



City of
Peterborough

Attachment 1

Terms, Conditions and General Information

Attachment 1 is applicable to all bid solicitation documents issued by the Corporation of the City of Peterborough since January, 2016 – with the exception of those issued by the City's Infrastructure and Planning Services Department for infrastructure construction for roads, sewers, bridges.

This document is posted on the City's website at:

www.peterborough.ca/tenders

Each Bidder, Proponent or Respondent; hereinafter referred to as a "Bidder"; to any of the City's bid solicitation documents, is obligated to confirm that they have read and understand **Attachment 1**, by signing **Appendix B "Acknowledgements"**, which is provided with each bid solicitation document.

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1.0 General Definitions

1.1 General Definitions - for All Bid solicitation documents

“Acceptable Form of Collateral” – Certified cheque, money order, bank draft, irrevocable letter of credit or bid bond issued by a Surety licensed and qualified to function in the province of Ontario.

“Administrative Staff Committee” –A committee comprised of the Chief Administrative Officer and Commissioners of the City Departments, which has authority to award competitive bids as set out in this By-law.

“Agreement” –A binding contract between the City and one or more other parties, which has been duly authorized and executed in accordance with this By-law.

“Agreement to Bond” – A letter, or form, issued by a licensed bonding agency advising that, if the Bidder is successful, the bonding agency will issue the required bond(s).

“Approval Authority” –The specific authorization to proceed with procurement.

“Approved Budget” - A budget approved by Council in a budget document and/or by specific Council resolution to acquire a good or service, including pre-commitments and any subsequent change to the budget approved either by Council or by delegated authority as set out in this by-law including operating expenditures to be approved in future budgets assuming the same level of service as that of the current year.

“Award” – means the acceptance of a bid, in accordance with the City’s Purchasing By-law, as amended from time to time.

“Bid” or **“Tender”** - An offer received from a supplier for the supply of Goods/Services, in response to an RFT, the acceptance of which will result in the formation of a formal Agreement and/or a Purchase Order. In this document ONLY, Bid or Tender shall also mean Proposal or Quotation.

“Bidder” – The person or company that responds to a bid solicitation document and includes their heirs, successors and permitted assigns. In this document ONLY, Bidder also means Proponent or Respondent.

“Successful Bidder” – The person, partnership or corporation and any employee, agent, representative or officer, or sub-contractor/supplier/sub-consultant thereof that has been successful in the award of a bid solicitation and thereby agrees to supply the goods/services under the terms of the bid solicitation and is undertaking the Work as identified in the Contract. In this document ONLY, successful Bidder shall also mean successful Proponent or successful Respondent.

“Bid Deposit” – As defined in the City’s Purchasing By-law, means currency, certified cheque, bank draft, bond surety issued by a surety company or other form of negotiable instrument submitted by a Bidder as evidence of their commitment to enter into an Agreement to do the work outlined in the Bid Solicitation.

“Bid Solicitation” – As defined in the City’s Purchasing By-law, means a formal competitive procurement process which is a Request for Proposals, a Request for Formal Quotations or a Request for Tenders, or other request for procurement.

“Budget” – An amount approved by Council for operating expenses or capital projects.

“Canadian Construction Documents Contract” or “CCDC” - A standard Canadian construction contract, prepared by the Canadian Construction Documents Committee, which provides standardization for bidding and contracting procedures.

“Certificate of Insurance” – A certified document issued by an insurance company licensed to operate by the Province of Ontario, certifying that the Bidder is insured in accordance with the City’s requirements.

“Change Order” – A written order issued from the City that changes the scope or specifications of the Work.

“Chief Administrative Officer” or “CAO” - The most senior staff position in the administrative structure and includes other employees that may be designated to act in this capacity.

“City” – The Corporation of the City of Peterborough.

“Clerk” - The City Clerk, or Deputy Clerk as appointed by City Council.

“Commissioner” – the head of a Department within the City of Peterborough

“Company” - A corporation, sole proprietorship or partnership

“Compliant Bid” - The bid of a responsive and responsible Bidder who has fully complied with all of the call for bid requirements and whose past performance, reputation and financial capability is deemed acceptable.

“Consultant” – The provider of a Service who, by virtue of their professional expertise, is contracted by the City to undertake a specific task or assignment. Examples include a planner completing a specific study; an architect or engineer drawing plans and managing construction for a particular building or project; a lawyer, representing the City for a particular legal matter; an appraiser providing an opinion of value on an asset; etc.

“Contract” – A binding agreement between the City and another party, which has been duly authorized and executed, in accordance with the City’s Purchasing By-law.

“Contract Documents” – The Bid Solicitation document, all attachments and appendices, any addenda, the Contract and the successful Bidder’s Bid Solicitation submission.

“Contract Administrator” or **“Engineer”** or **“Project Manager”** – The City employee, or Consultant, or such other officer, as may be authorized by the City to act in a particular capacity.

“Cooperative Purchasing” - Coordination of City purchases with purchases from other institutional organizations, such as other municipalities, utility companies, school boards, hospitals, universities and the taking advantage of Public Sector Pricing available through the Federal or Provincial Government

“Council” - The Council of the City of Peterborough duly elected.

“Cost” - The actual price of acquisition, including term discounts and freight charges, and excluding applicable taxes.

“Designate” – The authorized designate of a person identified in the bid solicitation who has specific approval or signing authority.

“Evaluation Criteria” - The criteria to be used in a Request for Proposals to determine which Proposal best meets the City’s needs, and which may include, but are not limited to: company background, project team and manager, related experience, availability for duration of works, comprehension, understanding and approach, planning and resources required, innovation, schedule of fees, quality of service, compatibility, product reliability, operating efficiency and other factors deemed appropriate for the project.

“Evaluation Committee” - A committee of staff and/or consultants established to evaluate the Proposal submissions according to the Evaluation Criteria, and is comprised of staff from the originating department and, where practical, at least one member from another department and, at the discretion of the Treasurer, may include the Purchasing Administrator.

“Goods and/or Services” – Means any one or more of supplies, personal property, construction materials, construction services, insurance, employee benefits, construction of assets, and maintenance and service contracts.

“Irrevocable Letter of Credit” – An irrevocable document on a financial institution’s standard form requesting that the party to whom it is addressed pay the bearer or a person named therein money as a result of failure to perform or to fulfill all the covenants, undertakings, terms, conditions and agreements contained in the Contract.

“Manager” - The Manager of a Division within the City of Peterborough.

“Material Safety Data Sheets” or **“MSDS”** – Material Safety Data Sheets that will be submitted by the successful Bidder for all hazardous materials, including an index of chemical compounds, with details of properties, handling details, precautions and first-aid procedures.

“Ontario Association of Architects contract document” or **“OAA contract document”** - A standard form of contract for Architectural Services.

“Originator” – The person or Department responsible for initiating a Bid Solicitation, and the ensuing process.

“Owner” or **“Authority”** or **“Corporation”** – The Corporation of the City of Peterborough.

“Mandatory Site Meeting” - A meeting arranged by the City, which usually takes place at the site outlined in the Bid Solicitation, and where City representatives and/or Consultant(s) review the Bid Solicitation document, its' requirements/specifications and may include a site tour, if applicable. All potential Bidders are required to attend the mandatory meeting to be able to make a submission for the Bid Solicitation and may ask questions applicable to the Bid Solicitation document, the process or the site. All additional information, clarifications and the attendee list will be finalized and issued by the City, in the form of an addendum, to all attendees.

“Procurement” – The obtaining of Goods and/or Services for use, whether on a permanent or on a temporary basis.

“Proponent” – A person or Company that submits a Proposal. In this document only, the use of the word Bidder also includes Proponent.

“Successful Proponent” – The person, partnership or corporation and any employee, agent, representative or officer, or sub-contractor/supplier/sub-consultant thereof that has been successful in the award of an RFP and thereby agrees to supply the goods/services under the terms of the RFP and is undertaking the Work as identified in the Contract.

“Proposal” – An offer received from a Proponent for the supply of Goods/Services, in response to a Request for Proposals, acceptance of which may be subject to further negotiation

“Purchase Order” - A written acceptance by the City of an offer to procure goods and/or services.

“Purchase Requisition” - An internal written or online request for procuring goods and/or services.

“Purchasing Card” - A credit card that may be used by authorized employees of the City to purchase goods and/or services within limits as set out in this By-law.

“Purchasing Section” or **“Purchasing”** - The administrative unit within the City’s Financial Services Division that is responsible for administering the City’s purchasing policies.

“Quotation” - An offer received from a selected supplier for the supply of specific goods and/or services, in response to a Request for Formal Quotations.

“Request for Information” or **“RFI”** – A non-binding solicitation of input from interested parties with respect to a possible future procurement process. This is a common procurement practice used to obtain product/service details, comments, feedback or reactions from potential suppliers/contractors prior to the issuing of a call for bid. A firm price or cost information is not required. Feedback may include best practices, industry standards, technology issues, etc.

“Request for Prequalification” or **“RFPQ”** – A request for the detailed submission of the experience, financial strength, education, background and personnel from individuals, firms or Corporations who may, from time to time, qualify to supply a good(s) or service(s) to the Corporation, but which does not create any contractual obligation between the respondent submitting the pre-qualification submission and the Corporation, but which may be a pre-condition to a further procurement contract(s) with the Corporation.

“Request for Proposals” or **“RFP”** – A form of Bid Solicitation whereby the City invites potential suppliers to submit Proposals with respect to a particular project, or the supply of Goods and/or Services, without supplying detailed specifications and/or terms and/or conditions of the Agreement that might ultimately be entered into and the cost is expected to be greater than \$25,000.

“Request for Formal Quotations” or **“RFQ”** – A form of Bid Solicitation whereby the City publishes the specifications, terms, conditions and details concerning the proposed contract and invites selected suppliers, as opposed to open advertisement, to submit sealed Bids in response to detailed specifications, and the cost is expected to be greater than \$25,000 and less than or equal to \$50,000.

“Request for Tenders” or **“RFT”** – A form of Bid Solicitation whereby the City publishes the specifications, terms, conditions and details concerning the proposed contract and advertises for, or invites suppliers to submit sealed Bids in response to detailed specifications, and the cost is expected to be greater than \$25,000.

“Responsive and Responsible Bidder” - A bidder who complies with the provisions of a Bid Solicitation, including specifications, and contractual terms and conditions, and who can reasonably be expected to provide satisfactory performance on the proposed Agreement based on, in part, reputation,

references, performance on previous Agreements, and sufficiency of financial and other resources.

