



**ENWIN UTILITIES LTD.**

# **REQUEST FOR TENDERS**

**for GEORGE AVE PARK  
RECONSTRUCTION**

**RFT No. 2020-027**

**Submission Deadline:** September 8, 2020 ON OR BEFORE 2:00:59pm Local Time

**Submission Location:** ENWIN Utilities Ltd.  
Electronically only at <https://www.biddingo.com/enwin>

**RFT Coordinator:** Stephanie Wrixon  
[purchasing@enwin.com](mailto:purchasing@enwin.com)

# 1. INTRODUCTION

## 1.1 INVITATION

- 1.1.1 The Windsor Utilities Commission (“WUC”) owns an integrated water supply system that provides treated potable water to the City of Windsor and the Towns of LaSalle and Tecumseh. ENWIN Utilities Ltd. (“ENWIN”) is the water system operator under contract with the WUC and is acting as the agent for the WUC for this Tender.
- 1.1.2 ENWIN is seeking to solicit submissions from Bidders for the provision of the George Avenue park reconstruction.
- 1.1.3 Each Bidder must submit a Bid electronically to the ENWIN Purchasing Department via the Biddingo website <https://www.biddingo.com/enwin> (the “**Submission Location**”) on or before 2:00:59pm Local Time on September 8, 2020 (the “**Submission Deadline**”). Bidders should contact [info@biddingo.com](mailto:info@biddingo.com) if they have questions about using Biddingo. Due to COVID-19 healthcare guidelines, paper Bids of any kind will not be accepted, and electronic responses will only be accepted if properly submitted through Biddingo.

## 1.2 OVERVIEW OF THE WORK AND SCHEDULE

- 1.2.1 Services include, but are not limited to, construction of a trail, installation of benches, lighting, electrical, grading, seeding, tree planting, pavements, retaining wall, fencing, signs, and culverts complete with associated appurtenances as further described in Appendix “B” (Specifications).
- 1.2.2 Services are to commence by September 25, 2020.
- 1.2.3 The whole of the work will be completed within sixty (60) working days.

## 1.3 RFT TIMELINE

- 1.3.1 Substantial performance of the work must be attained by December 31, 2020. It is ENWIN’s intent to complete the RFT in accordance with the following estimated timeline:
- (a) RFT issue date: August 20, 2020
  - (b) Deadline for Bidder questions (“**Question Deadline**”): seven (7) days before the Submission Deadline.
  - (c) Deadline for delivery of Bids: as specified in paragraph 1.1.3.
  - (d) Start of the construction work under the Contract: September 25, 2020

The estimated timeline is subject to change at ENWIN’s sole discretion.

## 1.4 THE EVALUATION CONTRACT

- 1.4.1 The Bidders and ENWIN acknowledge that it is their intention to create a process contract, sometimes referred to as “Contract A” (the “**Evaluation Contract**”), between ENWIN and each Bidder whose Bid meets the Mandatory Requirements. The Bidders and ENWIN further acknowledge that if an Evaluation Contract is created between ENWIN and one or more Bidders, the terms of the Evaluation Contract are represented by the RFT Documents and include an obligation on the successful Bidder, if any, to sign the Contract.

## 1.5 USING BIDDINGO

- 1.5.1 Bidders must use the ENWIN Biddingo procurement website to access the RFT Documents. Bids must be submitted through Biddingo.

## 1.6 BIDDERS' EXPENSES

- 1.6.1 ENWIN shall not be responsible for and Bidders shall bear all costs and expenses incurred by them in any way related to any aspect of their participation or involvement in this RFT.

## 2. DEFINITIONS

Capitalized terms used in the RFT Documents and not otherwise defined shall have the meanings indicated in this Article. All references in the Instructions to Bidders to "Article", "Section", "paragraph" or "Appendix" shall, unless specifically indicated otherwise, refer to an Article, Section or paragraph of, or Appendix to, these Instructions to Bidders.

