

Halifax Water Standard Terms and Conditions for Goods and Services

Effective June 1, 2009

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

These Terms and Conditions are intended to cover a wide range of Halifax Water procurements, including goods and services. As such, not all clauses will be applicable in all situations. If Bidders have questions regarding any of these Terms and Conditions, they must call the contact person named on the Invitation form, or get in touch with Halifax Water. To satisfy special requirements, supplementary Terms and Conditions may also apply to some acquisitions. If this is the case, the Invitation documents will reference any such documents, in addition to these Terms and Conditions.

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

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DEFINITIONS:

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

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

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

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

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

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

Procurement Office: The office responsible for the issuing and processing of Invitations of Halifax Water, as identified in the Invitation documents.

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

1. DATE, TIME AND PLACE OF CLOSING AND OPENING; LATE BIDS

- 1.1 Invitations will close at the time, date, and location specified in the Invitation documents.
- 1.2 All Bids must be received in the entirety at or before the closing time specified. Bidders are responsible for ensure that their Bid, however submitted, is received on time and at the location specified.
- 1.3 All times are local times; note the time difference between Bidder's location and Halifax Water's Office.
- 1.4 Bids received late, or not received completely by the closing time will NOT be considered. Halifax Water's office time clock will be assumed to be correct in the event of dispute.
- 1.5 All Bids must be sent to Halifax Water (as identified in the Invitation documents), and will be opened there, in accordance with Halifax Water's rules for opening Bids.
- 1.6 Bids will be opened publicly at the time and date specified in the Invitation. The public is allowed to attend Bid openings for most publicly-advertised Invitations – the website Invitation Notice, advertisement and/or the Invitation document itself will specify if the Bid opening can be attended by the public.

2. METHODS OF SUBMISSION

2.1 General

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

2.2 Paper Bids

- 2.2.1 Bids must be enclosed in a sealed, opaque envelope of package.
- 2.2.2 The Bidder's name, the Invitation number and the Invitation closing date should be clearly visible on the outside of the envelope or package.
- 2.2.3 The Bid must be signed by an appropriate authorized official of the firm submitting the bid.

2.3 Fax Bids

- 2.3.1 A Bid may be submitted by facsimile (fax) unless the Invitation documents stated that fax Bids are not acceptable.
- 2.3.2 Fax Bids may not be acceptable where the Bid must be accompanied by original documents, plans, deposits, or physical samples.

- 2.3.3 Fax Bids are accepted for the convenience of the Bidder; Halifax Water cannot ensure the confidentiality of error-free receipt of fax Bids. A Bidder submitting a Fax Bid does so at its own risk.
- 2.3.4 Submit Fax Bids to Halifax Water office only; do not send the Bid to any other fax number unless specifically directed to do so.
- 2.3.5 The Bid must be signed by an appropriate authorized official of the firm submitting the Bid.

3. OBTAINING DOCUMENTS

- 3.1 Bids should be submitted on the official Invitation forms as issued through Halifax Water's Procurement Office; failure to use the correct forms could result in the Bid being rejected.
- 3.2 Only use copies of Invitation forms received from the official sources. Improperly obtained forms could result in the Bid being rejected.
- 3.3 It is the Bidder's responsibility to obtain Invitation documents at their cost.
- 3.4 Bidders must not alter any portion of the Invitation or associated documents, with the exception of adding the information requested by the Invitation. Bids containing clauses additional to the Invitation that are "qualified" or "conditional" may be rejected.
- 3.5 The Invitation, or any supplementary document or portion thereof is proprietary information, and must not be used by the Bidder for any purpose other than the submission of Bids without the permission of Halifax Water's Procurement Office.

5.0 LIABILITY FOR COSTS

- 5.1 Bidders are responsible for their own expenses in preparing, delivering or presenting a Bid and for subsequent negotiations with Halifax Water, if any. Halifax Water will not defray any costs incurred by a Bidder in responding to an Invitation.
- 5.2 Halifax Water will not be responsible for any costs, expenses, losses, damages or liability incurred by the Bidder as a result of, or arising out of, the submission of any Bid, or due to Halifax Water not accepting or rejecting any Bid.

