

**1. Applicability**

All information in this Tender document forms the official Contract and shall be read accordingly. Failure to comply with any of these conditions may result in disqualification or termination.

**2. Terms of Reference**

- 2.1. “Best Value Proposal” The Bid Submission that most effectively meets the requirements of this bid document. This may include but is not limited to the lowest Total Evaluated Cost, and the most qualified, responsive and responsible bid submission.
- 2.2. “Bidder” refers to the firm, company, corporation or individual that is responding to this Tender.
- 2.3. “Bid Submission” means the response to Tender document requirements as issued by the Board, submitted by the Bidder, which must be received in its original form, with original signatures, in the bidding system.
- 2.4. “Board” or “Owner” refers to the York Region District School Board and its authorized representatives.
- 2.5. “Board Representative” refers to the assigned contact from the Board, in most cases an Assistant Manager of Maintenance from the Board’s Plant Services department, directly responsible for this project. The name of the Board Representative will be released to the Contractor upon award of the Tender and will be the chief contact during the life of the project.
- 2.6. “Comply” The Bidder acts in accordance to the terms and conditions stated in the bid document.
- 2.7. The “Contract Document” Consists of all information in this RFP document, the Proponent’s submission, subsequent negotiated terms, drawings, addendums and the Board’s purchase order and/or Contract award letter and a signed contract (YRDSB’s Contract L, etc.) which conveys acceptance of the Proponent’s submission.
- 2.8. “Contractor” refers to a seller of goods and services including construction contractors, professional service companies and other companies, partnerships and proprietorships, who is successful in the award for this Tender.

- 2.9. “CPI” The Consumer Price Index (CPI) provides a broad measure of the cost of living in Ontario. Statistics Canada tracks the retail price of a representative shopping basket of about 600 goods and services from an average household's expenditure: food, housing, transportation, furniture, clothing, and recreation. CPI will be based on the value in any given month for Ontario under the ‘All Items’ category, to be found at <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/cpis01g-eng.htm>
- 2.10. “F.O.B. Point” Means the locations to which the Vendor is responsible to transport goods to be delivered by the Vendor at the Vendor's expense and at which title of the goods passes from the Vendor to member agencies.
- 2.11. “Parties” refers to the Board and the Bidder or the Board and the Contractor.
- 2.12. “Specifications” means all written or printed descriptions, instructions or parameters in the document, including drawings, pertaining to the method and manner of performing the scope and requirements of the Work, including those pertaining to the quantities and qualities of the Work.
- 2.13. “Pecuniary Interest” A pecuniary interest involves an actual or potential financial gain or loss. The pecuniary interest, direct or indirect, of a parent or the spouse or any child of a board employee is, if known to such employee, also deemed to be a pecuniary interest of such employee.
- 2.14. “Pecuniary Interest (Indirect)” An indirect pecuniary interest is any matter in which a board employee or a parent, spouse or child of such employee:
- is a shareholder in/director/senior officer of a corporation that does not offer its securities to the public;
  - has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public;
  - is a member of a body that has a pecuniary interest in the matter; or
  - is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.
- 2.15. “Responsible Bidder” Means one who can reasonably be expected to provide satisfactory performance on the proposed contract based on reputation, references, performance on previous contracts, and sufficiency of financial

and other resources. This Bidder has the capability, integrity and reliability, which will assure good faith performance.

- 2.16. “Responsive Bidder” Means one who complies with the provisions of the bid solicitation, including specifications, contractual terms and conditions.
- 2.17. “Scope of Work” Means all written or printed descriptions, instructions or parameters in the document pertaining to the method and manner of performing the scope and requirements of the Work, including those pertaining to the quantities and qualities of the Work.
- 2.18. “Total Evaluated Cost” refers to the price measured in money that will be paid or required for acquiring the goods and services over the life of the project.
- 2.19. “Work” refers to all labour, materials, equipment, and services, required and implied as shown and described in the bid documents.

### **3. Tie Bid Submissions**

In the event of tie Bid Submissions, the following guidelines shall govern the Board’s award process:

- 3.1. Board Representative will confirm that the tie Bid Submissions are compliant. Non-compliant Bid Submissions will be disqualified.
- 3.2. In the event of tie Bid Submissions which are deemed compliant, the Board will flip a coin to determine the winning Bid Submission.

### **4. Disputes Resulting From This Bid**

- 4.1. In the event that a Bidder wishes to review the decision of the Board in respect of any material aspect of the procurement process, an subject to having attended a debriefing, the Bidder shall submit a protest in writing to the Board within ten (10) days from such debriefing. Any request that is not timely received will not be considered, and the Bidder will be so notified in writing.
- 4.2. A protest in writing should include the following:
  - A specific identification of the provision and/or procurement procedure that is alleged to have been breached;
  - A specific description of each act alleged to have breached the procurement process;

- A precise statement of the relevant facts;
- An identification of the issues to be resolved;
- The Bidder's arguments and supporting documentation; and
- The Bidder's requested remedy.

4.3. For the purposes of a protest, the Board will review and address any protest in a timely and appropriate manner. The Board will engage an independent and impartial third-party, should the need arise.

## **5. Nature of the Relationship**

5.1. The Parties acknowledge and agree as follows:

- 5.1.1. the relationship of the Contractor to the Board is that of an independent Contractor and the Contractor shall not make representations otherwise;
- 5.1.2. the Contractor and any employees of the Contractor are not employees of the Board; and
- 5.1.3. nothing herein shall be construed so as to make the Contractor an employee of the Board.

## **6. Reserved Rights**

6.1. Notwithstanding anything elsewhere herein set out, the lowest or any Bid Submission will not necessarily be accepted by the Board and the Board reserves the right to:

- (i) accept any Bid Submission which is considered advantageous to the Board;
- (ii) cancel this Bid without any obligation or any reimbursement to proposed Bidders;
- (iii) invalidate all Bid Submissions and to issue a second Tender for the same or similar work, products, and/or services;
- (iv) reject all Bid Submissions if less than three Bid Submissions are received;
- (v) cancel this Tender if the low Bid Submission price exceeds the projected budget of the project;
- (vi) make public the names of any or all Bidders;

- (vii) request written clarification or the submission of supplementary written information from any Bidder and incorporate a Bidder's response to that request for clarification into the Bid Submission;
- (viii) meet with some or all Bidders to discuss aspects of their Bid Submission;
- (ix) verify with any Bidder, or with a third party, any information set out in a Bid Submission;
- (x) verify with a Bidder that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract, where in the sole discretion of the Board, it receives a submission from a Bidder with a price that is abnormally lower than prices in other Bid Submission;
- (xi) check references other than those provided by any Bidder;
- (xii) waive any information or minor irregularity at the Board's discretion (without a bid submission being considered to be amended);
- (xiii) afford an opportunity to a Bidder to correct unintentional errors of form between the opening of Bids and the awarding of a contract and, if it does so, the Board shall afford the same opportunity to all participating Bidders;
- (xiv) make changes, including substantial changes, to this procurement in the manner set out herein;
- (xv) cancel this procurement process at any stage;
- (xvi) cancel this procurement process at any stage and issue a new procurement for the same or similar deliverables;
- (xvii) reject any or all Bids at the Board's sole discretion;
- (xviii) select three or more Bidders as preferred Bidders;
- (xix) to negotiate;
- (xx) terminate negotiations of a contract with any preferred Bidder at any time and for any reason without liability to such Bidder.
- (xxi) disqualify any Bidder:
  - a. whose Submission contains misrepresentations or any other inaccurate or misleading information;
  - b. who has engaged in conduct prohibited by this procurement; or

- c. whose capacity, integrity, or financial ability is, or whose previous experience with the Board has been unsatisfactory to the Board in its sole and unfettered discretion;
  - (xxii) invalidate any Bid Submission from a Bidder:
    - a. who has threatened or is currently involved in any legal disputes with the Board with respect to any previously awarded Tenders, whether or not such legal disputes arise prior to or subsequent to the issuance of this Tender; or
    - b. whose past performance has been unsatisfactory with respect to any previously awarded Tender, in the sole and unfettered discretion of the Board, whether or not such unsatisfactory performance occurs prior to or subsequent to the issuance of this Tender.
- 6.2 These reserved rights are in addition to any other rights which may be implied in the circumstances, and the Board shall not be liable for any expenses, costs, losses or any direct or indirect damages incurred or suffered by any Bidder or any party resulting from the Board exercising any of its express or implied rights under this procurement.