“Sub-Contractor” – A person or company who is awarded a portion of an existing contract by a principal or general contractor.

“Surety” – A specified dollar amount in the form of a certified cheque, bid bond, performance bond, labour and materials payment bond, letter of credit or any other form as deemed necessary and stated in the Bid Solicitation.

“Treasurer” – The person, appointed by City Council and charged with the Treasurer’s responsibilities as set out in the **Municipal Act, 2001**.

“WHMIS” – Workplace Hazardous Materials Information System.

“Work/Project” – The Goods/Services supplied by the successful Bidder pursuant to the Contract, and including all labour, materials, equipment, and any other items, which are required to execute the Contract.

“Vendor” or **“Supplier”** or **“Contractor”** – A person or company from whom the City may purchase or lease goods/and or services; or who performs services; or manufactures, produces, provides goods to the City.

2.0 Site Meetings/Site Inspections

Section 1.0 of the specific bid solicitation document will indicate if a meeting/inspection is applicable, mandatory or not, and provide such details as date, time and location. Below are the options and detailed information.

2.1 Mandatory Site Meeting

Attendance is mandatory and appropriate contact people will be available to answer any questions the Bidders may have.

Submissions from Bidders who do not attend and register at a mandatory site meeting, or arrive after official attendance has been taken, will not be considered.

Bidders must register using the legal name of the Company that will be submitting a Bid. Provision of a business card with registration is preferred. Sub-contractors/suppliers/sub-consultants are permitted to attend the site meeting, but it is not mandatory.

Information discussed at a mandatory site meeting is considered unofficial and will only be considered official when issued in an addendum prior to the Closing.

2.2 Non Mandatory Site Meeting

Attendance at a site meeting is not mandatory; but is recommended, as staff will be available to answer any questions Bidders may have.

Information discussed at a non-mandatory site meeting is considered unofficial and will only be considered official when issued in an addendum prior to the Closing.

2.3 Non Mandatory Site Inspection

A Bidder may be permitted to conduct a non mandatory inspection of a job site prior to submitting a bid. The Bidder may undertake their inspection in a careful and skilful manner, and shall obtain and conduct all requisite investigation in order to acquaint themselves with physical conditions in relation to the job site and the Project. **Section 1.0** of the specific bid solicitation will indicate if any appointment is required. Any questions, comments or requests for clarification must be put in writing to the City through bids&tenders™. **Section 4.0** of the specific bid solicitation document will provide additional information regarding last date and time for questions, etc. No information will be provided during the inspection.

3.0 Bid Deposit Information

3.1 Amount

The City reserves the right to request a Bid Deposit of at least 10% of the Bid amount, excluding HST, as stated in **Appendix C “Pricing”** of a specific bid solicitation document, or another amount, as approved by the Treasurer, to be provided with the bid submission, in an acceptable form of collateral, including a certified cheque, money order, bank draft, letter of credit from a banking or financial institution, or a bid bond issued by a surety company licensed and qualified to function in the Province of Ontario.

Note: each bid solicitation will indicate if a bid deposit is required and the amount or % required – in **Section 8.0** of the bid solicitation document.

If 10% bid deposit is being requested, to ensure the 10% of proposed price requirement has been met, the Bid Deposit calculation should be rounded up to the next highest dollar. As an example, a Bid Deposit of 10% on the submitted Tender price of \$945,657.23 would be \$94,566.

3.2 Purpose of Bid Deposit

Through the Bid Deposit, the Bidder acknowledges that:

- a. The Bid has been submitted in good faith, and with no collusion with any other Bidder;
- b. The Bid is genuine and accurate;
- c. The City can rely on the representations in the Bid; and
- d. The Bidder shall fulfill all requirements of the Bid if the City accepts it.

The City shall not pay interest on the Bid Deposit.

3.3 Failure to Provide

Failure to provide any Bid Deposit, if requested, will render the Bid null and void. The Bid, in such cases, shall not be accepted by the City, and shall not qualify as a Bid. In such circumstances, the Bidder will be notified.

3.4 Perfecting the Bid Deposit

Failure to provide a requested Bid Deposit in the proper form or quantum may, at the discretion of the City, render the Bid null and void. The City, however, reserves the right to have a Bidder perfect the Bid Deposit, in proper form or quantum, at the City's option within two working days after the City has notified the Bidder, in writing, of the need to perfect the Bid Deposit. The Bidder can then perfect the Bid Deposit provided that:

- a. The Bid Deposit is then in proper form; and
- b. The Bid Deposit is then provided in an amount which is at least twice the original amount or original percentage stated in **Section 8.0** of the bid solicitation document.

3.5 Forfeit of Bid Deposit

The Bid Deposit of the successful Bidder shall be forfeited to the City in the event that the successful Bidder, prior to executing a Contract, notifies the City that they are not prepared to provide the goods/services.

The Bidder acknowledges that any forfeiture of the Bid Deposit does not relieve the Proponent of their liability to pay damages sustained by the City arising from failure by the Bidder to enter into a Contract with the City.

3.6 Return of Bid Deposit

The Bid Deposit of the successful Bidder will be returned after all the documents are completed to the satisfaction of the City, and in particular:

- a. The successful Bidder has executed the Contract, if required in the bid solicitation document, with the City; and
- b. The successful Bidder has provided all insurance and bonding information, if required in the bid solicitation document.

The Bid Deposit provided by each unsuccessful Bidder shall be returned within 10 working days from the date of the City entering into a Contract with the successful Bidder.

All Bidders acknowledge the length of time between the Closing and the time Bid Deposits can be returned may be substantial.

If, for whatever reason, the City decides not to accept any of the Bids, all Bid Deposits will be returned.

4.0 Addenda

4.1 Purpose

It may be necessary for a variety of reasons to issue addenda that may include, but not be limited to:

- a. Correction to, or clarification of, the bid solicitation document;
- b. Extension of the Closing Date;
- c. Retraction or cancellation of the bid solicitation document; or
- d. Response to Bidder questions.

4.2 Bidder Registration

All Bidders must register with [bids&tenders™](https://cityofpeterborough.bidsandtenders.ca) at <https://cityofpeterborough.bidsandtenders.ca> in order to obtain any City of Peterborough bid solicitation documents. Bidders who download document(s) will be added to the Plan Takers List, also available on [bids&tenders™](https://cityofpeterborough.bidsandtenders.ca).

4.3 Posting of Addenda on [bids&tenders™](https://cityofpeterborough.bidsandtenders.ca)

Applicable addenda will also be posted to <https://cityofpeterborough.bidsandtenders.ca>. Only registered PlanTakers will be notified by [bids&tenders™](https://cityofpeterborough.bidsandtenders.ca).

4.4 Bidders' Responsibility

It is the Bidder's ultimate responsibility to ensure all addenda have been received and are reflected in their Bid.

The Bidder shall confirm the number of addenda received, when completing **Appendix B**, provided with the bid solicitation document.

5.0 Adjustments/Withdrawals of Bid Submissions

5.1 Adjustments to a Bid Submission

Adjustment requests received by telephone, email, mail or fax shall not be considered.

5.2 Request to adjust a Bid before Closing

A Bidder who has already submitted a Bid may make a request to adjust their Bid before the Closing time.

In order to make the adjustment, the already submitted Bid may:

- a. Be returned to the Bidder for adjustment and re-submission before the Closing time; or
- b. Be superseded by the Bidder making another submission before the Closing time.

The Bid contained in the envelope bearing the latest date and time shall be considered the intended Bid and any others shall be considered withdrawn and

will be returned to the Bidder. Authenticity of the request may be confirmed by the City.

5.3 Request to withdraw a Bid before Closing

A Bidder who has already submitted a Bid may request that their Bid be withdrawn before the Closing time. The request must be provided in writing, on Company letterhead, and include contact information for verification. Authenticity of the request may be confirmed by the City. Bids withdrawn under this procedure cannot be reinstated.

5.4 Request to withdraw a Bid during Bid Solicitation Opening

5.4.1 For RFPs - no request for withdrawal of a Proposal shall be permitted during the Proposal Opening process.

5.4.2 For RFQs and RFTs - when several RFTs/RFQs are being opened at the same Opening, at the conclusion of the reading out of the pricing of an RFT/RFQ, the low Bidder on that RFT/RFQ may request the withdrawal of any of their remaining Bids for the RFTs/RFQs yet to be opened. The withdrawal shall be allowed if the request is made in person. Authenticity of the request may be confirmed by the City.

Corporate authorization and identification are required, before the City will return the original Bid solicitation document. Bids returned under this procedure cannot be reinstated.

6.0 Closing Date and Bid Opening Information

6.1 Bid Solicitation Closing

The time registered on the City Hall digital clock, will be considered the official time of day when determining exact time of submission. All Bids received before the Closing will be marked by City staff with the date and time received.

Bids will not be accepted after the Closing.

6.2 Bid Solicitation Opening and Results

6.2.1 For RFPs only – only the names of Proponents who have submitted a Proposal will be identified at the Opening.

6.2.2 For RFTs/RFQs only - the names of Bidders and the financial information, as identified in **Appendix C** of the specific bid solicitation document, will be identified at the Opening.

The information, as specified in either of **Items 6.2.1 or 6.2.2 above** will be posted on bids&tenders™ at <https://cityofpeterborough.bidsandtenders.ca> for the specific bid document, after the Opening. Bidders will not be notified in writing of the Opening results. This information is unofficial, subject to review and award.

7.0 General Submission Requirements

7.1 All Requirements

The Bidder shall complete and submit all requirements indicated, and in the order stated in **Appendix A** of the bid solicitation document, which is the:

- a. Form of Tender cover page for the bid submission;
- b. Checklist of what is to be included in the bid submission; and
- c. Confirmation by the Bidder of items included in the bid submission.

7.2 Original and Copies

The bid submission shall be typed or written in ink. It shall contain original signatures, where required, and shall clearly be marked “Original” and shall include all requirements, as set out in **Appendix A** of the specific bid solicitation document.

Note: the Bid Deposit, if requested in **Section 8.0** of the specific bid solicitation document, shall be attached to the front of the Original.

Section 8.0 of the specific bid solicitation document will indicate the number of copies required.

7.3 Binding and Irrevocable

Offers made in a Tender will be considered by the City to be binding and irrevocable, and shall remain open for acceptance by the City for a period stated in the specific bid solicitation document.

8.0 Contacts and Communication

8.1 Contacts

In accordance with Part 5, Section 5.1.1 (f) of the City’s Purchasing Policy By-law 14-127, City Council members and employees, are prohibited from discussing any aspect of an RFT process with a prospective Bidder, from the time the RFT is issued until such time as an award report has been prepared and submitted to the appropriate approval authority.