- 2.1.1 **"All-Inclusive"** means including everything and, for the purposes of a price includes, without limitation, all costs, charges, fees and Disbursements and all other compensation and consideration whatsoever.
- 2.1.2 **"Bid"** means, collectively, a Bidder's original completed and signed Bid Form, and evidence of the Contract Security submitted by a Bidder in accordance with the RFT Documents.
- 2.1.3 **"Bidder"** means a Party that participates in this RFT by submitting a Bid.
- 2.1.4 **"Bidding"** has the meaning assigned to such term in paragraph 3.1.1.
- 2.1.5 **"Bid Form"** means Appendix "A" – Bid Form and any other schedules contained therein (e.g. Appendix "A-1" Detailed Price Schedule).
- 2.1.6 **"Conflict of Interest"** has the meaning assigned to such term in paragraph 13.2.1.
- 2.1.7 **"Contract"** means the written agreement to be signed between WUC and the successful Bidder in the form of the Construction Agreement attached at Appendix "C".
- 2.1.8 **"Contract Security"** means the contract security to be delivered as part of the Bid, in the amount and form specified in Section 7.3.
- 2.1.9 **"Disbursements"** means those costs, expenses and disbursements necessary for, as well as incidental to, the provision of services pursuant to, or required by the contract which include, but are not limited to, software rights and licenses and other intellectual property rights, plans, sketches, drawings, graphic representations, license fees, levies, permits, and approvals, mileage, accommodations, transportation and fuel charges, freight charges, tools and equipment, materials, telephone and other communications device charges (including long distance charges), postal and courier charges, all printing, binding, photocopying, paper document reproduction, profit and overhead costs, labour, costs with subcontractors and other related expenses and all other things and incidentals necessary for completing the services, but excluding HST. All anticipated and foreseeable disbursements are to be accounted for in the all-inclusive rates submitted in the Bid Submission. No additional disbursements will be paid by ENWIN, except as otherwise specified in the contract or as otherwise expressly agreed to in advance in writing by ENWIN.
- 2.1.10 **"ENWIN"** means ENWIN Utilities Ltd. and includes any of its designated employees, representatives or agents who are engaged in connection with this RFT.
- 2.1.11 **"Evaluation Contract"** means the contract described in paragraph 1.4.1 for the evaluation of Bids and the award of the Contract(s), if any.
- 2.1.12 **"Irrevocability Period"** means the period of 45 days starting from the day after the Submission Deadline.
- 2.1.13 **"Local Time"** means the time recorded by ENWIN at the Submission Location.

- 2.1.14 “**Mandatory Requirements**” has the meaning assigned to such term in paragraph 9.2.1.
- 2.1.15 “**Purchasing Policy**” means ENWIN Group of Companies Purchasing Policy EWU-B001.03 in effect on the Submission Deadline and as it may be amended from time to time.
- 2.1.16 “**Question Deadline**” is the date identified as such in paragraph 1.3.1(b) and is the last date on which Bidders can submit questions about the RFT.
- 2.1.17 “**RFT**” means the procurement process described in the RFT Documents.
- 2.1.18 “**RFT Coordinator**” is Stephanie Wrixon, “purchasing@enwin.com”.
- 2.1.19 “**RFT Documents**” means the documents listed in paragraph 3.2.1.
- 2.1.20 “**Site(s)**” means the location(s) of the work as described in Appendix “B” of the RFT Documents.
- 2.1.21 “**Submission Deadline**” is the date and time identified as such in paragraph 1.1.3.
- 2.1.22 “**Submission Location**” is the location identified as such in paragraph 1.1.3.
- 2.1.23 “**Total Tender Price**” means the All-Inclusive price based on estimated quantities provided in the Appendix “A” Bid Form as offered by the Bidder for the services contemplated for this tender.
- 2.1.24 “**WUC**” means Windsor Utilities Commission and includes any of its designated employees, officials or agents who are engaged to represent WUC in its capacity as (“Owner”) of the project and also includes an employee designated to exercise discretion on behalf of WUC.

