

Town of Truro Standard Terms and Conditions - Goods and Services

NOTE: These Terms and Conditions shall apply only to those documents that reference them specifically. In the event of any conflict or disagreement between these Terms and conditions and the Invitation documents, the Invitation documents have precedence and will be assumed to be correct

These Terms and Conditions are intended to cover a wide range of Town procurements, including goods and services. As such, not all clauses will be applicable in all situations. If Bidders have questions regarding any of these Terms and Conditions, they must contact the Town's Purchasing Department.

Failure to completely comply with these Terms and Conditions could cause the Bidder's Bid to be disqualified.

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Definitions

Bid: Bidder's written offer to provide the required goods or services at a given price or rate, or any similar document issued in reply to an Invitation. May also be referred to as a Proposal, Tender, Quotation, Submission, Response or similar name.

Bidder: Any person, business, or Consortium that submits a Bid.

Consortium: Two or more Bidders having no formal corporate links, who submit a joint Bid.

E-bid: A bid submitted electronically via the Internet.

Fax Bid: A Bid submitted by means of facsimile transmission over telephone lines.

Invitation: A formal request for prices or responses, whether in printed or electronic form, with sealed Bids, faxed Bids, electronically submitted Bids, or similar responses opened at a given time. May also be referred to as a Tender, Request for Bids, Request for Quotations, Request for Proposals, Request for Information, Pre-Qualification, Request for Expression of Interest, or similar name. The Invitation incorporates any addenda that may be issued.

Paper Bid: A bid submitted in printed form not through facsimile or other electronic medium .

Purchasing Department: The Town of Truro Purchasing Department, responsible for issuing and processing of Invitations for the Town, as identified in the Invitation documents.

Town: The Town of Truro.

Denotations: The words "may", "could" or "should" denote the permissive. The words "must", "shall" or "will" denote the imperative.

1. Date, Time and Place of Closing and Opening; Late Bids

- 1.1 Invitations will close at the time, date and location specified in the Invitation documents.
- 1.2 All Bids must be received in their entirety at or before the closing time specified; Bidders are responsible for ensuring that their Bid, however submitted, is received on time and at the location specified.
- 1.3 All times are local times; note the time difference between Bidder's location and the Town.
- 1.4 Bids received late, or not received completely by the closing time will not be considered; the Purchasing Department clock will be assumed to be correct in the event of dispute.
- 1.5 All Bids must be sent to the Purchasing Department (as identified in the Invitation documents), and will be opened there.
- 1.6 Bids will be opened at the time and date specified in the Invitation. The Invitation document will specify if the Bid opening can be attended by the public. The public is allowed to attend the Bid opening unless the Invitation states otherwise.

2. Methods of Submission

2.1 General

- 2.1.1 Bids must be legible and complete, must include the Invitation number and identify the Bidder's name and address and supply all information requested; incomplete or illegible Bids are subject to rejection.
- 2.1.2 All questions or areas on the Invitation form must be answered, even if it is only to indicate that the referenced item is not available; blank items will be assumed to be unavailable, and may result in rejection of Bidder's Bid.
- 2.1.3 Where the price summaries of the Bid do not fully explain the cost implications of an item, additional pricing detail should be attached, and shall form part of the Bid.
- 2.1.4 Prices should be broken down as requested; if the cost of an item has been included in some other items, enter "Included in Item [nn]".

2.2 Paper Bids

- 2.2.1 Bids must be enclosed in a sealed, opaque envelope or package.

2.2.2 The Bidder's name, the Invitation number and the Invitation closing date should be clearly visible on the outside of the envelope or package.

2.2.3 The Bid must be signed by an appropriate authorized official of the firm submitting the Bid.

2.3 Fax Bids

2.3.1 A Bid must not be submitted by facsimile (fax) unless the Invitation documents state that fax Bids are acceptable.

2.3.2 If the Invitation documents permit fax Bids, they are accepted for the convenience of the Bidder; the Town cannot ensure the confidentiality or error-free receipt of fax Bids. A Bidder submitting a fax Bid does so at its own risk.

2.3.3 Submit fax Bids to the Purchasing Department only; do not send the Bid to any other fax number unless specifically directed to do so.

