



THE CORPORATION OF THE CITY OF NIAGARA FALLS

REQUEST FOR TENDER – CONTRACTOR SERVICES

RFT26-2021

OAKES PARK – FIELD HOUSE RENOVATIONS – PHASE II

CLOSING DATE: Thursday, August 26th, 2021 at 2:00 p.m. local time

PART A

Instructions to Bidders

Bidders are invited to submit their bid for the **Oakes Park – Field House Renovations – Phase II** all in accordance with this Request for Tender - Contractor Services. This RFT is posted on the City of Niagara Falls website at www.niagarafalls.ca/bids.

Mandatory Pre-Bid Site Meeting

The purpose of this Mandatory Site Meeting is for Bidders to become fully aware of the conditions which shall be met in performing the work. In submitting a Tender, the Bidder acknowledges that they have satisfied themselves as to the nature and location of the work, the general and local conditions, particularly those bearing upon transportation, disposal, handling and storage of materials, availability of labour, water, electric power, roads, physical conditions at the site, ground conditions and contours and the character of equipment and facilities needed during the prosecution of the Work.

Questions **will not** be answered at this meeting. All questions need to be sent via email as per instructions in the following section.

Attendance is mandatory and attendance will be taken promptly at the scheduled meeting time. Individuals will be asked to line up and state their name and the organization they belong to, which will be recorded by a Procurement Division representative.

The meeting will be held on **Thursday, August 5th, 2021 at 10:00AM**. Bidders shall at the Oakes Park Field House at the north face by the concession stand counter, Niagara Falls. **Only one (1) representative from the Bidder's company shall be permitted access. Sub-contractors will not be permitted to attend.**

Attendees **must**:

- Maintain a two (2) meter distance with others.
- Be in accordance with the Niagara Region's Face Covering By-Law, a face covering (supplied by the Bidder) must be worn by all individuals while inside buildings, below is a link to the Niagara Region's Face Covering By-Law:
<https://www.niagararegion.ca/health/covid-19/mask-bylaw.aspx>
- Complete the COVID Screening questionnaire on the day of the prescribed site meeting, prior to entering the facility. The screening portal is available at:
<https://surveys.niagarafalls.ca/s3/Self-Screening-Assessment-Tool-v2>. Bidders are to complete the online screening. Appendix D – COVID Screening Questions are available for reference only. Hard copies of the screening will not be accepted at the meeting.
* If an attendee answered yes to any of these questions, to prevent the potential spread of COVID-19 and/or other illnesses, that attendee **will not** be permitted to enter the building at this time.

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Questions Regarding this RFT

Questions regarding this RFT must be submitted in writing only to Jessica Curno, Procurement Agent, e-mail jcurno@niagarafalls.ca no later than **Thursday, August 12th, 2021 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 webpage: www.niagarafalls.ca/bids. It is the Bidder's sole responsibility to check this webpage 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.

Addenda will not be posted until after the date for questions has closed. The deadline for addenda issuance will be **Thursday, August 19th, 2021 at 2:00 p.m.** If the City determines that it is necessary to issue an addendum after the deadline, the City may extend the submission deadline.

Tender Submission

All Bidders must submit **(one) 1 submission**, sealed in envelopes using the attached mailing labels and submitted to the Gale Centre Arena, 5152 Thorold Stone Road by **Thursday, August 26th, 2021 at 2:00 p.m. local standard time** (hereinafter referred to as the "closing time").

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(Issued for Tender July 15, 2021)

Electrical Engineer: Fuse Engineering Corporation

Mechanical Engineer: MEP Engineering Inc.

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Appendix B - Agreement to Bond Form - 1 page

Appendix C - Sub-Contractor Form - 2 pages

Appendix D - COVID Screening Questions - 1 page

ATTACHMENT

Labels for Tender Envelopes No. 1 & No. 2

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(i) GENERAL

1. Definitions

Throughout this Request for Tender – Contractor Services, unless inconsistent with the subject matter or context:

- a) City and Owner shall mean The Corporation of the City of Niagara Falls.
- b) Lead Consultant shall mean Chapman Murray Associates Architects Inc.
- c) RFT and Request for Tender shall mean the Request for Tender issued by The Corporation of the City of Niagara Falls.
- d) The word Tender and shall mean the Tender received from the Bidder by the City, in response to the RFT.
- e) The word Contractor shall mean the successful Bidder.
- f) The word Contract shall refer to the CCD 2-2008 Stipulated Price Contract amended by the supplementary conditions included in this RFT as Part C to be executed by the City and the successful Bidder.

