Clauses Applicable to all Norfolk County Request for Quotations (RFQ)

Norfolk County's procurement processes are governed by the County's Policy CS-02: Purchasing Policy. It is the Bidder's responsibility to become familiar with and comply with the County's Policy, which is available online at:

CS-02 Purchasing Policy (norfolkcounty.ca)

1.1 Withdrawal of Quotations

A Bidder who has already submitted a quotation may submit a further quotation at any time up to the official closing time. The last quotation received will supersede and invalidate all quotations previously received from that Bidder.

1.2 Stages of Evaluation

Norfolk County will conduct the evaluation of quotations in the following stages:

1.2.1 Stage I – Mandatory Submission Requirements

Stage I will consist of a review to determine which quotations comply with all of the mandatory submission requirements. Quotations that do not comply with all of the mandatory submission requirements as of the Submission Deadline will, subject to the express and implied rights of Norfolk County, be disqualified and not evaluated further.

1.2.2 No Amendment to Forms

Other than inserting the information requested on the mandatory submission forms set out in the RFQ, a Bidder may not make any changes to any of the forms. Any quotation containing any such changes, whether on the face of the form or elsewhere in the quotation, shall be disqualified.

1.2.3 Stage II – Mandatory Technical Requirements

Stage II will consist of a review to determine which quotations comply with all of the mandatory technical requirements. Quotations that do not comply with all of the mandatory technical requirements as of the Submission Deadline will, subject to the express and implied rights of Norfolk County, be rejected.

1.2.4 Stage III – Pricing

Stage III will consist of a review of the submitted pricing of each compliant quotation in accordance with the Schedule of Items and Prices. The evaluation of price will be undertaken after the evaluation of mandatory requirements has been completed.

1.2.5 Selection of Lowest Compliant Bidder

Subject to Norfolk County's reserved rights, the compliant Bidder with the lowest pricing will be selected to enter into the Agreement in accordance with the following section. In the event of a tie, the successful Bidder will be determined by way of a coin toss.

Selection and award may be subject to Council approval and budgetary restrictions.

1.3 General Information and Instructions

1.3.1 RFQ Incorporated into quotation

All of the provisions of this RFQ are deemed to be accepted by each Bidder and incorporated into each Bidder's quotation. A Bidder who submits conditions, options, variations or contingent statements to the terms as set out in this RFQ, including the terms of the Agreement, either as part of its quotation or after receiving notice of selection, may be disqualified.

1.3.2 Bidders to Follow Instructions

Bidders should structure their quotations in accordance with the instructions in this RFQ. Where information is requested in this RFQ, any response made in a quotation should reference the applicable section numbers of this RFQ.

1.3.3 Bids in English

All quotations are to be in English only.

1.3.4 No Incorporation by Reference

The entire content of the Bidder's quotation should be submitted in a fixed form, and the content of websites or other external documents referred to in the Bidder's quotation but not attached will not be considered to form part of its quotation.

1.3.5 Past Performance

In the evaluation process, Norfolk County may consider the Bidder's past performance or conduct on previous contracts with Norfolk County or other institutions.

1.3.6 Information in RFQ Only an Estimate

Norfolk County and its advisers make no representation, warranty or guarantee as to the accuracy of the information contained in this RFQ or issued by way of addenda. Any quantities shown or data contained in this RFQ or provided by way of addenda are estimates only, and are for the sole purpose of indicating to Bidders the general scale and scope of the Deliverables. It is the Bidder's responsibility to obtain all the information necessary to prepare a quotation in response to this RFQ.

1.3.7 Bidders to Bear Their Own Costs

The Bidder will bear all costs associated with or incurred in the preparation and presentation of its quotation, including, if applicable, costs incurred for interviews or demonstrations.

1.3.8 Bid to be Retained by Norfolk County

Norfolk County will not return the quotation or any accompanying documentation submitted by a Bidder.

1.3.9 No Guarantee of Volume of Work or Exclusivity of Contract

Norfolk County makes no guarantee of the value or volume of work to be assigned to the successful Bidder. The Agreement will not be an exclusive contract for the provision of the described Deliverables. Norfolk County may contract with others for goods and services the same as or similar to the Deliverables or may obtain such goods and services internally.

