

APPENDIX A: TERMS AND CONDITIONS

ARTICLE 1 – PROCESS TERMS AND CONDITIONS

1. Bidder's Responsibility

It shall be the responsibility of each Bidder:

- a) to examine all the components of this Request for Quotations (RFQ), including all appendices, forms and addenda;
- b) to become familiar and comply with all of the terms and conditions contained in this RFQ and the Town's Policies and Legislation set out on the Town of Petrolia website at: www.petrolia.ca/tenders/index.htm

The failure of any Bidder to receive or examine any document, form, addendum, or policy shall not relieve the Bidder of any obligation with respect to its Quotation or any purchase order issued based on the Bidder's Quotation.

2. Questions

All questions concerning this RFQ should be directed in writing to the contact as designated on the RFQ Form.

No other Town representative, whether an official, agent or employee, is authorized to speak for the Town with respect to this RFQ, and any Bidder who uses any information, clarification or interpretation from any other representative does so entirely at the Bidder's own risk.

Not only shall the Town not be bound by any representation made by an unauthorized person, but any attempt by a Bidder to bypass the RFQ process may be grounds for rejection of its Quotation.

3. Addenda

The Town reserves the right to revise this RFQ up to the Closing Deadline. Any such revisions will be made by way of addenda, which will be emailed to bidders.

All Bidders must acknowledge receipt of all Addenda on the Quotation Request Form.

4. Omissions, Discrepancies and Interpretations

A Bidder who finds omissions, discrepancies, ambiguities or conflicts in any of the RFQ documentation or who is in doubt as to the meaning or has a dispute respecting any part of the RFQ should notify the Town in writing as per Section 4.0 of the RFQ. If the Town considers that a correction, explanation or interpretation is necessary or desirable, the Town will issue an Addendum as described in the article above titled **Addenda**. The decision and interpretation of the Town respecting any such disputes shall be final and binding, from which there is no appeal. No oral explanation or interpretation shall modify any of the requirements or provisions of the RFQ documents.

5. Incurred Costs

The Town will not be liable for, nor reimburse, any potential Bidder or Bidder, as the case may be, for costs incurred in the preparation and submission of any Quotation.

The rejection or non-acceptance of any or all Quotations shall not render the Town liable for any costs or damages to any Bidder that submits a Quotation.

6. Post-Submission Adjustments and Withdrawal of Quotations

No unilateral adjustments by Bidders to submitted Quotations will be permitted.

A Bidder may withdraw its Quotation prior to the deadline any time by notifying the Town contact designated in this RFQ in writing.

A Bidder who has withdrawn a Quotation may submit a new Quotation, but only in accordance with the terms of this RFQ.

After the Deadline each submitted Quotation shall be irrevocable and binding on Bidders until the time of contract

If the Town makes a request to a Bidder for clarification of its Quotation, the Bidder will provide a written response within 48 hours accordingly, unless otherwise indicated, which shall then form part of the Quotation.

If the Town makes a request to a Bidder for samples in relation to its Quotation, the Bidder will provide the sample to the requested location within 10 days accordingly, unless otherwise indicated, which shall then form part of the Quotation.

7. No Collusion

No Bidder may discuss or communicate about, directly or indirectly, the preparation or content of its Quotation with any other Bidder or the agent or representative of any other Bidder or prospective Bidder. If the Town discovers there has been a breach at any time, the Town reserves the right to disqualify the Quotation or terminate any ensuing contract.

8. Prohibition against Gratuities

No Bidder and no employee, agent or representative of the Bidder, may offer or give any gratuity in the form of entertainment, participation in social events, gifts or otherwise to any officer, director, agent, appointee or employee of the Town in connection with or arising from this RFQ, whether for the purpose of securing a contract or seeking favourable treatment in respect to the award or amendment of the contract or influencing the performance of the contract, including without restriction enforcement of performance standards, or expressing appreciation, or providing compensation, for the award of a contract or for performance of the Town's obligations thereunder or for conferring favours or being lenient, or in any other manner whatsoever.