2. Named Parties

For the purposes of this Request for Tender (RFT) the following parties are identified:

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

City’s Contract Administrator: Jim Huppunen, Facilities Project Manager

Lead Consultant: Larry Griffiths, Chapman Murray Associates Architects Inc.

Contact for Inquiries: **Jessica Curno**, Procurement Agent, e-mail jcurno@niagarafalls.ca

3. Additional Insured

The following parties are identified to be included as additional insured for this project:

- The Corporation of the City of Niagara Falls
- Chapman Murray Associates Architects Inc.
- Fuse Engineering Corporation
- MEP Engineering Inc.

(ii) TENDER SUBMISSION PROCEDURE

The following policy regarding the submission of Tenders will be applicable for this project. Bidders are requested to adhere strictly to the instructions concerning submission.

1. Tenders should include all required pages and must be signed by the Bidder, in ink, where stated on Appendix A: Form of Tender page (s) and on any other pages so stated.
2. Tenders received later than the time specified will not be accepted, regardless of the postal seal date. Tenders delivered by mail or courier must have the Tender description and Tender number clearly stated on the exterior of the envelope or package. The City assumes no responsibility for the Tenders delivered by mail or courier.
3. Tenders shall be submitted in the two envelopes using the attached labels for Tender envelopes, as follows:

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- a) The **first envelope (smaller white envelope)** shall contain the Agreement to Bond (as specified under section 6 below) and the Tender Deposit (as specified in section 5 below).
- b) The **second envelope shall contain** submissions which must be in the following sequence:
 - 1) Appendix A: Form of Tender
 - 2) Addenda issued (if any)
 - 3) Appendix C: Sub-Contractor Form

Please note that the RFT specifications shall not be included in the second envelope. In the event the first envelope does not contain the proper documents the second will not be opened.

- 4. The following Documents shall form this Contract as noted on Appendix A – Form of Tender.
 - i) **PART A** – Instructions to Bidders - pages 1 to 17
 - ii) **PART B** – Stipulated Price Contract CCDC 2 2008 (not part of this document)
 - This Contract utilizes the Standard Construction Document CCDC 2 2008. Also the various sections of this RFT take precedence over the CCDC 2 2008 document. As the CCDC 2 2008 is under copyright, Contractors must obtain their own copy through the Canadian Construction Documents Committee.
 - iii) **PART C** - Supplementary Conditions to CCDC 2 Stipulated Price Contract, 2008 - pages 1 to 64
 - iv) Addenda, if any, issued during the Tendering period.
 - v) Appendices A, B, C and D
 - vi) Certificate of Insurance – Contractor
 - vii) WSIB
 - viii) Drawings
 - ix) Specifications

5. Tender Deposit

Tender submissions shall be accompanied by a deposit in the form of a certified or Bid Bond in the amount of **\$25,000.00**, made payable to “The Corporation of the City of Niagara Falls”. The Form of Bid Bond that is acceptable is a Bid Bond using CCDC220 or the same

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format and content as in CCDC220 or other form used by a Surety Company, authorized by Law to do Business in the Province of Ontario, and acceptable to the Owner. The Bid Bond shall be valid for a minimum of the acceptance period stated in the Tender document.

Bid Bonds will not be returned as they expire at the end of the acceptance period stated in the Tender document. Bidders are particularly requested to note that No Interest shall be paid for the Tender deposits required and retained by the City in connection with this tendering procedure.

6. Agreement to Bond

Bidders shall include with their Tender submission Appendix C: Agreement to Bond form attached to this RFT, indicating that a Bonding Company licensed in the Province of Ontario undertakes and consents to issue a Performance Bond and a Labour and Material Payment Bond in favour of the City upon the awarding of the Contract. The City will accept the Surety providers Agreement to Bond as long as it meets the requirements of Appendix C and is an original duly signed and sealed. Agreement to Bond must be duly signed and sealed (no copies of facsimiles will be accepted). The said Bonds deposited with the City shall be held by the City to secure the due performance and observance of the Contract and the payment of all creditors as required by the Contract.