2.3.4 The Bid must be signed by an appropriate authorized official of the firm submitting the Bid.

2.4 Electronic Bids

2.4.1 E-bids are not permitted unless the Invitation documents state that E-Bids are acceptable.

3. Obtaining Documents

3.1 If the Invitation documents contain or specify an official Invitation form, Bids should be submitted on that form; failure to use the correct forms could result in the Bid being rejected.

3.2 Invitation documents and Invitation forms can be obtained from the Purchasing Department.

3.3 It is the Bidder's responsibility to obtain Invitation documents at their cost.

3.4 Bidders must not alter any portion of the Invitation or associated documents, with the exception of adding the information requested by the Invitation. Bids containing clauses additional to the Invitation that are "qualified" or "conditional" may be rejected.

3.5 The Invitation, or any supplementary document or portion thereof is proprietary information, and must not be used by the Bidder for any purpose other than the submissions of Bids without the permission of the Purchasing Department.

4. Liability for Costs

4.1 Bidders are responsible for their own expenses in preparing, delivering or presenting a Bid and for subsequent negotiations with the Town, if any. The Town will not defray any costs incurred by a Bidder in responding to an Invitation.

4.2 The Town will not be responsible for any costs, expenses, losses, damages or liability incurred by the Bidder as a result of, or arising out of, the submission of any Bid, or due to the Town not accepting or rejecting any Bid.

5. Alternative Bids; Altering Bids Already Submitted

5.1 Bids already submitted may be amended prior to closing a) by submitting an amendment identifying the plus or minus variance to the original Bid, or b) by sending a complete new Bid, clearly indicating it replaces the previously submitted Bid. Any such revision must clearly identify the Invitation number and closing date of the Bid being submitted. A Bid revision replaces any other Bid revisions previously submitted by the Bidder; only the last of any Bid revisions received will be accepted.

5.2 Any Bid submitted in response to an Invitation may be withdrawn by written request to the Purchasing Department, but a Bid cannot be withdrawn, altered or changed in any way after the Invitation closing date and time.

5.3 All requests for withdrawal, amendment or submission of a replacement Bid must be submitted in writing on company letterhead or equivalent, and be signed by an authorized official of the Bidder.

6. Supporting Documents

6.1 A brief supplementary statement may be included with the response to an item to give the evaluators a clear understanding of the products/personnel proposed and their ability to perform the specified tasks.

6.2 In addition to the responses requested in the Invitation, Bidders may include specifications on some or all proposed items for evaluation purposes.

6.3 Supporting documents should be suitably cross-referenced to the Invitation.

7. Unit Prices and Extensions; Taxes excluded; Currency; Shipping Costs

7.1 All prices should be extended and totaled. The extended price is derived by multiplying the unit price by the quantity of units required.

7.2 In the event of an error in calculation of the extended price, the unit price will be taken as correct and will govern in the Bid evaluation and contract administration.

7.3 Do not include any Provincial or Federal sales taxes in the price.

7.4 All prices should be quoted in Canadian dollars unless other currencies are specifically requested.

7.5 Shipping, cartage, loading, insurance and handling charges must be included in the total price. If these charges have not been stated specifically, it will be assumed that they have been included in the Bid price, i.e. FOB to the destination(s) listed in the Invitation. The Town will not assume responsibility for any goods or services until they have been delivered to the destination(s) specified in the Invitation.

7.6 Unless stated otherwise in the Invitation, a firm, all-inclusive price is required, i.e. hourly rates or "Time and Materials" are not acceptable responses.

8. Duration of Bid/Award Prices

8.1 If the Bid is accepted, prices must remain firm for the duration of the contract unless otherwise specified.

8.2 Unless stated otherwise in the Invitation, Bids must remain open to acceptance and are irrevocable for a period of 90 days after the Invitation closing date.

9. Payment Terms

9.1 If special payment terms or schedules are required, these must be specified in the Bid; otherwise, the Town's payment terms (net 30 days) will apply.

10. Delivery

10.1 Where the Invitation includes a mandatory delivery schedule, the Town will assume that the Bidder can meet the requested schedule and is satisfied that the goods or services required will be available for delivery on the requested date(s).

10.2 If Bidders wish to specify a delivery schedule different from that requested in the Invitation, they must provide specific delivery dates or a schedule in calendar days from the date a purchase order is issued or a contract is signed. Bids that do not meet the delivery schedule as requested in the Invitation may be rejected.

10.3 Time is of the essence, and Bidder's delivery schedule is legally binding. The Town reserves the right to assess penalties or cancel awards to Bidders who fail to meet their state delivery or completion dates.