If the Town determines that this article has been breached by or with respect to a Bidder, the Town may exclude its Quotation from consideration, or if a contract has already been entered into, may terminate it without incurring any liability.

9. Acceptance of Quotations

The Town shall not be obliged to accept any Quotation in response to this RFQ. The Town may modify and/or cancel this RFQ prior to accepting any Quotation. Quotations may be accepted or rejected in total or in part. The lowest quoted price may not necessarily be accepted by the Town.

In determining which Quotation provides the best value to the Town, consideration may be given to the past performance of any Bidder. Quotations which are incomplete, conditional or obscure or which contain additions not called for, erasures or alterations of any kind may be rejected. The Town reserves the right to waive immaterial defects and minor irregularities in any Quotation.

The Town reserves the right to verify the validity of information submitted in the Quotation and may reject any Quotation where, in the Town's sole estimation, the contents appear to be incorrect, inaccurate or inappropriate.

The Town reserves the right to assess the ability of the Bidder to perform the contract and may reject any Quotation where, in the Town's sole estimation, the personnel and/or resources of the Bidder are insufficient.

The Town may reject a bid if it determines, in its sole discretion, that the bid is materially unbalanced.

A bid is materially unbalanced when:

- a) it is based on prices which are significantly less than cost for some items of work and prices which are significantly overstated in relation to cost for other items of work; and
- b) the Town had determined that the bid may not result in the lowest overall cost to the Town even though it may be the lowest submitted bid; or it is so unbalanced as to be tantamount to allowing an advance payment.

10. Currency

Unless otherwise stated herein, prices quoted are to be in Canadian dollars.

11. Tied Bids

In the event that the Town receives two or more Quotations identical in price, the Town reserves the right to select one of the tied Quotations by way of a coin toss (in the case of two identical bids), or lottery (in the case of more than

Town of Petrolia
Request For Quotation 11-05-21
Victoria Hall HVAC Renewal
two identical bids).

12. Mathematical Errors

In the event of mathematical errors found in the pricing pages, the unit prices quoted shall prevail. Extensions and totals will be corrected accordingly and adjustments resulting from the correction will be applied to the total bid price quoted.

13. Conflicts of Interest

In its Quotation, the Bidder must disclose to the Town any potential conflict of interest that might compromise the performance of the Work. If such a conflict of interest does exist, the Town may, at its discretion, refuse to consider the Quotation.

The Bidder must also disclose whether it is aware of any Town employee, Council member or member of a Town agency, board or commission or employee thereof having a financial interest in the Bidder and the nature of that interest. If such an interest exists or arises prior to the award on any contract, the Town may, at its discretion, refuse to consider the Quotation or withhold the awarding of any contract to the Bidder until the matter is resolved to the Town's sole satisfaction.

Bidders are cautioned that the acceptance of their Quotation may preclude them from participating as a Bidder in subsequent projects where a conflict of interest may arise. The Contractor for this project may participate in subsequent/other Town projects provided the Contractor has satisfied pre-qualification requirements of the Town, if any, and in the opinion of the Town, no conflict of interest would adversely affect the performance and successful completion of an agreement by the Contractor.

14. Ownership and Confidentiality of Town-Provided Data

All correspondence, documentation and information provided by Town staff to any Bidder or prospective Bidder in connection with, or arising out of this RFQ, the Services or the acceptance of any Quotation:

- a) is and shall remain the property of the Town;
- b) must be treated by Bidders and prospective Bidders as confidential;
- c) must not be used for any purpose other than for replying to this RFQ, and for fulfillment of any related subsequent agreement.

15. Ownership and Disclosure of Quotation Documentation

The documentation comprising any Quotation submitted in response to this RFQ, along with all correspondence, documentation and information provided to the Town by any Bidder in connection with, or arising out of this RFQ, once received by the Town:

- a) shall become the property of the Town and may be appended to purchase order issued to the Contractor;
- b) shall become subject to the *Municipal Freedom of Information and Protection of Privacy Act ("MFIPPA")*, and may be released, pursuant to that Act.