Bidders are cautioned, therefore, to deal exclusively with the City, based on information provided in **Section 4.0** of the bid solicitation document.

8.2 Errors, Omissions and Questions

The City shall not be held liable for any errors or omissions in any part in the bid solicitation document. Bidders with questions related to a specific bid solicitation document, finding errors in, or omissions from the drawings or documents, or having any doubt as to the meaning or intent of any part of the bid solicitation document, must make their inquiry through the “**Submit Question**” feature on bids&tenders providing reference to the applicable Section(s) and Item number(s).

The Deadline for Questions is **before 12:00 NOON Eastern Standard Time, on [insert date for Wednesday of week of before closing]**.

Staff will prepare and distribute an addendum through bids&tenders™, as necessary, in sufficient time to allow for Bidders to receive and understand the new information. **Questions received after the Deadline for Questions will not be responded to.**

The City will not consider any claim, after submission of the bid, that there has been a misunderstanding with respect to the conditions imposed by the bid solicitation document. It is each Bidder's obligation to satisfy itself that it understands every aspect of the bid solicitation document.

Only registered Plan Takers may submit a question.

The City will not respond to questions which are submitted other than through the bid&tenders portal. The City will not respond to questions after the Deadline for Questions has passed. The City is under no obligation to provide additional information, and the City is not responsible for any information provided by or obtained from any source other than an addendum.

Nothing in the bid solicitation document relieves a Bidder from its obligation to form its own opinion, through reading the entire document and submitting questions. If indicated in the specific bid solicitation document, the document, all attachments, appendices and addenda, if applicable, will be available on bids&tenders™, at <https://cityofpeterborough.bidsandtenders.ca>.

9.0 Insurance and Bonding

9.1 Indemnification and Insurance

9.1.1 Indemnification

The successful Bidder shall, at all times, indemnify and save harmless the City, its employees and Members of Council from and against any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever made or brought against, suffered by, or imposed on the City in respect of any loss, damage or injury to any person or property directly or indirectly arising out of, resulting from, or sustained, as a result of this Contract, provision of services or any operations connected therewith except for the negligence or wilful misconduct of the City.

9.2 General Insurance Information

All insurance costs, if indicated in **Section 8.0** of the specific bid solicitation document, will be borne by the successful Bidder. Otherwise, the successful Bidder shall be responsible for insurance coverage at all times, until the goods are delivered and accepted, based on final inspection by the City.

All applicable deductibles under the required insurance policies are at the sole expense of the successful Bidder.

All policies shall apply as primary and not as excess of any insurance available to the City.

All policies shall be endorsed to provide the City with not less than 30 days written notice of cancellation, change or amendment restricting coverage.

All policies shall be with insurers licensed to underwrite insurance in the Province of Ontario with an AM Best rating of no less than A-.

The successful Bidder covenants and agrees that the insurance requirements will not be construed to and shall in no manner limit, or restrict, the liability of the successful Bidder.

The successful Bidder will comply with any reporting requirements of the insurance policies in order to maintain the policies in good standing, to give notice in writing of any incident which may result in a claim or loss covered by the policies and to provide documentation necessary in the defense or settling of claims.

If any claims against the successful Bidder, whether arising from this Agreement or not, effects any aggregate limits evidenced to the City in an amount greater than 20% of the limit requested and evidenced, whether paid or in an insurance claim reserve condition, then the successful Bidder must report to the City of such limits erosion. The City has the right to request the successful Bidder to purchase additional limits to comply with the minimum limits requested.

The successful Bidder shall ensure that all sub-contractors/suppliers/sub-consultants, if applicable, have valid coverage with the same limits and wording as outlined in **Section 8.0** of the specific bid solicitation document.

9.3 Types of Insurance

Note: the types, limits and deductibles for insurances required will be provided in **Section 8.0** of each bid solicitation document. Additional insurance requirements, not stated herein, will be provided in detail in the specific bid solicitation document.

9.3.1 Commercial General Liability

The successful Bidder shall provide and maintain, during the term of the Contract, Commercial General Liability insurance, subject to limits of not less than **\$2,000,000** inclusive per occurrence, **or an amount as specified in the bid solicitation document**, and with a property damage deductible not to exceed **\$5,000, or an amount as specified in the bid solicitation document**.. To achieve the desired limit, umbrella or excess liability insurance may be used. The coverage shall include coverage for, but not be limited to:

- i. Bodily injury including death;

- ii. Damage to property including loss of use thereof;
- iii. Premises and operations liability;
- iv. Products and completed operations liability;
- v. Blanket contractual liability;
- vi. Cross liability or severability of interest clause;
- vii. Contingent employer's liability;
- viii. Personal injury liability;
- ix. Owners and Contractors Protective coverage;
- x. Non-Owned Automobile Liability
- xi. Contain a waiver of any subrogation rights which the successful Bidder's insurers may have against the City;
- xii. If applicable, demolition of buildings removal of property;
- xiii. Contain no materially restrictive language against the Work;
- xiv. If applicable, "Sudden and Accidental Pollution", 120 hour reporting;
- xv. Name the "Corporation of the City of Peterborough" and any consultant or agency indicated in the specific bid solicitation document, as Additional Insured, but only with respect to liability arising out of the operations of the named insured; and
- xvi. A clause stating that the successful Bidder's insurance policy will be considered as the primary insurance and shall not call into contribution any other insurance that may be available to the City.
- xvii. **For work done at the City's municipal Airport** - contain no materially restrictive language against the Work and is valid on airport premises.

9.3.2 Vehicle Insurance

The successful Bidder shall provide and maintain, during the term of the Contract, Standard OAP 1 Automobile Policy insurance, subject to a limit not less than **\$2,000,000, or an amount as specified in the bid solicitation document**, with the physical damage deductible not to exceed **\$5,000, or an amount as specified in the bid solicitation document**, for all licensed motor vehicles owned or leased by the successful Bidder to be used in the provision of the goods/services, if applicable, in this RFT.

The successful Bidder's use of automobiles is at the discretion of the successful Bidder and not the City. The City is not responsible for any physical loss or damage to any vehicles used by the successful Bidder in relation to this Work; and such damage shall not be assessed to the City in anyway.

9.3.3 Contractors Pollution Liability Coverage

The successful Bidder shall provide and maintain, during the term of the Contract, Contractors Pollution Liability Insurance, subject to limits of not less than **\$2,000,000** inclusive per claim, **or an amount as specified in the bid solicitation document**, and with a deductible not to exceed **\$5,000**, **or an amount as specified in the bid solicitation document**, or as agreed to by the City, and shall include coverage for but not be limited to, bodily injury including death, property damage and remediation costs which are reasonable and necessary to investigate, neutralize, remove, remediate, including associated monitoring, or dispose of: soil, surface water, groundwater or other contamination. The policy shall remain in force for 12 months following completion of Work. The City shall be named as an Additional Insured.

If Abatement Work is involved, the successful Bidder shall provide and maintain the above stated Insurance, or cause to be maintained by their sub-contractor, whoever will be responsible for any type of Abatement Work required for this Project.

9.3.4 Professional Liability Insurance or Errors and Omissions

9.3.4.1 For Consulting Services:

The successful Bidder shall provide and maintain, during the term of the Contract, professional liability insurance, in an amount not less than **\$2,000,000** per claim, **or an amount as specified in the bid solicitation document**, with a **\$5,000,000** aggregate, **or an amount as specified in the bid solicitation document**. Such insurance shall provide coverage for all errors and omissions made by the professional in the rendering of, or failure to render, professional services in connection with the contract. In the alternative, the Consultant shall provide a Single Project Professional Liability Insurance Policy, in an amount of **\$4,000,000**, **or an amount as specified in the bid solicitation document**.

The bid solicitation document shall indicate how long the policy shall remain in force.

9.3.4.2 For a Design Project – to ensure all potential contractors engaged in the design are covered

The successful Bidder shall provide and maintain, during the term of the Contract, Professional Liability Insurance, or Errors & Omissions Liability Insurance, for damages arising out of errors, omissions, or negligent acts by or on behalf of the successful Bidder and any other Contractors engaged in Design Services, except those directly employed by the City. Such insurance policy is to be in an amount not less than **\$5,000,000**, **or an amount as specified in the bid solicitation document**, for any one claim and in the annual aggregate. Any deductible shall not be more than **\$50,000 per claim**, **or an amount as specified in the bid solicitation document**, and such insurance shall remain in force for at least 24 months following substantial completion.

The bid solicitation document shall indicate how long the policy shall remain in force.

9.3.5 Crime/Fidelity Insurance

9.3.5.1 Employee Dishonesty Coverage - when a contract requires the successful Bidder, or their employee(s), sub-contractors, or sub-consultants, to be working, either on City property, or in other locations on behalf of the City, without supervision, the successful Bidder shall provide and maintain such coverage of not less than **\$10,000** per claim, **or an amount as specified in the bid solicitation document**, including 'third party' or 'client' coverage or equivalent insuring against any infidelity by the successful Bidder against infidelity to the property of the City and related Agencies. If required in the Contract, coverage shall extend to the client(s) for whom the successful Bidder will be providing their services.

9.3.5.2 Fidelity/Employee Dishonesty Coverage - when an administrative contract requires that funds be advanced to the successful Bidder, the successful Bidder shall provide and maintain such coverage of not less than **\$60,000** per claim, **or an amount as specified in the bid solicitation document**, including 'third party' or 'client' coverage, protecting the City's interest, and insuring against any infidelity by the successful Bidder.

9.4 Change in Coverage

If the City requests in the bid solicitation document to have the amount of coverage provided by the policies, increased, or to obtain other special insurance for the Contract, the successful Bidder shall endeavour forthwith to obtain such increased or special insurance.

It is understood and agreed that the coverage provided by the policies will not be changed or amended in any way nor cancelled by the successful Bidder until 30 days after written notice of such change or cancellation has been personally delivered to the City's Contact Person as described in the specific bid solicitation document.

9.5 Bonding Requirements

9.5.1 Agreement to Bond

If requested in **Section 8.0**, of the bid solicitation document, the Bidder shall provide an Agreement to Bond, issued to the Corporation of the City of Peterborough by a surety company licensed and qualified to function in the Province of Ontario, or 100% of the amount of the Tender, in a certified cheque, money order, bank draft, or irrevocable letter of credit. The Agreement to Bond shall be attached to the front of the Original submission.

Failure to provide an Agreement to Bond with the Tender will render the Tender null and void.