## **7. Awards**

- 7.1 In Tenders where Lump Sum Pricing only is requested, the Board will award the contract to the lowest compliant Lump Sum Price Bidder.
- 7.2 In Tenders where Separate Pricing and/or Alternate Pricing is requested in addition to Lump Sum Pricing and in the event that the Board agrees to exercise the Separate Pricing option and/or the Alternate Pricing option, the Board will award the Contract to the lowest compliant Lump Sum Price plus Separate Price(s) and/or Lump Sum Price plus Alternate Pricing option chosen. This would result in the lowest price overall incorporating the total of the Lump Sum plus Separate Price and/or Alternate Pricing chosen. If the Board does not choose to exercise the Separate Price and/or the Alternate Price option, the Board will award the Contract to the lowest compliant Lump Sum Price Bidder.

- 7.3 If an alternative product has the potential to make a Bidder lowest Bidder in a competition, the Board will review documentation on the alternative product and will decide if the alternative product will be accepted. The Board reserves the right to make this decision at the Board's sole discretion.
- 7.4 The lowest or any Bid Submission will not necessarily be accepted by the Board and the Board reserves the right in its sole discretion to reject any and all Bid Submissions at any time or to accept any Bid Submission which is considered advantageous by the Board. Bid Submissions which are non-compliant with the requirements of this Tender or which contain qualifying conditions may be disqualified or the Board may waive any non-compliance with this Tender and in its sole discretion retain for consideration Bid Submissions which are non-conforming or non-compliant.
- 7.5 The Board will have no liability or obligation to any Bid Submission except only the Bidder, if any, awarded the Contract by the Board in its sole discretion, and agrees that if not awarded the Contract, the Board shall be fully and forever released and discharged of all liability and obligations in connection with this Tender and all its submission procedures.
- 7.6 The right to reject any or all Bid Submissions, to waive informalities, or to accept any Bid Submission as most satisfactory in the opinion of the Board, is expressly reserved by the Board. Further, it is expressly acknowledged and agreed that the award to the lowest compliant Bidder contemplated in section 7.1, 7.2 and 7.3 hereof is subject to the Board's discretion not to award to the lowest compliant Bidder on account of previous outstanding performance or litigation issues regarding pre-existing projects with such Bidder.
- 7.7 It shall be understood by all Bidders that the Bid Submissions shall be valid and subject to acceptance by the Board, and that no adjustment shall be made to the tendered amount, for a period up to and including ninety (90) days from the date of tender closing.
- 7.8 Notwithstanding the values that may have been read out at the tender opening, the true tender values, as determined by the procedures contained herein, shall be used to establish the Lump Sum Price.

7.9 On notification of acceptance of this offer, the Board will issue a Letter of Intent and a Purchase Order to the Contractor.

7.10 For projects \$500,000.00 and over, the Board and the Contractor may enter into a Contract - CCDC2 2008, as amended by the Board's Supplementary Conditions.

**8. Examination of Work**

Drawings are, in part, diagrammatic, and are intended to convey the scope of Work and indicate general and approximate locations and arrangement of the Work. When job conditions require reasonable changes in indicated locations and arrangement, the Contractor is to obtain the Board's approval prior to making such changes and make changes at no additional cost to the Board.

**9. Schedule**

Unless otherwise stated, Work shall be completed during non-school hours.

**10. Codes, Standards & Performance of Work**

The Contractor shall:

- 10.1. Perform Work in accordance with the Ontario Building Code;
- 10.2. If applicable, comply with the Municipal Noise By-Laws; and
- 10.3. Meet or exceed requirements of Contract Documents, specified codes and standard. Codes and standards shall be the current editions as amended at date of issue of Contract Documents.
- 10.4. It is expected that the highest level of quality, skill and professionalism shall be exercised in the performance of the Work. The Board reserves the right to: request periodic progress reports; inspect materials at any time; monitor the progress of the Work; take samples; audit records during regular business hours with notice; request removal of any individual from the Work if the quality of the Work is in question.



**11. Permits**

Unless otherwise indicated, the Contractor shall obtain and pay for permits and licenses necessary to perform the Work. All necessary permits are to be presented to the Board Representative prior to the commencement of Work.

The Vendor will bear the whole cost of any permits, tests and inspections required by the Board or by any regulatory body having jurisdiction with the exception of the Building Permit which, if required, will be applied for and paid for by the Board.

**12. Insurance**

12.1. The Contractor must carry public liability and property damage insurance in an amount of not less than five million (\$5,000,000) dollars per occurrence. The Board must be added as an additional insured to the policy, and the policy must contain a cross liability clause, a waiver of subrogation clause in favour of the Board and a thirty (30) day prior notice clause of any cancellation or material change in coverage, terms or conditions. The Contractor must submit proof of ability to obtain this insurance with the Bid Submission, and an updated copy before any Work begins. The Contractor shall provide a certificate of insurance indicating its current level of insurance. If this does not meet the Board's requirements, the Contractor is asked to submit a letter from their broker, advising that the Contractor will be able to obtain this level of insurance, should they be awarded the contract or any portion thereof. Once awarded the contract, the Contractor must have their broker complete our Board Insurance Form for our records before any Work may commence, and thereafter at the beginning of each year of the Contract. If the Contractor is unable to provide a Certificate of Insurance in the proper amount and in a form acceptable to the Board by the time the Work shall commence, the Contractor will be disqualified and the Board may award to any compliant Bidder. An updated copy of a valid certificate must be provided before any Work may commence and thereafter at the beginning of each year of the Contract.

12.2. Automobile Liability Insurance

Automobile Liability Insurance in respect of licensed vehicles must have limits of not less than two million dollars (\$2,000,000.00) inclusive per occurrence for bodily injury, death and damage to property. Coverage shall be in the form of a standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned and/or leased or operated by or on behalf of the Contractor.

**13. Workplace Safety Insurance Board Coverage (WSIB)**

- 13.1. WSIB coverage is required where Contractors engage in any form of Work on Board premises. The Contractor shall be in good standing with the Workplace Safety and Insurance Board and the Employment Insurance Commission prior to the commencement of any Work.
- 13.2. For any Work commencing after January 1, 2013, and prior to the commencement of any Work, Contractors who were previously identified as Independent Operators/Sole Proprietors shall provide the Board with proof of WSIB coverage, as required by WSIB under new regulations (January 1, 2013).
- 13.3. The Contractor is obligated to remain in good standing with WSIB throughout the life of this project. The Board reserves the right to request a current Clearance Certificate at any time during the course of this Contract.
- 13.4. Prior to commencing the Work, application for progress payment, substantial performance of the Work, and/or application for final payment, the Contractor shall ensure that they are in compliance with the Workplace Safety and Insurance Act.
- 13.5. The Contractor clearly understands and agrees that it is not, nor is anyone hired by it, covered by the Board under the Workplace Safety and Insurance Act, and it shall be responsible for and pay all dues and assessments payable under the Workplace Safety and Insurance Act, the Unemployment Act, or any other Act, whether Provincial or Federal, in respect to itself, its employees and operations, and shall, upon request furnish the Board with such satisfactory evidence that it has complied with the provisions of any such

acts. If it fails to do so, the Board shall have the right to withhold payment of such sum or sums of money due to it that would be sufficient to cover its default and the Board shall have the right to pay same. Information on coverage under the Workplace Safety and Insurance Act can be obtained directly from the Workplace Safety and Insurance Board. The Board is not deemed to be the employer of the Contractor or its personnel under any circumstances whatsoever.

