



REQUEST FOR TENDER  
(RFT)  
TERMS AND CONDITIONS

RFT #2022-06-239

Indian Creek Public School – Renovation – Phase 3

## 1. RFT PROCESS

### 1.1. Introduction

- .1 This RFT is an invitation by the Lambton Kent District School Board (LKDSB) to pre-qualified, General Contractors to submit bids for the provision of all labour, materials, equipment and supervision required to carry out the renovations and window replacements at Sarnia Education Centre (SEC) as outlined in this RFT.
- .2 Invitation to submit a Bid, including participation in any pre-qualification, request for information or other similar process or exchange of information prior to the RFT, does not imply that a Proponent is automatically prequalified to meet the requirements of the RFT or that the factors which were examined during such process of exchange may not be re-examined or re-evaluated by the LKDSB during the consideration and selection process for this RFT. It will still be necessary for the Proponent to demonstrate its qualifications through the RFT process.
- .3 The Successful Proponent shall be required to execute the Contract with the LKDSB for the provision of the Work. Proponents should review the terms and conditions set out in Section 1.3.1 to understand the Contract being entered into with the LKDSB.

### 1.2. Procurement Contact

- .1 The contact Person at the LKDSB for all matters related to this RFT process is set out below:

Name	Olivia Jans
Title	Buyer
- .2 All communications relating to this RFT must be submitted to the Procurement Contact using the Bidding System found at <https://lkdsb.bidsandtenders.ca> and only communication received in this manner will be considered in the RFT process.
- .3 All permitted communications with the Procurement Contact will be deemed as having been received by the Procurement Contact on the dates and times indicated by the Bidding System.

### 1.3. RFT Documents

- .1 This RFT is comprised of these RFT Terms and Conditions, and the documents listed below, which along with the Selected Proponent's Bid, will form the basis of the Contract with the Selected Proponent:
  - Architectural Specifications
  - Project Drawings
  - CCDC 2 Stipulated Price Contract 2008
  - CCDC 41 Insurance Requirements
  - LKDSB Supplementary Contract Terms and Conditions
  - General Conditions for Contractors/Sub-Contractors
  - Contract Management Supplier Occurrence Report (SOR)
  - Requirements of Consultants/Contractors for the Purposes of IESO Incentives
  - COVID 19 Jobsite Protocol
  - COVID-19 Admin Procedure
  - Addenda (as may be issued during the RFT Process)
- .2 Prior to submitting a Bid, Proponents shall examine all components of the RFT (including all reference documents, appendices, forms and Addenda) and, in accordance with Section 1.2, will promptly notify the Procurement Contact of any perceived errors, omission, conflicts, ambiguities or discrepancies in the RFT.
- .3 For clarity, no prequalification documents issued by the LKDSB or prequalification submissions delivered by the Proponents to the LKDSB shall form a part of the RFT or the Contract.

- .4 It shall be the responsibility of the Proponent to acquire, from online or other sources or in person from the Procurement Contract, as specified in the RFT, any document that is referenced or mentioned in this RFT which is not included herein.
- .5 The failure of any Proponent to acquire, receive or examine any document, form, Addendum, or policy shall not relieve the Proponent of any obligation with respect to its Bid or the Contract. The LKDSB is not responsible for any misunderstanding on the part of the Proponents concerning this RFT or its processes.

1.4. RFT Timetable

- .1 The LKDSB’s proposed schedule for each step in the RFT process is set out below:

Event	Date/Time
RFT Issue Date	Open Date within the Bidding System
Mandatory Pre-Bid Meetings	February 3, 2022 3:30 – 4:30 PM
Deadline for Questions	February 15, 2022
Submission Deadline	Close Date within the Bidding System
Anticipated Award Date	February 2022
Project Start Date	July 1, 2022
Substantial Completion date	August 26, 2022
Request for Debrief	60 days after Award
Bid Validity Period	90 days after Submission Deadline

- .2 The LKDSB reserves the right, in the LKDSB’s sole and absolute discretion, to at any time:
  - Revise the RFT schedule, to accelerate, eliminate or postpone any of the dates or times set out in the RFT, including the Submission Deadline;
  - To add to, delete or re-order any of the milestones set out in this RFT, at any time; or
  - Modify the RFT process.
- .3 In the event of an inconsistency or a conflict between the Submission Deadline as displayed in the Bidding System, the Submission Deadline as indicated in the RFT Terms and Conditions, Addendum, or any other document related to the RFT, the Submission Deadline as displayed in the Bidding System shall take precedence.

