



Bid Opportunity ONLINE

Town of Newmarket
Procurement Services Department
395 Mulock Drive, P.O. Box 328, STN Main
Newmarket, ON L3Y 4X7

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Town of Newmarket Purchase Order Terms and Conditions

“**Bid**” means a Tender, Proposal or Quotation submitted in response to a solicitation from the Owner.

“**Bidder**” means any person who submits a response to a solicitation. For clarity, the “Bidder” shall also include “Proponent” and “Offerer”.

“**Bid Call Document**” means the Owner’s solicitation document, which may be in the form of an Informal Quick Bid (Request for Quotation (QB) or Quick Bid Request for Proposal (QBRFP)), Request for Tender (RFT), Request for Proposal (RFP) or Sale (S).

“**Contractor**” means the selected Bidder that has a Contract with the Owner to perform the Work and/or Services described in a Bid Call Document. For clarity, for this by-law only, “Contractor” includes “Consultant” and “Supplier”.

“**Consultant**” means services of an advisory nature required to support policy development, decision making, administration, or management of a business or public entity, generally provided by individuals or organizations who possess specific knowledge, technical skills or unique abilities not usually available in-house or from the entity.

“**Owner**” means the Corporation of the Town of Newmarket and its local boards.

“**Procurement Bylaw**” means the [Owner’s Procurement Bylaw Number 2014-27](#), as it may be amended, restated, supplemented or replaced from time to time.

“**Work**” means the Work to be undertaken by the Contractor pursuant to the provisions of the Contract.

For a complete list of definitions see the [Owner’s Procurement Bylaw 2014-27](#), as amended.

1. ACCEPTANCE.

The Contractor by accepting this order further acknowledges and accepts all Purchase Order Terms and Conditions stated herein, as amended.

2. F.O.B.

2.1 All shipments shall be FOB Destination, Freight Prepaid and Allowed.

2.2 The F.O.B. Prepaid Destination point shall be the destination as indicated on the purchase order. For greater certainty, the Contractor shall be responsible for the payment of shipping, bearing the cost of shipping and for all liability related to the goods until the goods are delivered to and accepted by the Owner at the Owner's facility or if stated, the actual Facility Room or Department location indicated on the purchase order.

3. INTENDED PURPOSE OF USE:

The Contractor warrants that the goods, materials and/or equipment are of merchantable quality, and fit for the intended use and will perform according to the requirements set out by the Owner

4. WARRANTY PERIOD

Unless a greater warranty period is stated in the specifications of the Bid Call Document, the warranty period shall be for a minimum of one (1) year on all parts, labour, goods, materials, equipment and/or services provided under the Contract (Unless otherwise stated in the specifications, the warranty period shall commence either from the date of substantial performance for construction or the day after delivery and acceptance for goods, services and equipment).

5. PAYMENT TERMS

Payment for provision of Goods, Services and/or Construction, satisfactorily performed in the opinion of the Owner is Net Thirty (30) days.

6. INVOICES

7.1 All invoices shall be sent to the Town of Newmarket, Finance Department - Accounts Payable, 395 Mulock Drive, Newmarket, ON L3Y 4X7.

7.2 All invoices submitted by the Contractor shall reference the Purchase Order number and conform to the order and content as set out in the Owner's Purchase Order form and shall provide additional information as follows:

- Harmonized Sales Tax shown separately
- Contractor's HST registration number

7.3 The Invoice shall contain sufficient detail in accordance with the items and unit prices of the awarded Bid. For example: Time and Material Contracts should provide a breakdown of labour and material utilized for the project.

7. CONTRACTOR PERFORMANCE EVALUATION

All Contractors undertaking assignments for the Owner may be subject to a performance evaluation which may be conducted by the Owner, on "as needed basis", and/or at the conclusion of the project and/or at the end of the warranty period, or for term contracts, on an annual basis and upon conclusion of the project, in accordance with the Owner's Contractor Performance Policy, as amended.

Use this hyperlink to view the [Owner's Contractor Performance Procedures](#).