#### **14. Occupational Health and Safety**

- 14.1. All Contractors and Staff shall observe and enforce the Provincial Acts and construction safety measures required by the Occupational Health and Safety Act (Ontario), Ontario Building Code, Ontario Ministry of Labour, Ontario Hydro Safety Requirements, Workplace Safety and Insurance Boards, Worker's Compensation Act, Workplace Hazardous Material Information System (WHMIS), Environmental Protection Act and all other provincial and municipal statutes and authorities. Requirements shall be strictly enforced. In case of conflict between any provisions of the above authorities, the most stringent provisions shall apply. Copies of the Provincial Acts are available through Publications Ontario at 50 Grosvenor Street, Toronto Ontario.
- 14.2. All employees and Sub-contractors shall have the necessary health and safety training appropriate to their trade. The Contractor must be able to provide proof of training.
- 14.3. The Contractor shall comply with the requirements of the Workplace Hazardous Materials Information System (WHMIS) legislation and be able to provide proof of training. For each product to be used on the job which is designated as "controlled" by the legislation, the Contractor shall provide at the site a Material Safety Data Sheet for inspection by an employee of the Board.

The Vendor must operate in a safe manner at all times and must ensure that all its employees receive appropriate safety training including WHMIS training

in accordance with current regulations. The Vendor must ensure that the Board's responsibilities regarding safety are fulfilled.

The Contractor must observe and enforce construction safety measure required by the Occupational Health and Safety Act (Ontario), Ontario Building code, the regulations of the Ontario Ministry of Labour, Ontario Hydro Safety Requirements, Workplace Safety and Insurance Board, provincial and municipal statutes and authorities. Requirements must be strictly enforced. In case of conflict between any provisions of the above authorities, the most stringent provisions will apply.

All employees and sub-contractors will have received health and safety training appropriate to their trade and be able to provide proof thereof.

The Contractor must report immediately to the Board, and jurisdiction authorities, any accident or incident involving the Contractor, the Board, or public personnel and/or property, arising from the Contractor's execution of the Work.

In the event the Contractor deems any system or equipment to be unsafe, they shall take remedial action and immediately notify the Board. The Contractor shall not leave the premises until steps have been taken to protect the public and occupants from all hazards in or with materials or equipment.

The Contractor must assume responsibility for ensuring that the work is carried out in strict accordance with the Occupational Health and Safety Act for construction projects, applicable to the province and municipality.

The Contractor shall at all times carry out work in a manner which offers minimum hazard and interference to the normal operation of Board facilities

and shall accept the Board's direction in all matters related to safety, interference, scheduling and conduct.

Fire extinguishing equipment shall be provided by the Contractor and be readily accessible. They must be in good working order and shall comply with the Fire Safety Regulations requirements and laws of municipal, provincial and federal authorities, pursuant to the Regulations for Construction Projects. The Contractor will ensure that no unauthorized persons are allowed near the equipment or work area.

The Contractor will ensure that the Board's responsibilities regarding safety are fulfilled.

The Contractor will be aware of and comply with all applicable local, Municipal, Regional, Provincial and Federal Legislation and Regulations relating to fire and safety and shall appropriately educate and train its staff.

The Contractor shall comply and require the sub-Contractor to comply with the Workplace Safety and Insurance Board Act and any regulations made thereunder. Evidence of permitted sub-Contractor's compliance is also to be furnished upon the Board's request.

The Contractor must provide first aid facilities at the job site in accordance with the requirements of the Construction Safety Act applicable to the province and municipality and make available for use to all personnel on site.

In an emergency affecting or threatening the safety of life, Work, or adjoining property, the Board Representative has the authority to stop the progress of Work.

The Contractor must ensure that no part of the Work is subjected to a load which will endanger its safety or will cause permanent deformation.

The Contractor must provide the Board Representative with name and telephone number of a person that is available and may be contacted during off hours, week-ends and holidays in case of emergency.

**15. Protective Clothing, Equipment, & Devices**

Workers must wear and be instructed and trained on the proper use and care of personal protective clothing, equipment and devices, pursuant to the Regulations for Construction Projects.

**16. Professional Qualifications**

16.1. The Contractor may be asked to provide detailed information on the professional qualifications of all staff who are expected to be involved with the Work. Also, it is critical that the Contractor identify a single senior individual who shall co-ordinate the Work from beginning to end. All Work shall be performed diligently and to a high standard of professional competence by all parties.

**17. Force Majeure**

No party to the Contract shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control. The parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in the Contract would have put in place contingency plans to either properly mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism, pandemics, epidemics, quarantines or civil disturbances caused by severe medical emergencies or diseases, government declared emergencies, including in respect of COVID-19, but shall not include shortages or delays relating to products or services. If a party seeks to excuse itself from its obligations under the Contract due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance. The Board may offer a reasonable extension of time for performance; however if the anticipated or actual delay or non-performance exceeds fifteen (15) Business Days,

the other party/parties may immediately terminate the Contract by giving notice of termination and such termination shall be in the addition to the other rights and remedies of the terminating party under the Contract, at law or in equity. Subject to the foregoing, the Contractor shall resume providing services when the circumstances giving rise to force majeure cease to be operative. The Contractor shall not be entitled to payment for any time period during which service is interrupted under this paragraph.

If the Contractor is unable to provide service during the force majeure, and has communicated same to the Board, the Board reserves the right to contact another Contractor to perform any emergency Work required.

## **18. Labour Disruptions**

In the event of labour disputes or disruptions affecting the Contractor (e.g. strike by Contractor personnel), the Contractor must ensure that the regular service requirements outlined in this Tender continue to be carried out as outlined in the Scope of Work. This may involve the use of other staff from either within the Contractor's organization or hired from external sources as Sub-contractors. Note the qualifications of replacement staff must meet or exceed the same professional training and certification requirements as outlined herein.

In the event of other labour disputes affecting any access to school Board locations (e.g. Board picket lines) the Contractor must ensure that the regular service requirements outlined in this Tender continue to be carried out as outlined herein. This may involve the use of staff from either within the Contractor's organization or hired from external sources as Sub-contractors to perform Work during and/or after normal business hours, whichever is appropriate. Note the qualifications of replacement staff must meet or exceed the same professional training and certification requirements as outlined in the Tender.

Should continual service not be provided during either of the aforementioned labour disruption periods, the Board will not be responsible for any payment to the Contractor for services not rendered. The Board reserves the right to make alternate arrangements with other service providers. Any additional costs incurred by the Board will be charged back to the Contractor. Partial service or substandard service provided by the Contractor during labour disruptions will be subject to the scrutiny of the Board and the Board will have full

discretion in determining the diminished value of the Work and in establishing the amount of partial payment owing to the Contractor.

**19. Asbestos Containing Materials**

- 19.1. Asbestos containing materials may be present on this project. Prior to starting any project, service or repair Work, the Contractor must refer to the Asbestos Management Program Documentation (i.e. Asbestos Survey) located in the Caretaker's Office of the building for the presence of known asbestos containing materials and the type of asbestos in the materials. The Contractor shall sign the form in Life Safety Binder declaring that the Contractor has reviewed the Asbestos Management Program Documentation. Upon review of the Survey and inspection of the Building, if the Contractor suspects that there is asbestos within the Work area, the Contractor shall contact the Board Representative that is overseeing the project. Work shall not start in the area until instructed by the Board Representative.
- 19.2. Handling, removal and clean up of asbestos containing materials must be completed by a Board Approved Asbestos Removal Contractor in accordance with the Ontario Ministry of Labour Regulation 278/05 (or latest Act) and the Asbestos Procedure established by the Board. The disposal of asbestos waste shall be performed in accordance with the Ontario Ministry of Environment Regulation 347 under the Environment Protection Act and the Asbestos Procedures established by the Board.
- 19.3. If materials suspected of containing asbestos are encountered during the course of Work that were not identified in the Asbestos Survey, the Contractor shall institute the following emergency procedures:
  - 19.3.1. Do not clean up, cover, move or contact suspect materials.
  - 19.3.2. Isolate the immediate Work area by locking doors and/or installing barricades.
  - 19.3.3. Notify the Board of situation by contacting a "live" person – either the Board Representative overseeing the Project or the Supervisor of Facility Services for the School (previously known as the Head Caretaker) or a Representative of Plant Services or a



Representative of the Board's Health and Safety Department. The Board will arrange to have the suspect materials analyzed to determine if the materials contain asbestos. If so, the Board will arrange to have the materials removed.