1.5. Responding to the RFT

- .1 The RFT is available only through the LKDSB’s online procurement system supplied by Bids and Tenders (“Bidding System”). For further information about the Bidding System, visit the Bidding System website at: [lkdsb.bidsandtenders.ca](http://lkdsb.bidsandtenders.ca).
- .2 Proponents that intend to respond to the RFT must:
  - a. Ensure that they have the necessary hardware and software to access the RFT through the Bidding System.
  - b. Check the Bidding System from time to time for the addition, deletion or amendment of any documents related to the RFT, Addenda and the posting of responses to Questions.
  - c. Keep themselves informed of and take into account the most current version of the RFT and other LKDSB materials available on the Bidding System.
  - d. Monitor their spam or junk filters to ensure they do not miss automatically generated messages sent by the Bidding System that relate to this RFT.
- .3 If a Proponent experiences any difficulties with the Bidding System during the RFT process, the Proponent shall notify [support@bidsandtenders.ca](mailto:support@bidsandtenders.ca) and the Procurement Contact immediately.

- .4 Each Proponent is solely responsible for accessing the RFT through the Bidding System in sufficient time prior to the Submission Deadline to enable the Proponent to submit a Bid.

#### 1.6. Prohibited Communications

- .1 Proponents shall not, and shall cause their representatives not to discuss, disclose or communicate, directly or indirectly, any details pertaining to or in connection with their Bid or this RFT to:
  - Any employee or agent of the LKDSB (other than the Procurement Contact)
  - Any member of the LKDSB's governing body (such as Members of the Board of Trustees); and
  - Any elected official of any level of government, including any advisor to any elected official.
  - Any other Proponent
- .2 Other than the Procurement Contact, no LKDSB employee, agent, elected or appointed official, is authorized to speak for the LKDSB with respect to this RFT. Any Proponent who uses or relies on any representation, information, clarification, correspondence or other communication from any other LKDSB representative does so entirely at the Proponents own risk and the LKDSB shall not be bound by such representation, information, clarification, correspondence or other communication.
- .3 Without limiting any other provisions of Section 1.5 (Responding to the RFT) and this Section 1.6 (Prohibited Communications), any attempt by a Proponent to bypass the RFT process may be grounds for rejection of the Proponent's Bid.

#### 1.7. Mandatory Site Meeting

- .1 Information regarding the mandatory site meeting is specified within the RFT documents in the Bidding System.

#### 1.8. Questions

- .1 Proponents finding errors, omissions, conflicts, ambiguities or discrepancies in the RFT or having questions, comments or concerns regarding this RFT, its process and related matters ("Questions") may submit such Questions to the Procurement Contact using the internal messaging system within the Bidding System.
- .2 LKDSB will make reasonable efforts to respond to Questions received by the deadline for Questions set out in the RFT timetable in Section 1.4 (RFT Timetable). However, the LKDSB shall have no obligation to respond to any or all Questions, and the LKDSB's determination as to whether or not it will respond to any Question shall be in the LKDSB's sole and absolute discretion. The onus is on each Proponent to confirm the LKDSB has received all correspondence from the Proponent.
- .3 Although it is the LKDSB's practice to make available to all Questions received as well as responses to such Questions, where a Proponent's question is identified as commercially confidential in nature and where, the LKDSB in its sole and absolute discretion, deems the Question or response to be commercially confidential, the LKDSB may provide a response only to that Proponent.
- .4 The LKDSB reserves the right to edit Questions for clarity and applicability to all Proponents generally.
- .5 Pursuant to Section 1.9 (Addenda), responses to Questions prepared and circulated by the LKDSB are not RFT documents and do not amend the RFT, unless such responses form part of an Addendum.

#### 1.9. Addenda

- .1 The RFT may only be amended by Addendum, in accordance with this Section 1.9 (Addenda). If deemed necessary by the LKDSB and prior to the Submission Deadline, the LKDSB may at any time

or times modify the RFT in whole or in part through the issuance of an Addenda. Each Addendum shall form an integral part of this RFT.

- .2 All Addenda will be posted through the Bidding System. Although the Bidding System may send notices to registered Proponents when Addenda are posted, the LKDSB is not responsible for any failure of such notice system or for notices not received by the Proponents.
- .3 Proponents must check the Bidding System frequently to inform themselves of any posted Addendum. Proponents acknowledge that addenda issued after the Proponent has submitted their Bid will require the Proponent to resubmit the Bid to acknowledge the addenda. Proponents shall be wholly responsible for checking and reviewing any posted Addenda and ensuring the completeness of the RFT (as amended) and their Bids (as impacted by such Addenda). The LKDSB is not responsible for any incomplete or incorrect Bids resulting from the issuance of an Addendum or a Proponent failing to update its Bid in response to an Addendum.
- .4 The LKDSB will make reasonable efforts to issue the final Addendum (if any) in a sufficient time prior to the Submission Deadline to allow Proponents to submit their Bids. If any Addendum requires substantial amendments to the RFT, the LKDSB may in its sole and absolute discretion, extend the Submission Deadline.
- .5 Other than documents issued as part of the RFT (including Addenda), the LKDSB shall not be responsible for any explanations, instructions, or interpretations even if provided by its actual or purported employees, designees or agents. No oral or written explanations, instructions or interpretations shall modify any of the requirements or provisions of the RFT unless in the form of an Addendum.
- .6 Any reference in this RFT to any document comprising the RFT includes any amendments to such document made in accordance with this Section 1.9 (Addenda).

## 2. RFT DEFINITIONS AND INTERPRETATIONS

2.1. Throughout this RFT, the following definitions shall apply:

- .1 “**Addenda**” or “**Addendum**” means a document containing additional information and/or changes to the RFT issued by the LKDSB through the Bidding System prior to the Submission Deadline.
- .2 “**Bid**” means an offer submitted by a Proponent in response to the RFT, which includes all of the documentation necessary to satisfy the submission requirements of the RFT and “**Bids**” shall have a corresponding meaning.
- .3 “**Bid Bond**” has the meaning set out in Section 3.6.1 (Bid Bonds).
- .4 “**Bid Materials**” refers to all documentation comprising any Bid, along with all correspondence, data, plans, materials, drawings, specifications, reports, estimates, summaries, photographs, models and all other information and documentation in any form provided or made available to the LKDSB by, or on behalf of, any Proponent in connection with, or arising out of this RFT.
- .5 “**Bid Submission**” means all documentation and information submitted by a Proponent in response to this RFT.
- .6 “**Bid Validity Period**” means ninety (90) days following the Bid Submission Deadline.
- .7 “**Bidding System**” refers to the LKDSB online web-based solution for issuing solicitations and/or receiving online bid submissions and correspondence. Access to this can be found at [lkdsb.bidsandtenders.ca](http://lkdsb.bidsandtenders.ca).

- .8 **“Business Day”** means Monday to Friday between the hours of 8:00 am and 4:00 pm EST, except when such a day is a public holiday, as defined in the Employment Standards Act (Ontario), or as otherwise agreed to by the parties in writing.
- .9 **“CETA”** means Canada European Union (EU) Trade Agreement which regulates trade between Canada and the EU in order to ensure that all suppliers have equal access to public sector procurement.
- .10 **“CFTA”** means Canadian Free Trade Agreement which regulates between provinces in order to ensure that all Canadian suppliers have equal access to public-sector procurement.
- .11 **“Conflict of Interest”** means any situation or circumstance where, in relation to the performance of its obligations under the Contract, the Proponent’s other commitments, relationships or financial interest (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, impar, or be incompatible with the effective performance of its obligations under the Contract.
- .12 **“Consultant”** means the person or entity engaged by the Owner and identified as such in the Agreement. The Consultant is the Architect, Engineer or entity licensed to practice in Ontario. The term Consultant means the Consultant or the Consultant’s authorized representative.
- .13 **“Contract”** means the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents and represents the agreement between the parties.
- .14 **“Contract Documents”** consist of those documents set out in Section 1.3.1
- .15 **“Contractor”** or **“Contractors”** means an entity that is awarded Work as part of this RFT.
- .16 **“LKDSB”** is the Owner and is the abbreviation for the Lambton Kent District School Board.
- .17 **“MFIPPA”** means the *Municipal Freedom of Information and Protection of Privacy Act*, as amended, supplemented, re-enacted or replaced from time to time.
- .18 **“Person”** means any individual, partnership, limited partnership, firm, joint venture, syndicate, company or corporation with or without share capital, trust, trustee, executor, administrator or other legal personal representative, governmental authority or entity however designated or constituted.
- .19 **“Preferred Proponent”** means the Proponent(s) that the Purchaser has identified as the highest ranked Proponent(s) in accordance with the evaluation process.
- .20 **“Proponent”** or **“Proponents”** means an entity that submits a Tender in response to this RFT and, as the context may suggest, refers to a potential Proponent.
- .21 **“Procurement Contact”** has the meaning set out in Section 1.2.1 (Procurement Contact).
- .22 **“Project”** has the meaning set out in Section 1.1 (Introduction).
- .23 **“Purchaser”** means the entity whose name appears on the cover page of the RFT, and which is the purchasing authority pursuant to this RFT>
- .24 **“RFT”** means this RFT package in its entirety, including all documents listed in Section 1.3.1 (RFT Documents) and Addenda that may be issued by the LKDSB.

- .25 **“RFT Materials”** means all correspondence, data, plans, materials, drawings, specifications, reports, estimates, summaries, photographs, models and all other information and documentation in any form provided or made available to any Proponent by, or on behalf of the LKDSB in connection with, or arising out of this RFT (collectively, the “RFT Materials” and all intellectual property rights therein).
- .26 **“Subcontractor”** means a Person or entity having a direct contract with the Contractor to perform a part of parts of the Work at the Place of Work.
- .27 **“Submission Deadline”** means the specified deadline for Bids to be submitted to the LKDSB as specified in the Bidding System and indicated in the RFT timetable in Section 1.4 (RFT Timetable).
- .28 **“Services”** means the services intended to be procured pursuant to this RFT and in accordance with the Contract.
- .29 **“Unfair Advantage”** means any conduct, direct or indirect, by a Proponent that may result in gaining an unfair advantage over other Proponents, including but not limited to (i) possessing, or having access to, information in the preparation of its Bid that is confidential to the Purchaser and which is not available to other Proponents, (ii) communicating with any person with a view to influencing, or being conferred preferred treatment in, the RFT process, or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the RFT process and result in any unfairness.
- .30 **“Work”** means the total construction and related services required by the RFT and Contract Documents.

2.2. This RFT shall be interpreted according to the following provisions:

- .1 Except where otherwise requested, all documents relating to the Bid and all communications between Proponents, Contractors and the City will be in the English language.
- .2 All references to time in this RFT will be local times in Sarnia, Ontario, Canada.
- .3 Unless otherwise stated herein, all amounts in the RFT are in Canadian dollars, including any amounts provided in the Schedule of Pricing.
- .4 Words in the RFT shall bear their natural meaning.
- .5 Unless the context requires a different meaning, wherever used herein, the plural includes the singular, the singular includes the plural, and each of the masculine and feminine includes all genders.
- .6 The phrase “includes”, “include” or “including” means “includes, without limitation” or “including” or “include, without limitation”.
- .7 Whenever the terms “must” or “shall” are used in relation to the Purchaser or the Proponents, such terms shall be construed and interpreted as synonymous and shall be construed to read “the Purchaser shall” or the “Proponent shall”, as the case may be.
- .8 The term “should” relates to a requirement that the Purchaser would like the Proponent to address in its Bid.
- .9 In addition to the words defined in Section 2 (RFT Definitions and Interpretations), the other words used in this RFT shall be interpreted consistent with the definitions in the “CCDC 2, Stipulated Price Contract 2008”.

### 3. SUBMISSION OF BIDS

#### 3.1. General

- .1 Bids shall be submitted through the Bidding System, prior to the Submission Deadline. Bids will be rejected as non-compliant if submitted by any other mechanism including, but not limited to, post, courier, fax, e-mail or orally, unless specifically requested by the LKDSB Procurement Contact through the Bidding System.
- .2 The Bidding System will not accept any Bids that are attempted to be submitted after the Submission Deadline. The expiry of the Submission Deadline and submission time of a Bid shall be determined by the Bidding System.
- .3 It is the Proponent's sole responsibility to ensure its' Bid is received by the Submission Deadline in accordance with the requirements of this RFT. The receipt of Bids can be delayed due to a number of factors, including but not limited to, "internet traffic", file transfer size and transmission speed. The Proponent should allow sufficient time to download, complete and upload, as applicable, the submission forms comprising its Bid and any attachments.
- .4 A Bid will only be considered to be submitted once it has been received by the Bidding System. The time of such receipt is reflected by the time stamped acknowledgement of receipt generated by the Bidding System, regardless of when the Bid was submitted by the Proponent.
- .5 Proponents must submit their Bids in the format presented, prescribed and compatible with the requirements of the RFT and the Bidding System and must include all attachments requested within the RFT documents. Failure to fully complete the forms presented in this RFT or to include and submit the required attachments or separate documentation, as applicable, may result in the Bid being rejected as non-compliant.
- .6 Any documents forming part of a Bid uploaded to the Bidding System by the Proponent must:
  - Not have a security password;
  - Not be defective, corrupt or blank; and
  - Be provided in PDF format and be able to be opened and viewed by the LKDSB.
- .7 All Proponents should exercise extreme care when completing their Bid submission, as failure to complete the Bid fully or to comply with the requirements of this RFT may cause the Bid to be rejected as non-compliant.

#### 3.2. Schedule of Pricing

- .1 Proponents shall complete and submit the Schedule of Prices form according to the instructions contained in such form.
- .2 In completing the Schedule of Prices form, Proponents must take into account compliance with all of the requirements of the RFT, including the drawings and specifications and the terms of the Contract. The LKDSB will assume, in evaluating all Bids, that compliance with such requirements has been accounted for in the completed Schedule of Prices form.

#### 3.3. Supervision

- .1 Proponents shall identify proposed Supervision for the Project, and outline their qualifications and experience.
- .2 LKDSB reserves the right to approve or reject proposed Supervision.



### 3.4. Proponent Legal Name and Structure

- .1 Proponent shall provide the legal name, contact information, business structure and incorporation information.

### 3.5. Subcontractors

- .1 Proponent shall state all Subcontractors and the type of Work each Subcontractor shall complete.
- .2 Proponents must not include companies under the suspension of the LKDSB on their list of Subcontractors.
- .3 LKDSB reserves the right to reject a Subcontractor.
- .4 The qualified list of Subcontractors for Roofing, Locksmith, Asbestos and Abatement work is restricted by the LKDSB. Proponents should contact the Procurement Contact for a current list of qualified Subcontractors for this type of Work.

### 3.6. Bid Security

- .1 Bid Bond
  - .a Proponents shall upload a Digital Bid Bond from a licensed Canadian Surety Company authorized to carry on business in the Province of Ontario, to the Bidding System.
  - .b The Bid Bond shall specify that it is 10% of the Stipulated Price Bid, not a dollar value.
- .2 Agreement to Bond
  - .a Proponents shall upload an Agreement to Bond from a licensed Canadian Surety Company authorized to carry on business in the Province of Ontario, to the Bidding System.
  - .b The Agreement to Bond will include:
    - A Performance Bond in the amount of fifty percent (50%) of the contract sum.
    - A Labour and Material Bond in the amount of fifty percent (50%) of the Total Contract Amount.
- .3 General Bond Requirements
  - .a The Bid Bond and Agreement to Bond shall remain in force for the complete tender acceptance period of ninety (90) calendar days. The Bid Bond shall be forfeited to the LKDSB if the Proponent refuses to enter into a Contract for the performance of the Work if so requested by the LKDSB during the tender acceptance period.
  - .b The Proponent shall include the cost of such Bonds in their tender price.
  - .c Failure of the Proponent to submit a Digital Bid Bond and an Agreement to Bond shall result in the Bid being rejected as non-compliant.

### 3.7. Acknowledgements

- .1 Proponents are required to complete the acknowledgements to confirm their receipt of addenda and certify compliance with the Bid requirements.
- .2 Failure of the Proponent to complete all acknowledgements could result in the Bid being rejected as non-compliant.

### 3.8. Amendment and Withdrawal of Bids

- .1 Prior to the Submission Deadline, a Proponent may withdrawal or amend its Bid at any time after submission of the Bid in the Bidding System. Bids will not be viewed by the LKDSB until after the Submission Deadline and a Proponent may amend its Bid one or more times if it so wishes prior to the Submission Deadline.
- .2 If a Proponent amends its Bid, the Proponent must resubmit the Bid using the Bidding System. If a Proponent commences the amendment of a Bid but fails or is unable to resubmit an amended Bid prior to the Submission Deadline, the Proponent will have in effect, withdrawn from the RFT process.

### 3.9. Completeness of Tender

- .1 By submitting a Bid, the Proponent confirms that all of the components required to complete the Work have been identified in its Bid or will be provided to the Purchaser at no additional charge. Any requirements that may be identified by the Proponent after the Submission Deadline or subsequent to signing the Contract shall be provided at the Proponent's expense.

### 3.10. Bid Validity Period

- .1 Upon the Submission Deadline, each submitted Bid shall be irrevocable and binding on Proponents for ninety (90) days following the Submission Deadline.
- .2 In exceptional circumstances, prior to the expiration of the Bid Validity Period, the LKDSB may request Proponents to extend the validity of their Bids and any accompanying Bid Bonds. The request and responses shall be made in writing by the Procurement Contact through the Bidding System. A Proponent may refuse the LKDSB's request without rendering its Bid non-compliant. A Proponent granting the request shall not be required or permitted to modify its Bid.

### 3.11. Ownership of Bid Materials

- .1 The Bid Materials and all intellectual property rights therein, once received by the LKDSB:
  - Shall become the sole and absolute property of the LKDSB;
  - Shall become subject to MFIPPA, and the LKDSB may be required to disclose the Bid Materials to members of the public, pursuant to MFIPPA
- .2 Proponents are advised that MFIPPA does provide protection for confidential and proprietary business information. For the purposes of the LKDSB's compliance with MFIPPA, Proponents are advised to identify in their Bid Materials any scientific, technical, commercial, proprietary or similar confidential information, the disclosure of which could cause the Proponent injury.
- .3 Each Proponent's name and total bid price may be made public. Bid Materials will, as necessary be made available:
  - On a confidential basis, to Advisers retained by the LKDSB to advise or assist with the RFT process;
  - To members of the Board of Trustees in accordance with the LKDSB's procedures; and
  - To members of the public pursuant to MFIPPA.

## 4. EVALUATION AND ACCEPTANCE

### 4.1. Evaluation Process

- .1 The LKDSB will conduct the evaluation of Bids in the following two stages:

Stage 1: The Bids will be reviewed to determine whether they comply with all of the mandatory requirements of the RFT, including the requirements of Section 3 (Submission of Bids). Bids that are

substantially incomplete or do not substantially comply with the requirements of the RFT will be excluded from consideration in Stage 2.

Stage 2: The compliant Bids will be ranked on the basis of the submitted pricing in accordance with the price evaluation method set out in the Schedule of Pricing.

- .2 Subject to its reserved rights set out in this Part, the LKDSB may at any time and from time to time, in its sole and absolute discretion, revisit, revise, confirm and adjust the evaluations of a Bid at any time during the RFT process.
- .3 In the event that the LKDSB receives two (2) or more compliant Bids identical in price, the Board will flip a coin and the winner of the coin toss will be selected.

#### 4.2. Materially Unbalanced or Abnormally Low Bids

- .1 A Bid is materially unbalanced if:
  - a. It is based on prices which are significantly less than cost for some items and prices which are significantly overstated in relation to cost for other items; and
  - b. The LKDSB has determined that the Bid may not result in the lowest overall cost to the LKDSB even though it may be the lowest submitted Bid; or
  - c. It is so unbalanced as to be tantamount to allowing an advance payment.
- .2 A Bid is abnormally low if the pricing, in combination with other constituent elements of the Bid, appears unreasonably low to the extent that the pricing raises material concerns with the LKDSB as to the capability of the Proponent to perform the Contract on the basis of the offered pricing.
- .3 If a materially unbalanced Bid or an abnormally low Bid is identified, the LKDSB may seek clarification from the Proponent, including a detailed price analysis of the pricing in relation to the subject matter of the Contract, the scope of Work, the estimated quantities, the schedule for the performance of the Work, the allocation of risks and responsibilities and any other requirements of RFT.
- .4 If after evaluation of the price analysis, the LKDSB determines that the Proponent has failed to demonstrate its capability to perform the Contract on the basis of the offered pricing, or that the offered pricing in constitutes a material risk to the LKDSB, the LKDSB may reject the Bid.

#### 4.3. Rights of the LKDSB

- .1 In addition to, but without limiting any other rights or options of the LKDSB under this RFT, the LKDSB may, in its sole and absolute discretion carry out the RFT process as it determines to be in the best interests of the LKDSB and to be the most beneficial to the LKDSB. The LKDSB may, in its sole and absolute discretion, exercise any, or all of the following rights and options with respect to this RFT, at any time.
  - a. The LKDSB has the right, in their best interests and at their sole discretion, to award the Work based on the Base Bid or Base Bid plus whatever combination of Separate and Alternate Prices that the LKDSB intends to proceed with.
  - b. The LKDSB may waive minor irregularities in any Bid where the bid substantially complies with the requirements of this RFT.
  - c. Request written clarification or the submission of supplementary written information from any Proponent and incorporate such clarification or supplementary written information into the Proponent's Bid, at LKDSB's discretion, provided that any clarification or submission of supplementary written information shall not be an opportunity for the Proponent to correct errors, change or enhance the Proponent's Bid in any material manner.