### **3. RFT DOCUMENTS**

#### **3.1 ACCESS TO RFT DOCUMENTS**

- 3.1.1 The RFT Documents will only be made available to Bidders electronically at “<https://www.biddingo.com/enwin>” (“**Biddingo**”). Bidders should contact “info@biddingo.com” if they have questions about using Biddingo.
- 3.1.2 All RFT Documents, addenda and all other relevant notices, information and communications relating to the RFT will be posted to Biddingo. Each Bidder is solely responsible to ensure that it:
- (a) registers/signs up and obtains access to Biddingo;
  - (b) has the appropriate software to access and download the contents from Biddingo; and
  - (c) visits and reviews the Biddingo website as frequently as is necessary to ensure it has the most current documents, information and addenda.
- 3.1.3 If there is a conflict or inconsistency between an electronic version of any document posted on Biddingo and any other version of the same document, whether in electronic or paper form, the latest electronic version posted on Biddingo shall govern.

#### **3.2 RFT DOCUMENTS**

- 3.2.1 Bidders should ensure they have all of the documents listed below (collectively, the “**RFT Documents**”), which will be made available via Biddingo only:
- (a) Instructions to Bidders (this document).
  - (b) Appendix A – Bid Form.
    - (i) Appendix A-1 – Detailed Price Schedule.
  - (c) Appendix B – Specifications.

- (d) Appendix C – Construction Agreement.
- (e) Appendix D – Health and Safety Acknowledgement Form.
- (f) Appendix E – Drawings.
- (g) Addenda which may be issued.

3.2.2 Bidders should inform the RFT Coordinator immediately if any documents are missing or incomplete and/or upon finding any discrepancies or omissions in the RFT Documents.

## **4. INFORMATION AND BIDDERS' DUE DILIGENCE**

4.1.1 Nothing in this RFT or in the RFT Documents is intended to relieve Bidders from undertaking their own research, investigations or other due diligence, or forming their own opinions and conclusions with respect to the work, the RFT Documents, the Site(s), the Contract, and all other matters related to this RFT. ENWIN (a) does not accept or assume any responsibility for any interpretations or conclusions that Bidders may make or draw from the RFT Documents, (b) does not represent, warrant or guarantee that any information provided or made available to the Bidders is complete, accurate, comprehensive or exhaustive, and (c) assumes no responsibility for the completeness or accuracy of anything provided or made available to the Bidders during this RFT.

4.1.2 Each Bidder is solely responsible, at its own cost and expense, to perform its own independent research and due diligence, including any investigations considered necessary by the Bidder, to satisfy itself as to all existing conditions, circumstances and limitations affecting the Site(s), the RFT Documents, the Contract, and all other matters related to this RFT. The Bidders' obligations set out in this paragraph apply irrespective of the information contained in the RFT Documents or provided or made available to the Bidders. No allowances will be made for additional costs and no claims whatsoever will be considered in the event actual conditions differ from those anticipated by the Bidders and/or indicated in the RFT Documents.

## **5. COMMUNICATIONS, QUESTIONS AND ADDENDA**

### **5.1 COMMUNICATIONS**

5.1.1 Except as provided in the RFT Documents, Bidders are not to communicate with or contact any of ENWIN's consultants, employees, agents or other representatives, including any member of ENWIN's board of directors, regarding this RFT. A Bidder's failure to comply with this paragraph may result in the disqualification of the Bidder and the rejection of its Bid.

5.1.2 All questions and other communications permitted by this RFT are to be in writing and sent by e-mail only to the RFT Coordinator at "Purchasing@enwin.com" and are to state "**RFT for George Ave Park Reconstruction, 2020-027**".

### **5.2 BIDDERS' QUESTIONS**

5.2.1 Bidders are encouraged to ask questions or request clarification with respect to any part of this RFT or any RFT Documents which do not appear to be clear. Bidders should submit questions to the RFT Coordinator at "Purchasing@enwin.com" well before the Question Deadline so as to allow sufficient time for ENWIN to consider a response including whether an addendum should be issued.