9.5.2 Labour and Materials Bond and/or Performance Bond

If requested in **Section 6.0** of the specific bid solicitation document, the successful Bidder, within 10 working days of notification of award of the bid solicitation, and prior to the start of the Project, shall furnish a Labour and Materials Bond and/or a Performance Bond, issued by a surety company licensed and qualified to function in the Province of Ontario, or in a certified cheque, money order, bank draft, or irrevocable letter of credit, for a percentage of the amount bid, or an amount, as stated in the specific bid solicitation document.

The Labour and Materials Bond shall remain in force, without reduction, for the duration of the Contract. The Performance Bond shall remain in force for a period, as stated in the specific bid solicitation document.

Failure by the successful Bidder to provide the Bond(s), as requested, shall cause the Contract to be terminated and the Contract will be awarded to the next qualified Bidder.

10.0 General Terms and Conditions

Note: additional terms and conditions, not included herein, and specific to a bid solicitation document, may be added in **Section 6.0** of the bid solicitation document.

10.1 Freedom of Information

The Bidder hereby consents to the disclosure of the information contained in their bid submission, pursuant to **The Municipal Freedom of Information and Protection of Privacy Act**, as amended, or “MFIPPA”.

If a Bidder considers any part of the Bid proprietary, the Bidder shall clearly mark such page or section of the bid submission as confidential. The complete bid submission details are not to be identified as confidential.

The Bidder shall clearly identify, if applicable, patent, proprietary, copyright rights or similar confidential information, the disclosure of which could cause them injury or damage. The Bidder is encouraged to place all such details and information within a separate section of their bid submission.

The Bidder acknowledges that marking any page or section as “confidential” does not automatically protect that portion of the bid submission from release, but only assists the City in making a determination if a request for information is made by a third party. Any decision made by the City to release or withhold information under MFIPPA may be appealed to the Information and Privacy Commissioner of Ontario, who may direct the release of such information or uphold the City’s decision in whole or in part.

The identity of submitting Bidders, as well as the successful Bidder’s amount, may be available to the public on the City website as part of the award process.

The MFIPPA Coordinator for the City is the City Clerk. Any questions regarding the MFIPPA may be directed to the City Clerk’s office at 705-742-7777, or Toll-Free at 1-855-738-3755, Extension 1797.

10.2 Reports and Draft Reports

If the Bidder and the City enter into a contract, the City, subject to the requirements of MFIPPA, may release any information received by the City, by making it available to City Council prior to, or concurrent with, the public release of any staff report which contains a recommendation based on such information, whether or not the information is incomplete or in final form.

10.3 Costs Incurred

The City shall not, under any circumstances, be responsible for any costs incurred by the Bidder in the preparation of the submission, including, but not limited to, costs to prepare documentation, travel, and attendance at any site meetings, interviews or demonstrations, if required.

10.4 Sub-Contractors/Suppliers/Sub-Consultants

No sub-contracting/sub-consulting of any part of the Contract shall be permitted, unless as indicated in the specific bid solicitation document.

Where the City approves sub-contracting/sub-consulting, the successful Bidder shall be held fully responsible to the City for the acts and omissions of their sub-contractors/suppliers/sub-consultants and of persons directly or indirectly employed by them.

The City may, in a specific bid solicitation document, request a list of all sub-contractors/suppliers/sub-consultants whom the Bidder intends to employ in the work. The Bidder must complete an Appendix, providing the applicable information. If the successful Bidder wishes to substitute a sub-contractor/supplier/sub-consultant named in the Appendix, the successful Bidder shall provide the City with the following:

- a. Reason for the substitution;
- b. Documentation from the originally named sub-contractor/supplier/sub-consultants indicating their desire to withdraw from the project including the reason(s) for withdrawal; and
- c. The proposed substitute sub-contractor/supplier/sub-consultant experience and competence to carry out the work.

The City reserves the right to wave requirement b. at its sole discretion. Employment of the proposed substitute sub-contractor/supplier/sub-consultant to perform contract work is subject to the written consent of the City.

The successful Bidder shall be held fully responsible to the City for the acts and omissions of persons directly employed by them; for the acts and omissions of their sub-contractors/suppliers/sub-consultants; and for persons directly or indirectly employed by the sub-contractors/suppliers/sub-consultants.

In view of this responsibility for the acts and omissions of their sub-contractors/suppliers/sub-consultants, the successful Bidder shall not be obliged to employ, as a sub-contractor/supplier/sub-consultant, any person or firm to whom they object. The successful Bidder agrees to enter into a signed contract with every sub-contractor/supplier/sub-consultant that references the executed Contract between the successful Bidder and the City. The successful Bidder shall hold all sub-contractors/suppliers/sub-consultants equally responsible for safe Work performance. Nothing contained in the contract shall create a contractual relationship between a sub-contractor/supplier/sub-consultant and the City.

10.5 Assignment/Subletting

The successful Bidder shall not assign or sublet the Contract or any portion thereof without prior written consent of the City. Such consent shall not release or relieve the successful Bidder from any of their obligations or liabilities under the Contract.

10.6 Pricing and Taxes

The bid amount shall be stated in Canadian funds and shall include all applicable charges, e.g. excise taxes, customs, freight, exchange, supply, delivery and installation costs, and any other charges as may be applicable to the bid solicitation. **HST shall be extra.** See **Appendix C** of the specific bid solicitation document.

This offer will remain open to acceptance until the Bid is awarded to the successful Bidder for the said Work or until a time after the bid Solicitation Closing, as stated in the specific bid solicitation document, whichever event occurs first, and that the City may at any time within that period, without notice, accept the Bid whether any other Bid has been previously accepted or not.

The City is not responsible for costs incurred by the Bidder as a result of their failure to understand the statements in this Attachment or a bid solicitation document. It is the Bidder's responsibility to seek clarification if unsure of what is expected.

10.7 Accept/Reject

The City may accept a bid submission, in whole or in part, whether the Bid price is the lowest or not, and may reject any or all bid submissions. There is no requirement of a bid solicitation, implied or otherwise, that the Bid representing the lowest price would be selected or preferred.

Should the bid(s) received be unsatisfactory, the City reserves the right, in its sole and absolute discretion, to cancel or re-issue the bid solicitation, or negotiate for the whole, or any part, of the Work with one or more of the Bidders, commencing with the most compliant Bid, to arrive at a mutually satisfactory arrangement with respect to any modifications to the bid submission.

The City reserves the right to reject any bids submitted which may be restricted by clauses or by any agreements or by restrictive statements of any kind in a Bidders' submission.

The City reserves the right to award the Bid to another qualified Bidder whom the City, in its sole and absolute discretion, deems appropriate.

Should the City receive only one bid submission for goods/services that have a known multiple-source potential, the City reserves the right to negotiate, recall or cancel the bid solicitation.

Should qualified bid submissions exceed the City's budget provision for the bid solicitation document; the City also reserves the right to negotiate, reject or recall the bid solicitation. See **Section 10.0, Item 10.11** of this Attachment.

If no bid submissions are received, the City reserves the right to enter into negotiations with any one or more persons whatsoever.

Revised Bids will not be called for, if only minor changes are contemplated.

Note: for RFP's – the City evaluates a number of criteria, one of which is price. The evaluation criteria used to review submissions is contained in **Section 9.0** of the specific bid solicitation document.

10.8 Bid Irregularities and Causes for Rejection

10.8.1 Reject

The following will result in a bid being rejected:

- a. Bid received late - will not be opened;
- b. Faxed or emailed Bid – will not be accepted;
- c. Bids determined to be collect by courier, or with insufficient postage – will not be opened;
- d. Bids addressed to/delivered to the wrong address or location and not received prior to the Closing time indicated in the specific bid solicitation document;
- e. Bid received where a pre-qualification process or meeting is mandatory and has not been met by the Bidder - will not be opened;
- f. No Bid Deposit, if required in the bid solicitation – Bidder will be notified;
- g. Correct version of any part of Form of Tender not used;
- h. Bid not complete;
- i. Bid not legible in whole or in part;
- j. Bid not completed in ink or type;
- k. Bid not signed;
- l. Erasures, alterations or cross-outs not initialed in ink by the Bidder; and
- m. Other mandatory forms or details required and clearly shown in the bid solicitation document as being required upon submission of a bid are omitted.

10.8.2 Accept

The following represent examples of circumstances where a bid is questioned but may be accepted after examination or correction:

- a. Bid containing readily apparent arithmetic errors, if pricing required in the bid solicitation, as determined during evaluation process;
- b. Bid not acknowledging correct number of addenda issued; or
- c. Bid Deposit, if required in the bid solicitation, not in proper form or quantum.

10.9 Rejection of Bid when the City/Bidder Relationship Impaired

The City may reject a bid from a Bidder where, in the opinion of the Treasurer and the City Solicitor, the commercial relationship between the City and the Bidder has been impaired by the act(s) or omission(s) of the Bidder or sub-contractor, within the five year period immediately preceding the date on which the bid submission is to be awarded.

The act(s) or omission(s) include, but are not limited to, the following:

- a. Threatening litigation or pursuing litigation of the City, in relation to any previous contracts awarded to the Bidder by the City, or a person against whom the City is pursuing litigation. Threatening litigation means transmitting a written threat to commence an arbitration action, application or other judicial proceeding;
- b. Being a supplier against whom the City is pursuing litigation;
- c. A claim has been made against the City by the Bidder, under a surety submitted by the Bidder, such as a Bid Deposit, Performance Bond or Materials and Labour Bond;
- d. The Bidder has refused to follow reasonable directions of the City or to cure a default under any contract or agreement with the City;
- e. The Bidder refuses to enter into an agreement with the City after the Bidder's Bid has been accepted by the City;
- f. The Bidder has communicated, directly or indirectly, with any other Bidder about the preparation of the Bidder's submission for the same work;
- g. The Bidder or any person with whom that Bidder is not at arm's length within the meaning of the **Income Tax Act, Canada**, as amended, has been convicted of an offence under any taxation statute in Canada;
- h. The Bidder has been convicted under the **Criminal Code** or other legislation;
- i. The Bidder has been convicted under any environmental legislation;
- j. The Bidder has been convicted relating to product liability or occupational health or safety; or
- k. The Bidder has been convicted under the financial securities legislation; or
- l. Poor quality of work previously received.

The City reserves the right to reject a bid from a Bidder, or from a person or Company that is affiliated, associated or controlled, as defined in the **Canadian Business Corporations Act, R.S.C., 1985, c.C-44**, as amended, by the Bidder that is indebted to the City. The Treasurer may choose to accept a bid and exercise the City's legal or equitable right to deduct the indebted amount from amounts owing to the successful Bidder.