(iii) BIDDER REQUIREMENTS

1. Notification of Potential Bidders Not Guaranteed

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

2. Questions Regarding Possible Discrepancies

If a Bidder finds discrepancies, ambiguities or omissions in the Contract Documents, or should be in doubt as to their meaning, he shall notify the Owner at once, who will have prepared and posted on the website a written addendum to all Bidders. All addenda are to be incorporated in the Tender and will become part of the Contract. Neither the Owner nor the additional insured will be responsible for any other explanations or interpretations of the proposed Contract Documents.

3. Tender Submission and Correspondence in English

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

4. Form of Tender Pages – Appendix A

a) Bidders must complete all required spaces and sign where indicated on the Appendix A: Form of Tender.

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- b) Bidders 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 Bidder's Company who has authority to bind the Company.
 - d) All taxes to be extra to the unit prices stated on the Form of Tender.
 - e) By submitting a Tender in response to this RFT, the Bidder 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.
5. **Adherence to Requirements**
The Bidder 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 guideline for Bidders. 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 Bidders from forming their own opinions and conclusions with respect to the matters addressed in this RFT.
7. **Collusion**
By submitting a Tender, a Bidder certifies that the Tender has been prepared independently and without collusion with any other Bidder.
8. **Conflicts of Interest**
- a) In its submission, the Bidder 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 Proposal.
 - b) The Bidder 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 Bidder and the nature of that interest. If such an interest exists or arises during the award of the City may, as its discretion, refuse to consider the Bidder's submission or withhold the awarding of any Contract to the Bidder until the matter is resolved to the City's sole satisfaction.
9. **Anti-Lobbying Restrictions and Required Disclosure**
- a) Bidders, 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 Bidder without further consideration and terminate that Bidder's right to continue in the

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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 Inquires identified in this RFT. It should be duly noted by all Bidders 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 timeframe by any Bidder or the Bidder's 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 City, its Staff and the elected Council of the City that may necessarily include contact with potential Bidder 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. Bidder's Expenses

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

11. Examination of Drawings, Specifications, and Work Site

Bidders shall carefully examine all Contract Documents and inspect the work site in order to satisfy themselves by personal examination as to all conditions and materials affecting the Contract and as to the detailed requirements of the construction. Bidders must not rely upon any verbal confirmation or any estimate or representations, made by an officer, servant or employee of the City.

12. Erasures and Alterations

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

13. Public Comment or Promotion of Tender Submission

Except for Bidder's interviews, meetings or presentations specifically authorized or arranged by the City contact person or authorized designate, neither Bidders 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.

14. Adjustments to Tender Submissions After Closing Date

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

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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.

16. Unbalanced Tenders

Each item in the Form of Tender shall be a reasonable price for such work, as is the custom of the trade. Tenders that contain prices which appear to be so unbalanced or out of line with the custom of the trade as likely to affect adversely the interests of the City, may be rejected.

17. Prices

All prices, as Tendered, are to remain in effect for the duration of the Contract. If it is deemed necessary, at the request of the Contractor and subject to approval by the City Representative, the Contract is to be extended for a period not exceeding six months; the Contractor agrees that the Contract prices shall remain in effect until completion of the Contract.

18. Specified Products

(a) Unless stated otherwise in the RFT or the Contract, where products are specified in the RFT or the Contract, the City **shall not** accept any substitutions. Bidders shall be solely responsible for conducting due diligence to assess the price of such products and the time required for shop drawing approval, manufacturing, delivery, installation and all other timing requirements necessary to obtain such products. By submitting a Tender, the Bidder represents to the City that the specified products are available and can be supplied without an increase to the Bidder's Tender price and without an extension of the prescribed date for substantial performance of the Contract, and the City is entitled to rely on such representation when awarding the Contract.

(b) The City reserves the right prior to the closing date, to approve or reject in its sole discretion alternative or substitute products suggested by a Bidder. If a Bidder would like to suggest an alternate product, the Bidder must deliver to the City, at least 15 business days prior to the closing date, the information and documents set out below that demonstrate the requested substitution is equal to those being specified in this RFT. The City will evaluate the submission and, if approved, all Bidders will be notified of the acceptable alternative. Where an alternate or substitute is being proposed, the Bidder must submit the following, along with any other pertinent information, to the City's Procurement Agent (as applicable):

1. Item for which the alternate or substitute is being proposed
2. Product make(s) and model number(s)
3. Supplier/Manufacturer's information: Name, Address, Telephone Number, Contact Person
4. Lead time for alternate or substitute product
5. Product warranty information
6. Product brochure and specifications.