5.2.2 Questions received by the Question Deadline will be reviewed and if ENWIN believes that a response is warranted it will include the question and its answer in an addendum. Questions

submitted after the Question Deadline may not be considered and may not be answered, although ENWIN reserves the discretion, but has no obligation, to consider and respond to questions submitted after the Question Deadline. In responding to questions ENWIN may answer similar questions from different Bidders only once, may edit or rephrase the questions for purposes of clarity, and may ignore questions which, in ENWIN's opinion, do not require a response.

5.2.3 ENWIN will not respond to questions sent through Biddingo.

### **5.3 ADDENDA**

5.3.1 This RFT and the RFT Documents may be amended only by written addendum. Answers, responses, clarifications, instructions or any other information provided by any person, by any means and in whatever context or setting are not binding on ENWIN and are not to be relied upon by any Bidder, unless and until they are issued as an addendum.

5.3.2 Addenda will be posted on Biddingo only and will not be sent or otherwise distributed to the Bidders. Bidders are solely responsible to regularly visit and check Biddingo for addenda, and ENWIN will not be responsible if any addendum is not obtained by a Bidder. Bidders will be required to confirm their Bid incorporates all addenda issued by so indicating in the space provided in the Bid Form.

## **6. SITE EXAMINATION**

6.1.1 Bidders are responsible to conduct any site examinations deemed necessary by the Bidder for the proper preparation of a Bid. Nothing in this RFT shall relieve the Bidders from undertaking all investigation and clarification on all matters related to this RFT. No allowance will be made for additional costs nor will any claim be considered in connection with conditions or circumstances that could have been reasonably ascertained by the Bidders had reasonable efforts been made prior to the Submission Deadline.

## **7. INSTRUCTIONS FOR COMPLETING THE BID**

### **7.1 BID COMPLETION**

7.1.1 Bidders shall complete their Bids by:

- (a) completing the Bid Form in accordance with Section 7.2; and
- (b) attaching evidence of Contract Security described in Section 7.3.

### **7.2 INSTRUCTIONS FOR COMPLETING THE BID FORM**

7.2.1 Bidders shall complete the Bid Form and any other attachments in permanent medium and in legible format. The Bid Form must be **signed** by a duly authorized signing representative of the Bidder. Where the Bidder is a Joint Venture, each member of the Joint Venture must execute the Bid Form and, for each member which is a corporation, the Bid Form must be signed by a duly authorized signing representative of the corporation. Submitting an unsigned Bid Form will result in the Bid being declared non-compliant.

7.2.2 Submission of a Bid Form which is illegible or incomplete, or which contains modifications, erasures, changes, exceptions, additions, conditions, qualifications or uninitialled amendments, may result in the Bid being declared non-compliant. Bids which modify or change the Contract, or which contain exceptions, additions, conditions or qualifications to the Contract, may be declared non-compliant.

7.2.3 Appendix A-1 Detailed Price Schedule, which is to be submitted with the Bid Form, lists several items that are provisional (the “**Provisional Items**”) and ENWIN reserves the right to authorize all, part, or none of the work listed under these items, at any time. If any Provisional Item, or part thereof, is deleted from the Contract, the Contractor will have no claim against ENWIN for so doing and Bidders must take this requirement into consideration when determining its unit prices and Estimated Total Price.

### **7.3 CONTRACT SECURITY**

7.3.1 Attach to the Bid Form evidence that if awarded the Contract the Bidder will provide the performance bond required by the Contract. Such evidence shall be in the form of one of the following:

- (a) An agreement to bond or surety’s consent issued by a surety licensed to conduct surety and insurance business in Canada or in Ontario for a performance bond in the Form 32 Performance Bond under section 85.1 of the *Construction Act*, in the amount of fifty percent (50%) of the Total Tender Price.
- (b) The agreement to bond / surety’s consent shall remain valid for at least the duration of the Irrevocability Period.