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

Each Bidder's name and quoted price shall be made public. Quotations will be made available to members of Town Council on a confidential basis and may be released to members of the public pursuant to MFIPPA.

16. Intellectual Property Rights

Each Bidder warrants that the information contained in its Quotation does not infringe any intellectual property right of any third party and agrees to indemnify and save harmless the Town, its staff and its consultants, if any, against all claims, actions, suits and proceedings, including all costs incurred by the Town brought by any person in respect of the infringement or alleged infringement of any patent, copyright, trademark, or other intellectual property right in connection with their Quotation.

17. Failure or Default of Bidder

If the Bidder, for any reason, fails or defaults in respect of any matter or thing which is an obligation of the Bidder under the terms of the RFQ, the Town may:

- a) disqualify the Bidder from the RFQ and/or from competing for future tenders or RFQ issued by the Town for a period of one year; and

- b) require the Bidder to pay the Town the difference between its Quotation and any other Quotation which the Town accepts, if the latter is for a greater amount and, in addition, to pay the Town any cost which the Town may incur by reason of the Bidder's failure or default.

18. Governing Law

This RFQ and any Quotation submitted in response to it and the process contemplated by this RFQ shall be governed by the laws of the Province of Ontario. Any dispute arising out of this RFQ or this RFQ process will be determined by a court of competent jurisdiction in the Province of Ontario.

ARTICLE 2 – GENERAL CONTRACT TERMS AND CONDITIONS

In addition to any other terms and conditions contained elsewhere in this RFQ, the following terms and conditions form part of any contract(s) entered into between the Town and any Contractor(s) (the "Contractor") and are deemed to be incorporated into any purchase order(s) issued in connection with this RFQ.

1. Compliance with Laws

The Contractor will be required to comply with all federal, provincial and municipal laws and regulations in providing the Goods and services including, without limitation, the *Occupational Health and Safety Act* and the *Workplace Safety and Insurance Act, 1997*, or any successor legislation, as applicable, and to provide to the Town, upon request, periodic reports confirming such compliance.

2. Non-Exclusivity

The awarding of a contract to a Contractor shall not be a guarantee of exclusivity.

3. Confidentiality

The Contractor shall treat as confidential all information of any kind which comes to the attention of the Contractor in the course of providing the goods and services and shall not disseminate such information for any reason without the express written permission of the Town.

4. Indemnities

The Contractor shall indemnify and save harmless the Town of Petrolia, its Mayor, Members of Council, officers, employees, and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgements (including legal fees and costs) arising from or related to the Contractor's performance or non-performance of its obligations, including payment obligations to its approved subcontractors and suppliers and others, and including or breach of any confidentiality obligations under the contract or infringement, actual or alleged of any Canadian, American or other copyright, moral right, trade-mark, patent, trade secret or other thing with respect to which a right in the nature of intellectual/industrial property exists.

Upon assuming the defence of any action covered under this sub-article the Contractor shall keep Town of Petrolia reasonably informed of the status of the matter, and the Contractor shall make no admission of liability or fault on Town of Petrolia's part without Town of Petrolia's written permission.

5. No Assignment

The Contractor shall not assign any part of the contract nor any interest therein without the prior written consent of the Town, which consent shall not be unreasonably withheld.

6. Sub-contractors

The Contractor shall be solely responsible for the payment of every sub-contractor employed, engaged, or retained by it for the purpose of assisting it in the performance of its obligations under the contract. The Contractor shall coordinate the provision of the goods and services by its sub-contractors in a manner acceptable to the Town, and ensure that they comply with all the relevant requirements of the contract.

The Contractor shall be liable to the Town for all costs or damages arising from acts, omissions, negligence or willful misconduct of its sub-contractors.

7. Personnel and Performance

The Contractor must make available appropriately skilled workers, consultants or subcontractors, as appropriate, and must be able to provide the necessary materials, tools, machinery and supplies to fulfill its obligations under the contract. The Contractor shall be responsible for its own staff re-sources and for the staff resources of any sub-contractors and third-party service providers.