19.3.4. Work that may disturb the suspect materials may only continue with the Board's approval.

19.4. If a Contractor has proceeded with Work without referring to the Asbestos Survey and has encountered asbestos containing material that was identified in the survey, the Contractor will be responsible for all removal and testing costs that are incurred by the Board as a result of the Contractor not reviewing the Asbestos Survey.

## **20. Other Designated Substances**

20.1. Designated substances other than asbestos (e.g. PCB's) may be present on this project.

20.2. If materials suspected of containing designated substances are encountered during the course of Work, institute the following emergency procedures:

20.2.1. Do not clean up, cover, move or contact suspect materials.

20.2.2. Isolate the immediate Work area by locking doors or installing barricades.

20.2.3. Notify the Board of situation.

20.2.4. The Board will arrange to have the suspect materials analyzed to determine if the materials contain designated substances. If so, the Board will arrange to have the materials removed.

20.2.5. Work that may disturb the suspect materials may only continue with the Board's approval.

## **21. Sub-Contracting**

21.1. Sub-contracting of any portion of the Work outlined in these specifications will not be permitted without prior written consent of the Board. Any Work undertaken by Sub-contractors will be under the terms and conditions as set forth in this specification and use of Sub-contractors shall not relieve the

Contractor of its responsibilities. Bidders shall provide a complete list, on the Tender Form, of all Sub-contractors to whom it is proposed to subcontract any part of the Work. Failure to do so may result in disqualification. The list of Sub-contractors as set forth shall not be altered or changed except as agreed by the Board prior to awarding the contract.

- 21.2. Bid Submissions submitted that list multiple Sub-contractors under a single sub-trade discipline may be disqualified at the discretion of the Board.
- 21.3. Where there is Work that involves a pre-qualified sub-contractor base, Bidders MUST ensure that they carry a Board pre-qualified sub-trade and to indicate accordingly on the Bid Submission form. Failure to do so may place the Bidder at risk of disqualification. Please click on the following link for the most current list of pre-qualified contractors. [Pre-Qualified Contractors](#)  
**It is the responsibility of the bidder to ensure that they are in possession of all current board pre-qualified contractor and sub-contractor lists.**
- 21.4. Bidders are permitted to utilize their own forces in lieu of carrying a pre-qualified contractor for such Work, and without risk of disqualification.
- 21.5. The Contractor and its employees shall have all necessary qualifications, licenses and approvals as required by law. All Work shall be performed diligently and to a high standard of professional competence by all parties. The Board reserves the right to ask the Contractor to provide detailed information on the professional qualifications of all staff who are expected to be involved with the Work.
- 21.6. Where a Contractor acting as a General Contractor chooses a subtrade, whether Pre-qualified or not, it is incumbent on the Contractor to ensure that the subtrade carries the requisite amount of insurance and WSIB coverage for this project and has all necessary qualifications, licenses and approvals as required by law.

## **22. Other Contractors**

If there are several Contractors for separate sections of Work, they shall co-operate with each other as necessary to aid in the expeditious completion of the Work as a

whole. Any dispute between Contractors regarding their liability to one another and to the Work shall be subject to the Board's final decision.

**23. Accessibility for Ontarians with Disabilities (AODA)**

The Contractor covenants and agrees to ensure that the Work provided hereunder is consistent with the *Ontario Human Rights Code* ("OHRC"), the *Ontarians Disabilities Act, 2001* ("ODA") and the *Accessibility for Ontarians with Disabilities Act, 2005* ("AODA") and their respective regulations in order to achieve accessibility for Ontarians with disabilities. Without limiting the generality of the foregoing, the Contractor covenants and agrees to comply with the Board's accessibility standards, policies, practices and procedures, as may be in effect during the term of the Agreement and as they apply to the Work to be provided hereunder by the Supplier.

[AODA](#)

**24. Coordination**

The Contractor shall:

- 24.1. Study all documents which describe, or are related to any operation before commencement of that operation. Report discrepancies discovered between existing conditions and documentation. Obtain ruling on required interpretation before commencing Work; and
- 24.2. Ensure that materials, equipment, services and operatives are brought to site in sufficient quantity and in accordance with requirements of the Work schedule.

**25. Communication Procedures**

To avoid unnecessary Work stoppages, Contractor inconvenience, and to ensure the safety of staff, the Contractor shall adhere to the following communication procedures:

- 25.1. Provide at least 48 hours notice before starting each phase of Work;
- 25.2. Provide the estimated time needed to complete the Work; and
- 25.3. If required, prearrange movement of people prior to commencing Work.

**26. No Smoking Policy**

All Contractors, their staff and sub-contractors must adhere to the Smoke Free Environment Policy. It is the Contractor's responsibility to ensure that the Contractor employees and Sub-Contractors, if any, comply with this policy. Please see the attached website for specific information. [No Smoking Policy](#)

**27. Use of Site, Access, and Dress Code**

- 27.1. During school hours, it is standard procedure for a Representative of the Contractor to check in at each school's main office or reception area immediately upon arrival to notify Staff of their purpose for being on site and to sign in to the maintenance/Contractor's log prior to starting any Work. Contractors may also be required to wear a school visitor's badge. Before leaving the school grounds, the Contractor must sign out to the maintenance and Contractor's log at reception. This process must be complied with. Work during school hours shall also be approved in advance by the Board.
- 27.2. During non-school hours, a Representative of the Contractor shall report to the Caretaker on duty prior to starting any Work.
- 27.3. The Representative shall notify Staff of their Work location and method of accessing the Work location.
- 27.4. The Contractor shall execute Work with least possible interference to normal use of premises.
- 27.5. Where access routes are restricted, the Contractor shall provide signs to indicate alternate routes for vehicular and pedestrian traffic. The Contractor shall provide hazard signs and traffic barriers as necessary to ensure that diversions are clearly identifiable and that public safety is not compromised.
- 27.6. The Contractor shall not obstruct entrances, stairs, or fire exits. If entrances, stairs, or fire exits need to be closed to complete the Work, the Contractor shall obtain prior approval from the Board.
- 27.7. Where security is compromised by the Work, the Contractor shall provide temporary means to maintain security.
- 27.8. The Contractor shall temporarily protect Work and building interior from environmental damage until permanent repairs have been completed.