1.4 Communication after Issuance of RFQ

1.4.1 Bidders to Review RFQ

Bidders shall promptly examine all of the documents comprising this RFQ, and shall report any errors, omissions or ambiguities. Bidders may direct questions or seek additional information by using the Submit a Question button, on or before the Deadline for Questions. All questions submitted by Bidders shall be deemed to be received once it has entered into the Norfolk County Contact's email inbox. No such communications are to be directed to anyone other than the RFQ contact, and the County shall not be responsible for any information provided by or obtained from any source other than the RFQ contact. It is the responsibility of the Bidder to seek clarification from the RFQ on any matter it considers to be unclear. The County shall not be responsible for any misunderstanding on the part of the Bidder concerning this RFQ or its process.

If and wherever in the specifications a brand name, make, name of any manufacturer, trade name or vendor catalogue number is mentioned, it is for the purpose of establishing a grade or quality of material only, unless specified otherwise. Since the Municipality does not wish to rule out other competition and equal brands or makes, APPROVED EQUALS will be considered. If a product other than that specified is bid, it is the vendor's responsibility to name such product within his bid and to prove to the Municipality that said product is equal to or exceeds the specifications and to submit brochures, samples and/or specifications in detail on item/s bid. The Municipality shall be the sole judge concerning the merits of bids submitted.

1.4.2 All New Information to Bidders by Way of Addenda

This RFQ may be amended only by addendum in accordance with this section. If Norfolk County, for any reason, determines that it is necessary to provide additional

information relating to this RFQ, such information will be communicated to all Bidders by addenda. Each addendum forms an integral part of this RFQ and may contain important information, including significant changes to this RFQ. Bidders are responsible for obtaining all addenda issued by Norfolk County.

1.4.3 Post-Deadline Addenda and Extension of Submission Deadline

If Norfolk County determines that it is necessary to issue an addendum after the Deadline for Issuing Addenda, Norfolk County may extend the Submission Deadline for a reasonable period of time.

1.4.4 Verify, Clarify and Supplement

When evaluating quotations, Norfolk County may request further information from the Bidder or third parties in order to verify, clarify or supplement the information provided in the Bidder's quotation. The response received by Norfolk County shall, if accepted by Norfolk County, form an integral part of the Bidder's quotation.

1.5 Notification and Debriefing

1.5.1 Notification to Other Bidders

Once the Agreement is executed by Norfolk County and a Bidder, the other Bidders may be notified in writing and shall be notified by public posting in the same manner that this RFQ was originally posted of the outcome of the procurement process.

1.5.2 Debriefing

Bidders may request a debriefing after receipt of a notification of the outcome of the procurement process. All requests must be in writing to the RFQ Contact and must be made within sixty (60) days of such notification.

1.5.3 Procurement Protest Procedure

If a Bidder wishes to challenge the RFQ process, it should provide written notice to the RFQ Contact. The notice must provide a detailed explanation of the Bidder's concerns with the procurement process or its outcome.

1.6 Conflict of Interest and Prohibited Conduct

1.6.1 Conflict of Interest

For the purposes of this RFQ, the term "Conflict of Interest" includes, but is not limited to, any situation or circumstance where:

a. in relation to the RFQ process, the Bidder has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having, or having access to, confidential information of Norfolk County

in the preparation of its quotation that is not available to other Bidders, (ii) communicating with any person with a view to influencing preferred treatment in the RFQ process (including but not limited to the lobbying of decision makers involved in the RFQ process), or (iii) engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive RFQ process or render that process non-competitive or unfair; or

b. in relation to the performance of its contractual obligations contemplated under a contract for the Deliverables, the Bidder's other commitments, relationships or financial interests (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement, or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

1.6.2 Disqualification for Conflict of Interest

Norfolk County may disqualify a Bidder for any conduct, situation or circumstances, determined by Norfolk County, in its sole and absolute discretion, to constitute a Conflict of Interest as defined above.