11. Quality/Complete Product

11.1 Unless otherwise stated in the Invitation, all material included in the Bid must be new, first quality goods; used, refurbished, second, obsolete, discontinued or

demonstrator items must only be proposed if the Invitation specifically requests or otherwise states that such goods will be allowed.

11.2 By submitting a Bid, Bidder guarantees that, unless the Invitation specifies otherwise, all components required to make the required equipment or system operable or to deliver the required services have been included in the Bid, or will be provided at no additional charge to the Town.

11.3 Where applicable, the Town must be provided with complete operation manuals, warranty registration forms, user licenses/authentications and/or other associated documentation normally provided by the manufacturers, reseller, installer and/or consultant.

12. Substitutions and Equivalent, Discontinued Items

12.1 The specifications in the Invitation define the minimum acceptable goods and/or services required. Minor deviations from the specifications may or may not be permitted at the sole discretion of the Town.

12.2 The Invitation may specify items by brand name and/or model number to designate the design, type of construction, quality, functional capability and/or performance level to the product requested.

12.3 If an item has been discontinued during the Invitation process, or is otherwise unavailable, the Town will cancel the Invitation, or will issue an Addendum to update the specification. Bidders should notify the Purchasing Department immediately when they become aware of any discontinuation of specified items.

12.4 If Bidders feel that they can provide items with equivalent or better functionality at the same or lower cost, they may be able to offer a substitute item. Substitutions offered must be of equal or better quality and clearly identified, and accompanied by brochures and technical information to permit evaluation of the item being offered. Substitution items must be identified by manufacture's stock/part number and other descriptive information to establish equivalency. Substitutions offered without documentation sufficient to determine equivalency may be rejected as non-compliant.

12.5 The Town reserves the right to inspect or test any product bid to determine equivalency, and may require demonstrator or sample items in order to be able to evaluate the items proposed. The Town will be the sole judge of equivalency.

12.6 Specifications may, for technical or logistical reasons, require that the items specified be supplied without substitution.

13. Standards and Certification

13.1 Where applicable, all equipment must be certified by the appropriate regulatory agencies (e.g. Canadian Standards Association, Communications Canada, Transport Canada, Canadian Gas Association, Health Canada, etc.) and/or must be approved by the appropriate Provincial agency (e.g. Office of the Fire Marshall).

14. Addenda, Corrections or Extensions of the Invitation

14.1 The Town reserves the right to modify the terms of the Invitation at any time prior to closing, at its sole discretion.

14.2 The Purchasing Department will make information available to the public regarding any changes made to the Invitation, or any change in the closing date or time. Bidders are responsible for ensuring that they are aware of and have complied with any Addenda.

14.3 When these changes occur within five business days of the closing date, the closing date may be extended to allow for a suitable Bid preparation time.

15. Environmental Considerations

15.1 The Town may seek to purchase recycled and/or environmentally sensitive products where practical and effective.

15.2 Where appropriate, the integration of environmental considerations into Invitations may be noted in the specifications; the specifications will identify these considerations to ensure that suppliers have a full understanding of the conditions to be met.

16. Warranty

16.1 The Bidder must describe the duration, type (e.g. on-site, depot, ship-in or carry-in) and terms of the manufacturer's warranty on all goods.

16.2 If the Bidder provides any additional/supplementary warranty coverage, describe this as well.

16.3 If warranties can be upgraded or extended, identify the upgrade costs separately. Do not include warranty upgrade or extension costs in the Bid price unless the Invitation specifically states that the upgrade is a mandatory requirement.

16.4 If local service is a requirement of the Invitation, describe the means by which this will be accomplished, i.e. by "own forces" or through a contractual arrangement with a third party (which must be identified – see Section 18, "Subcontractors and Consortium Bids").

17. No Restrictions on Fair Use

17.1 The Bidder warrants that there are no patents, trademarks or other rights restricting the use, repair or replacement of the goods or services furnished or any part thereof. The Bidder agrees to indemnify and save harmless the Town from and against all claims filed or prosecuted in any manner because of such use, repair or replacement of the goods or services being a violation of any patent, trademark, or other right.

18. Subcontractors and Consortium Bids

18.1 The use of a subcontractor is permitted unless otherwise specified in the Invitation.

18.2 Names of all subcontractors and the services they will provide must be listed on or attached to the Bid, if requested.