- 27.9. The Contractor shall not encumber site with materials and equipment.
- 27.10. All Contractors and Staff shall leave their Work area in a clean and safe condition at the end of each Workday.
- 27.11. The Contractor must clean up as Work progresses on renewals and renovations, and maintain the Work in a "broom swept clean" condition throughout the duration of the Contract.
- 27.12. The Contractor shall protect existing building, trees, shrubs, lawns, paving, and service wires during progress of Work. The Contractor shall be responsible for any damage and such damage shall be rectified at the Contractor's expense.
- 27.13. If facilities are available on site, the Board will designate washroom(s) that may be used by the Contractor's personnel. Contractor shall maintain washroom(s) in a clean and sanitary condition at all times.
- 27.14. If facilities are not available on site, the Contractor shall provide portable toilets for Contractor's personnel. Exact location to be determined on site.
- 27.15. On the completion of the Work, the Contractor shall remove all temporary protections and staging as well as other materials or things belonging to the Contractor and all rubbish, and leave the premises in a clean condition.
- 27.16. The Contractor shall co-operate fully with any other trades and Board Staff.
- 27.17. All Contractors shall use appropriate language.
- 27.18. All Contractors shall Work with dignity, courtesy and respect for self and others.
- 27.19. All Contractors shall observe the following school rules:
- Noise and movement in corridor during announcements and the National Anthem is unacceptable.
  - Procedures during fire alarms and fire drills are to be observed.
  - Parking at school sites will be specified upon reporting to the administrative office.
- 27.20. All Contractors shall be dressed appropriately. Unacceptable dress would be:
- Any clothing that fails to contain the anatomy when the person is carrying out normal duties.

- Any clothing with printed slogans, advertising or design that is obscene or could have a double meaning.
- Service Technicians/Staff shall wear clearly visible identification with at minimum Company name and staff name.

## **28. Existing Services and Utilities**

- 28.1. Before commencing Work, the Contractor shall establish location and extent of service lines in area of Work and notify Board of findings. Where unexpected services are encountered, immediately advise the Authorized Board Representative.
- 28.2. The Contractor shall protect utilities and services against damage or interruption. Notify Board at least 48 hours in advance of any necessary interruption.
- 28.3. Any claims resulting from damage shall be the Contractor's responsibility.

## **29. Protection of Work**

Where applicable, the Contractor shall erect and maintain shoring, bracing, fencing, and barricades in accordance with the requirements of the latest edition of the Construction Safety Act and as directed by the Board to protect the public, workers, students, and employees of the Board from injury. Such protection is the full responsibility of the Contractor and it shall be liable for all damages.

## **30. Loading of Work**

The Contractor shall take precautions to prevent the overloading of any part of the structure during the progress of the Work. The Contractor shall make good, at no expense to the Board, any damage resulting from such overloading.

## **31. Hot Work**

- 31.1. The York Region District School Board has implemented the use of a Hot Work Permit Process for all hot work taking place within and on the property of Board Owned Buildings.
- 31.2. Hot Work is defined as any Work activity that may produce flames or heat that

would act as an ignition source for any flammable or combustible material.

This can include, but is not limited to: brazing, cutting, grinding, soldering, thawing pipes, welding and torch-applied roofing and similar applications producing or using a spark, flame or heat.

- 31.3. The guiding document in creating the requirement for Hot Work Permit process is: NFPA 51B - Standard for Fire Prevention during Welding, Cutting, and Other Hot Work.
- 31.4. It is a requirement of all Contractors who may carry out Hot Work on Board Property to have a Hot Work Permit Process in place and implement this process whenever Hot Work takes place.
- 31.5. If Proponent is going to issue a Hot Work Permit for Work taking place on Board premises, the Contractor must notify the Authorized Board Representative a minimum of one hour in advance of the Hot Work taking place. Upon completion of the Hot Work, a copy of the completed Hot Work Permit must be sent to the Board Representative in charge of the project.
- 31.6. This process is required as well for any Contractors who are working on Construction and Renovation Projects within board buildings or if additions, the Hot Work may affect existing structures or materials outside of the construction area.

## **32. Demolition**

- 32.1. Except if expressly stated otherwise, materials indicated for removal become the Contractor's property and shall be promptly taken from the site.
- 32.2. Rubbish, debris and material cannot fall freely from one level to another, but shall be lowered by a chute, in a container, or hoist except where an enclosed designated area is set up during a demolition project. People are not to have access to the area.

## **33. Disposal of Wastes**

The Contractor shall:

- 33.1. Not bury rubbish and waste materials on site;

- 33.2. Not dispose of waste or volatile materials into waterways, storms or sanitary sewers;
- 33.3. Remove garbage, superfluous material and products of demolition from site and recycle or dispose of material in accordance with guidelines from the Ministry of the Environment.

#### **34. Drainage**

The Contractor shall not pump water containing suspended materials into waterways, storms or sanitary sewers, or drainage systems. The Contractor shall control disposal or runoff of water containing suspended materials or harmful substances in accordance with local authority requirements.

#### **35. Cutting, Patching, Making Good**

The Contractor shall:

- 35.1. Cut existing surface, as required, to accommodate new Work;
- 35.2. Remove all items as shown or specified; and
- 35.3. Patch and make good all surfaces cut, damaged or disturbed, to Board's satisfaction.

#### **36. Pollution Control**

The Contractor shall:

- 36.1. Prevent saw cutting operations from contaminating air beyond application area by providing temporary enclosure; and
- 36.2. Cover or wet down materials and rubbish to prevent blowing dust and debris.

#### **37. Cleaning during Construction**

The Contractor shall:

- 37.1. Conduct cleaning and disposal operations to comply with regulations of local authorities and with anti-pollution laws;
- 37.2. Provide adequate ventilation during use of volatile or noxious cleaning



substances;

- 37.3. Prevent accumulation of wastes which create hazardous conditions;
- 37.4. Maintain building, site, and adjacent property free from debris and waste material; Provide on-site containers for collection of waste materials and rubbish;
- 37.5. Remove waste materials and rubbish from site as often as required; and
- 37.6. The building's disposal bins shall not be used for disposal purposes.

### **38. Water Supply**

The Contractor may use existing water supply. The Contractor shall provide hoses and temporary hook-ups as required.

### **39. Power**

The Contractor may use existing power supply (minimum 110V). Should existing supply be inadequate, the Contractor shall provide additional service. The Contractor shall provide extension cords, temporary distribution facilities and temporary lighting as required.

### **40. Heating and Ventilation**

- 40.1. The Contractor shall provide temporary heat and ventilation in enclosed areas as required to:
  - Facilitate progress of Work;
  - Protect Work and materials against dampness and cold;
  - Prevent condensation on surfaces; and
  - Permit drying of surfaces to be sealed.
- 40.2. The Contractor shall provide ambient temperatures and humidity levels suitable for storage, installation and curing of materials.
- 40.3. The Contractor shall provide adequate ventilation to meet health regulations for safe Working environment.
- 40.4. The Contractor shall finish and install temporary supports and dust sheets to adequately protect the Work and the surrounding area from pollutants.

**41. Storage**

The Contractor shall provide safe storage for equipment and tools of the Work force in temporary enclosures. Exact location shall be determined on site by Board.

**42. Vehicle Operation**

- 42.1. Limited parking for vehicles will be provided. Vehicles shall not block streets, driveways, fire routes, or walkways.
- 42.2. Drivers of motor vehicles shall not operate their vehicles beyond the parking area. Such vehicles shall be operated with due caution at all times while on school property. Speed limits shall not exceed 8 kilometres (5 miles) per hour, at any time.
- 42.3. Delivery and service vehicles must not enter or leave school grounds when students are in the area unless directed by or with the permission of the school and/or administrative staff.
- 42.4. No vehicle may be backed up unless there is a person on foot available to guide the driver (except in designated parking areas).
- 42.5. Vehicles must shut down their engines when stopped in school yards or when stopped on any street adjacent to any Board buildings. When returning to an unattended vehicle the driver must circle the vehicle to ensure that no child is hiding behind or under the vehicle before it is driven.
- 42.6. Operators of vehicles such as heavy trucks, construction machinery of any kind, snow blowers, snowploughs, et cetera, must not enter upon, or do Work on, school property during normal school hours without first reporting to the principal of the school or the school office.
- 42.7. All accidents, no matter how minor, must be reported immediately to the school Principal.
- 42.8. The Contractor will be liable for all damages incurred to all Board structures through the operation of their vehicle.
- 42.9. The Contractor shall conform to regulations of Municipality regarding cleanup of tracking on streets and protection of sidewalks and curbs and other applicable Laws, By-Laws and Regulations.

