equipment, or the completion of the work or services covered thereby, pursuant to an official order issued by the City the appropriate increase or decrease in the price of such goods, material, articles or equipment, shall be made to compensate for such changes as of the effective date thereof.
- d) Unless otherwise stated, all goods, materials, articles or equipment supplied, and all work or services, performed, pursuant to this condition shall be subject to inspection by the City at the point of unloading or the site of the work or services. No extra charge shall be made by the Supplier for packaging, packing or containers, unless otherwise indicated herein.
- e) The Tenderer agrees that the goods, materials, articles, equipment, work or services, specified or called for in or under this RFT, will be delivered or completed within the period set out herein as the guaranteed period of delivery or completion after receipt of an official order therefor.

13. Payment Schedule

- a) The normal payment term offered by the City of Niagara Falls is net 30 days. Payment term shall only be modified at the sole discretion of the City to take advantage of discounts for prompt payment or for other terms that shall be deemed to be in the best interests of the City.
- b) Invoices must be submitted to the Accounts Payable Department, City Hall, 4310 Queen St., Niagara Falls, ON L2E 6X5.
- c) The Tenderer agrees that the City shall be entitled to the discounts stated herein if the payment of invoices for the goods, materials, articles or equipment specified or called for in or under this RFT, is made with the period specified herein after acceptance or satisfactory completion thereof, as the case may be, and the receipt by the City of the invoice therefor.
- d) The City shall not pay the final invoice to the supplier for the goods, materials, articles or equipment stated in this RFT until the City is fully satisfied that all terms and conditions stated in this RFT are delivered to the complete satisfaction of the City.

14. Additional Requirements

The Corporation of the City of Niagara Falls reserves the right to add or delete items listed herein following award of any Contract resulting from this RFT. Unit prices stated by the Tenderer shall apply.

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INSTRUCTIONS TO TENDERERS

15. Standards and Legislation: Failure to Comply

The successful Tenderer may be required to provide written documentation that all materials proposed meet Municipal, Provincial and Federal Government standards, legislation and laws. Also, the successful Tenderer must comply with all laws, legislation, regulations, and provisions of the Federal, Provincial, Municipal Governments or any governmental agency as they pertain to the work described herein. Failure by the successful Tenderer to comply with these laws, legislation, regulations and provisions shall be just cause for the City, at its discretion, to stop performance of the Contract resulting from this RFT, until such time as the successful Supplier complies with these laws etc. Also, the City may, at its discretion, award the Contract to any other supplier or may re-issue the RFT. The City may assess against the Supplier any damages whatsoever as a result of failure to comply.

16. Warranties and Covenants

The Tenderer will represent, warrant and covenant to the City, and acknowledge that any supply as a result of this RFT with the City will be in strict accordance with the functional and technical requirements set out in this RFT.

17. Extension of Contract

The time period duration of any Contract resulting from this RFT may be extended for a specific period, provided that both the City and the successful Supplier agree to such extension. The City may notify the successful Supplier at any time to seek an extension.

18. Failure to comply with all Tender Terms

Failure to comply with all terms, specifications, requirements, conditions and general provisions of this RFT, to the satisfaction of the City, shall be just cause for the cancellation of the Contract award. The City shall then have the right to award this contract to any other supplier or to re-issue the RFT. The City shall assess against the Supplier any damages whatsoever as a result of failure to perform. In addition, the City may, at its discretion, stop the performance of this Contract until such time as the Supplier complies with all the provisions of this Contract.

19. Termination for Convenience of the City

The City of Niagara Falls, upon giving thirty (30) days written notice (unless a longer period is given) may terminate the Purchase Order, in whole or in part, when it is in the best interest of the City of Niagara Falls.

20. Removal from Tenderers List

The City reserves the right to remove from its list of Tenderers, for an indeterminate period, the name of any Tenderer who fails to execute a Contract or for unsatisfactory performance on any previous or current contract held with the City or if the Tenderer is currently involved in or responsible for litigation of any kind against the City.