6.0 ALTERNATIVE BIDS; ALTERING BIDS ALREADY SUBMITTED

- 6.1 Alternative Bids are multiple replies to an Invitation, all or any of which are open for consideration. If Alternative Bids are being made, each alternative should be submitted as a complete, separate and independent Bid, and the Bid form and or the faxed Bid must be identified with words such as "Alternative A", "Alternative B", etc.
- 6.2 Multiple Bids submitted by the same Bidder and not clearly identified as Bid revisions will be assumed to be Alternative Bids.
- 6.3 Bids already submitted may be amended prior to closing a) by submitting an amendment identifying the plus or minus variance to the original Bid, or b) by sending in a completely new Bid, clearly indicating it replaces the previously submitted Bid. Any such revision must clearly identify the Invitation number and closing date of the Bid being submitted. A Bid revision replaces any other Bid

revisions previously submitted by the Bidder; only the last of any Bid revisions received will be accepted.

- 6.4 Any Bid submitted in response to an Invitation may be withdrawn by written request to Halifax Water's Procurement Office, but cannot be withdrawn, altered or changed in any way after the Invitation closing date and time.
- 6.5 All requests for withdrawal, amendment or submission of a replacement Bid must be submitted in writing on company letterhead or equivalent, and be signed by an authorized official of the Bidder.

7.0 SUPPORTING DOCUMENTS

- 7.1 A brief supplementary statement may be included with the response to an item to give the evaluators a clear understanding of the products/personnel proposed and their ability to perform the specified tasks.
- 7.2 In addition to the responses requested in the Invitation, Bidders may include specifications on some or all proposed items for evaluation purposes.
- 7.3 Supporting documents should be suitably cross-referenced to the Invitation.

8.0 UNIT PRICES AND EXTENSIONS; TAXES EXCLUDED; CURRENCY; SHIPPING COSTS

- 8.1 All prices should be extended and totaled. The extended price is derived by multiplying the unit price by the quantity of units required.
- 8.2 In the event of an error in calculation of the extended price, the unit price will be taken as correct and will govern in the Bid evaluation and contract administration.
- 8.3 Do not include and Provincial or Federal sales tax in the price.
- 8.4 All prices should be quoted in Canadian dollars unless other currencies are specifically requested.
- 8.5 Shipping, cartage, loading, insurance, and handling charges must be included in the total price. If these charges have not been stated specifically, it will be assumed that they have been included in the Bid price, i.e.: FOD to the destination(s) listed in the Invitation. Halifax Water will NOT assume responsibility for any goods or services until they have been delivered to the destination(s) specified in the Invitation.
- 8.6 Unless stated otherwise in the Invitation, a firm, all-inclusive price is required, i.e. hourly rates or "Time and Materials" are not acceptable responses.

9.0 DURATION OF BID/AWARD PRICES

- 9.1 If the Bid is accepted, prices must remain firm for the duration of the contract unless otherwise specified.
- 9.2 Unless stated otherwise in the Invitation, Bids must remain open to acceptance and are irrevocable for a period of 90 days after the Invitation closing date.

10 PAYMENT TERMS AND DISCOUNTS

10.1 Payment shall be based on Net 30 Days from date of invoice or receipt of goods/services, whichever is later. Invoices are to be sent to;

Halifax Water
Attn: Accounts Payable
P.O. Box 8388, RPO CSC
Halifax, NS, B3K 5M1

10.2 Halifax Water administers its payables via an electronic payment process known as EDI payment. Payments for this solicitation and following contract will be administered via the electronic payment process. Upon award, vendor must send payables information to accounting_dept@halifaxwater.ca.

10.3 If special payment terms or schedules are required, these must be specified in the Bid; otherwise, Halifax Water payment terms (net 30 days) will apply.