1.6.3 Disqualification for Prohibited Conduct

Norfolk County may disqualify a Bidder, rescind a notification of selection or terminate a contract subsequently entered into if Norfolk County determines that the Bidder has engaged in any conduct prohibited by this RFQ.

1.6.4 Prohibited Bidder Communications

Bidders must not engage in any communications that could constitute a Conflict of Interest and should take note of the Conflict of Interest declaration set out in the Submission Form.

1.6.5 Bidder Not to Communicate with Media

Bidders must not at any time directly or indirectly communicate with the media in relation to this RFQ or any agreement entered into pursuant to this RFQ without first obtaining the written permission of the RFQ Contact.

1.6.6 No Lobbying

Bidders must not, in relation to this RFQ or the evaluation and selection process, engage directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the successful Bidder(s).

1.6.7 Illegal or Unethical Conduct

Bidders must not engage in any illegal business practices, including activities such as quotation-rigging, price-fixing, bribery, fraud, coercion or collusion. Bidders must not

engage in any unethical conduct, including lobbying, as described above, or other inappropriate communications; offering gifts to any employees, officers, agents, elected or appointed officials or other representatives of Norfolk County; deceitfulness; submitting quotations containing misrepresentations or other misleading or inaccurate information; or any other conduct that compromises or may be seen to compromise the competitive process provided for in this RFQ.

1.6.8 Past Performance or Past Conduct

Norfolk County may prohibit a supplier from participating in a procurement process based on past performance or based on inappropriate conduct in a prior procurement process, including but not limited to the following:

a. illegal or unethical conduct as described above;
b. the refusal of the supplier to honour submitted pricing or other commitments; or
c. any conduct, situation or circumstance determined by Norfolk County, in its sole and absolute discretion, to have constituted a Conflict of Interest.

1.6.9 Litigation

It is the policy of Norfolk County that a Contract may not be awarded to any Bidder who:

a. Is a party adverse in interest in litigation with the County, or
b. Directly or indirectly, including by common ownership or control or otherwise, is related to a party adverse in interest in litigation with the County, or
c. Intends to use a sub-contractor in respect of this project who is a party adverse in interest in litigation with the County, or, who, directly or indirectly, including by common ownership or control or otherwise, is related to a party adverse in interest in litigation with the County.

For the purposes of this section, the phrase "party adverse in interest in litigation with the County" includes matters in which the Bidder or prospective Bidder or any of the parties named above, have advised the County in writing of their intention to commence litigation, or have commenced or have advised the County of their intention to commence an arbitral proceeding, against the County.

Bids from any Bidder in any of the above circumstances shall be rejected as being non-compliant.

1.7 Confidential Information

1.7.1 Confidential Information of Norfolk County

All information provided by or obtained from Norfolk County in any form in connection with this RFQ either before or after the issuance of this RFQ:

a. is the sole property of Norfolk County and must be treated as confidential;

b. is not to be used for any purpose other than replying to this RFQ and the performance of the Agreement;
c. must not be disclosed without prior written authorization from Norfolk County; and
d. must be returned by the Bidder to Norfolk County immediately upon the request of Norfolk County.

1.7.2 Confidential Information of Bidder

A Bidder should identify any information in its quotation, or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by Norfolk County. The confidentiality of such information will be maintained by Norfolk County, except as otherwise required by law or by order of a court or tribunal. Bidders are advised that their quotations will, as necessary, be disclosed, on a confidential basis, to advisers retained by Norfolk County to advise or assist with the RFQ process, including the evaluation of quotations. If a Bidder has any questions about the collection and use of personal information pursuant to this RFQ, questions are to be submitted to the RFQ Contact.