10.10 Tied Tender Submissions

For RFT/RFQs only - If the lowest compliant bid from two or more Bidders are identical in cost or unit price, the Treasurer, in consultation with the City Solicitor and the originating Department Commissioner, are authorized to enter into negotiations with the Bidders who have submitted the identical prices, in an attempt to resolve the tied Tender submissions. The negotiations may consider the following options:

- a. Awarding the Work to multiple Bidders, where practical;
- b. Basing the price on an alternative factor submitted in the Tenders, e.g. several items may have been bid but only one was the price used to award;
- c. Providing an opportunity for the tied Bidders to submit new prices;
- d. In the case where two Bidders are tied, the successful Bidder may be determined by a coin toss; or

- e. In the case of tied Tender submissions between more than two Bidders, the successful Bidder may be determined by the drawing of a name.

10.11 All Bids Exceed Approved Budget

In the event that all bids exceed the approved budget, and staff is not prepared to seek additional funding, the originating Department Commissioner may, in consultation with both the Treasurer and the City Solicitor, opt for one of the following:

- a. Approach the preferred Bidder to seek options to change the scope of work and obtain a corresponding price change for the reduced scope;
- b. Approach one or more of the lowest compliant Bidders to discuss options to change the scope of work and obtain a corresponding price change from each for the reduced scope; or
- c. Advise all Bidders that the bid solicitation process will be cancelled, and a review of the scope of work will be undertaken and that a new bid solicitation may be issued later.

10.12 Rights of the City

The City reserves the right to communicate with one or more Bidders following the Closing Date to clarify elements of the submission. The City will retain the right to ensure that an acceptable standard of use, service and operation is maintained.

10.13 Invoicing/Payment

If applicable, invoices shall be paid net 30 days from date of invoice and verification that goods/services listed have been provided to the satisfaction of the City. All invoices shall include the successful Bidder's HST number, as applicable.

10.14 Preferred Methods of Payment

The City's preferred method for payment of invoices is via Electronic Funds Transfer, or "EFT". Information on EFT may be obtained from the City Contact if the successful Bidder chooses to participate in this program. Signup is required only once. Information submitted is held in the strictest confidence and is kept on file for all future payments.

Another preferred method of payment, as applicable, is corporate credit card. Information on availability of this option may be requested in specific bid solicitation documents.

10.15 Employees

The successful Bidder and their employees shall not be deemed to be employees of the City.

The successful Bidder shall employ only orderly, competent and skilful employees to ensure that the services are carried out in a respectable manner.

In the event that any person employed by the successful Bidder, in connection with the service arising out of the bid solicitation gives, in the opinion of the City, just cause for complaint, the successful Bidder, upon notification by the City in writing, shall not permit such person to continue in any future service arising out of the bid solicitation.

10.16 Confidentiality

The successful Bidder recognizes that they may, by the nature of the goods or services being provided for the City, have access to confidential information. It is understood and agreed that the successful Bidder shall hold all information, whether confidential or not, in the strictest confidence. The successful Bidder shall not disclose, nor permit by any act or failure to act, the disclosure of any information to any third party at any time during or after the term of their Contract with the City. Nor will the successful Bidder use any information however obtained as a result of performing duties for the City for their own commercial, financial or personal advantage. The successful Bidder also acknowledges that they may be held both criminally and civilly responsible for any breach of confidentiality.

It is hereby agreed that the following information is not considered to be confidential under this Contract:

- a. Information already in the public domain;
- b. Information disclosed to the successful Bidder by a third party who is not under a confidentiality obligation;
- c. Information developed by or in the custody of the successful Bidder before entering into a contract;
- d. Information developed by the successful Bidder through their work with other clients; and
- e. Information required to be disclosed by law or regulation, including, but not limited to, subpoena, court order or administrative order.

10.17 Collusion

The Proponent declares that their response to a bid solicitation document is not made in conspiracy with any other Bidder bidding for the same products/services and is without collusion or fraud.

10.18 Force Majeure

Save and except for the payment of any monies required hereunder, neither party shall be deemed to be in default of any contract where the failure to perform or the delay in performing any obligation is due wholly or in part to a cause beyond their reasonable control, including, but not limited to, an Act of God, an act of any federal, provincial, municipal or government authority, civil commotion, strikes, lockouts and other labour disputes, fires, floods, sabotage, earthquakes, storms, epidemics and an inability to perform due to causes beyond the reasonable control of the party.

The party subject to such an event of force majeure shall promptly notify the other party of their inability to perform or of any delay in performing due to an event of force majeure and shall provide an estimate, as soon as practicable, as to when the obligation will be performed.

The time for performing the obligation shall be extended for a period equal to the time during which the party was subject to the event of force majeure.

Both parties shall explore all reasonable avenues available to avoid or resolve events of force majeure in the shortest time possible.

This requirement shall not oblige the party suffering the strike, lockout or labour dispute to compromise their position in such dispute.

10.19 Relationship of Parties

The Bidder expressly acknowledges that they are an independent vendor and neither agency, partnership nor employer-employee relationship is intended or created by the resulting contract.

The successful Bidder shall be solely responsible for all matters, if applicable, relating to statutory deduction of all taxes, employment insurance and Canada Pension and all licenses and permits which may be or become required to perform all Services.

The successful Bidder shall be solely responsible for all their personnel matters, if applicable, relating to hiring, firing, discipline, leave, remuneration, WSIB and insurance premiums.

The successful Bidder fully acknowledges and accepts their responsibility as defined under the **Occupational Health and Safety Act**, as amended.

10.20 Conflict of Interest

The successful Bidder covenants that a contract will be undertaken without a conflict of interest and that, during the course of the contract, the successful Bidder shall not undertake any work for any other client, which would result in a conflict of interest, without the prior written consent of the City.

The successful Bidder shall disclose to the City prior to accepting the contract, any potential conflict of interest. If such a conflict of interest does exist, the City may, at its discretion, withhold the assignment from the successful Bidder until the matter is suitably resolved, and further, that if during the conduct of the contract the successful Bidder identifies any issues giving rise to a potential conflict of interest; the successful Bidder shall so inform the City. If a conflict of interest is deemed to exist, then the successful Bidder shall refuse the new assignment or shall take such steps as are necessary to remove the conflict of interest to the satisfaction of the City.

Subsequent to the award of any contract, should the successful Bidder fail to disclose any conflict of interest that arises thereafter, fail to cure any conflict, or

otherwise fail to comply with the conflict of interest provisions as set out by the City, the City shall be entitled to terminate the contract immediately and any monies due and payable may be withheld by the City as liquidated damages.

The City shall have the right to judge, at its sole discretion, whether or not the declared situations do constitute an actual or potential conflict of interest.

In the event the City informs the successful Bidder that it is satisfied that a conflict of interest exists, the successful Bidder shall expeditiously take reasonable steps to resolve such conflict of interest, in the event the City, acting reasonably, is not satisfied that the conflict has been resolved it may thereafter suspend or terminate the contract in accordance with the terms of the contract.

10.21 Ownership

All information, data, policies, plans, and documents prepared and collected by the successful Bidder shall be deemed to be the property of the City. The successful Bidder shall deliver all information, data, policies, plans, and documents to the City immediately upon completion, abandonment or termination of the Work. Any re-use of documents by the City for other projects beyond the scope of bid solicitation document shall be at the City's sole risk.

10.22 Deviation

No deviation from the specifications or requirements of the bid solicitation document shall be made by the successful Bidder in the provision of the goods/services, without the written approval of the City. See **Section 14.0** of this Attachment.

10.23 Infringement Claim

The successful Bidder shall render the City harmless from any patent infringement claim that may arise.

10.24 Publication

The successful Bidder shall obtain consent in writing of the City before publishing or issuing any information regarding the goods/services provided.

10.25 Public Relations

The successful Bidder shall conduct themselves in a manner conducive to the maintenance of good public relations for the City.

Under no circumstances shall the successful Bidder, if applicable to the work or project, enter upon, or allow their equipment to enter upon private property without first obtaining approval from the respective property owner.

If, during the performance of the work, the successful Bidder receives complaints or enquiries to which the successful Bidder is not qualified to respond, the name of the complainant or the person making the enquiry shall be recorded along with their address and telephone number. A report of the incident is to be given to the City's representative, as indicated in the specific bid solicitation document, within two business days of the incident.

10.26 Non Exclusive

The contract awarded for any bid solicitation may not be exclusive. The City may, at their sole discretion, purchase the same or similar goods/services from other sources, including, but not limited to, other Bidders, during the term of the contract and beyond.

10.27 Protection of Work and Property

If applicable to the contract, the successful Bidder shall be responsible for maintaining the security of the site at all times, until the completion of the project. This requirement includes, but is not limited to, ensuring that the site is not damaged by trespassers, weather events, including rain, snow, wind, etc., or any foreseeable source of damage. In the event the City suffers any loss or damage as a result of the negligent act or omission by the successful Bidder, the City shall be entitled to deduct the amount of the loss or damage from any amount owing to the successful Bidder and/or pursue any other remedy available at law.

The successful Bidder shall be held responsible by the City for all damage caused by themselves, including damage to subsurface or surface utilities, properties, pavement, sidewalks, curbs, buildings, homes or structures adjacent to or in the general area of the Work, through any other cause relating to the Work carried out under this Contract.

Additionally, the successful Bidder will be required to make good all such damage, at their expense, and to the satisfaction of the City. Replacement of any building component and/or operational equipment shall be the full replacement cost.

The successful Bidder shall be fully responsible for all accidents arising by reason of execution or non-execution, or non-repairs of the said Work, or by reason of any failure to comply with the requirements of this clause and shall fully indemnify the City in respect thereof.

The successful Bidder shall conduct the Work at all times with the safety of employees on the job and the safety of the public in mind. All Work shall be done in accordance with recognized safe working practices and all government requirements applying to the Work.

10.28 Execution of Work

The successful Bidder shall execute the work with every possible dispatch and in a substantial and workmanlike manner, comprehending what may be reasonably implied from the specifications, though not particularly shown or called for.

The work shall be completed to the satisfaction of the City and in adherence to the requirements of this RFT. If the successful Bidder fails to perform the work as required on any particular date, the City at its discretion may have others do the work and charge the successful Bidder.