**43. Quality Assurance**

The Contractor shall have its own forces (key personnel) on site, full time, to oversee the Work.

**44. Inspection and Testing**

44.1. Inspection

44.1.1. The Board Representative shall have access to the Work. The Contractor shall perform tests for analysis as requested by the Board's Representative.

44.1.2. The Contractor shall provide sufficient notice if Work is designated for special tests, inspections or approvals by Board instructions, or law of place of the Work.

44.1.3. If the Contractor covers, installs, or permits to be covered an installed Work that has been designated for special tests, inspections or approvals before such an inspection is made, the Contractor shall uncover such Work, have inspections or tests satisfactorily completed and make good such Work at no cost to the Board.

44.2. Independent Inspection Agencies

44.2.1. Independent Inspection/Testing Agencies will be engaged by the Board for purpose of inspecting and/or testing portions of Work.

44.2.2. The Contractor shall provide typical trade tools or equipment required for executing inspection and testing by appointed agencies.

44.2.3. Specialized equipment (i.e. infrared photographic or water penetration tests) will be provided by inspection/testing agency.

44.3. Reports

One (1) copy of the Inspection and Test Reports will be provided to the Contractor and to the Board.

**45. Unsatisfactory Work**

The Board is in the first instance the interpreter of the Contract and the judge of its performance and shall have the right to:

45.1. Demand the full performance of the Contract, including the replacement of unsatisfactory Work at no extra cost;

- 45.2. Terminate the Contract for any reason and withhold payment of any sum for uncorrected and/or incomplete Work or damage; and shall
- 45.3. Determine the final value of partially completed Work or damage.
- 45.4. The Laws of the Province of Ontario shall govern in any dispute over the performance or non-performance of materials and/or workmanship resulting from this Tender.

**46. Shop Drawings**

- 46.1. If required, the Contractor shall submit shop drawings. Shop drawings shall be originals prepared by the Contractor or Subcontractor which illustrate appropriate portions of the Work. Shop drawings shall show fabrication, layout, setting, and erection details as required.
- 46.2. Drawings shall be to scale, correctly identified, signed, and dated.

**47. Samples and Prototypes**

- 47.1. If required, the Contractor shall submit samples. Samples shall be in sizes and quantities as indicated by Board Representative. The Contractor shall construct field samples and prototypes at locations acceptable to Board Representative.
- 47.2. Reviewed samples and prototypes will become standards of workmanship and material against which installed Work will be checked.

**48. Materials**

- 48.1. Materials shall be new (unless otherwise specified), and Work conform to, or exceed, the minimum applicable standards of Canadian General Standards Board (CGSB), the Canadian Standards Association (CSA) or the National Building Code of Canada or the Ontario Building Code.
- 48.2. All Work is to be executed with the best materials of their kind, free from all imperfections and in a sound workmanlike and substantial manner.
- 48.3. The Contractor must ensure that materials, equipment, services and operatives are brought to site in sufficient quantity and in accordance with requirements of the Work schedule.

- 48.4. The Contractor, at no cost to the Board, must replace any product or service that is received and found to be inferior or damaged in any way immediately.
- 48.5. Any material and/or service ordered, which in the opinion of the Board, does not completely fulfill the specifications or is not a sample as previously submitted, must be removed, at the expense of the Contractor, and be replaced immediately with material and/or service which fulfill the specifications or sample quality.
- 48.6. Any materials received in a damaged condition must be replaced immediately by the Contractor. The Board will not bear any portion of the cost of such replacement.
- 48.7. All replacement materials shall be of equal or superior quality to the material originally installed.

**49. Limitations of Liability**

- 49.1. The Bidder agrees that if the Board commits a material breach of the Board's obligations under a Tender, the Board's liability to the Bidder, and the aggregate amount of damages recoverable against the Board for any matter relating to or arising from that material breach, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct, or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the Board, shall be no greater than the Bid Submission preparation costs that the Bidder seeking damages from the Board can demonstrate. In no event shall the Board be liable to the Bidder for any breach of the Board's obligations pursuant to the Tender, which does not constitute a material breach thereof. The Bidder acknowledges and agrees that the provisions of the Broader Public Sector Accountability Act, 2010 shall apply notwithstanding anything contained herein.

**50. Delivery, Handling and Storage**

The Contractor shall:

- 50.1. Be responsible for receiving, handling and storing of materials and equipment

delivered to the site. Manufacturer's labels and seals must be intact;

- 50.2. Prevent damage and adulteration of material during delivery, handling and storage; and
- 50.3. Immediately remove rejected material and equipment from site.

## **51. Manufacturer's Instructions**

The Contractor shall:

- 51.1. Comply with manufacturer's latest instructions for materials and installation methods; and
- 51.2. Notify Board of any apparent conflict between specification and manufacturer's instructions.

## **52. Fastenings**

The Contractor shall:

- 52.1. Provide metal fastenings and accessories of same material with same texture, colour and finish as base metal in which they occur; and
- 52.2. Prevent electrolytic action between dissimilar metals.

## **53. Equipment**

The Contractor shall:

- 53.1. Supply and maintain all equipment as required to complete the Work.
- 53.2. Provide and maintain equipment such as temporary stairs, ladders, and the like, as required for execution of Work.
- 53.3. Not use any Board equipment, including but not limited to genies, scaffolding, ladders, hydraulic lifts, and/or hand tools.
- 53.4. Comply with all governing safety regulations in force at the time of Work.
- 53.5. Remove immediately such equipment when not required for Work.

**54. Power Activated Guns**

Power activated guns using explosives shall not be used.

**55. Documents**

The Contractor shall keep one (1) copy of the Contract Documents on site during progress of Work.

**56. Guarantee**

The Contractor shall make good any defect in the whole of the Work of the Contract during the guarantee period. Unless otherwise indicated the guarantee period shall be for a two (2) year duration beginning from the time that the Work has been accepted as complete for final payment.

**57. Final Cleaning**

The Contractor shall:

- 57.1. Remove surplus materials and equipment from site;
- 57.2. Remove dust, dirt, stains, paint, labels, mortar, and caulking compound (which were generated by the Work) from existing and new surfaces;
- 57.3. Touch up damaged painted areas;
- 57.4. Clean surfaces, including walls (interior and exterior), ceilings, windows, fixtures, and hardware;
- 57.5. Clean off roof areas. Remove debris from drains of flat roof and valleys and eaves troughs of sloped roofs;
- 57.6. Sweep and clean walkways and driveways.
- 57.7. Not use any cleaning agent other than water is permitted unless approved by the Board Representative, prior to any such use.

**58. Extra Work**

No Work in excess of that shown on Contract Documents shall be carried out without written approval from the Authorized Board Representative.

**59. Making Good**

On completion of Work, the Contractor shall restore building and property damaged as a result of the Work to the conditions found before commencement of the Work, except for items permanently altered by the scope of the Work.

**60. Administrative Records**

60.1. The Contractor shall maintain accurate records, payrolls, and accounts, which pertain to the Contract to permit their verification and audit and they shall have no claim for payment unless such books, payrolls, accounts, and records have been so maintained and kept. All such documents shall be retained by the Contractor for a period of seven (7) years from the date of substantial completion.

60.2. The Contractor shall furnish all time sheets, records, and other vouchers which pertain to the Contract for verification, on request by the Board.

**61. Purchase Orders**

61.1. No orders conveyed to the Vendor shall be recognized unless printed on the official Purchase Order of the Board and duly signed by a Purchasing Services representative. Alternate payment terms, e.g. progress payments, milestone payments and draws shall not be allowed unless agreed upon and approved by an Authorized Board Representative prior to the start of the project.

**62. Payment**

62.1. Payments for the Contractor's services shall be made monthly in arrears, and the amount claimed shall be for the value, proportionate to the amount of the Contract price of the Work performed, subject to the Board's holdback requirements under the Construction Act, R.S.O. 1990, c. C.30, or any other applicable construction lien legislation (the "Construction Act").