7.3.2 Attach to the Bid Form evidence that if awarded the Contract the Bidder will provide the labour & material payment bond required by the Contract. Such evidence shall be in the form of one of the following:

- (a) An agreement to bond or surety’s consent issued by a surety licensed to conduct surety and insurance business in Canada or in Ontario for a labour & material payment bond in the Form 31 Labour and Material Payment Bond under section 85.1 of the *Construction Act*, in the amount of fifty percent (50%) of the Total Tender Price.
- (b) The agreement to bond / surety’s consent shall remain valid for at least the duration of the Irrevocability Period.

7.3.3 A Bid that does not include the specified evidence of Contract Security shall be declared non-compliant.

7.3.4 Bidders shall include the costs of the Contract Security in their Total Tender Prices.

## **8. INSTRUCTIONS FOR DELIVERING BIDS**

### **8.1 BID DELIVERY**

8.1.1 Bids must be delivered electronically via <https://www.biddingo.com/enwin>.

8.1.2 Bidders must submit:

- (a) original completed and signed Bid Form; and
- (b) evidence of Contract Security.

Bidders must ensure the above is clearly titled with the Bidder’s name and address and identifies the RFT and the RFT number.

8.1.3 The Bid envelope must be submitted to the Submission Location ON OR BEFORE the Submission Deadline. Bids which are submitted by fax, e-mail, courier, in-person delivery, or any means other than as set out in this Section will not be considered.

8.1.4 Late Bids will not be considered and will be returned unopened. If there is a dispute over the time of delivery of a Bid, the time of receipt recorded by ENWIN at the Submission Location shall govern. Bidders are solely responsible for the method and timing of delivery of their Bids to the Submission Location and should ensure they take into account potential delays.

## **8.2 AMENDING BIDS AFTER DELIVERY**

8.2.1 Bids may be amended before the Submission Deadline by submitting a written amendment or by making corrections, provided corrections are initialed by an authorized representative of the Bidder. Where a Bidder submits more than one Bid by the Submission Deadline, the last Bid received by the Submission Deadline shall supersede all previous Bids submitted by that Bidder.

## **8.3 IRREVOCABILITY**

8.3.1 Each Bid including, for greater certainty, any amendments negotiated pursuant to the terms of this RFT, shall be irrevocable and shall remain open for consideration by ENWIN for the duration of the Irrevocability Period.

# **9. OPENING OF BIDS AND REVIEW FOR MANDATORY REQUIREMENTS**

## **9.1 OPENING OF BIDS**

9.1.1 Only Bids received from Bidders at the Submission Location on or before the Submission Deadline will be opened. All other submissions will be returned unopened.

9.1.2 Bids will be open in private.

## **9.2 REVIEW FOR MANDATORY REQUIREMENTS**

9.2.1 Subject to paragraphs 9.2.2 and 9.2.3, only Bids that pass all of the mandatory requirements listed below (collectively the “**Mandatory Requirements**”) on a “pass/fail” basis will be evaluated:

- (a) the Bid must include an original Bid Form signed in accordance with paragraph 7.2.11;
  - (i) electronically attached to the Bid Form must be the detailed Price Schedule (Appendix A-1 of the RFT Documents);
- (b) the Bid must include evidence of ability to obtain the Contract Security;
- (c) the Bid must substantially comply with the other requirements of the RFT Documents. In this respect, ENWIN reserves the right, in its sole and unfettered discretion, to waive minor errors and matters of non-compliance contained in a Bid.

9.2.2 If only one Bid passes all Mandatory Requirements ENWIN, in its sole discretion, may:

- (a) evaluate such Bid but without any obligation to award a Contract;
- (b) enter into negotiations towards a Contract with the Bidder that submitted such Bid;
- (c) take any action in accordance with paragraph 12.2.1.

9.2.3 If all Bids fail at least one of the Mandatory Requirements ENWIN, in its sole discretion, may:



- (a) evaluate one or more Bids selected by ENWIN, in its sole discretion, and proceed with the RFT and treat such Bids as having passed all of the Mandatory Requirements;
- (b) enter into negotiations toward a Contract with any Bidder;
- (c) take any action in accordance with paragraph 12.2.1.