- d. The LKDSB may verify the validity of a Bid including the Proponent's statements, claims, qualifications or capabilities, by whatever means the LKDSB deems appropriate including obtaining references other than those offered by the Proponent and conduct investigations as to the qualifications of each Proponent.
- e. The LKDSB reserves the right to assess the ability of the Proponent to perform the Contract and may reject any Bid where, in the LKDSB's sole determination, the personnel and/or resources of the Proponent are insufficient.
- f. The LKDSB may choose to meet with some or all of the Proponents in connection with their Bids or the matters provided for in the RFT. The LKDSB may visit the existing place or places of business of some or all Proponents for purposes of clarification or verification.
- g. The LKDSB shall not be obliged to accept or reject any Bid (in whole or in part), including if:
  - The Bid contents appear to be incorrect, inaccurate or inappropriate;
  - The Proponent has engaged in conduct prohibited by the RFT; or
  - The Proponent is or becomes bankrupt, insolvent, makes an assignment for the benefit of its creditors generally or has a receiver appointed over all or a substantial part of its assets.
- h. The LKDSB may suspend, modify and/or cancel this RFT (with or without the substitution of another RFT) or the Project.
- i. The lowest quoted price may not necessarily be accepted by the LKDSB.
- j. After the Submission Deadline, the LKDSB may increase or decrease the quantity of any unit of Work in accordance with the Contract.
- k. The LKDSB may do nothing in relation to the Bids or this RFT.

.2 The LKDSB reserves the right to make public the names of any and all Proponents.

## **5. CONTRACT EXECUTION**

### **5.1. Acceptance**

- .1 Once a Bid has been accepted by the LKDSB, the Procurement Contact will notify the Successful Proponent that it has been awarded the Contract.

### **5.2. Contract Form**

- .1 The form of contract shall be a CCDC 2 Stipulated Price Contract, 2008 that incorporates the following documents:
  - CCDC 41 Insurance Requirements
  - LKDSB Supplementary Contract Terms and Conditions
  - Project Drawings
  - Architectural Specifications
  - Consultant Reports
  - General Conditions for Contractors/Sub-Contractors
  - Contract Management
  - Requirements of Consultants/Contractors for the Purposes of IESO Incentives
  - COVID 19 Jobsite Protocol
  - COVID-19 Admin Procedure
  - Addenda issued during the RFP Process

### 5.3. Contract Deliverables

- .1 The Successful Proponent will be required to execute and deliver the Contract as well as other documentation set out below by taking the following steps within seven (7) Business Days after being notified by the LKDSB or the Agent of the LKDSB that the Contract is ready for execution:
  - a. Execute and return the Contract, without any unilateral revisions to the Contract;
  - b. Obtain and deliver a performance bond and a labour and material payment bond for the due and proper performance of the Work, each in accordance with the requirements of the Contract and signed and sealed by the Successful Proponent and its surety;
  - c. Obtain LKDSB approval to utilize the selected Supervisor that will manage the Work
  - d. Arrange for the certificate of insurance in the form attached as part of the Contract to be completed and signed and delivered to the LKDSB.

### 5.4. Issuance of Purchase Order

- .1 After receipt of the signed Contract and supporting documentation, the LKDSB Procurement Contact will issue a Purchase Order to the Contractor. All invoices submitted by the Contractor shall reference the Contract and Purchase Order number.
- .2 There shall be no binding Contract for the supply of the Work unless and until the LKDSB and the Proponent who's Bid has been accepted have executed the written agreements contemplated in the RFT.
- .3 The Proponent who's Bid has been accepted shall not start the Work before the Contract has been executed by the Proponent and LKDSB all documents required by the RFT, as a condition of acceptance, have been delivered to the LKDSB.

### 5.5. Failure to Execute

- .1 Should the Successful Proponent fail to execute and deliver the Contract and or the accompanying documents in accordance with the requirements of Section 5 (Contract Execution), the Successful Proponent shall be deemed to have abandoned all rights and interest in the Contract and the RFT, and the LKDSB may, without prejudice to any other remedy or right which it may have, exercise all or any one or more of the following rights:
  - Rescind its award of the Contract;
  - Call on the Bid Bond;
  - Accept the Bid of the next highest ranked Proponent and proceed to execute the Contract with such Proponent; or
  - Suspend the Successful Proponent from participating in other LKDSB procurement processes for such period of time as may be determined by the LKDSB.

### 5.6. Notification to Other Suppliers

- .1 Once the Successful Proponent is notified that the LKDSB has awarded the Contract, the other Proponents will be notified by the LKDSB in writing through the Bidding System of the outcome of the RFT process. Notification will include the name of the successful Proponent.