18.3 “Own forces” may only be named as subcontractors when the Bidder is equipped to carry out and normally carries out the work noted.

18.4 If subcontractors (including “own forces”) are named, work must be carried out by the named forces and substitution of others will not be allowed without prior approval of the Town.

19. Right to Reject; Financial Stability; Non-Compliance

19.1 Failure to comply with any of the mandatory terms or conditions contained or referenced in the Invitation documents may result in the rejection of the Bid.

19.2 All of the terms, conditions and/or specifications stated or referenced in the Invitation are assumed to be accepted by the Bidder and incorporated in the Bid.

19.3 Bidders may be required to demonstrate financial stability, authorization to provide the goods/services being acquired, and/or regulatory agency approval, licensing or registration as needed, or otherwise clarify Bidder’s capability to satisfy the Invitation requirements. The Town reserves the right to reject Bids from any Bidder that it feels is incapable of providing the necessary labour, materials, equipment, financing or management resources to perform the work or supply the goods in a satisfactory and timely manner.

19.4 The Town reserves the right to waive minor non-compliance where such non-compliance is not of a material nature in its sole and absolute discretion, or to accept or reject in whole or in part any or all Bids, with or without giving notice. Such minor non-compliance will be deemed substantial compliance and capable of acceptance. The Town will be the sole judge of whether a Bid is accepted or rejected.

19.5 The Town reserves the right to split an award amongst Bidders as deemed in the best interests of the Town.

20. Cancellation; No Award

20.1 Issuing an Invitation implies no obligation on the Town to accept any Bid, or a portion of any Bid submitted. The lowest or any Bid will not necessarily be accepted.

20.2 Invitations may be cancelled in whole or in part without penalty, when a) the price Bid exceeds the funds allocated for the purchase; b) there has been a substantial change in the requirements after the Invitation has been issued; c) information has been received by the Town after the Invitation has been issued that the Town feels has substantially altered the procurement; or d) there was insufficient competition in order to provide the level of service, quality of goods or pricing required.

20.3 If no compliant Bids are received in response to an Invitation, the Town reserves the right to enter into negotiations with one or more vendors in order to complete the procurement.

20.4 The Town will be the sole judge of whether there is sufficient justification to cancel any Invitation.

20.5 No action or liability will lie or reside against the Town in its exercise of its rights under this section.

21. Governing Laws and Trade Agreements – Local Preference

21.1 The Invitation, all Bids, and any subsequent contracts will be construed and interpreted in accordance with the laws of Nova Scotia.

21.2 This Invitation may be subject to the Atlantic Procurement Agreement, the Agreement on Internal Trade, or another inter-provincial agreement.

21.3 Copies of any applicable trade or procurement agreements and/or legislation can be obtained by contacting the Purchasing Department.

21.4 Bidders agree to comply with all applicable laws, regulations and standards, including all labour, occupational health & safety, and worker compensation requirements of the Town and Province of Nova Scotia.

21.5 The Purchasing Department may consider and evaluate any Bids from other jurisdictions on the same basis that the purchasing authorities in those jurisdictions would treat a similar Bid from a supplier located in Nova Scotia. The Town will be the sole judge of whether these conditions will be used and the extent to which they will be applied.

21.6 In evaluating which goods or services offer best value to the Town, the Town may apply a preference of 5% to the price offered by a local business as compared with non-

local businesses, such that the price offered by the local business is adjusted lower by 5% for the purposes of evaluating which goods or services offer best value.

21.7 If a local preference is being applied to a purchase, the request for quotations, or notice of tender or RFP, must state that local preference applies to the purchase.

21.8 Under Canadian law (and international agreements), your Bid must be arrived at separately and independently, without conspiracy, collusion or fraud.

22. Confidentiality and Freedom of Information

22.1 The Town is required to comply with the *Personal Information International Disclosure Protection Act* (S.N.S. 2006, c. 3). This *Act* creates obligations for the Town and its service providers when personal information is collected, used or disclosed. Requirements include limiting storage, access and disclosure of personal information to Canada, except as necessary or otherwise required by law.

22.2 All Bids submitted become the property of the Town. By submitting a Bid, the Bidder hereby grants the Town a license to distribute, copy, print or translate the Bid for the purposes of the Invitation. Any attempt to limit the Town's right in this area may result in rejection of the Bid.

22.3 Bidder's Bid package may be subject to disclosure under the "freedom of information" provisions of the *Municipal Government Act* (S.N.S. 1998, c. 18). By submitting a Bid, the Bidder agrees to the appropriate disclosure of the information supplied, subject to the provisions of the governing law. The Town cannot guarantee the confidentiality of the complete content of any Bid after the procurement has been awarded to the successful Bidder.

22.4 During the delivery and installation of goods and/or services, the Bidder or Bidder's staff may have access to confidential information belonging to the Town. Should this occur, the Bidder must ensure that such information is not released to any third parties or unauthorized individuals; failure to comply may result in criminal or civil charges and/or the Bidder's disqualification from any further Invitations issued by the Town.

23. Bidders Located Outside Canada

23.1 The Bidder must arrange for clearance of goods through the Canada Border Services Agency, along with all brokerage fees and payment of applicable Canadian taxes and duties.

23.2 The Bidder must arrange all visas, insurance, work permits, passports, etc. for personnel required to visit Canada in association with the Bid.

23.3 All warranties on goods must be valid in Canada. To the extent that facilities are available, warranty service should be provided in Canada.

23.4 There must be no conflict with authorized Canadian distributors of the goods and/or services being Bid.

23.5 All goods must be compliant with Canadian operating environments and, where applicable, must be certified by the appropriate Canadian regulatory agencies (reference paragraph 13.1).

23.6 Professional personnel (medical staff, engineers, architects, lawyers, accountants, etc.) must be registered with the appropriate Canadian professional and/or regulatory authorities, or must be eligible to register with such authorities if accepted for the work being tendered.

23.7 Where any of the requirements set out in paragraphs 23.1 to 23.6 inclusive are not met, the Town reserves the right to reject the Bid, or to require bonds or sureties to ensure compliance.

24. Enquiries and Contacts

24.1 In case of any dispute over the completeness, accuracy and/or interpretation of any Invitation documents, the versions of such documents held by the Purchasing Department will be considered correct.

24.2 Information, offers, commitments or instructions obtained from any source other than the Purchasing Department will not be binding on the Town.

24.3 Enquiries regarding the Invitation must be made to the contact(s) named in the Invitation documents (or their designates); quote the Invitation number on any correspondence.

24.4 Enquiries and the responses given may be recorded and may be distributed to all other Bidders as Addenda. No response shall be binding on the Town unless made in writing.

24.5 All enquiries regarding the interpretation of these Terms and Conditions, general procurement policy or procedures must be made to the Purchasing Department.

25. Accuracy of the Invitation; Right to Clarify

25.1 While the Town has tried to ensure accuracy in the Invitation, it is not guaranteed or warranted by the Town to be accurate, nor is it necessarily comprehensive or exhaustive.

25.2 The Town will assume that all Bidders have resolved any questions they might have about the Invitation and have informed themselves as to existing conditions and limitations, site restrictions, etc. before submitting their Bids.

25.3 Nothing in the Invitation is intended to relieve Bidders from forming their own opinions and conclusions with respect to the matters addressed in the Invitation or its associated documents.

25.4 The Town reserves the right in its sole discretion to clarify any Bid after closing by seeking further information from that Bidder, without becoming obligated to clarify or seek further information from any or all other Bidders. However, Bidders are cautioned that any clarifications sought will not be an opportunity either to correct errors or change their Bids in any substantive manner.

26. Language

26.1 Unless specifically requested otherwise, all Bids, supporting materials, operation manuals and documentation must be in English.

27. Eligibility and Conflict of Interest

27.1 A Bid may not be eligible for acceptance if current or past corporate or other interests of the Bidder may, in the Town's opinion, give rise to a conflict of interest in connection with a project.

27.2 Bidders are cautioned that acceptance of their Bid may preclude them from bidding on subsequent phases where a conflict of interest may arise; Bidders should study the project implementation strategy to determine whether or not they plan to submit Bids on subsequent phases.

27.3 If the Bid covers the first phase of what may prove to be a multi-phased project, the successful Bidder on the initial phase may be permitted to bid on subsequent phases as long as, in the Town's opinion, no conflict of interest would be created in performance of the work by that Bidder.

27.4 Sub-contracting to any firm or individual whose current or past corporate or other interests may, in the Town's opinion, give rise to a conflict of interest in connection with this acquisition will not be permitted. This includes, but is not limited to, any firm or individual involved in the preparation of the Invitation documents.