## **10. EVALUATION OF BIDS**

### **10.1 BASIS OF EVALUATION AND ENWIN'S BUDGETS**

- 10.1.1 Bids shall be evaluated in accordance with the Purchasing Policy and irregularities shall be addressed in accordance with Schedule B of the Purchasing Policy.
- 10.1.2 Subject to all of its rights herein, ENWIN shall evaluate the Bids based on Total Tendered Price.
- 10.1.3 In the event that the Bids exceed the available budget, ENWIN may at its option commence negotiations with the lowest compliant Bidder in an attempt to achieve budgetary compliance. In so doing, ENWIN may negotiate, amend, reduce or change any aspect of the scope of work, without limitation and without regard to the value of the change.

## **11. AWARD OF CONTRACT(S), SIGNING CONTRACT(S), AND DOCUMENTS TO BE DELIVERED**

- 11.1.1 Notwithstanding anything else contained in the RFT Documents, ENWIN's award and execution of any Contract is conditional upon and is subject to the approval of the ENWIN board of directors, in its sole and unfettered discretion. Bidders shall have no claims whatsoever against ENWIN or any member of the board of directors arising out of the latter's exercise of its authority, and/or in the event ENWIN, in its sole and unfettered discretion, and for any or no reason, decides not to award or sign any Contract.
- 11.1.2 If ENWIN decides to award a Contract it will issue written notice to the successful Bidder.
- 11.1.3 Within ten (10) business days of receiving the written notice referred to in paragraph 11.1.2 the successful Bidder shall deliver to ENWIN:
  - (a) the performance bond and the labour and material payment bond described in the Contract;
  - (b) certified true copies of the insurance policies required by the Contract or certificates of insurance, at ENWIN's option;
  - (c) the Bidder's current WSIB clearance certificate; and
  - (d) a copy of the notice of project issued by the Ministry of Labour naming the Bidder as the "constructor" under the Contract.
- 11.1.4 Within ten (10) business days of receiving the Contract for signing, the successful Bidder shall sign the Contract and shall deliver the signed original to ENWIN.
- 11.1.5 A Bidder's failure to comply with paragraph 11.1.3 or paragraph 11.1.4 will constitute a breach of the Evaluation Contract and may result in the cancellation of Contract award to such Bidder.

## **11.2 CONTRACTOR COMPLIANCE**

11.2.1 Within ten (10) business days of receiving the written notice referred to in paragraph 11.1.2, the successful Bidder shall register with Contractor Compliance ([www.contractorcompliance.ca](http://www.contractorcompliance.ca)) to assist with ENWIN's contractor management program. Contractor Compliance will be used to monitor Occupational Health & Safety and regulatory compliance requirements on behalf of ENWIN. Registration fees shall be at the expense of the successful bidder.

## **12. ENWIN'S RIGHTS**

### **12.1 GENERAL**

12.1.1 In addition to any other express rights contained in the RFT Documents or any other rights which may be implied in the circumstances, ENWIN reserves the right to exercise any or all or a combination of the rights described in this Article. ENWIN shall not be liable for any costs, expenses or damages incurred or claimed by a Bidder resulting from ENWIN's exercise of any of its rights.

12.1.2 A Bidder's delivery or ENWIN's evaluation of any Bid, even where only one Bid is received before the Submission Deadline, will not obligate ENWIN to accept any Bid, award a Contract, or proceed further with this RFT.

### **12.2 ENWIN'S RIGHTS**

12.2.1 ENWIN may, in its sole discretion, and for any or no reason:

- (a) reject one or more or all Bids;
- (b) reject the whole or any part of any Bid;
- (c) accept the whole or any part of any Bid;
- (d) if there is only one Bid that passed all Mandatory Requirements, elect to accept or reject all or any part of such Bid;
- (e) cancel this RFT at any time before signing a Contract;
- (f) cancel this RFT at any time before signing a Contract and issue a new procurement process for the work contemplated by this RFT with the same or different participants.