62.2. Contractor's invoices submitted under the Contract, provided that they meet the requirements of a Proper Invoice, shall be paid by the Board within



twenty-one (21) days after submittal, provided further that same are in good order and not disputed by the Board in good faith within seven (7) days of receipt of the Proper Invoice. Proper Invoices shall reference the Contract and shall contain a brief, point-form narrative relating to the amounts set out in it, and shall include the following:

- Contractor invoices;
- The period in which services were supplied;
- How the Work was authorized;
- Description of services or materials supplied;
- The amount payable;
- The contract information of the payment administrator; and
- Any other prescribed information required by the Construction Act.

62.3. Upon the completion of the Work, the holdback monies required by the Construction Act shall become due any payable on the day following the expiry of the statutory limitation period stipulated in the lien legislation applicable to the Project, or where such legislation does not exist or apply, in accordance with such other legislation, industry practice or such other provisions which may be agreed to between the parties, provided that the Board may retain out of such holdback monies and any sum required by law to satisfy any liens against the Project or other monetary claims against the Contractor and enforceable against the Board and that the Contractor has submitted to the Board a sworn statement that all accounts for labour, subcontracts; products, construction machinery and equipment and other indebtedness which may have been incurred by the Contractor in the performance of the Project and for which the Board might in any way be held responsible have been paid in full except holdback monies properly retained.

62.3.1. The Contractor shall be responsible for any legal or other costs due to construction liens related to this project. The Contractor fully indemnifies the Board for any expenses, including legal costs incurred by the Board due to any lien actions.

62.3.2. The Board reserves the right to provide that construction lien

claims may be secured by an increased hold back.

62.3.3.

62.4. Prior to release of the holdback, the Contractor shall submit to the Board:

62.4.1. An acceptable Statutory Declaration signed by the Consultant stating that all material work and services in connection with the Project have been paid in full, expert for statutory holdbacks, and that no liens exist; and

62.4.2. A receipt from each of the Contractor's consultants and subcontractors stating that the consultant or subcontractor has, except for statutory holdbacks, been paid in full for all materials, Work and services in connection with the Project; and

62.4.3. A statement from the Worker's Compensation Board to the effect that all assessments from the Worker's Compensation Board to the end of the Project have been paid full.

62.5. The Board's fiscal year ends August 31<sup>st</sup> of each year. It is the Contractor's responsibility to ensure that all invoicing for Work completed is forwarded to the Board for payment, well prior to this date. Failure to do so may result in payment delays.

62.6. The HST amount must be shown at the bottom of each application for payment. The Contractor's HST Registration Number must be shown at the top of each application for payment.

### **63. Conflicts and Omissions**

The Contractor shall not take advantage of any apparent error or omission in any of the Contract Documents. Any Work not specified which is necessary for the proper performance and completion of any part of the Work contemplated, which may be implied as included in the Contract Documents shall, at the sole discretion of the Board, be done by the Contractor as if such Work had been specified, shall not be construed as a variation in the Work to be done, and shall not be subject to any claim by the Contractor for additional compensation.

The Contractor upon finding inaccurate information shall be bound to bring any inaccuracies to the attention of the Board Representative.

**64. Municipal Freedom of Information And Protection of Privacy Act**

The Bid Submission and supporting documentation shall become the property of the Board. Information in a Bid Submission is subject to potential disclosure to third parties after the award, in accordance with the provisions of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990 (“MFOIPOP”). The Bidder acknowledges that any personal or confidential information which Bidders provide is being collected and will be used exclusively for the purposes of analyzing, evaluating and assessing Bid Submissions submitted. Any information a Bidder wishes to identify as proprietary and have maintained as confidential, excluding unit pricing information as well as the total dollar value of the Bid Submission, must be clearly identified as such, and any proposed restrictions on disclosure specified. For the purposes of a report to the Trustees of the Board, pricing information as well as the total dollar value of the Bid Submission may be reported in a public report and will not be considered confidential. In addition, the Board may be ordered by the Information & Privacy Commissioner under the provisions of MFOIPOP to disclose additional information identified by a Bidder as proprietary and confidential.

**65. Personal Information Protection and Electronic Documents Act (PIPEDA)**

Each Bidder represents and warrants that if the Bidder is or becomes subject to any private sector privacy legislation in responding to a Tender, or in carrying out its obligations under any Contract, the Bidder will be solely responsible for compliance with such legislation. Without limitation, the Bidder represents and warrants that if the Bidder is subject to the Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5, including any amendments thereto (“PIPEDA”), the Bidder shall ensure PIPEDA compliance of:

1. All PIPEDA Protected Information the Bidder collects directly from the individuals or indirectly from the Board or others;
2. All PIPEDA Protected Information the Bidder uses or discloses in the course of responding hereto or in performing its obligations under any Contract; and,

3. All PIPEDA Protected Information the Bidder transfers or discloses to the Board.

For the purposes hereof, “PIPEDA Protected Information” means any “Personal Information” or “Personal Health Information” as such terms are defined in PIPEDA.

**66. Indemnification and Liability**

The Contractor agrees to indemnify, hold harmless and defend the Board and its trustees, officers, agents and employees, from and against any and all losses, claims, liability, action, damage or expense (including without limitation costs and legal fees), loss of life, personal injury, damage to property or any other loss of injury whatsoever arising from any negligent act or omission or any breach or default in the performance of any obligation of the Contractor under the Contract to be entered into pursuant to the terms hereof.

**67. Non-Performance of Work**

The Board is in the first instance the interpreter of the Contract and the judge of the quality of equipment and performance and shall have the right to:

- Demand the full performance of the Contract including the replacement of unsatisfactory Work at no extra cost.
- Terminate the Contract in accordance with the provisions hereinafter set out and withhold payment of any sum or uncorrected and/or incomplete Work or damage.
- Determine the final value of partially complete Work or damage.

If the Contractor should neglect to perform the Work properly or otherwise fails to comply with any of the requirements of the Contract Documents, the Board may notify the Contractor, in writing, that the Contractor is in default of its contractual obligations and instruct the Contractor to correct the default within five (5) working days, immediately following receipt of such notice. If the Contractor fails to correct the default in the specified time, or fails to provide a satisfactory correction plan in circumstances where more than five (5) working days may be required to correct

such default, and fails to proceed diligently in accordance with any such correction plan, the Board, without prejudice to any other right or remedy, may:

- Correct such default and deduct the cost from any payment then or thereafter due to the Contractor;
- Terminate the Contractor's right to continue with the Work in whole or in part or terminate the Contract.
- If the Contractor does not meet performance expectations at any time during the Contract period, the Board reserves the right to withhold participation of this Contractor in future bid opportunities; or
- Where there is a question of non-performance, payment in whole or in part may be withheld at the discretion of the Board.

The Board reserves the right to contact an alternative Contractor when the original Contractor is unable to perform the desired Work within the time required and have such alternate Contractor perform the Work.

The laws of the Province of Ontario will govern in any dispute regarding the non-performance of materials and/or workmanship.