1.8 Reserved Rights and Limitation of Liability

1.8.1 Reserved Rights of Norfolk County

Norfolk County reserves the right to

a. make public the names of any or all Bidders;
b. make changes, including substantial changes, to this RFQ provided that those changes are issued by way of addendum in the manner set out in this RFQ;
c. request written clarification or the submission of supplementary written information in relation to the clarification request from any Bidder and incorporate a Bidder's response to that request for clarification into the Bidder's quotation;
d. assess a Bidder's quotation on the basis of: (i) a financial analysis determining the actual cost of the quotation when considering factors including quality, service, price and transition costs arising from the replacement of existing goods, services, practices, methodologies and infrastructure (howsoever originally established); and (ii) in addition to any other evaluation criteria or considerations set out in this RFQ, consider any other relevant information that arises during this RFQ process;
e. waive formalities and accept quotations that substantially comply with the requirements of this RFQ;
f. verify with any Bidder or with a third party any information set out in a quotation;
g. check references other than those provided by any Bidder;
h. reject any Bid if the references submitted by the Bidder are deemed unacceptable by the County;
i. disqualify a Bidder, rescind a notice of selection or terminate a contract subsequently entered into if the Bidder has engaged in any conduct that breaches the process rules or otherwise compromises or may be seen to compromise the competitive process;

j. select a Bidder other than the Bidder whose quotation reflects the lowest cost to Norfolk County;
k. cancel this RFQ process at any stage;
l. cancel this RFQ process at any stage and issue a new RFQ for the same or similar deliverables;
m. accept any quotation in whole or in part; or
n. reject any or all quotations;

These reserved rights are in addition to any other express rights or any other rights that may be implied in the circumstances.

1.8.2 Limitation of Liability

By submitting a quotation, each Bidder agrees that

a. neither Norfolk County nor any of it employees, officers, agents, elected or appointed officials, advisors or representatives will be liable, under any circumstances, for any claim arising out of this RFQ process including but not limited to costs of preparation of the quotation, loss of profits, loss of opportunity or for any other claim; and
b. the Bidder waives any right to or claim for any compensation of any kind whatsoever, including claims for costs of preparation of the quotation, loss of profit or loss of opportunity by reason of Norfolk County's decision not to accept the quotation submitted by the Bidder, to enter into an agreement with any other Bidder or to cancel this bidding process, and the Bidder shall be deemed to have agreed to waive such right or claim.

1.9 Force Majeure

Neither party 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 materially 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, emergencies, including public health emergencies**; but shall not include shortages or delays relating to supplies or services. If a party seeks to excuse itself from its obligations under this 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. If the anticipated or actual delay or non-performance exceeds fifteen (15) business days, the other party may immediately terminate the Contract by giving notice of termination and such termination shall be in addition to the other rights and remedies of the terminating party under the Contract, at law or in equity.

1.10 COVID-19

Norfolk County and the Contractor fully intend to adhere to the schedule as specified in this quotation. Notwithstanding any other provisions within this quotation, the Contractor will not be entitled to claim any liabilities resulting from any delay or disruption.

Should circumstances change, based on orders issued by the Medical Officer of Health, the parties are to consult on a mutually agreeable schedule.

1.11 Health and Safety Directives

Norfolk County puts the bidders on express notice that this quotation is being issued during a declared emergency that may continue during the Term of the Agreement arising from this quotation. Norfolk County reserves the right to issue health and safety directives, including but not limiting to halting construction and the provision of services. The Contractor shall follow all health and safety directives so issued by Norfolk County and is also obligated to follow health and safety directives in accordance with Schedule 3 of O. Reg. 82/20. In the event the Contractor fails to follow a health and safety directive, Norfolk County may immediately terminate the agreement and is not liable for any damages including loss of anticipated profit or the cost of labour and materials. Norfolk County is not liable to the Contractor in the event of a delay required by health and safety directives for any damages including loss of anticipated profit or the cost of labour or materials.

1.12 Reference to County Staff and Administrative Units

Any reference to the title or position of a member of County staff in the Agreement shall include any change to the title or position or any successor title or position or any new title or position which assumes the responsibilities of the title or position referenced in the Agreement. Any reference to a County administrative unit shall include any change to the name or any administrative unit which assumes the responsibilities of the administrative unit referenced herein.

1.13 Governing Law and Interpretation

These Terms and Conditions of the RFQ Process

a. are intended to be interpreted broadly and independently (with no particular provision intended to limit scope and other provision);
b. are non-exhaustive and shall not be construed as intending to limit the pre-existing rights of Norfolk County; and
c. are to be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein.