

# *Standard Terms and Conditions*

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## Scope

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The following Terms and Conditions form part of each Tender, Quotation, Proposal and Contract and shall apply in like force towards the purchase of goods and services by The Corporation of the City of Sarnia. All bidders will be bound by the terms and conditions set forth, except otherwise specified in the main body of each individual Tender, Quotation, Proposal or Contract.

## Definitions

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As used herein, as well as in all Specifications, Tenders, Quotations, Proposals and Contracts etc. issued by the City of Sarnia, the following Definitions shall apply unless otherwise indicated:

- **City** – The Corporation of the City of Sarnia
- **Tender** – A formal offer received from a supplier of goods and/or services in response to a public advertising of a bid competition based on precisely defined specifications. Tenders are sealed in an envelope and opened in public, the results of which are forwarded to City Council for consideration.
- **Quotation** – An offer to provide goods and/or services meeting technical and functional specifications at a set price in response to a bid competition.
- **Proposal** – An offer to provide goods and/or services to the City where it is not practical to prepare precise specifications, or where “alternatives” to detailed specifications will be considered which may be subject to further negotiation. This process allows vendors to propose solutions to arrive at the end product, and allows for evaluations on criteria other than price.
- **Expression of Interest** – An offer to provide documentation for the interest of providing goods and/or services that are subject to the Expression of Interest.
- **Specifications** – Detailed or precise technical and functional description of the required goods and services.
- **Bidder** – Any individual, firm, company, etc., submitting bids in response to the City’s Request for Tender, Quotation, Proposal or Expression of Interest.
- **Contract** – Means a legally binding agreement between two or more parties. Such agreements will consist in the form of a Purchase Order, a Purchase Order incorporating a formal agreement, or a Formal Agreement between two or more parties that creates an obligation to provide defined goods and/or perform services.
- **Contractor** – An individual, firm, company, etc. to whom a contract is awarded.
- **Invitation to Bid** – Any request for Proposal, Tender, Quotation or Expression issued by the City.

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### Warning

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Any alleged oral agreement or arrangement made by a bidder or contractor with any Department or Employee of the City will be disregarded.

### Submission

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1. Bids must be submitted on and in accordance with the forms supplied by the City. All Bids must include name, address, telephone number, and e-mail address. Bidders must also include their Registered Business Name and Number and Ontario Corporation Number (if applicable).
2. Telephone, facsimile, telegraphic or electronic submissions will not be accepted, unless specifically allowed as a special provision in the main body of each individual Quotation or Proposal.
3. Quotations and Proposals must be sealed and addressed to the Purchasing Agent, City of Sarnia, 255 North Christina Street, Sarnia, ON. Envelopes must clearly indicate the contents and the name and address of the bidder.
4. Tenders must be sealed and addressed to the City Clerk's Office, City of Sarnia, 255 North Christina Street, Sarnia ON N7T 7N2. Envelopes must clearly indicate the contents and the name and address of the bidder.
5. Bidders are cautioned to verify their bids before submission. Bids received by the City later than the time and date specified cannot be considered.
6. Bids may be submitted for all or part of the requirements listed, unless otherwise specifically indicated. However, the City in its absolute discretion, reserves the right to accept or reject all or part of any Proposal, Quotation, or Tender.
7. Unless qualified by the provision "**No Substitute**" the use of the name of a manufacturer, brand, make or catalogue designation in specifying an item does not restrict bidders to that identification. This is used simply to indicate the character, quality and/or performance equivalent of the commodity desired. The commodity on which bids are submitted must be of such character, quality and/or performance equivalent that it will serve the purpose for which it is to be used equally as well as that specified. In submitting a proposal on a commodity other than as specified, the bidder must furnish complete data and identification with respect to the alternate commodity it proposes to furnish. Consideration will be given to proposals submitted on alternate commodities to the extent that such action is deemed to serve the best interests of the City. If the bidder does not clearly indicate that the commodity which he proposes to furnish is other than specified, it will be construed to mean that the bidder proposes to furnish the exact commodity as described in the Specifications.
8. If the bidder proposes to furnish any item of a foreign origin the word "foreign", together with the name of the country of origin, must be written opposite such item on the proposal. All items not so designated will be considered to be of domestic origin.
9. The City is subject to payment of Sales, Excise and other Taxes imposed by the Federal and Provincial Governments. Such Taxes must be shown separate unless otherwise specifically indicated. Should there be any approved changes in any tax or duty imposed by the Government of Canada or Province of Ontario which becomes