10.29 Laws, Acts and Regulations

The bid solicitation process and any resulting contract shall be subject to applicable inter-provincial and international trade agreements (Trade Agreements”), federal, provincial, municipal laws, statutes, regulations and by-laws, including without limitation. For example, successful bidders will be required to follow the **Workplace Safety Insurance Act**, the **Occupational Health and Safety Act**, and the **Environmental Protection Act**, in the transportation and delivery of goods/services required for the Contract.

The contract shall be governed and construed pursuant to laws of the Province of Ontario and the Government of Canada and applicable Trade Agreements. In the event of conflict between the provisions of the above authorities, the most stringent provisions will apply.

Where the provisions of the above acts, and any related regulations are applicable to the goods/services provided, all the responsibilities and obligations imposed upon the successful Bidder must be assumed by the Bidder.

10.30 Health and Safety

The successful Bidder shall comply with all conditions and regulations of the **Occupational Health and Safety Act**, as amended, the City and the Province of Ontario.

The successful Bidder shall take all necessary precautions to ensure that duties are performed safely and shall comply with all applicable provisions of law relating to injury to persons and property on, or about, the premises where the Work is performed.

The City reserves the right to decline to Contract with any Bidder regardless of any other factor, including without limiting the generality of the foregoing, on the basis that the Bidder has an unsatisfactory record of compliance with the regulations of **The Occupational Health and Safety Act**, as amended.

The successful Bidder shall ensure that, during the performance of the Work outlined in the Contract, their personnel are equipped with and wear the necessary safety apparel, including headgear, footwear and other equipment as appropriate

10.30.1 Construction, Renovation, Demolition Work

The successful Bidder shall, in addition to their other obligations under the contract, have sole responsibility for the construction and management of construction of the Work, including all matters related to health and safety and site security. The contract describes the duties and obligations of the successful Bidder, including their role as “constructor” under OHSA.

The successful Bidder shall:

- a. Participate in relevant safety and other committee meetings for the duration of the Work, and share related safety information with the Owner

or designate;

- b. Ensure that employees of the successful Bidder are aware of the mechanisms to report hazards and occurrences; have ready access to hazard report forms, and are encouraged to submit such reports; and
- c. Advise employees of restrictions that apply to the movement of personnel at the City site(s).

The successful Bidder shall be responsible for ensuring the supervision of staff and associated equipment for all construction activities during and outside of normal operating hours.

10.30.2 Pre-Start Health and Safety Review

A Pre-Start Health and Safety Review means the production of a report as required by O. reg. 528/00 amending Section 7 of the Regulations for Industrial Establishments of the **Occupational Health and Safety Act**, R.S.O. 1990, as amended. When required by the City, the successful Bidder shall be requested in a specific bid solicitation document to provide a Pre-Start Health and Safety Report.

10.31 Competent Supervision

The successful Bidder shall ensure at all times that adequate and competent supervision is provided, if applicable, by a Competent Supervisor as defined under the **Occupational Health and Safety Act**, as amended. The Supervisor shall represent and be an agent for the successful Bidder for all purposes and directions given to the Supervisor shall bind the successful Bidder.

If requested in the specific bid solicitation document, and before undertaking a contract with the City, the successful Bidder may be required to supply proof of competent personnel to implement and supervise a health and safety program, to ensure that the City standards and the standards of the **Occupational Health and Safety Act**, as amended, or the “legislation”, shall be complied with throughout the term of the contract.

10.32 Quality Control

The successful Bidder must ensure the regular daily supervision of staff, inspection of the work and any other requirements to provide satisfactory performance and service. Brief periodic meetings may be required to discuss any concerns or problems at the discretion of the City Contact.

10.33 Emergencies

The City has the authority to stop the work whenever, in its opinion, such stoppage may be necessary to ensure the proper and safe execution of the work.

10.34 Warranty

If applicable, the successful Bidder shall warranty all materials and workmanship as stated in **Section 6.0** of the bid solicitation document.

During the warranty period, the successful Bidder shall repair, replace or otherwise remedy all defects due to faulty materials or workmanship, at no additional cost to the City.

10.35 Permits, Fees and Certificates

Note: the bid solicitation document will indicate whether the successful Bidder or the City will be required to apply /pay for any building permit.

If applicable, the successful Bidder shall apply for and pay for permits, and all inspections required for the contract, and provide the City with all certificates necessary, as evidence that the contract conforms to the law and regulations of all authorities having jurisdiction. The successful Bidder shall provide the City with copies of all plans as may be required to comply with regulations.

10.36 Use of City Site(s)

“No Smoking” is to be observed in all City buildings and on City owned property and parkland.

The successful Bidder is responsible for ensuring that no person who is impaired by alcohol or drugs shall enter and/or remain on the site. The City may cause to remove from the site, for a duration determined solely by the City, any persons not observing or complying with these requirements and such non-compliance may be cause for termination of any agreement/contract.

10.37 Storage of Equipment, Materials, Disposal of Materials and Cleaning Up

If applicable, the successful Bidder shall confine their equipment, the storage and disposal of materials, and the operation of the workmen, to limits indicated by law, ordinance, permits, or directions of the Owner or designate, and shall not unreasonably encumber other areas with materials or other equipment. The successful Bidder shall provide or arrange for all necessary storage and disposal facilities of equipment and materials required while carrying out the terms of the contract. Upon completion of the work at the site, the successful Bidder shall remove from the premises all surplus materials and all debris resulting from the operations and leave the site clean unless otherwise stated. The successful Bidder is responsible for restoration of all damaged grounds.

If applicable, following project turnover, and after reasonable notice, the City may at its discretion remove equipment, materials, and clean up the site, with all costs being paid by the successful Bidder.

10.38 Workmanship and Responsibility

The work outlined in the bid solicitation document shall be undertaken and completed by experienced tradesmen and in conformance with and up to the minimum acceptable standards of all relevant codes and regulations.

Nothing contained in a bid solicitation document shall be construed as relieving the successful Bidder from making good and perfect in all the usual details of construction, and they will be held responsible to provide all materials, to do all

work and to bear all expense incidental to the satisfactory completion of the work embraced in these specifications.

10.39 Quality of Work

The successful Bidder shall execute the whole of the Work with every possible dispatch and in a substantial and workmanlike manner.

10.40 Loss, Damage and Claims

The City will not, in any manner, be answerable, or accountable for, any loss, or damage, that shall or may happen to the said Work, or in any part or parts thereof respectively, or for any of the materials or other things used and employed in finishing and completing the Work or for any injury to any person or persons, either workers or the public, or for any damage to the adjoining property. The successful Bidder will properly guard and make good all damage which may arise or be occasioned by any cause connected with the Contract, or the Work done by the successful Bidder, and will indemnify and keep indemnified, the City against the same, until the completion of all the Work required.

10.41 Safety Requirements

If applicable, the successful Bidder must ensure that, during the performance of the Work outlined in the Contract, their personnel are equipped with and wear the necessary safety apparel, including, but not limited to, headgear, footwear and other equipment as appropriate.

10.42 Tipping Fees

The tendered price shall be inclusive of all City tipping fees that may be necessary to complete the work in a specific bid solicitation document. In the event that materials are to be deposited at the City landfill site, the successful Bidder shall be required to use “roll-off” type containers. In the event that earth fill or other aggregates are taken to the landfill site, dump trucks may be used.

10.43 Criminal Record Check

If requested in **Section 6.0** of the specific bid solicitation document, the successful Bidder shall provide, within ten working days of notification of award, and prior to the commencement of the Work, in a separate, sealed envelope labelled “**Criminal Record Checks**” and reference the bid solicitation document number, proof of a Criminal Record Check, for each employee to be assigned to the contract, including all replacement employees. The Check(s) must also cover offences under the Criminal Code, the **Narcotics Control Act**, as amended, and any other offences which would be revealed by a search of the automated Criminal Records Retrieval System maintained by the RCMP, or “Criminal Record Check”. All costs associated with the Criminal Record Check(s) are the responsibility of the successful Bidder.

The documentation may be obtained from a local police department.

The information contained in the Criminal Check will be reviewed by the City's Human Resources Department only.

If the successful Bidder fails to provide the necessary documentation as requested herein, or fails to notify the City Contact of any delay in obtaining/providing such documentation, the Contract shall be cancelled and shall be awarded to the next eligible Bidder.

During the term of the Contract, the successful Bidder's staff must have a Criminal Record Check completed and reviewed prior to their first working shift.

The City reserves the right to request updated Criminal Record Checks from the successful Bidder throughout the Contract, and at the expense of the successful Bidder.

The City reserves the right to cancel the Contract or request that any individual employee be removed from the successful Bidder's work roster, if, in the sole opinion of the City, the results of the background check(s) are found to be unacceptable.

10.44 Failure to Comply

10.44.1 Standards and Legislation

The successful Bidder may be required to provide written documentation that all materials supplied to perform the requirements of the bid solicitation document meet municipal, provincial and federal government standards, legislation and laws. Failure by the successful Bidder to comply with these laws, legislation, regulations, and provisions shall be just cause for the City, at its discretion, to stop performance of this Contract, until such time as the successful Bidder is in compliance with the law. The City may, at its discretion, award the Contract to any other Bidder or may re-issue the bid solicitation document. The City may set-off or assess against the successful Bidder any damages whatsoever as a result of failure to comply.

10.44.2 All Terms for Bid Solicitation Documents

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

11.0 WSIB and Employment Standards Act

11.1 Responsibility

The successful Bidder shall be responsible for providing Worker's Compensation coverage for their employees, and no extras will be allowed for such items.

The successful Bidder clearly understands and agrees that they are not, nor is anyone hired by them, covered by the City under the **Workplace Safety and Insurance Act**, as amended, the **Employment Standards Act**, as amended, or any other act, whether provincial or federal, in respect of themselves, their employees and operations, and shall, upon request, furnish the City with satisfactory evidence that they have complied with the provisions of any such acts.

During the term of the Contract, the successful Bidder shall ensure that the City is in receipt of the most current and valid Clearance Certificate. The City will not pay invoices unless a copy of the most current and valid Clearance Certificate has been provided.

11.2 Additional Information

Information on coverage under the **Workplace Safety and Insurance Act**, as amended, can be obtained directly from the WSIB, on-line at www.wsib.on.ca.

The City is not to be deemed the employer of the successful Bidder or any of their personnel under any circumstance whatsoever.

12.0 Accessibility

12.1 Communicating in a Manner that is Accessible

The Ontarians with Disabilities Act, as amended, or “AODA”, is meant to create accessibility for all Ontarians with disabilities by January 1, 2025. The Integrated Accessibility Standards, or “IAS”, were made law as Ontario Regulation 191/11. The bid solicitation document aims to communicate in a manner that is accessible to everyone. The Bid submission shall also incorporate the following standards:

- a. Use minimum font size and appropriate font family: Arial 12;
- b. Use bold for emphasis, not italics and underlining;
- c. Use sentences written in a combination of upper and lower case letters;
- d. Align text to the left margin;
- e. Use standard date format, e.g. yyyy-mm-dd;
- f. Use page numbering, in the header or footer of a document.

