

INSTRUCTIONS TO BIDDERS

1.0 DEFINITIONS

Agreement means the signed document between the Minister or delegated representative and the Contractor for the performance of the Work included in the Contract Documents.

Bidder means a person, sole proprietorship, firm, partnership, corporation, or any other business venture that submits a Bid to the Ministry.

Bonds means both the Contract Bonds and the Statutory Bonds prescribed in the Tender Documents.

Business Day means any Day which is not: a) A Saturday or a Sunday or b) A Day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable to the Province of Ontario.

Coercive Practice means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract.

Collusive Practice means scheme or arrangement between two or more Bidders, with or without the knowledge of the Ministry, designed to establish bid prices at artificial, non-competitive levels.

Contract means the undertaking by the Ministry and the Contractor to perform their respective duties, responsibilities, and obligations as prescribed in the Contract Documents.

Contract Bonds means the surety bonds executed by the Contractor and its Surety prescribed in the Tender Documents but does not include Statutory Bonds.

Contract Documents means the Agreement, Tender, MTO General Conditions of Contract, Standard Specifications and Drawings, Special Provisions, Contract Drawings, Addenda incorporated into any aforementioned document, documents referenced in the aforementioned documents, and subsequent amendments to any of these documents made pursuant to the provisions of the Agreement.

Confidential Information refers to the confidential information of the Ministry (other than confidential information which is disclosed to the bidders in the normal course of the Tender) that is relevant to the services required by the Tender, or their pricing and the disclosure for which could result in prejudice to the Ministry or an Unfair Advantage to the Bidder.

Conflict of Interest means having an interest (whether personal, financial or

INSTRUCTIONS TO BIDDERS

otherwise), which interferes or may reasonably interfere, with the ability of the Bidder to submit a fair and objective Tender or Bid.

Contractor means the person, partnership, or corporation undertaking the Work as identified in the Agreement.

Contractor Registration Form or CRF means the Ministry approved form supplied by the Ministry and completed by the Bidder to submit information in support of a contractor's basic financial rating.

Contract Tender Form or CTF means the Ministry approved form detailing the contract tender information for an advertised contract.

Corrupt Practice means the offering, promising, giving, receiving, or soliciting, directly or indirectly, anything of value or any other advantage to influence improperly the actions of a public official in the procurement process.

Day means a calendar day.

Fraudulent Practice means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract.

Joint Bid means a Bid submitted for a Qualified Contract by companies that are not associated or related by common ownership and have not formed a corporation.

Joint Venture means a Bid submitted for a Contract by companies that are not associated or related by common ownership and have formed a corporation.

Itemized Bid Form means the Ministry approved form that the Bidder is to use to price the items specified in the tender documents to perform the Work.

Late Bid means a Bid received by the Ministry's Service Provider after the Tender Closing.

Late Bid Notification is a statement sent by the Ministry's Service Provider to a Bidder notifying the Bidder that their Bid is a Late Bid and will not be considered and is rejected.

MERX means the company engaged by the Ministry to provide electronic tendering services, which is a subsidiary of Mediagrif Interactive Technologies Inc.

Ministry means the Ministry of Transportation of Ontario.

No Bid Statement means a 'No Bid' selection on a Summary Bid Submission Form submitted to the Ministry's Service Provider from a Bidder who has an approved

INSTRUCTIONS TO BIDDERS

Tender Registration Form, but who does not intend on submitting a Summary Bid Submission Form containing a summary Bid prior to the Tender Closing, or intends to withdraw a summary Bid submitted on a Summary Bid Submission Form submitted to the Ministry prior to Tender Closing.

Non-Qualified Contract means a Contract that does not require the Bidder to be a Rated Contractor.

Non-Qualified Contractor Registration Form or NQCRF means the Ministry approved form supplied by the Ministry and completed by the Non-Rated Contractor.

Non-Rated Contractor means a contractor who does not have a basic financial rating or maximum workload rating in accordance with the Ministry's Qualification Procedures for Contractors.

Non-Resident Contractor means any contractor outside Ontario and is not incorporated pursuant to the laws of Ontario and who has not maintained a permanent place of business in Ontario continuously for twelve months prior to Tender Opening.

Non-Qualified Tender Registration Form or NQTRF means the Ministry approved form supplied by the Ministry completed by the Bidder to notify the Ministry of its intention to submit a Bid on a Non-Qualified contract in accordance with the Instructions to Bidders.

Qualified Contract means a Contract that requires the Bidder to be a Rated Contractor.

Qualification Procedures for Contractors means the administrative routine established by the Ministry to determine that contractors have the financial, managerial, and technical capability to perform the work in accordance with the contract.

Preferred Bidder means the Bidder that has been successful in the bidding process for the Contract as determined by the Ministry at the conclusion of the bid evaluation process.

Registry, Appraisal and Qualification System or RAQS means an electronic procurement portal for contractors hosted by MERX where the Ministry tenders its transportation infrastructure contracts.

Rated Contractor means a Contractor, or a Contractor's subsidiary company that is included in the executed Memorandum of Agreement, that has been granted a basic financial rating or maximum workload rating in accordance with the Ministry's Qualification Procedures for Contractors.

INSTRUCTIONS TO BIDDERS

Service Provider means the company appointed by the Ministry to provide electronic tendering services on behalf of the Ministry.

Statutory Bonds means a Performance Bond and Labour & Materials Payment Bond executed by the Contactor and its Surety and required to be furnished by Part XI.1 of the Construction Act, R.S.O. 1990, c.30, as amended.

Summary Bid Submission Form means the electronic form obtained from the Ministry's Service Provider prior to Tender Closing that the Bidder is to use to summarize the lump sum offer to perform the Work.

Surety means an insurance company that is licensed by the Financial Services Regulatory Authority of Ontario to issue Statutory Bonds.

Tender or Bid can be used interchangeably and means the offer submitted by a Bidder to perform the work required of the Tender Documents at the prices set out in the offer, which offer shall be set out in the forms approved by the Ministry and in accordance with the procedures more particularly described in these Instructions to Bidders. More particularly, the forms shall include, among other things, the Summary Bid Submission Form and the Itemized Bid Form.

Tender Closing or Tender Opening can be used interchangeably and mean the last date and time that the Ministry will receive Bids.

Tender Documents means the Tender, MTO General Conditions of Contract, Standard Specifications and Drawings, Special Provisions, Contract Drawings, Addenda incorporated into any aforementioned document, and documents referenced in the aforementioned documents, but excludes the Qualification Procedures for Contractors.

Tender Registration Form or TRF means the Ministry approved form supplied by the Ministry completed by the Bidder to notify the Ministry of its intention to submit a bid on a Qualified or Non-Qualified Contract in accordance with the Instructions to Bidders.

Unbalanced Bid means a Bid containing a lump sum or unit prices, which does not reflect reasonable actual costs to do the work as described in the Tender Documents, plus a reasonable proportionate share of the Bidder's anticipated profit, overhead costs, and other indirect costs which are anticipated for the performance of the work.

Unfair Advantage means the Bidder, any of its subcontractors, employees or former employees, had access to information related to the bid solicitation that was not available to all Bidders

INSTRUCTIONS TO BIDDERS

Work means the total construction and related services required by the Contract Documents.

2.0 COMPLIANCE WITH INSTRUCTIONS

- 2.1 Bidders shall comply with these Instructions to Bidders. Failure to do so may result in the rejection of their Bids.
- 2.2 Bidders shall respond to Tenders in an honest, fair and accountable manner, including by complying with all applicable laws and regulations regarding fair competition as well as recognized standards of good procurement practice.
- 2.3 Bidders shall not engage in Corrupt, Fraudulent, Collusive, or Coercive Practices in bidding for a Contract.
- 2.4 The Ministry will not award a Contract to a Bidder that has engaged in Corrupt, Fraudulent, Collusive or Coercive Practices.

3.0 CONFLICT OF INTEREST

- 3.1 A Bidder must ensure that its employees, officers, advisers, agents, former employees or subcontractors do not place themselves in a position that may, or does give rise to an actual or potential Conflict of Interest between the interests of the Ministry and the Bidder's interests during the procurement process. This may include having access to Confidential Information related to the Tender or Bid that was not available to other Bidders and that would, in Ministry's opinion, give or appear to give the Bidder an Unfair Advantage.
- 3.2 The Bidder must declare prior to Tender Closing any situation that may be a Conflict of Interest. This declaration shall be submitted to the ministry as an attachment to the Summary Bid Submission form. A template Conflict of Interest Declaration Form is included with the Tender Documents.
- 3.3 The Ministry shall have the right to rescind any Contract with the Preferred Bidder in the event that the Ministry, in his/her sole discretion, determines that the Preferred Bidder has made misrepresentation regarding any of the above, in addition to or in lieu of any other remedies that the Ministry has in law or in equity.

4.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

- 4.1 The Freedom of Information and Protection of Privacy Act applies to the information provided to the Ministry by a Bidder.

INSTRUCTIONS TO BIDDERS

4.2 The Bidder should identify any information in its Bid or any accompanying documents supplied in confidence for which confidentiality is to be maintained by the Ministry, except as otherwise required by law or order of a court.

4.3 Bidders are advised that their Bids will, as necessary, be disclosed on a confidential basis to the Ministry's advisers for the purpose of evaluating or participating in the evaluation of their Bids.

5.0 ACCESSIBILITY OBLIGATIONS

5.1 The Province of Ontario is committed to the highest possible standard for accessibility. Contractor(s) are responsible for complying with the requirements under the Ontario Human Rights Code, the Ontarians with Disabilities Act, 2001 and Accessibility for Ontarians with Disabilities Act, 2005 ("AODA") and its regulations. In circumstances where Contractors are providing a service to the public on behalf of the Ministry, they may need to follow Ministry direction to ensure Ministry compliance with the AODA and its regulations (such as the Integrated Accessibility Standards Regulation). The Contractor is responsible for applying the Integrated Accessibility Standards Regulation and effective dates and timelines as they pertain to the Government of Ontario, as directed by the Ministry.

6.0 ENQUIRIES DURING TENDERING PERIOD

6.1 Enquiries shall be submitted electronically through the RAQS. All public enquiries and responses to enquiries will be posted through the RAQS.

6.2 Unless addressed through an addendum to the Tender Documents issued by the Ministry, all responses to Bid enquiries shall not be incorporated as part of the Contract or in any way change the Contract.

6.3 Bidders shall not make verbal enquiries of Ministry personnel. Information given orally by Ministry personnel shall not be binding on the Ministry, nor shall it be construed as a factor in the Bid evaluation. Any attempt on the part of any Bidder or any of its employees, officers, agents, advisers or subcontractors to contact any member of the Ministry with respect to the Tender other than as described above in this section may lead to disqualification.

7.0 JOINT VENTURES OR JOINT BIDS

7.1 Rated Contractors are permitted to Bid on tenders as a Joint Venture/Joint Bid. All participants in the Joint Venture/Joint Bid shall, on a joint and several basis, absolutely, unconditionally and irrevocably be responsible for all obligations described in the Tender Documents.

INSTRUCTIONS TO BIDDERS

7.2 Rated Contractors shall notify the Ministry of their intent to form a Joint Venture or submit a Joint Bid in accordance with the Ministry's Qualification Procedures for Contractors. Upon approval by the Ministry, the lead Contractor must submit the TRF on behalf of the Joint Venture or Joint Bid.

7.3 The lead Contractor shall sign the Contract on behalf of the Joint Venture upon award of the Tender. In the case of a Joint Bid, the Contract shall be signed by the Rated Contractors in the Joint Bid.

8.0 TENDER REGISTRATION

8.1 An approved NQTRF or TRF is required for the submission of a Bid in respect of the Work.

8.2 A Non-Rated Contractor must have an approved NQCRF and a Ministry approved NQTRF for the submission of a Bid for a Non-Qualified Contract.

8.3 A Rated Contractor must have an approved CRF and either a Ministry approved NQTRF or a TRF for the submission of a Bid for a Non-Qualified Contract or a Qualified Contract.

9.0 STATUTORY BONDS

9.1 The successful Bidder shall provide Statutory Bonds each in the amount of 50% of the Tender price if the Tender price is **\$500,000.00 or more**.

9.2 Statutory Bonds shall be issued by a Surety in the prescribed form that satisfies the requirements of the Construction Act, R.S.O. 1990, c.C.30, as amended.

9.3 Statutory Bonds shall name "HER MAJESTY THE QUEEN in right of Ontario as represented by the Minister of Transportation" as an obligee.

9.4 Statutory Bonds shall be in the name of the Contractor. For a Joint Venture/Joint Bid, the Statutory Bonds shall be in the name of all Joint Venture/Joint Bid participants.

10.0 ELECTRONIC BID SUBMISSION PROCEDURES

10.1 All Bidders shall have a valid user ID and password to access the RAQS website. Only a Bidder with an approved TRF or NQTRF for the advertised Tender can submit a Bid.

10.2 The Bidder's TRF or NQTRF shall be completed as of the date and time specified on the Contract Tender Form. The Ministry will not review any TRF's or NQTRF's received after that date and time.

INSTRUCTIONS TO BIDDERS

- 10.3 Bidders shall complete an on-line Summary Bid Submission Form. Only a Bidder with an approved TRF or NQTRF for the advertised Tender can complete and submit a Summary Bid Submission Form to the Ministry.
- 10.4 All Bids shall be received by the Ministry before the Tender Closing date and time specified in the Contract Tender Form.
- 10.5 Bidders may submit a revised on-line Summary Bid Submission Form up until Tender Closing. The Ministry will only consider the last Summary Bid Submission Form received by the Ministry prior to Tender Closing. A No Bid Statement may be received from any Bidder on-line up until Tender Closing.
- 10.6 Upon successfully submitting an on-line Summary Bid Submission Form, Bidders will receive an on-line notification for information purposes that the Ministry has received their Summary Bid Submission Form.
- 10.7 The Itemized Bid Form will be available to pre-qualified Bidders for on-line data entry 24 hours prior to Tender Closing.
- 10.8 After Tender Closing, Bidders will receive an electronic notification from the Ministry's Service Provider, advising them that Tender Closing has occurred.
- 10.9 The Ministry's Service Provider will notify all Bidders electronically and will publish a Bidders list showing tender results on the RAQS website.
- 10.10 The three (3) lowest Bidders will be advised to submit the Itemized Bid Form within 24 hours after the Bids are published. Failure to submit the Itemized Bid Form within the specified time may result in rejection of the Bid and/or may be referred to the Qualification Committee. The Itemized Bid Form shall not be changed once submitted.

11.0 COMPUTER SYSTEM FAILURE

- 11.1 The Ministry will only accept Bids submitted electronically through RAQS. Any Bid received through any other format will not be considered and is deemed rejected without consideration.
- 11.2 The Ministry accepts no responsibility for any reason whatsoever, including computer system failures of either the Bidder or the Ministry's Service Provider, if the Bidder is unable to submit its Bid before Tender Closing, and the Bidder agrees that the Ministry shall have no liability for delays caused by internet/network traffic, degraded operation or failure of any computer system element, including, but not limited to: any computer system, power supply, telephone or data connection or system or software or browser of any type whatsoever.

INSTRUCTIONS TO BIDDERS

11.3 It is the sole responsibility of the Bidder to ensure that it can access and exchange data with the Ministry Service Provider's computer systems electronically and that it allows sufficient time to successfully access and share data with the Ministry Service Provider's computer systems, having regard to the possibility of delays caused by internet/network traffic. Bidders are solely responsible to ensure that they plan their access to the Ministry Service Provider's computer/servers, so that the Bidders can reach the Ministry Service Provider's computers/servers before Tender Closing.

12.0 UNBALANCED TENDERS AND DISCREPANCIES

12.1 Bidders that submit Tenders containing a lump sum or unit prices that appear to be an Unbalanced Bid may be referred to the Ministry's Qualification Committee. A Bid that has been determined to be a mathematically or materially Unbalanced Bid may be rejected by the Ministry.

12.2 The Ministry will not allow any Bidder to adjust the total Tender amount after Tender Closing.

12.3 In the event of a mathematical error or discrepancy in the Itemized Bid Form, the Ministry may request the Bidder to resubmit the Itemized Bid Form without changing the total Tender amount.

13.0 ACCEPTANCE OR REJECTIONS OF TENDERS

13.1 The Ministry reserves the right to reject any or all Tenders, and to waive formalities as the interests of the Ministry may require without stating reasons, therefore, the lowest or any Tender may not necessarily be accepted.

13.2 The Ministry shall not be liable for any costs, expenses, loss or damage incurred, sustained or suffered by any Bidder prior, or subsequent to, or by reason of the acceptance or the non-acceptance by the Ministry of any Tender, or by reason of any delay in the acceptance of a Tender, except as provided in the Tender Documents.

13.3 The Tender shall be irrevocable for a period of 30 Days following the date of Tender Closing.

14.0 CONTRACT AWARD PROCEDURES

14.1 The Ministry will notify a Preferred Bidder in writing that the Tender has been accepted within 30 Days of the Tender Closing.

14.2 The Ministry will send the contract agreement and other such forms and documents as are necessary to the Preferred Bidder for execution by the Preferred Bidder.

INSTRUCTIONS TO BIDDERS

- 14.3 The Preferred Bidder shall fully execute and return the contract agreement and other such forms and documents, including the required Statutory Bonds, if applicable, required certificates and declarations as directed in the document titled "Notification of Acceptance of Tender" within seven (7) Business Days of the date the documents are received.
- 14.4 Following receipt of all properly executed forms and documentation, the Preferred Bidder will receive written authority to proceed with the work.

15.0 FAILURE TO PROVIDE DOCUMENTS OR ENTER INTO CONTRACT

- 15.1 If the Preferred Bidder is a Rated Contractor and fails to return the applicable documents as directed in the notification of acceptance of Tender, within seven (7) Business Days of receipt of such notification, the Ministry may reject the Bid on written notice to the Preferred Bidder and refer the matter to the Ministry's Qualification Committee without prejudice to any right or remedy the Ministry may have in law.
- 15.2 If the Preferred Bidder is a Rated Contractor and fails for any reason to enter into the Contract within the specified time, then it shall not be allowed to work on the Contract as a subcontractor or be allowed to supply any material, equipment or labour to the contract and the matter shall be referred to the Ministry's Qualification Committee without prejudice to any right or remedy the Ministry may have in law.
- 15.3 If the Preferred Bidder is a Non-Rated Contractor and fails to return the applicable documents as directed in the notification of acceptance of Tender, within seven (7) Business Days of receipt, the Ministry may reject the Bid, on written notice to the Preferred Bidder without prejudice to any right or remedy the Ministry may have in law, and the Ministry may revoke the Preferred Bidder's bidding privileges with the Ministry on future Ministry Contracts for a period of up to two (2) years.
- 15.4 If the Preferred Bidder is a Non-Rated Contractor and fails for any reason to enter into the contract within the specified time, then it shall not be allowed to work on the Contract as a subcontractor or be allowed to supply any material, equipment or labour to the Contract and the Ministry may revoke the Preferred Bidder's bidding privileges on future Ministry Contracts for a period of up to two (2) years without prejudice to any right or remedy the Ministry may have in law.

16.0 NON-RESIDENT CONTRACTORS REQUIREMENTS

- 16.1 If the Preferred Bidder is a Non-resident, it will provide a WSIP Clearance Certificate and the Ministry of Labour Form 1000 "Registration of Constructors and Employers Engaged in Construction" with their executed documents.