(c) Where substitutions are permitted following award in accordance with the Contract, the Contractor shall follow the process specified in the Contract to seek the approval of the City to proceed with a substitution, which approval is within the sole discretion of the City.

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(d) All costs related to or arising from applications for substitutions shall be at the sole expense of the successful Bidder. The City shall not be liable for any such costs.

19. Irrevocability and Firm Prices

Tender submissions received from Bidders 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.

20. Escalation Clauses

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

21. Harmonized Sales Tax

The Harmonized Sales Tax shall be shown as a separate item on the Contractor 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 Bidder's signature. The Contractor will be required to pay Harmonized Sales Tax on purchases which he/she makes under any Contract resulting from this RFT. Bidders are instructed to include this tax in the prices Tendered herein. The Contractor shall make allowances for the savings which may accrue due to the Ontario Harmonized Sales Tax and the City expects that these savings will be deducted from the dollar value of the Contract.

22. Third Party Software

Where the City is in possession of software containing or constituting confidential proprietary information belonging to third parties, the successful Bidder shall not, except 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 Bidder 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 Bidder, its officers, directors, partners, contract personnel, agents and employees or any of them to comply with the provisions hereof.
- d) Should the successful Bidder include third party components within the documents, expertise, design and any other aspect of the Tender submitted to the City, the successful Bidder 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 Bidder and its sub-consultants.

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

By submitting a Tender, the Bidder 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 Bidder'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 contractual relationship with the Bidder and the Bidder's use of any or all technologies, methodologies, strategies in providing the services required herein. The Bidder 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 Bidder 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 contractual relationship with the Bidder and the Bidder's use of any or all technologies, methodologies, strategies in providing the services required herein. It is expressly agreed by the Bidder that these covenants are irrevocable and perpetual.

24. 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 Bidder 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.

25. 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 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 Contractor shall, at the Contractor'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 Contractor 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.

26. Withdrawal of Tender

Bidders 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 Bidder to the Manager of Procurement, prior to the time specified for the

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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 Bidder as a result of such withdrawal.

27. Agreement with Terms

By submitting a Tender the Bidder agrees to all the terms and conditions of this RFT. Bidders 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 Bidder's delivered Tender submission will be rejected.

28. Waiver of Rights in Tender Submission and Indemnity

- a) Each Bidder 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 Bidders 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 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 Bidder of any such rights, and each Bidder, by virtue of submitting a Tender submission pursuant to this RFT, expressly waives any and all protection to which the Bidder 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 Bidders 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 Bidder 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.

29. 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 Bidders 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 Bidders or for the failure to comply with the process for submission set out in these instructions to the Bidders.
- (c) Except as expressly and specifically permitted in the Instructions to Bidders, no Bidder shall have any claim for any compensation of any kind whatsoever, as a result of

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participating in this RFT process and by submitting a Tender each Bidder shall be deemed to have agreed that it has no claim.

30. Rights to Tender Submission

Upon receipt of the Bidder's Tender submission, the City shall retain the right to determine the use of the said submission for its own purposes. Bidders 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 Bidder's company, unless permission for any such use is received in writing by the Bidder from the Corporation of the City of Niagara Falls. Bidders 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.

31. 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 Bidder 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 Bidder;
- 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 Bidders 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.

32. Limitation and Waiver of Damages

The Bidder, 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 Bidder, by submitting a Tender, also waives any claim for loss of profits if no Agreement is made between the Bidder and the City.

33. Protection of the City

The successful Contractor 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.

34. Confidentiality of Information

Except as noted, all communications between the Bidders and the City regarding this RFT shall be treated as confidential, commencing the date of issuance of the RFT to and after

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the receipt and opening of Tenders. The City, in its sole and unfettered discretion, may at any time reject any Tender from a Bidder without further consideration and terminate that Bidder's right to continue in the RFT process in the event of any breach of confidentiality by the Bidder.

(iv) 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:

- Contract (in form CCDC2 2008) as issued by the City in supplementary conditions thereto.
- Addenda to the RFT (if any)
- The RFT including all appendices and attachments.
- The Bidder's submission.