12.2 Training

- a. The successful Bidder shall ensure their employees, agents, volunteers, or others they are responsible for, complete accessibility training, as it is appropriate to the scope of Work/Project. The specific bid solicitation document shall provide a chart, outlining the required training;
- b. The successful Bidder shall submit the completed **Attachment 2** provided with the specific bid solicitation document, within 10 business days of notification of award. If not submitted, the Contract may be terminated;
- c. Upon request, the successful Bidder shall submit their accessibility training policies, procedures, content and records. The City reserves the

- right to require the successful Bidder to amend their training program at their own expense, to ensure compliance with the AODA; and
- d. The successful Bidder shall only assign the employees who have completed accessibility training, to provide services on behalf of the City.

12.3 Incorporating Accessibility into Goods, Services and Facilities

- a. The successful Bidder shall ensure accessibility design, criteria and features be incorporated into the Work/Project. Where it is not practicable, the successful Bidder shall provide an explanation, if requested; and
- b. Refer to **Section 6.0** of the specific bid solicitation document for accessibility specifications, if applicable.

12.4 Accessibility Resources

- a. Government of Ontario's information about accessibility laws:
www.ontario.ca/accessibility
- b. Government of Ontario's training modules on the IAS regulation:
www.accessforward.ca
- c. City of Peterborough's training modules
www.peterborough.ca/AODATraining
- d. City of Peterborough's Accessibility Coordinator
Phone: 705-742-7777, or Toll-Free at 1-855-738-3755, Extension 1785
email: accessibility@peterborough.ca.

13.0 Asbestos

13.1 Application

May be applicable to bid solicitations involving construction, demolition, repair or renovation.

13.2 Ontario Regulation 278/05

In accordance with Ontario Regulation 278/05, under the **Occupational Health and Safety Act**, as amended, the City completed asbestos surveys for its properties in 2008, to identify the presence of any asbestos-containing materials within the City's buildings.

Ontario Regulation 278/05 requires the Owner, or their designate, to give any successful Bidder written notice of the information in the asbestos survey record if the Work:

- a. May involve material mentioned in the record, or
- b. May be carried on in close proximity to such material and may disturb it.

It is the City's policy that any disturbance of asbestos-containing materials, or materials that may contain asbestos be undertaken only by personnel who have received adequate training, as specified in Sections 19 and 20 of Ontario Regulation 278/05, and any other sections of the Regulation.

The asbestos records are available at each facility through the facility manager.

The work to be performed in any bid solicitation may involve asbestos-containing materials; however, should it become necessary, or if the successful Bidder suspects that they are about to, penetrate, remove, or in any way disturb any asbestos-containing building or insulating materials, they shall notify the City, who will arrange for a qualified asbestos abatement contractor to perform this portion of the Work, at no cost to the successful Bidder.

13.3 Asbestos Awareness Training

The successful Bidder for such a bid solicitation shall ensure that, all their employees and sub-contractors/suppliers/sub-consultants who will do work in City properties, have received **Asbestos Awareness Training**, that allows them to recognize materials which may contain asbestos, and enables them to react in a safe manner, in accordance with the requirements of Ontario Regulation 278/05, the **Occupational Health and Safety Act**, as amended, in the event materials which may contain asbestos are encountered, or suspected, during the course of their Work.

The Asbestos Awareness Training shall be provided by a competent and qualified instructor and shall, at a minimum, cover the following topics:

- a. Use of Asbestos;
- b. Health Effects of Asbestos Exposure;
- c. Overview of the Applicable Regulations;
- d. The Asbestos Management Program; and
- e. Limitations of Training.

13.4 Procedure

If during the course of the work, any materials are encountered that the successful Bidder, or one of their workers, suspects may contain asbestos, they must immediately stop Work and follow the procedure outlined below:

- a. The worker must advise their supervisor of the situation. If not available, proceed to next step;
- b. The supervisor, or worker from Step a., must contact either the Facilities and Energy Manager, Mr. Mac MacGillivray, at 705-742-7777, or Toll-Free at 1-855-738-3755, Extension 1852, or the Supervisor of Facilities Maintenance Programs at Extension 1802, and advise of the situation;
- c. The supervisor, or worker from Step a., must advise their Manager or Supervisor of the situation, and the steps taken; and
- d. Under no circumstances is Work to proceed until authorized by a City representative.

Note: a copy of **Section 13.0** of this Attachment, and all applicable sections of the specific bid solicitation document must be provided by the successful Bidder to each worker, sub-contractor/supplier/sub-consultant, or any other personnel involved in the work on site.

It is the successful Bidder's responsibility to ensure that each sub-contractor/supplier/sub-consultant, if any, follows the requirements of the **Occupational Health and Safety Act**, as amended, the regulations enacted hereunder, and of the specific bid solicitation document pertaining to Asbestos Awareness training.

Prior to the start of any work, the successful Bidder shall file with the City, together with the signed Contract Documents, if any, a completed Attachment, entitled "**Asbestos Awareness Training**", as provided in the specific bid solicitation document. The City reserves the right to require additional information concerning the training.

14.0 Contract

14.1 General Information and Types of Contracts

Section 7.0 of the specific bid solicitation document will outline the type of Contract to be executed, and sample Contract, if applicable.

14.1.1 Contract - Formal

The successful Bidder may be required to enter into and sign a formal contract with the City, within 10 working days of notification of award of the Tender, along with:

- a. Articles of incorporation and a copy of any amendments thereto;
- b. A sworn affidavit:
 - i. Confirming who, by way of attaching a Certificate of Incumbency, the officers and directors are;
 - ii. Confirming the current location of the head office;
 - iii. Confirming that the corporation is active; and
 - iv. Providing any other names under which the corporation operates.
- c. Other required documentation as per the bid solicitation document.

The City will also issue a Purchase Order to the successful Bidder in conjunction with the Contract.

The bid solicitation document will include a "sample contract", in Attachment form, in the specific bid solicitation document.

14.1.2 Contract - CCDC

The successful Bidder may be required to execute an original Canadian Standard Construction Document, i.e. CCDC-2, 2008 Stipulated Price Contract, with the required number of copies, and return them to the City, within 10 business days of notification of award, along with:

- a. All required bonds, irrevocable letters of credit or other security;
- b. All required Certificates of Insurance;

- c. Articles of incorporation and a copy of any amendments thereto;
- d. A sworn affidavit
 - i. Confirming who, by way of attaching a Certificate of Incumbency, the officers and directors are;
 - ii. Confirming the current location of the head office;
 - iii. Confirming that the corporation is active; and
 - iv. Providing any other names under which the corporation operates.
- e. Other required documentation as per the specific bid solicitation document.

Any Warranty/Guarantee shall be in accordance with the specific Canadian Standard Construction Document.

The CCDC Contract will be the Construction Contract, as amended by the Supplementary Conditions contained in an Attachment, included in the specific bid solicitation document.

The City may provide, in writing, a letter of award as authority to commence Work prior to executing a formal Contract, so that equipment and materials can be ordered, documentation obtained and Work can start.

The City will also issue a Purchase Order to the successful Bidder.

14.1.3 Purchase Order as Contract

The City reserves the right, once the bid is awarded, to issue a Purchase Order that, along with the specific bid solicitation document, all addenda issued, and the bid submitted by the successful Bidder, will become the Contract. The City will issue a formal Purchase Order as confirmation of the award and Contract. The successful Bidder must accept the City's Purchase Order/ Contract, which will supersede all other contracts.

14.2 Events of Default and the City's Right to Terminate Contract under Certain Conditions

The City shall have the right to terminate the contract forthwith and without penalty, upon written notice to the successful Bidder, in the event that:

- a. The successful Bidder makes an assignment for the benefit of creditors, or becomes bankrupt or insolvent, or an order is made for the winding-up of the successful Bidder, or if a receiver is appointed on account of the successful Bidder's insolvency; or
- b. The successful Bidder refuses or fails to supply sufficient properly skilled employees or proper materials at all times to perform the work in the manner and to the standards required under the applicable contract; or
- c. The successful Bidder fails to observe and comply with any provisions of law, including, without limiting the generality of the foregoing, all requirements of all governmental authorities, including federal, provincial and municipal legislative enactments, by-laws and other regulations now

- or hereafter in force which pertain to or affect the services or the conduct of the successful Bidder's business; or
- d. For non-performance, which shall mean the failure to meet the complete terms and conditions of the contract including, but not limited to, performance, provision of requested reports etc.; or
 - e. The successful Bidder fails to institute appropriate corrective action forthwith after verbal notification by the City, which shall be confirmed subsequently in writing, of any failure on the part of the successful Bidder to comply with the terms and specifications of the contract; or
 - f. The work performed is not satisfactory, which the City reserves the right to determine in its sole discretion; or
 - g. Delivery requirements are not met; or
 - h. Requested reports are not provided; or
 - i. The invoiced amounts do not match the quoted prices.

At the sole discretion of the City, it shall have the right to terminate the contract immediately and without notice in its entirety should non-performance involve issues regarding health and safety of staff on site.

The City retains the right to claim damages as a result of any such default. The successful Bidder shall be responsible for any increased cost to complete the contract.

14.3 Unfulfilled Orders/Outstanding Accounts

Forthwith, upon the termination of the contract, for any reason, all collections, or unfulfilled orders, shall be appropriately adjusted and all steps shall be taken to perform all unfilled orders and collect all outstanding accounts.

14.4 Failure to Execute Contract

In the event that the successful Bidder fails to execute the contract or to accept the City's Purchase Order, or to file any of the documentation required in bid solicitation document, or to meet any of the other requirements of the bid solicitation document within the specified time period, the successful Bidder agrees that the City may retain the successful Bidder's Bid Deposit, if applicable to the bid solicitation document, and, at its discretion, cancel the contract award and enter into a contract with the next qualified Bidder.

14.5 Changes to Work when Contract Underway

No deviation from the specifications shall be made by the successful Bidder in the execution of the contract, without the written approval of the City.

The City will not pay the successful Bidder any amounts over and above the bid amount unless the City agrees to a price change as the result of changes in the goods/services required, and before the additional goods/services are provided.

The successful Bidder shall furnish a complete breakdown of any costs beyond the bid submission price to support the additional cost.