8. MATERIAL SAFETY DATA SHEETS (MSDS)

The Contractor shall supply current Material Safety Data Sheets for all controlled products supplied on or before delivery of initial shipments and again sixty (60) days prior to expiry of the sheet. Failure

to comply with this instruction or to label products in accordance with the Workplace Hazardous Materials Information System Act may result in cancellation of the Contract, in which event any existing stocks shall be removed and credited back to the Owner in full by the Contractor. The Owner shall be under no obligation whatsoever, to any Contractor who does not comply with the Owner's procedure in this regard.

9. DISCOUNT TERMS

If a discount is allowed for payment within a certain time, the time for taking the discount will not begin until the date of the receipt of the invoice or the date of the delivery of the goods, whichever is later. However, if an invoice is returned for correction, the time for taking the discount will not begin to run until the date of the receipt of the corrected invoice.

10. EXTRAS/CHANGES TO THE PURCHASE ORDER

No charges for extras or changes or changes to pricing will be allowed unless it has prior written authorization of the Manager, Procurement Services or designate.

11. TERMINATION

The Owner may terminate this Purchase Order without prior written notice if Goods, Services and / or Construction are not provided within the timeframe specified. The Contractor shall give the Owner written notice of the cause and extent of any delay, and the Owner, at its sole discretion may terminate the Purchase Order and may order with another Contractor, without penalty or other fee. Furthermore if the Owner, in its sole opinion, determines that the Contractor has neglected, failed or refused to proceed promptly with delivery of the Goods, Services and/or Construction, the Owner may cancel the Purchase Order without penalty or other fee.

12. HAZARDOUS GOODS

Goods must be transported by the Contractor or Contractor's agent in accordance with all relevant federal and provincial legislation covering the handling and transportation of all hazardous and dangerous goods.

13. INSPECTION AND ACCEPTANCE

All Goods, Service(s) and/or Construction are subject to inspection and acceptance by the Owner or the Owner's representative. Rejected Goods, Services and/or Construction, upon written notice of rejection by the Owner, shall be returned and either exchanged, refunded or cancelled at the Owner's discretion, at the Contractor's expense and cost.

14. GOVERNING LAWS

This Purchase Order shall be governed by the laws of Province of Ontario.

15. ASSIGNMENT

The Contractor is not permitted to assign the work of this Purchase Order, in whole or in part, to any party, without the prior written approval of the Manager, Procurement Services or designate.

16. FORCE MAJEURE

It is understood and agreed that the Contractor shall not be held liable for any losses resulting if the fulfilment of the terms of the Contract shall be delayed or prevented by wars, acts of public enemies,

strikes, fires, floods, acts of God, or for any other cause not within the control of the Contractor and which by the exercise of reasonable diligence the Contractor is unable to prevent. Should the performance of any Contract be delayed or prevented as herein set forth, the Contractor agrees to give immediate written notice and explanation of the cause and probable duration of any such delay.

17. INDEMNITY

The Contractor shall indemnify and hold harmless the Owner, its officers, Council members, partners, agents and employees from and against all actions, claims, demands, losses, costs, damages, suits or proceedings whatsoever which may be brought against or made upon the Owner and against all losses, liabilities, judgements, claims, suits, demands or expenses which the Owner may sustain, suffer or be put to resulting from or arising out of the selected Contractor's actions or omissions in the performance or rendering of any Work or service required hereunder to be performed or rendered by the Contractor, its agents, officials and employees, or any damage or injury caused to any third party by reason of or arising out of any breach, violation or non-performance of any provision of the Contract by the Contractor, its agents, officials and employees. This indemnification shall include any legal costs incurred by the Owner on a substantial indemnity basis, including those incurred to defend any criminal prosecutions against the Owner resulting from the actions of the selected Contractor.

18. SUPPLIER CODE OF CONDUCT

Contractors agree by accepting this order declare that they have read and understood the Owner's [Supplier Code of Conduct](#) in its entirety and that the Contractor and any applicable sub-contractors, are not only in full compliance with this Supplier Code of Conduct but we will maintain compliance with it throughout the full duration of this Contract.

19. STRIKES / ACCIDENTS

In the event of strikes, accidents or unforeseen contingencies causing stoppage of work, the Owner reserves the right to; delay or cancel the work specified on the Purchase Order.