Town of Petrolia
Request For Quotation 11-05-21
Victoria Hall HVAC Renewal

The Contractor will ensure that its personnel (including those of approved sub-contractors), when using any Town buildings, premises, equipment, hardware or software shall comply with all security policies, regulations or directives relating to those buildings, premises, equipment, hardware or software.

Personnel assigned by the Contractor to provide the goods and services (including those of approved subcontractors) may, in the sole discretion of the Town, be required to sign non-disclosure agreement(s) satisfactory to the Town.

8. Independent Contractor

The relationship of the Town and the Contractor is one of owner and independent contractor and not one of employer-employee. Neither is there any intention to create a partnership, joint venture or joint enterprise between the Contractor and the Town.

Warranties and Covenants

The Contractor represents, warrants and covenants to the Town (and acknowledges that the Town is relying thereon) that any deliverable resulting from or to be supplied or developed under the contract will be in accordance with the Town's functional and technical requirements (as set out in the RFQ) and, if applicable, will function or otherwise perform in accordance with such requirements.

10. Ownership of Project Documentation

All information, data, plans, specifications, reports, estimates, summaries, photographs and all other documentation prepared by the Contractor in the connection with the provision of the goods and services under the contract, whether they be in draft or final format, shall be the property of the Town.

11. Termination Provisions

Upon giving the Contractor not less than 30 days' prior written notice, the Town may, at any time and without cause, cancel the contract, in whole or in part. In the event of such cancellation, the Town shall not incur any liability to the Contractor apart from the payment for the goods, material, articles, equipment, work or services that have been satisfactorily delivered or performed by the Contractor at the time of cancellation.

Failure of the Contractor to perform its obligations under the contract shall entitle the Town to terminate the contract upon ten (10) calendar days' written notice to the

Contractor if a breach which is remediable is not rectified in that time. In the event of such termination, the Town shall not incur any liability to the Contractor apart from the payment for the goods, material, articles, equipment, work or services that have been satisfactorily delivered or performed by the Contractor at the time of termination.

All rights and remedies of the Town for any breach of the Contractor's obligations under the contract shall be cumulative and not exclusive or mutually exclusive alternatives and may be exercised singularly, jointly or in combination and shall not be deemed to be in exclusion of any other rights or remedies available to the Town under the contract or otherwise at law.

No delay or omission by the Town in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or the exercise of any other right or remedy.

12. Workers Compensation

Prior to commencing the *Work*, again with the *Contractor's* application for payment of the holdback amount following *Substantial Performance of the Work* and again with the *Contractor's* application for final payment, the *Contractor* shall provide evidence of compliance with workers' compensation legislation at the *Place of the Work*, including payments due thereunder.

At any time during the term of the *Contract*, when requested by the *Owner*, the *Contractor* shall provide such evidence of compliance by the *Contractor* and *Subcontractors*.

13. Warranty

The warranty period under the *Contract* is one year from the date of *Substantial Performance of the Work*.

The *Contractor* shall be responsible for the proper performance of the *Work* to the extent that the design and *Contract Documents* permit such performance.

The *Owner*, through the *Consultant*, shall promptly give the *Contractor Notice in Writing* of observed defects and deficiencies which occur during the one-year warranty period. The *Contractor* shall correct promptly, at the *Contractor's* expense, defects or deficiencies in the *Work* which appear prior to and during the one-year warranty

Town of Petrolia
Request For Quotation 11-05-21
Victoria Hall HVAC Renewal

period. The *Contractor* shall correct or pay for damage resulting from corrections made under the requirements of this Contract.

13. Payments

Application for progress payment will be accepted on a bi-weekly basis, based on progress, with a 10% draw offered on completion of site mobilization and project start-up. Owner's project representative shall determine progress based on draw requests and site review.

Owner to make payment to the Contractor on or before 20 calendar days after receipt and acceptance.

Holdbacks of 10% shall apply to all draws with the exception of site mobilization. Final release shall be within 45 days of written confirmation of substantial performance of the Contract.

This is to acknowledge that I have reviewed and understood these Terms and Conditions :

Company: _____ Signature: _____ Date: _____