2. Reasons for Rejection of the Bidders Submission:

- a) All Appendix A: Form of Tender pages not completed and not signed by the Bidder in the stated place.
- b) All required pricing and information not stated on the Appendix A: 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 Bidder.
- d) All Addenda requirements not included.
- e) The first page of all Addenda, completed and signed by the Bidder, not included.
- f) All other reasons as stated in this Request For Tender – Contractor Services.

3. Vendor Performance

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

- 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.

4. Suspension of Activity

- a) All Bidders are advised and put on notice that notwithstanding anything else contained in this RFT that all Bidders 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 Bidders acknowledge and agree that if any such processes are suspended, terminated or cancelled at any time or times during any stage of the RFT

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or subsequent procurement process (if any) by the City, then the Bidders 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 Bidder, without incurring any liability whatsoever to any Bidder, 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 Bidder.
- 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 Bidder do not commit the City to award a Contract or to pay any costs incurred in the preparation of any Tender by any Bidder, or in any Bidder's attendance at any meetings with the City.

5. Contractor

The Bidder shall bid on all items under the Appendix A: Form of Tender. The City Representative will deal only with the Contractor, whose name is shown in the Agreement, or his appointed Representative. This Contract, if awarded, will be awarded to only one Bidder.

6. Inducements

Any Bidder 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.

7. Tender Opening Procedure and Tender Results

To assist in the containment of COVID-19 the City has suspended all public openings. Tenders will be opened the same day that is stated for the closing of the RFT.

Unofficial results, of the Total Tender Amount (including HST), will be posted on the City's website before the end of business that day.

8. Decision by City

The Bidder 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 Bidder.

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9. Contract Award

No announcement concerning information about any Tender submission received by the City or about the evaluation process of the City in determining a successful Bidder (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.

10. Execution of Contract

The successful Bidder shall be notified in writing of the acceptance of their Tender submission and shall be bound to execute the Agreement with the Corporation within two weeks of Contract award. Date of Contract award shall be taken as the date on which the successful Bidder is notified in writing of the acceptance of the Tender submission by the City.

The successful Bidder must submit the following to the City Contractor Administrator within two weeks of the Contract award:

- a) A Performance Bond which complies with the requirements of the conditions of the Contract for **50%** of the Contract price. The said Performance Bond shall include maintenance of the work for a period of **one year** from the date of completion thereof.
- b) A Labour and Material Payment Bond which complies with the requirements of the conditions of the Contract for **50%** of the Contract price. The said Labour and Material Payment Bond shall be in effect for a period of **one year** from the date of completion thereof.
- c)
 - (i) A certified copy of all required Insurance Policies which complies with the requirements of the Contract, including all endorsements.
 - (ii) A Certificate of Insurance.
- d) A letter from Workplace Safety and Insurance Board certifying that the Contractor is in good standing with the Board. A "letter of good standing" must be re-submitted throughout the Contract every 90 days.

11. Examination of Records

The Bidder agrees that the City of Niagara Falls or any of their duly authorized representatives shall, until the expiration of three (3) years after the final payment under this Contract, have access to and the right to examine any directly pertinent books, documents and records of the Bidder involving transactions related to this Contract.

12. Additional Requirements

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 Bidder shall apply.

13. City not Employer

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The Bidder agrees that the Corporation of the City of Niagara Falls is not to be understood as the employer to any successful Contractor nor to such Contractor's personnel or staff for any work, services, or supply of any products or materials that may be awarded as a result of this RFT. Also, in accordance the Occupational Health and Safety Act, **the successful Contractor herewith agrees to be the "constructor" as defined under this Act.**

14. 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.

15. Payment Schedule

Payment shall be made to the successful Bidder in accordance with the terms and conditions of the Contract.

16. 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 Contractor agree to such extension. The City may notify the successful Contractor at any time to seek an extension.

17. Failure to Execute Contract

Failure by the successful Bidder to execute the Agreement with the City and to deposit with the City the said Bonds, certified copies of all required Insurance Policies and a Workplace Safety and Insurance Board letter within the specified times as provided herein shall be just cause for the annulment of the Contract award and the forfeiture of the Tender deposit to the Corporation, not as a penalty, but as liquidated damages sustained.

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 contractor or to re-issue the RFT. The City shall assess against the Contractor 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 Contractor complies with all the provisions of this Contract.

19. Removal from Bidders List

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