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- directly applicable to the goods and services to be purchased during the currency of this contract, the contractor and the City shall mutually agree to allow the appropriate increase or decrease in the prices as of the date they become effective.
10. Prices quoted shall be net prices including transportation and delivery charges fully prepaid by the contractor to any specified destination within the limits of the City and subject only to prompt payment discounts.
  11. In the event of discrepancy between the unit price and the extension, the unit price shall govern. Where applicable, your bid prices must be extended and totaled.
  12. Bidder declares that the proposal is NOT made in connection with any other bidder submitting a proposal for the same commodity (ies) and is in all respects, fair and without collusion or fraud.
  13. **Bid Opening**

*Tenders* are opened publicly and bidders may be present or represented at tender openings. Tenders are traditionally opened immediately after the closing time for receiving tenders.

*Quotations and Proposals* will be opened as quickly as possible after the closing date and time. Openings are done in private in the Purchasing Agent's Office.
  14. Where quantities are described only as "approximate" or "estimated" it shall be understood that such quantities are provided for bidding purposes only. The City shall not be held liable if actual requirements decrease or increase.
  15. Any variations from the specifications must be noted. Failure to indicate variations shall imply specifications are met.
  16. Each item in the Price Schedule shall be reasonably priced for such item. Proposals that contain prices which appear to be so unbalanced as to adversely affect the interest of the City, in the opinion of the Purchasing Agent may be rejected.
  17. Bid Forms are supplied in an effort to have all bidders quote under the same conditions and for ease of comparing proposals. If you should find it necessary to take exception to any of the conditions, such shall be noted. All bids must be on the form(s) provided by the City.
  18. Where necessary the successful bidder will be required to provide training to City Staff until they are familiar and competent in the operation and daily maintenance of the purchased goods and/or services. Unless otherwise stated, the cost of such instruction will be included in the bid price.
  19. It will be the bidder's responsibility to clarify with the City, any details in question mentioned or not mentioned in the Invitation to Bid or shown on the Specifications, before submitting an offer.

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### Addenda

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1. Prospective bidders shall provide their postal address and e-mail information to the Purchasing Department. Any Addendum required will be sent to the bidder's e-mail address.
2. Where mandatory site meetings are specified, Addenda will be sent only to bidders who were present at the pre-bid site meeting.

### Bid Evaluation Process

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- 1) The objective of this section is to describe the criteria in the selection of a bidder with which the City of Sarnia would: enter into a contract for the goods and or services identified in the invitation to bid, commence the negotiation process for a contract, or recommend for Sarnia City Council's consideration, the acceptance of the bid submission.
- 2) For Request for Quotations and Tenders containing detailed technical specifications, the lowest compliant bid shall be the recommended vendor/contractor.
- 3) For Request for Proposals where functional specifications or goals and objectives are used in lieu of technical or detailed specifications, the evaluation process shall include but not be limited to weighting factors for price, warranty and quality. The proponent with the highest total rating will be the recommended vendor/contractor.

### Award

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The City in its absolute discretion, reserves the right to:

- Award and/or reject by item or part thereof, groups of items or parts thereof, or all items listed on the Invitation to Bid.
- Award contracts to one or more bidders who have submitted proposals identical as to price;
- Waive technicalities, irregularities and omissions if, in the opinion of the Purchasing Agent, the interest of the City will thereby be served; and
- Not accept the lowest or any proposal.

The City reserves the right to make award within one-hundred and twenty (120) days from the date bids are opened.

A bidder must be prepared, if requested to present evidence of experience, ability, capacity, services, facilities and financial resources necessary to meet the requirements of the contract.

Early Payments Discounts may be offered for prompt payments of invoices, but such discounts will not be taken into consideration in determining which is the low bidder unless such discount is based on payment of invoice not less than fifteen (15) days after satisfactory delivery and/or receipt of satisfactory invoice, whichever is later.

Purchase Orders will be issued by the Purchasing Agent for all goods and or services required. Transactions without corresponding Purchase Orders will not be paid unless otherwise approved in writing by the City.

