

Bid Submission Procedure

Purpose

The following bidding procedures shall apply for the acquisition of Good and/or Services as stipulated in The Corporation of the City of Oshawa's (the "City") Purchasing By-law 80-2020, as amended (the "Purchasing By-law").

Definitions

All initially capitalized terms not otherwise defined in this Bid Submission Procedure shall have the meaning as defined in the Purchasing By-Law.

- (a) **Bid Closing Date** means date and time shown as set out on Section 2.1 a), Part A – Instructions to Bidders.
- (b) **Bid Solicitation** includes Requests for Proposal, Quotations and Tenders.
- (c) **Bidder** is the person who responds to the Bid Solicitation and includes its heirs, successors and permitted assignees.
- (d) **Bidding System** means the City's Bid Opportunities Website (<https://oshawa.bidsandtenders.ca>).
- (e) **Certificate of Recognition or COR** means a certificate issued from the Infrastructure Health and Safety Association, or an equivalent certification.
- (f) **Department Head** means the Commissioner of Development Services Department, the Commissioner of Community Services Department, the Commissioner of Corporate Services Department, Commissioner of Finance Services or the Chief Administrative Officer.
- (g) **Designated Official** means either of the Manager, Purchasing Services or the Commissioner, Finance Services who under the direction of the C.A.O., is assigned the duties, powers and responsibilities relating to the City's Centralized Purchasing program.
- (h) **Electronic Bidding** means a method of issuing solicitations and/or receiving Bids by internet.
- (i) **Plan Takers** means a Bidder that has registered in the Bidding System as a Plan Taker for a particular Bid Solicitation.
- (j) **Purchase Order** means a written contract to purchase Goods and/or Services, or a written acceptance of a Proposal, completed on forms prescribed by the Designated Official.

Designated Official Roles

The Designated Official performs the following functions:

- (a) clerical duties;
- (b) Bid opening; and
- (c) adjudication of the Bids, including answering queries from prospective Bidders, considering extensions of time, reviewing Bids received, ruling on the acceptance of Bids not completely meeting the Bid requirements, and preparing reports and recommendations to the City's Chief Administrative Officer ("C.A.O."), the appropriate Standing Committee and City Council.

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The Designated Official may assign these roles to the City's Procurement staff.

Pre-Qualification Process

Pre-qualification is a procedure whereby firms satisfy the City that they are capable of performing the work before being allowed to submit a Bid. The Designated Official may carryout a non-binding Bid Solicitation pre-qualification process.

The subsequent request for Bid Solicitation will be issued to and received from only those pre-qualified firms. The Contract, if awarded at all, must be awarded to the lowest qualified responsive and responsible Bidder or highest scoring Bidder providing there are no changes to the Bidder's eligibility from the time of pre-qualification to awarding the Contract, subject to contrary direction by City Council.

The pre-qualified Bidder shall be responsible for notifying the City in a timely manner of any changes to its business operations or information.

The City reserves the right to investigate and remove any pre-qualified Bidder if there are any changes in the Bidder's eligibility, during the Bid Solicitation process or post Bid closing. The City decision in this regard is final. Where the pre-qualification procedure is recommended by the initiating City department, the approval by the Designated Official must be obtained prior to commencing the Bid Solicitation process. The pre-qualification process must be carried out by the City's Procurement staff in consultation with staff of the initiating City department.

The recommendation of pre-qualified Bidders will be confirmed by the evaluation team and circulated to the City Solicitor, the City Treasurer, the appropriate Department Head and the C.A.O.

Health & Safety

As part of the City's commitment to safety and the provision of safe working environments for Contractors, employees and residents, the City requires Bidders of construction projects greater than \$500,000 or projects deemed by the City to have high risk to hold one (1) of the following certifications:

1. IHSA COR® 2020 – Infrastructure Health and Safety Association ("IHSA") Certificate of Recognition (COR)® 2020;
 - For Bidders with a Certificate of Recognition issued in a jurisdiction other than Ontario, the Bidder must also submit a Letter of Reciprocity from the IHSA along with the COR certification;
2. MLITSD SOSE – Ministry of Labour, Immigration, Training and Skills Development of Ontario ("MLITSD") Supporting Ontario Safe Employers Program certificate; or
3. ISO 45001:2018 – International Organization for Standardization ("ISO") 45001:2018 certificate. ISO certificates must be issued by a certification body that is accredited by an accreditation body that is recognized by the International Accreditation Forum.