14.6 Indemnification

The successful Bidder shall, at all times, indemnify and save harmless the City, its employees and Members of Council from and against any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever made or brought against, suffered by, or imposed on the City in respect of any loss, damage or injury to any person or property directly or indirectly arising out of, resulting from, or sustained, as a result of this Contract, provision of services or any operations connected therewith except for the negligence or willful misconduct of the City.

14.7 Remedies for Non-Performance

Unless otherwise indicated in a specific bid solicitation document, and In the event that the successful Bidder fails to perform any obligation hereunder, the City shall be entitled to exercise any one or more of the following remedies:

- a. The City may withhold any payment due hereunder until the successful Bidder has remedied its failure;
- b. The City shall be entitled, in the event that the successful Bidder does not remedy its default within 72 hours of a request that it do so from the City, to engage others to complete the work of the successful Bidder and to deduct the cost of obtaining such other contractors from any amounts owing to the successful Bidder hereunder;
- c. The City may terminate this Contract in the event that the successful Bidder does not remedy their default within 72 hours of a request that it do so from the Owner; and,
- d. The City may exercise any other right available to it in law or equity.

Unless the City expressly agrees to the contrary, any failure of the City to exercise any of the foregoing remedies, or the granting of any extension or indulgence, shall not be prejudicial to the right of the City to subsequently obtain such remedies, and the successful Bidder expressly waives any defences of laches or promissory estoppel.

15.0 Construction

15.1 Construction Liens

The successful Bidder agrees to comply with the provisions of the **Construction Lien Act**, as amended, including, but not limited to, ensuring that holdbacks are retained in accordance with Part IV of the Act, with respect to the supply of goods and services. The release of a holdback is contingent upon the successful Bidder satisfying the requirements contained within Part V of the **Construction Lien Act**, as amended, including the requirement to publish a copy of the certificate, or declaration of substantial performance, in a construction trade newspaper

having general circulation in the Province of Ontario. The successful Bidder shall forthwith provide the City with a copy of the advertisement. The City is not responsible for any costs associated with the successful Bidder meeting their statutory or contractual obligations. The 45 day period under the **Construction Lien Act** as amended, starts to run on the date the publication, required by paragraph 5 of Section 32(1) appears.

If any lien is preserved, or written notice of lien is given, pursuant to the **Construction Lien Act**, as amended, for the supply of goods and services in connection with the Work, the successful Bidder forthwith shall give written notice to the City of such documents, process or claim.

The successful Bidder shall indemnify, defend and save the City harmless from and against any and all claims, actions, demands made against the City in connection with the **Construction Lien Act**, as amended, and all costs incurred by the City as a result thereof. In the event that any action, cause of action, claim or other legal document or process or other alleged claim is commenced against or imposed upon the City, the City shall, within a reasonable time, give notice to the successful Bidder of such document, process or claim. Upon receipt of such notice from the City, the successful Bidder, at their own expense and to the satisfaction of the City, shall appeal, contest, defend or settle such legal document, process or claim on behalf of the City and reasonably notify the City on a periodic basis of the progress of the matter. The successful Bidder acknowledges and agrees that the City reserves the right to elect at any time to conduct its own appeal, contestation, and defence or settlement negotiations at the successful Bidder's expense, after giving notice of same to the successful Bidder.

If any lien is preserved, or written notice of lien is given, pursuant to the **Construction Lien Act**, as amended, for the supply of goods/services in connection with the Work, the successful Bidder shall be considered to be in default of their obligations contained herein until such time as each Claim for Lien, together with any associated Certificate of Action, is discharged or vacated, or written notice is received that such lien is withdrawn or a Court declaration is obtained that the written notice of lien is no longer binding or that the related lien has expired.

The successful Bidder acknowledges and agrees that no reduction in financial security shall be considered if the successful Bidder is in default with any provision of this RFT, or any Contract flowing out of the awarding of the RFT.

15.2 Holdbacks

Holdbacks shall be retained and released in compliance with the **Construction Lien Act**, as amended.

15.3 Contract Completion Security

The City may deduct, on each Certificate of Payment, after the 10% lien holdback has been deducted, a further amount, as stated in **Section 6.0** of the

specific bid solicitation document, to be set aside and held as a Contract Completion Security Account. The accumulated amount in this account shall be released to the successful Bidder upon Total Performance of the Work. Partial releases will not be made.

If, within 15 days of written notification by the City at any time after Substantial Performance, the successful Bidder does not reach Total Performance, by failing to completely finish outstanding Work, the City shall have the right to complete such Work and deduct the cost for such Work, together with an appropriate administration fee, from the Contract Completion Security Account.

15.4 Allowances for Overhead and Profits

Section 6.0 of a bid solicitation document, if related to construction, demolition and/or renovation only, will indicate if applicable or not.

Allowance for overhead shall be limited to 10% for Contractor's; or "GC's", work, or where work is sub-contracted, 10% for overhead for sub-contractor's work. The GC shall be entitled to 5% for overhead of a sub-contractor's total cost. Overhead and profit may not be charged on credits to the Contract. Where a change involves extras and credits, overhead and profit shall apply only to the net value of the change, inclusive of all costs and site supervision.

Three scenarios of potential extras to the contract are illustrated below:

Example 1: GC's own forces do all work that has a net value of \$10,000. No sub-contractors involved in the work.

GCs Additional Work	\$15,000
Credits	-\$5000
Sub Total Net Extra	\$10,000
GCs Overhead 10%	\$1,000
Total Value of Extra	\$11,000

Example 2: GC's sub-contractor does all of the work

Subs Additional Work	\$15,000
Credits	-\$5000
Sub Total Net Extra	\$10,000
Subs Overhead 10%	\$1,000
Subs Cost of Extra	\$11,000
GCs Profit 5%	\$550
Total Value of Extra	\$11,550

Example 3: GC's forces do some of the work that has a net value \$10,000 and sub-contractor does some of the work that has a net value of \$5,000

GCs Additional Work	\$15,000	
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Credits	-\$5000	
Sub Total Net Extra	\$10,000	
GCs Overhead 10%	\$1,000	
Contractor Cost of Extra	\$11,000	\$11,000
Subs Work	\$5,000	
Subs Overhead 10%	\$500	
Subs Cost of Extra	\$5,500	
GCs Profit 5%	\$275	
Value of Subs Work to GC	\$5,775	\$5,775
Total Value of Extra		\$16,775

16.0 Award Process

16.1 For RFP only

16.1.1 Evaluation of Submissions

RFPs shall be awarded based on the evaluation of the criteria set out in **Section 9.0** of the specific bid solicitation document.

16.1.2 Evaluation Committee

Each specific RFP will have an Evaluation Committee, comprised of City staff, consultants and others, as applicable.

16.1.3 Presentation/Interview

As part of the evaluation process, the Evaluation Committee may undertake an interview process with a short-list of Proponent(s). Should this be required, a date will either be provided in the bid solicitation document, or will be determined following the Closing of the RFP.

Proponent(s) selected for an interview will be advised of presentation date, location, requirements, format and required participants.

A method for scoring will be provided in the bid solicitation document.

16.1.4 Clarification and References

The City reserves the right to contact any Proponent to seek clarification of the contents of their Proposal.

Some scores assigned to the various categories may be determined through reference checks.

The specific bid solicitation document will indicate details of reference check process, e.g. will be completed for highest scoring or top three Proponent.

The purpose of reference checks is to confirm the elements contained in the RFP submission and to verify the success of the Proponent with past projects. Should the highest scoring candidate receive one or more negative reference(s), the

City, at its discretion, may remove the Proponent and proceed to the next highest candidate.

The City may investigate as it deems necessary to determine the ability of the Proponent to provide the goods/services, and the Proponent shall furnish the City all such information and data for this purpose as the City may request.

The City reserves the right to contact any or all of the supplied references and may disqualify Proponents who have been given negative performance/service and/or quality ratings by supplied references or other references contacted.

Reference checks initiated by the City may not be limited to contacting those references provided by the Proponent. The City may consider all available information, including prior performance on other City projects, information concerning other projects, and information provided by other clients contacted by the City as a reference. The City will limit its investigations to the same time period stated in **Section 8.0** of the specific bid solicitation document, which provides requirements for references for completion of **Appendix E**.

The City reserves the right to reject any Proposal if the information submitted by the Proponent or investigation carried out by the City fails to satisfy the City that the Proponent is qualified to fulfill the obligations of the Agreement.

16.1.5 Evaluation Criteria

Each Proposal will be evaluated on its own merit in relation to the criteria stated in the specific RFP. The criteria shall be based on the requirements stated in **Section 8.0** of the specific bid solicitation document. The City reserves the right not to accept any Proposal.

16.1.6 Recommendation/Award

Recommendation for award of any Proposal will be based on the Proponent's overall total score. By responding to the RFP, the Proponent agrees to accept the recommendation of the Evaluation Committee as final and binding.

The award of any RFP shall be in accordance with the City of Peterborough's current Purchasing By-law. The decision of the City will be final.

The successful Proponent shall not make any claims for additional costs, or expenses, due to the delay in, or cancellation of, the award of any RFP due to the approval process.

16.1.7 Post Award Requirements

Each RFP will state the requirements a successful Proponent must provide upon award.

16.2 For RFT/RFQ only

16.2.1 Award

RFTs/RFQs will be awarded based on the following:

- a. Proper completion of all forms and submission requirements;
- b. Compliance to specifications;
- c. Ability to provide the goods/services specified and within any stated deadlines; and
- d. Price - as a clarification, should all other evaluations appear equal, lowest Total Price shall govern award.

16.2.2 Clarification and References

The City reserves the right to contact any Bidder to seek clarification of the contents of a Tender.

The City may investigate, as it deems necessary, the ability of the Bidder to provide the goods/services and the Bidder shall furnish the City all such information and data for this purpose as the City may request.

The City reserves the right to contact any or all of the supplied references and may disqualify Bidders who have been given negative performance/service and/or quality ratings by supplied references or other references contacted.

The City reserves the right to reject any Tender if the information submitted by the Bidder or investigation carried out by the City fails to satisfy the City that the Bidder is qualified to fulfill the obligations of the Contract.

16.2.3 Approval

The award of any RFT/RFQ shall be in accordance with the City of Peterborough's current Purchasing By-law. The decision of the City shall be final.

The successful Bidder shall not make any claims for additional costs or expenses due to the delay in, or cancellation of the award of any RFT/RFQ, due to the approval process.

16.2.4 Post Award Requirements

Each RFT/RFQ will state the requirements a successful Bidder must provide upon award.