### Contract

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1. Each Bid or Proposal will be received with the understanding that acceptance in writing by the City of the offer to furnish all or any part of the services and/or commodities therein (Proposal) shall constitute a contract between the bidder and the

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- City. This contract shall bind the bidder to furnish and delivery the services and/or commodities at the prices offered and in accordance with the specifications and **Terms and Conditions** and the City to take delivery of and pay for the services and/or commodities at the contract prices.
2. No alterations or variations of the terms of the contract shall be valid or binding upon the City unless authorized in writing by the Purchasing Agent.
  3. The contractor shall not assign, transfer, convey, sublet or otherwise dispose of the contract or his right, title or interest therein, or its power, or execute such contract to any other person, firm, company or corporation, without the previous written consent of the City.
  4. The placing in the mail to the address given in a proposal or delivery of a purchase order or notice of award to a bidder will constitute acceptance of a proposal. When so requested by the City, the contractor shall execute a formal contract with the City for the complete performance specified therein.
  5. The contract may be cancelled by the City upon non-performance of the contract terms.
  6. Failure of a contractor to deliver within the time specified or within reasonable time as interpreted by the City or failure to make replacements of rejected commodities when requested, will constitute authority for the City to purchase in the open market to replace commodities rejected or not delivered. The City reserves the right to authorize immediate purchases in the open market against rejections on any contract when necessary. On all such purchases the contractor agrees to promptly reimburse the City for excess costs occasioned by such purchases. Such purchases will be deducted from the contract quantities.
  7. When commodities are rejected, same must be removed by the contractor from the premises of the City within five (5) days after notification unless public health and safety require immediate action as it deems necessary. Rejected items left longer than five (5) days will be considered abandoned and the City shall have the right to dispose of them as its own property.
  8. The City reserves the right to remove from eligibility to submit proposal for an indeterminate period, the name of any bidder for failure to accept a contract, or the name of any contractor for unsatisfactory performance of contract.

#### Contract Guarantee

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The contractor hereby covenants and agrees:

- a) to perform contract in accordance with the specifications under which the contract is awarded;
- b) to save the City, its agents or employees, harmless from liability of any kind for the use of any composition, secret process, invention, article or appliance furnished or used in the performance of the contract for which the contractor is not the patentee, assignee or licensee;
- c) to guarantee its products against defective material or workmanship and to repair or replace any damage or marring occasioned in transit. This guarantee is to be in writing with the proposal stating the period of the guarantee;

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- d) to furnish adequate protection from damage for all work and to repair damage of any kind for which the contractor or its workers are responsible, to the premises or equipment, to its own work or the work of other contractors;
- e) to pay for all permits, licenses and fees and to give all notices and comply with all By-laws and Regulations of the City;
- f) to carry such insurance as may be required by the City and to furnish satisfactory proof thereof when required by the City;
- g) to indemnify and save harmless the City, its agents and employees, from all suits and actions for damages and costs to which the City and its employees may be put by reason of injury or death to persons and damages to property of others as well as the City, resulting from negligence, poor workmanship and materials, as well as any cause whatsoever in the performance of the work by the contractor, the contractor's employees, sub-contractors and their employees.

If the contractor shall fail, neglect or refuse at any time to supply goods and or services to the City then the City shall be and is hereby empowered to forthwith procure such material elsewhere and to charge all costs thereby incurred to the contractor as liquidated damages and to deduct the same from the monies due or to become due, to the contractor on this or any other contract.

#### Delivery

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- a) Any equipment delivered must be standard new equipment of the latest model except as otherwise specifically stated. Where any part or nominal appurtenances of equipment is not described, it shall be understood that all equipment and appurtenances which are usually provided in the manufacturer's stock model shall be furnished.
- b) Materials and supplies must be new items except as otherwise specifically stated in the Invitation to Bid.
- c) Delivery must be made as stated on the Purchase Order. If no delivery instructions appear on the Purchase Order, it will be interpreted to mean prompt delivery. Burden of proof of delay in receipt of a Purchase Order shall rest with the contractor.
- d) Commodities shall be securely and properly packed for shipment according to accepted standard commercial practice, without extra charge for packing materials or containers, the containers to remain the property of the City unless otherwise stated in the Tender or Proposal. Where materials are stored in refillable containers (e.g. chlorine cylinders, gas, etc.) deposits and rental charges must be shown separately (if applicable) and not in the unit price.
- e) Where materials are furnished for specified price per unit of weight, the City reserves the right to require such materials to be weighed on scales designated by it, in which case payment shall be made on the basis of the net weight of the materials furnished.