Adherence to the certification requirement must be maintained throughout the duration of the Contract, if stipulated in the Bid Document.

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Currently, sub-contractors to Contractors will not be expected to hold a certification but they will be expected to:

- meet or exceed the elements of a health and safety certification; and
- adhere to the certified Constructor's Health and Safety Program.

The City, in its sole discretion, maintains the authority to accept or reject a Bidder's certificate and/or request a copy of the accompanying audit report.

For consultant assignments, the certificate requirement may be selectively applied based on the complexity and risk factors of the assignment, as determined by the City and as indicated in the Bid Documents.

Lease Requirements

Department Heads wishing to acquire or use Good and/or Services by an external third-party financing lease must receive the approval of the City Treasurer or their designate prior to requesting the Designated Official undertake any Bid Solicitation process.

Any material financing leases executed to acquire or use municipal capital assets must be in compliance with O. Reg. 46/94: Municipal and School Capital Facilities – Agreements and Exemptions, as amended, made under the Municipal Act, 2001, S.O. 2001, c. 45, as amended.

Any external third-party financing lease must be in accordance with the City's current Leasing Policy and Goods Policy.

Advertising

To attract as many competent Bidders as possible, Bid Solicitation may be posted on the City's website and if the City so desires..

Bid Solicitations may be advertised on other government websites, where practicable.

Release of Information to Bidders

Upon the request from a prospective Bidder for information, the City's Procurement staff shall direct the prospective Bidder to the Bidding System to obtain all information pertaining to the Bid Solicitation where applicable.

Bid Submission Requirements

All Bids shall be submitted online through the Bidding System. Bids are required to conform to the conditions listed below:

- (a) late Bids shall not be accepted by the Bidding System;
- (b) the Bid must not be qualified by any statement added to the Bid Submission (unless requested by the City);
- (c) adjustments by telephone, facsimile, electronic transmission or letter to a Bid already submitted will not be considered. A Bidder desiring to make adjustments to a Bid may do so through the

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Bidding System prior to the Bid Closing Date;

- (d) the Bidding system will not accept Bids unless the Bidder has checked a box confirming authority to submit a Bid on behalf of the Bidder;
- (e) the Bid deposit (when required) shall be submitted with the Electronic Bid Submission, as instructed below; and
- (f) the agreement to bond (when required) shall be submitted with the Electronic Bid Submission, as instructed below.

The Bidding System places all Bid Submissions into a virtual lock box where they cannot be viewed by the City until after the specified Bid Closing Date.

Digital Bid Deposit and Agreement to Bond Upload

Bidders shall upload both their Bid deposit and agreement to bond to the City's Bidding System, in the Bid Submission file labelled "Bid Deposit and Agreement to Bond".

Bidders shall create a **single file** (instructions on how to create a zip file are in the Bidding System) containing both their Bid deposit and agreement to bond and upload the zip file to the file labelled "Bid Deposit and Agreement to Bond".

Digital bonds shall be uploaded using the latest version of the CCDC bond forms, or other acceptable bond forms, if issued by a surety company authorized by law to do business in the Province of Ontario. All content on the bond form must match the requirements as defined in the Bid Document.

The City must be able to authenticate digital bonds through a third-party authentication firm such as Xenex Enterprises, Mobile Bonds or Trisura Guarantee Insurance Company.

Instruction details for accessing authentication can be found on the specific third-party website which can also be accessed from the bond itself by clicking the verification link affixed to the bond.

Bonds must be irrevocable and open for acceptance for the time period as specified in the Bid Document.

If any of the bond requirements have not been met, the Bid shall be considered to be an "Improper Bid" and subject to rejection.

The Bidder and the Bidder's surety can refer to the e-bonding information on the Surety Association of Canada's website for clarification on creating and submitting digital bonds. Information at this site includes:

- a list of third parties that provide online surety digital bond services. The City does not endorse or promote any third-party digital bond service provider; and
- an industry checklist which digital bonds provided should meet.

Digital Bid Bond Deposit

When specified in the Bid Documents, a digital Bid bond deposit in the amount of **ten (10)**

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percent of the total Bid amount (including HST), shall be uploaded with the Bid Submission.

Bid deposits are provided as assurance that should the Bid be accepted by the City, a Contract will be entered into for the proper performance of the work and document requirements as specified in the Bid Documents will be provided within ten (10) calendar days following written notification from the City to the successful Bidder.