12.2.2 ENWIN reserves the right to:

- (a) waive minor errors and matters of non-compliance contained in a Bid;
- (b) disqualify any Bidder whose Bid contains misrepresentations or any other inaccurate or misleading information relating to matters which ENWIN, in its sole discretion, considers material.

## **13. GENERAL**

### **13.1 PROHIBITION ON LOBBYING AND COLLUSION**

13.1.1 Bidders and their respective directors, officers, employees, consultants, agents, advisors and other representatives are prohibited from engaging in conduct which is or could reasonably be considered as any form of political or other lobbying, or as an attempt to influence the outcome of this RFT. Without limiting the generality of the foregoing, and except as provided in this RFT, no such person shall contact, communicate with or attempt to contact or communicate with,

directly or indirectly and in any manner whatsoever, any staff, personnel, member or representative of ENWIN, or any of ENWIN's consultants, in connection with this RFT.

- 13.1.2 Bidders and their respective directors, officers, employees, consultants, agents, advisors and other representatives are prohibited from communicating with or attempting to contact or communicate with, directly or indirectly and in any manner whatsoever, any information whatsoever regarding the preparation of a Bid to any other Bidder.
- 13.1.3 Failure of a Bidder to comply with this Section may result in the disqualification of the Bidder and the rejection of its Bid.

## **13.2 CONFLICT OF INTEREST**

13.2.1 Bidders are required to declare in their Bid Form that they are not aware of any perceived, potential or actual Conflict of Interest. For the purposes of this RFT, "**Conflict of Interest**" includes:

- (a) any situation or circumstances where, in relation to this RFT and/or any Contract, the Bidder's other commitments, relationships or financial interests could or could be perceived to exert an improper influence over ENWIN's objective, unbiased and impartial exercise of independent judgment;
- (b) any situation or circumstances where any person employed by ENWIN in any capacity:
  - (i) has a direct or indirect financial or other interest in any Bidder;
  - (ii) is an employee or a consultant to or under contract to any Bidder;
  - (iii) is negotiating or has an arrangement concerning future employment or contracting with any Bidder;
  - (iv) has an ownership interest in or is an officer or director or partner of any Bidder.

13.2.2 If a Bidder discovers, at any time, any perceived, potential or actual Conflict of Interest, the Bidder shall promptly send a written statement to the RFT Coordinator describing the perceived, potential or actual Conflict of Interest, along with a written proposal that, if implemented, would address the identified perceived, potential or actual Conflict of Interest. ENWIN will review the Bidder's written statement and proposal and, without limiting the generality of Article 12, ENWIN may, in its sole discretion:

- (a) disqualify the Bidder from participating in this RFT and reject its Bid; or
- (b) waive any and all perceived, potential or actual Conflict of Interest upon such terms and conditions as ENWIN, in its sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately managed, mitigated and minimized.

13.2.3 The onus is on each Bidder to conduct any and all investigations necessary to confirm and satisfy itself that there is no perceived, potential or actual Conflict of Interest and that the declaration made in its Bid Form is true and correct. If ENWIN determines that a Bidder's declaration is not materially true and correct, or if a Bidder otherwise fails to comply with this Section, ENWIN may disqualify the Bidder and reject its Bid.

## **13.3 CONFIDENTIALITY, DISCLOSURE, AND MFIPPA**

13.3.1 All information provided by or obtained from ENWIN in connection with this RFT, the Site(s) and/or the Contract is the sole property of ENWIN and must be treated as confidential. Such

information is not to be used for any purpose other than responding to this RFT and, upon conclusion of this RFT, if requested by ENWIN, Bidders shall return all such information.