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### Inspection and Tests

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- a) The inspection and testing of all commodities and workmanship to determine compliance with the specifications shall be made in the manner prescribed by the City. All costs associated with inspection and testing shall be the contractor's responsibility.
- b) Any item which, in the absolute discretion of the City, fails in any way to meet the terms of the contract is subject to rejection or to be paid for on an adjusted price basis.

### Saving Clause

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- a) It is understood and agreed that the contractor shall not be held liable for any losses resulting if the fulfillment of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any cause not within the control of the contractor and which, by the exercise of reasonable diligence, the contractor is unable to prevent. Should the performance of any contract be delayed or prevented as herein set forth the contractor agrees to give immediate written notice and explanation of the cause and probable duration of any such delay.
- b) The contractor, if awarded an order or contract, agrees to protect, defend and save harmless the City against any demand for payment for the use of any patented material, process, article or device that may enter into the manufacture or construction or form a part of the work covered either by order or contract, and the contractor further agrees to indemnify and save harmless the City from suits or actions of every nature and description brought against it for or on account of any injuries or damages received or sustained by any party or parties, by or from any of the acts of the contractor, his servants or agents.

### Withdrawal of Bids

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Bid withdrawal requests may be made prior to the closing date and time for receiving Tenders, Quotations, and Proposals. Withdrawal information shall be addressed to the office receiving the bids (City Clerk or Purchasing) in writing, with an authorized signature or in person, in possession of proper identification. Withdrawal requests after the closing date and time will not be allowed.

### Bid Surety

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Bid surety such as Bid Deposits, Performance Bonds etc., whenever necessary, shall be specified on each invitation to bid.

### Health and Safety

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The contractor shall comply with the Regulations set out in the Ontario Occupational Health and Safety Act and the Workplace Safety and Insurance Act. The contractor shall also comply with the City of Sarnia's Safety Policy and Procedures.

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### W.S.I.B. Clearance

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For any contract requiring the services of the contractor's employees, the contractor shall submit a Certificate of Clearance from the W.S.I.B.. The contractor shall also submit an Insurance Certificate confirming the contractor's General Liability and Vehicle Insurance Coverage.

### General Insurance Requirements

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Each Proponent doing business with the City of Sarnia shall provide a Certificate of Insurance with the City of Sarnia additionally insured at a minimum \$2,000,000 for each occurrence or as specified by the City of Sarnia requirements.

### Regulations for Construction and Service Contracts

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- a) It shall be the contractor's responsibility to ensure that all workers, including owners designated as workers on the project, abide by the applicable Regulations for Construction and Service Projects as mandated by the Occupational Health & Safety Act, latest revision, as well as any other safety, environmental or transportation standards that are applicable by law or established by generally accepted industry standards. The contractor shall also comply with the City of Sarnia's Health & Safety Policies, the Ministry of the Environment (M.O.E.) and the Ministry of Transportation (M.T.O.) Regulations.
- b) The contractor agrees to indemnify the City and all third parties against any fines, claims and costs incurred by it as a result of the contractor, sub-contractor and their workers breaching the Occupational Health & Safety Act, M.O.E. and M.T.O Regulations, including costs incurred in preparing for and attending legal hearings and trials in connection therewith.
- c) The contractor shall obtain any required permits or certificates of approval and conform with all applicable Regulations, Codes and Standards such as those governed by the following:
  - American Waterworks Association
  - Canadian Standards Association
  - Ministry of the Environment
  - Ministry of Labour
  - Ministry of Transportation, Ontario
  - Ontario Building Code
  - Ontario Fire Code
  - Ontario Electrical Safety Authority
  - Technical Standards & Safety Authority
  - Underwriters' Laboratories of Canada
  - Workplace Hazardous Materials Information System
  - Local By-laws
  - Other applicable Government regulated requirements
  - Workplace Safety & Insurance Act



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Interpretation

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The validity and interpretation of this contract and each clause and part thereof shall be governed by the laws of the Province of Ontario.

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## Accessibility

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The City of Sarnia is required to comply with the Accessibility for Ontarians with Disabilities Act, 2005 as amended and any associated regulations. Under this Act, every person who deals with members of the public or other third parties on behalf of the City must receive training about the provision of goods and services to persons with disabilities.

The Contractor and any subcontractor hired by the contractor for the completion of the work must be aware of these requirements and certifies that all required personnel have or will receive training prior to commencement of work under the contract.

An Accessible Customer Service Training Manual and other training resources are available on line, at [City of Sarnia Website](#) on the Accessibility > Accessible Customer Service Policy web page.