When the Contract is executed by the successful Bidder and the City and the Bid award is posted to the Bidding System by the City, the Bid deposits of all Bidders shall be null and void.

The Bid Document shall state that the security will be forfeited to the City if the successful Bidder fails to enter into a formal Contract with the City or fails to provide all documentation specified in the Bid Document.

Digital Agreement to Bond

To protect the City, security to guarantee the completion of the Contract is required. It is a requirement that this security be in the form of a digital performance bond and/or labour and materials bond issued by a surety company, authorized by law to do business in the Province of Ontario. The requested bond value may be in the form of one (1) of the following:

- (a) 100% performance bond equal to the total bid amount (including all taxes);
- (b) 50% performance bond and 50% labour and materials bond of the total bid amount (including all taxes); or
- (c) 100% performance bond equal to the total bid amount (including all taxes) and 50% labour and materials bond of the total bid amount (including all taxes).

Agreements to bond are subject to the City's approval. All agreements to bond shall be irrevocable and open for acceptance for the time period outlined in the Bid Document.

Performance and Labour and Material Bonds - Upon Award

The successful Bidder shall supply upon award:

- (a) a performance bond (can be digital or hard copy) for the due completion of the work in accordance with the terms and conditions of the Contract in an amount equal to 100% of the Total Contract Price (including all applicable taxes); or
- (b) a performance bond and labour and material payment bond (can be digital or hard copy) for the due completion of the work in accordance with the terms and conditions of the Contract each in an amount equal to 50% of the total contract price (including all applicable taxes).

The performance and/or labour and material bonds received from the successful Bidder shall remain in force throughout the duration of the Contract including the guarantee, warranty or maintenance period of the Contract and/or until the Contract is deemed complete by the City.

Changes to Bids under Call (Addenda, Extension of Time or Cancellation)

Preparation of addenda:

- (a) interpretations should be made in reply to queries from Bidders only in the form of written

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addenda with input from the City staff and/or consultant; and

- (b) when it becomes necessary to revise, delete, substitute or add to the Bid information for a Contract under call, the Designated Official shall approve the issuance of an addendum.

Notification of addenda to prospective Bidders shall be processed in the following manner:

- (a) an addendum will be posted to the Bidding System and an email will automatically be issued to notify all Plan Takers;
- (b) when it becomes necessary to extend the closing date for receiving Bids, time for Bidders to review the additional information must be taken into consideration and allowance for further questions if required. The appropriate City departments and outside agencies shall be notified of the extension of time; and
- (c) when a Bid Solicitation is cancelled in the Bidding System, all registered Bidders will automatically be notified and no Bids will be accepted by the Bidding System.

Receiving Bids

Bid Solicitations stating Electronic Bid Submissions will only be received through the Bidding System.

Withdrawal Procedures - Prior to Bid Closing

A Bidder who has submitted a Bid may withdraw only through the Bidding System before the Bid Closing Date.

Bid Opening

Unofficial results are posted on the Bid System shortly after the Bid Closing Date or after checking Bid compliance, unless Bids are over-budget.

The unofficial Bid Submissions are subject to review, verification and calculation by the City in accordance with the terms and conditions of the Bid Solicitation and the Purchasing By-law.

Review of Bids for Compliance and Accuracy

The purpose of reviewing Bids for compliance and accuracy is to determine whether all Bid requirements have been met.

All Bids will be reviewed for compliance with the Bid Solicitation process (i.e. bonds are verifiable).

If the Buy Ontario Act applies to the Bid, the low bid will be determined by the method listed in the terms and conditions of the Bid Document.

Only the low Bidder's references will be checked for experience and that references are for projects of similar scope and size. If none of the low Bidder's references meet the requirements, then the second low Bidder's references will be checked. The reference check process will continue until a valid Bid is confirmed.

Bids that do not conform to Bid requirements shall be deemed "Improper Bids" and subject to

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rejection.

The review of all Bids shall be completed by the City's Procurement staff responsible as soon as possible following the Bid Closing Date.

All Bids shall be checked to ensure that:

- (a) Bids comply with the Bid Document requirements and that all items as specified have been bid on, unless part Bids are permitted under the Bid Solicitation;
- (b) any Bid irregularities shall be dealt with in the manner described in the Bid Solicitation and the Purchasing By-law;
- (c) the Bid deposit (when applicable) and agreement to bond is sufficient, includes references that match the Bid Solicitation and is in an acceptable form; and
- (d) all other Bid requirements have been met.

Decisions on Improper Bids

When an improper Bid is one (1) that may be accepted or requires the Designated Officials review, it shall be noted as an "Improper Bid" on the "Bid Closing Submission Summary". All Bids shall then be referred to the Designated Official for review.

When an improper Bid and the bid must be rejected, the "Bid Analysis" shall include the words "Rejected" or "Disqualified".

In the report to City Council or the C.A.O., the Designated Official shall include all Bids that are improper, shall recommend the acceptance or rejection of any Bid and shall recommend the award to the successful Bidder or, if necessary, the cancellation of the Bid Solicitation. Where Bids are recommended for rejection, the Bid amount shall not be provided in the report but shall be noted as "Rejected".

Designated Official Review

After Bids have been checked by the City's Procurement staff, the Designated Official shall review the Bids in order to make an award recommendation.

All reasonable care must be exercised by the Designated Official(s) to ensure that improper Bids are handled in a manner that is consistent and fair to other Bidders, as well as to the public. Irregularities in Bids described below will be rejected:

- (a) late Bids will not be accepted by the Bidding System;
- (b) Bids not received through the Bidding System will be rejected;
- (c) qualified Bid (if a Bid is restricted by a covering letter or information added to the Bid, it must be rejected unless the change was requested by the City);
- (d) the City is unable to verify digital bonds;
- (e) Bid deposit of insufficient amount; and
- (f) agreement to bond is not properly executed.

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Action When Tie Bids are Received

In the event that more than one (1) Bidder has submitted a low Bid in the same amount and all else is equal, the Designated Official shall enter into negotiations as permitted by Article 5.02 Negotiation Instead of Bid Solicitation of the Purchasing By-law.

If negotiations fail to break the tie, the Bidders shall be advised that the Bid to be accepted will be decided by means of a draw. The names of tied Bidders shall be placed in a container and the Bid to be accepted shall be drawn by a Designated Official.

The time and location of the draw shall be set by the Designated Official and the Bidders shall be advised so that they may be present. The following individuals shall be present at the draw; two (2) or more Designated Officials and any of the Bidders or their authorized representatives.

Should any Bidder elect not to be represented at the draw, the draw will proceed regardless.

Notification of Contract Award to Successful Bidder

Upon receiving Contract award approval, the City's Procurement staff shall update the Bidding System and notify the successful Bidder of award by sending an award email through the Bidding System.

Notification of acceptance and award of a Contract can be in the form of a City Purchase Order or a PeopleSoft Contract.

The acceptance of Bid and award of the Contract shall be carried out as quickly as possible. This is especially important if the Bid contains a time limit for acceptance (usually ninety (90) days) and it is necessary to obtain the approval of another authority before the Bid can be formally accepted.

Notification to Rejected Bidders

Upon receiving Contract award approval and after notification of Contract award through the Bidding System, the City's Procurement staff shall send an email to the Bidders whose Bids were rejected.

Notification of Contract Award to Other Bidders

Once the successful Bidder has been notified of the Contract award, the other Bidders shall be notified by public posting of the Bid results by the Bidding System.

Action on Acceptance of Contract

As soon as copies of the required Contract documents are returned and found acceptable to the Designated Official the Bid deposits of the successful Bidder and all Bidders shall be null and void.

Action When Successful Bidder Does Not Finalize Contract

If a Contract has been awarded and the successful low Bidder fails to execute the Contract or provide the required documents within the specified time, the Designated Official may grant the successful low Bidder additional time to fulfil the necessary requirements or may recommend that:

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- (a) the Contract be awarded to the next lowest compliant Bidder; or
- (b) the Bid Solicitation be cancelled.

In the case of (a) or (b) above, the deposit of the low Bidder shall be forfeited. If a Contract is to be awarded to the second low Bidder, its bid deposit shall be retained until it has executed the Contract.

If the second low Bidder fails or declines to execute the Contract if awarded to it, its deposit shall be forfeited.

The process outlined in this section will continue until the Contract is executed or cancelled.

Absolute Right

Notwithstanding the provisions of the Purchasing By-law, the City shall have absolute discretion in awarding Contracts and retains the right to reject any or all Bids.