### 5.7. Debriefing

- .1 Unsuccessful Proponents may request a debriefing after receipt of a notification of the outcome of the selection process. All requests must be in writing to the Procurement Contact through the Bidding System and must be made within sixty (60) days of notification of the outcome of the selection process. The intent of the debriefing information session is to aid the Proponent in presenting a better bid in subsequent procurement opportunities. Any debriefing provided is at the sole and absolute discretion of the LKDSB, and not for the purpose of providing an opportunity to challenge the RFT process.

## 5.8. Bid Dispute Resolution

- .1 In the event a Proponent wishes to review the decision of the LKDSB in respect of any material aspect of the RFT process, and subject to having attended a debriefing, the Proponent shall submit a protest in writing to the Procurement Contact within ten (10) days from such a debriefing.
- .2 Any protest in writing that is not timely will not be considered and the Proponent will be notified in writing.
- .3 A written protest shall include the following:
  - Identification of the provision and/or procurement procedure that is alleged to have been breached;
  - A specific description of each act alleged to have breached the procurement process.
  - A precise statement of the relevant facts.
  - An identification of the issues to be resolved.
  - The Proponent's arguments and supporting documentation.
  - The Proponent's requested remedy.

## 6. OTHER RFT TERMS AND CONDITIONS

### 6.1. RFT Materials

- .1 The RFT Materials:
  - a. Are and shall remain the sole and absolute property of the LKDSB;
  - b. Must be treated by Proponents as confidential and Proponents must maintain such confidentiality;
  - c. Must not be disclosed without prior written authorization from the LKDSB;
  - d. Must not be used for any purpose other than for replying to this RFT, and for fulfillment of the Contract or any related subsequent agreement; and
  - e. Immediately upon the request of the LKDSB, must be returned by the Proponent to the LKDSB and all electronic copies must be destroyed.

### 6.2. Proponents Costs

- .1 Each Proponent shall bear all costs, expenses and financial obligations associated with or incurred by the Proponent to prepare and present its Bid or to otherwise participate in the RFT process or to establish a legally binding Contract with the LKDSB.

### 6.3. Limitation of Liability

- .1 Notwithstanding anything in the RFT and any express or implied duties or obligations of the LKDSB to the contrary, the LKDSB and each of its agencies, elected officials, employees, agents, volunteers, suppliers and contracted personnel will have no liability to an Person, including any Proponent for any damages, costs, liabilities, losses or expenses including direct, indirect, special or punitive damages, or for loss of profits, loss of opportunity or loss of reputation arising out of or otherwise relating to:
  - This RFT;
  - Participating of any such person in this RFT process;
  - The provision and availability or lack of availability or accuracy of the Bidding System; or
  - The LKDSB's acts or omissions in connection with the conduct of this RFT process, including the acceptance, non-acceptance or delay in acceptance by the LKDSB of any Bid.
- .2 The limitation applies to all possible claims, whether arising in contract, tort, equity, or otherwise, including any claim for a breach by the LKDSB of a duty of fairness, if any, or relating to a failure of the Bidding System or to comply with the rules set out in this RFT. By submitting a Bid to the LKDSB, each Proponent irrevocably and unconditionally waives any claims for damages, costs, liabilities, losses and expenses, and shall not seek any order for injunctive relief of specific performance, against the LKDSB, its agencies, elected officials, officers, employees, agents, advisers and contracted personnel.

- .3 Each Proponent agrees that, despite Section 6.3 (Limitation of Liability) or any limitations of liability or releases in favor of LKDSB, if the LKDSB is found to be liable, in any way whatsoever, for any act or omission in respect of the RFT or the provision of the Bidding System, the total liability of the LKDSB to any Proponent or any other Person participating in the RFT process, and the aggregate amount of damages recoverable against LKDSB for any matter relating to or arising from any act or omission by the LKDSB, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the LKDSB shall be no greater than the Proponent's cost of preparing its Bid.
- .4 Any action or proceeding relating to this RFT process shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purposed the Proponent irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario Court.

#### 6.4. Governing Law & Trade Agreements

- .1 The laws of the place of Work shall govern the RFT, the Proponent's Bid, and any resulting Contract therein.
- .2 The Proponent should note that procurements falling within the scope of provincial or federal trade agreements are subject to such agreements, but the rights and obligations of the parties will be governed by the specific terms of this RFT. These agreements may include but are not limited to, CFTA, CETA or the Trade and Cooperation Agreement between Quebec and Ontario.
- .3 Under Canadian law, a Proponent's Bid shall be prepared without conspiracy, collusion, or fraud. For more information on this topic, visit the Competition Bureau website at: <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/home>, and in particular, part VI of the *Competition Act*, R.S.C. 1985, c. C-34.