## **68. Mediation / Arbitration**

- 68.1. If a dispute (other than a dispute relating to the Board's right to terminate the resulting agreement) occurs arising out of the resulting Agreement, and all matters or dispute relating to the rights and obligations of the Parties to the Agreement under the Agreement shall at first attempt be amicably resolved between the parties. Contractor should contact the Buyer who is the lead on the project.
- 68.2. If the dispute cannot be amicably resolved by the Parties, it shall be referred to confidential mediation.
- 68.3. Either Party may give written notice to the other Party of its desire to submit such a dispute to confidential mediation, stating with reasonable particularity the subject matter of such dispute and indicating its desire for the Parties to

jointly appoint a Mediator. Within ten (10) business days after receipt of such notice, the Parties shall appoint a single Mediator with appropriate experience to mediate and assist in the consensual resolution of such dispute. If the Parties fail to appoint a Mediator within such ten (10) business day period, the Parties may agree to extend the deadline for appointment of a Mediator. If the Parties, acting reasonably, are unable to agree to the appointment of a Mediator following the ten (10) business day notice period, either Party may give a notice for the arbitration of such a dispute. The Mediator so appointed shall promptly arrange to hold a mediation to enable each of the Parties to make submissions and to mediate the dispute. The mediation shall be conducted in Ontario, in English and in accordance with procedures agreed to by the Parties and the Mediator. If in the determination of the Mediator those procedures cannot or have not been settled by agreement within a reasonable time (“reasonable time” being determined by the Mediator), the procedures shall be those specified by the Mediator. The costs of the mediation shall be borne equally by the Parties making submissions.

- 68.4. Disputes between the Parties arising out of the resulting Agreement, other than disputes relating to the Board’s right to terminate the resulting agreement, which cannot be resolved by such mediation shall be settled and determined by any court of competent jurisdiction, provided, however, the Board reserves the right to submit such dispute for settlement and determination by arbitration pursuant to the Arbitration Act of Ontario (the “Act”), in which case the following provisions shall apply.
- 68.5. Either Party may give written notice to the other of its desire to submit such dispute to confidential arbitration, stating with reasonable particularity the subject matter of such dispute. In the case of the Contractor giving notice to the Board, if the Board does not consent to submitting such matter to arbitration, the Contractor may refer such matter to a court of competent jurisdiction. If the Board generates the notice or if the notice is generated by the Contractor and consented to by the Board, then the following provisions shall apply. Within ten (10) business days after receipt of such notice, the Parties shall appoint a single arbitrator with appropriate experience to

determine such dispute. If the Parties fail to appoint an arbitrator, either Party may apply to a Judge of the Superior Court of Justice to appoint an arbitrator to determine such dispute. The costs of the arbitration shall be paid by the Party as determined by the arbitrator, which jurisdiction shall include the determination of the costs to be paid by the unsuccessful Party.

- 68.6. The award of the arbitrator shall be final and binding upon the Parties. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction and enforced in the normal course, provided that confidentiality is maintained.
- 68.7. Arbitration will not be available to negotiate or re-negotiate terms of the Agreement.
- 68.8. The laws of the Province of Ontario and the By-laws of the Region and Municipalities will govern in any dispute occasioned through the performance or non-performance of materials and/or Workmanship resulting from a Bid Submission.

**69. Assignment of Contract and Merger**

It is mutually agreed and understood that the Contractor shall not assign, transfer, convey, subcontract or otherwise dispose of the Contract, or their right, title or interest therein, or their power to execute the Contract, to any other person, firm, company or corporation, in whole or in part, without the prior written approval of the Board. In addition, in the event that the Contractor merges with another institution(s) or there is a change in voting control of the Contractor or the Contractor sells its assets to a third party, at any time during the term, the merger, change in voting control, or sale of assets will constitute assignment, and the Board will be entitled to cancel the Contract on at least ninety (90) days written notice from the date of disclosure or from the effective date of merger, change or sale, whichever is sooner.

**70. Criminal Background Checks**

The Contractor acknowledges receipt of a copy of Regulation 521/01 (Collection of Personal Information) to the Education Act (Ontario) with respect to criminal background checks and offence declarations. The Contractor covenants and agrees

to assist the Board in complying with same by providing the Board, or such other entity as the Board may designate, with criminal background checks covering offences under the Criminal Code, the Controlled Drugs and Substances Act, and any other convictions, charges and occurrences which would be revealed by the long version Vulnerable Persons Search of the automated Criminal Records Retrieval System maintained by the Royal Canadian Mounted Police at the Canadian Police Information Centre (“Criminal Background Check”), together with an Offence Declaration in Board-approved form for every individual or employee of the Contractor who may come into direct contact with students on a regular basis at a school site of the Board or who may have access to student information, prior to the occurrence of such possible direct contact or prior to having access to student information and on or before September 1<sup>st</sup> each year thereafter with respect to Offence Declarations. For the purposes of this procurement, the Board shall determine in its sole and unfettered discretion whether an individual or employee of the Contractor may come into direct contact with students on a regular basis. The Contractor agrees to indemnify and save harmless the Board from all claims, liabilities, expenses, and penalties to which it may be subjected on account of the Contractor’s failure to provide a Criminal Background Check and an Offence Declaration, as aforesaid. This indemnity shall survive the expiration or sooner termination of the Contract. In addition, and notwithstanding anything else herein contained, if the Contractor fails to provide a Criminal Background Check and an Offence Declaration for an individual or employee of the Contractor who may come into direct contact with students on a regular basis at a school site of the Board or who may have access to student information, prior to the occurrence of such possible direct contact or prior to having access to student information, and on or before September 1<sup>st</sup> each year thereafter with respect to Offence Declarations, then the Board shall have the right to forthwith terminate the Contract without prejudice to any other rights which it may have in the Contract, in law or in equity.

**NOTE:** This clause may not be applicable to single project tenders. This clause may only be applicable to long term service contracts and may be exercised at the board’s discretion, as a result of legislation.



**71. Agreement to Abide by the Established Process**

- 71.1. It is vital to the Board that the process leading to the acceptance of a submission and the conclusion of an agreement for the provision of this service be, and be seen to be, open and fair and that each of the Bidders be treated equally.
- 71.2. No Bidder can be seen to be deriving, intentionally or otherwise, an advantage or information, which is not equally available to all other Bidders. Nor is it acceptable that any advantage or information be sought or obtained from any unauthorized staff and representatives of the school boards, or any benefit be derived from any special or personal relationships or contacts.
- 71.3. Bidders shall sign, and return with their submission, the “Agreement to Abide by the Established Process” form. The signed form will indicate concurrence with the process. Failure to indicate concurrence by returning the signed form may result in disqualification of Bid Submission.

**72. Conflict of Interest – Employees (Board Policy #222.0)**

- 72.1. Employees who have a direct or indirect personal or financial interest in any decision to be taken by the Board, or where that decision affects direct relatives, spouses or direct relatives of persons living in the same household, the employee shall not participate in the decision without first declaring their interest to their immediate supervisor who shall decide whether continuing participation is permissible. No disclosure shall be required if the only interest is a minority interest in a limited company in which the employee holds no official position.
- 72.2. Employees shall not sell to the Board or to a school, either directly or through the use of school funds, any goods or services without declaring their interest and removing themselves from the decision making process.
- 72.3. Employees shall not directly or indirectly use or attempt to use their position with the Board to purchase goods or services for their personal use from any supplier to the Board at a discount or on the same or similar terms to the

board.

72.4. “Conflict of Interest” includes any situation or circumstance where a Bidder:

72.4.1. has other commitments, relationships, financial interests or involvement in ongoing litigation that:

- could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the Board’s independent judgment; or
- could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Contract;

72.4.2. has contractual or other obligations to the Board that could or could be seen to have been compromised or impaired as a result of its participation in the Tender or the project; or

72.4.3. has knowledge of confidential information (other than confidential information disclosed by the Board in the normal course of the Procurement process) of strategic and/or material relevance to the Procurement that is not available to other Bidders and that could or could be seen to give the Bidder an unfair competitive advantage.

72.5. Each Bidder shall declare, by completing Appendix C - Conflict of Interest, any situation that may be a conflict of interest or a potential or perceived conflict of interest of the Bidder, including its obligations to the Board, the Contract, the Price or any customer.

72.6. The Board shall have the discretion to exclude or remove the Bidder from the Procurement process where there is a failure to disclose an actual or perceived Conflict of Interest, failure to comply with Board’s requirements to mitigate or resolve a Conflict of Interest, or the Bidder’s Conflict of Interest cannot be mitigated or resolved.