- 13.3.2 Bidders acknowledge that the contents of their Bids will be disclosed to ENWIN personnel, consultants and advisors and to ENWIN's board of directors. ENWIN will use reasonable efforts to protect sensitive and confidential information provided by the Bidders, however, ENWIN shall not be liable in any way whatsoever if such information, or any part of it, is disclosed, even if ENWIN, its board of directors, or any other person associated with ENWIN may have been negligent with respect to such disclosure. By delivering a Bid each Bidder agrees to such disclosure and releases the RFT Coordinator, the ENWIN board of directors, and ENWIN from any liability for the same.
- 13.3.3 Information provided in the Bids may be presented at public meetings and may be disclosed to the public. In addition, ENWIN may be required to disclose parts or all of the Bids pursuant to applicable law including the Municipal Freedom of Information and Protection of Privacy Act (Ontario). Subject to the provisions of such applicable law, ENWIN will use reasonable efforts to safeguard the confidentiality of any information identified by a Bidder as confidential, however, ENWIN shall not be liable in any way whatsoever if such information is disclosed pursuant to an order, decision or obligation under such applicable law. By delivering a Bid each Bidder agrees to such disclosure and releases the RFT Coordinator, the ENWIN board of directors and ENWIN from any liability for the same.

#### **13.4 PUBLIC STATEMENTS**

- 13.4.1 Bidders shall not publish, issue, advertise, distribute or make any statements, postings, blogs or news releases, electronic or otherwise, concerning their or any other Bid, this RFT, the evaluation of Bids, or the award of the Contract(s), without ENWIN's prior express written consent. A Bidder's failure to comply with this paragraph may result in the disqualification of the Bidder and the rejection of its Bid.

#### **13.5 BIDDER COSTS**

- 13.5.1 Bidders shall bear all costs and expenses in any way related to the preparation, submission or progress of this RFT, including but not limited to the gathering of information, attending or participating in any interviews or site meetings, the preparation of the Bid or responding to any questions or clarifications or requests for additional information made by ENWIN.

#### **13.6 LIMIT OF LIABILITY**

- 13.6.1 ENWIN's aggregate liability and the aggregate amount of damages recoverable against ENWIN by any person for any and all claims relating to or arising from this RFT or a person's participation in this RFT, including:
- (a) claims arising from negligence, wilful misconduct or other conduct; and/or
  - (b) claims arising from a breach of any contract or contractual or other relationship or obligation that may arise as a result of that person's participation in this RFT and/or delivery of a Bid; and/or
  - (c) claims arising from a breach of the Evaluation Contract,
- shall be limited to the sum of \$5,000.00.

## **13.7 DISPUTES**

13.7.1 If a dispute arises in connection with this RFT including, without limitation, a dispute as to whether a Bid was delivered on time, the parties to the dispute agree:

- (a) to use their best efforts to resolve the dispute through amicable and good faith negotiations for a period of at least ten (10) days, having such written and oral communications and meetings as appropriate;
- (b) if the dispute is not resolved through negotiations, ENWIN, in its unqualified subjective discretion, may refer the dispute to confidential final binding arbitration before a single arbitrator, selected by ENWIN, to be held at Windsor, Ontario pursuant to the *Arbitration Act, 1991* (Ontario), as amended. If ENWIN refers the dispute to arbitration, each Bidder agrees that it is bound to arbitrate such dispute. Unless ENWIN refers such dispute to arbitration, there shall be no arbitration of such dispute.

13.7.2 ENWIN may give notice of a dispute to one or more Bidders, each of whom shall be a party to and shall be entitled to participate in the negotiation and/or arbitration, as the case may be and, in the case of arbitration, each of whom shall be bound by the arbitrator's award, whether or not they participated in the arbitration.

13.7.3 If ENWIN refers a dispute to arbitration, the parties to the arbitration shall exchange brief statements of their respective positions on the dispute, together with the relevant documents, and shall submit to an arbitration hearing which shall last no longer than two (2) days, subject to the discretion of the arbitrator to increase such time. The parties further agree that there shall be no appeal from the arbitrator's award. The costs of the arbitrator and the venue shall be shared equally among the parties to the arbitration.

## **13.8 APPLICABLE LAW**

13.8.1 This RFT and any bidding contract which may arise shall be construed in accordance with and be governed by the laws of the Province of Ontario and each of the Bidders attorns to the exclusive jurisdiction of the courts of Ontario.

**END OF INSTRUCTIONS TO BIDDERS**