10.4 Payment of term discount invoices will be calculated from the date on the invoice or goods/services have been received, whichever is later.

10.5 Discount terms must appear on the Bid, and on the invoice.

11 DELIVERY

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

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

11.3 Time is of the essence and Bidder's delivery schedule is legally binding. Halifax Water reserves the right to assess penalties or cancel awards to Bidders who fail to meet their stated delivery or completion dates.

12 QUALITY/ COMPLETE PRODUCT

12.1 Unless otherwise stated in the Invitation, all materials included in the Bid must be new, first quality goods; used, refurbished, second, obsolete, discontinued or demonstrator items must only be proposed if the Invitation specifically requests or otherwise states that such goods will be allowed.

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

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

13 SUBSTITUTIONS AND EQUIVALENTS, DISCONTINUED ITEMS

- 13.1 The specifications in the Invitations define the minimum acceptable goods and/or services required. Minor deviations from the specifications may or may not be permitted at the sole discretion of Halifax Water.
- 13.2 The Invitation may specify items by brand name and/or model number to designate the design, type of construction, quality, functional capability and/or performance level of the product requested.
- 13.3 If an item has been discontinued during the Invitation process, or is otherwise unavailable, Halifax Water will cancel the Invitation, or will issue an Addendum to update the specification. Bidders should notify Halifax Water immediately when they become aware of any discontinuation of specified items.
- 13.4 If Bidders feel that they can provide items with equivalent or better functionality at the same or lower cost, they may be able to offer a substitute item. Substitutions offered must be of equal or better quality and clearly identified, and accompanied by brochures and technical information to permit evaluation of the item being offered. Substitution items must be identified by manufacturer's stock/part number and other descriptive information to establish equivalency. Substitutions offered without documentation sufficient to determine equivalency may be rejected as non-compliant.
- 13.5 Halifax Water reserves the right to inspect or test any product bid to determine equivalency and may require demonstrator or sample items in order to be able to evaluate the items proposed. Halifax Water will be the sole judge of equivalency.
- 13.6 Specifications may, for technical or logistical reasons, require that the items specified be supplied without substitutions.

14 STANDARDS AND CERTIFICATION

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

15 ADDENDA, CORRECTIONS OR EXTENSIONS OF THE INVITATION

- 15.1 Halifax Water reserves the right to modify the terms of the Invitation at any time prior to closing, at its sole discretion.
- 15.2 Halifax Water will make information available to the public regarding any changes made to the Invitation, or any change in the closing date or time. Bidders are responsible for ensuring that they are aware of and have complied with any Addenda.
- 15.3 When these changes occur within five (5) business days of the closing date, the closing date may be extended to allow for a suitable Bid preparation time.

16 ENVIRONMENTAL CONSIDERATIONS

- 16.1 Halifax Water may seek to purchase recycled and/or environmentally sensitive products where practical and effective.
- 16.2 Where appropriate, the integration of environmental considerations into Invitations may be noted in the specifications; the specifications will identify these considerations to ensure that suppliers have a full understanding of the conditions to be met. (Michelle I don't think this last sentence applies to us)

17 WARRANTY

- 17.1 The Bidder must describe the duration, type (i.e. on-site, depot, shin-in or carry-in) and terms of the manufacturer's warranty on all goods.
- 17.2 If the Bidder provides any additional/supplementary warranty coverage, describe this as well.
- 17.3 If warranties can be upgraded or extended, identify the upgrade costs separately. Do not include warranty upgrade or extension costs in the Bid price unless the Invitation specifically states that the upgrade is a mandatory requirement.
- 17.4 If local service is a requirement of the Invitation, describe the means by which this will be accomplished – See Section 19 "Subcontractors and Consortium Bids").

18 NO RESTRICTIONS ON FAIR USE

- 18.1 The Bidder warrants that there are not patents, trademarks or other rights restricting the use, repair or replacement of the goods or services furnished or any part thereof. The Bidder agrees to indemnify and save harmless Halifax Water from and against all claims filed or prosecuted in any manner because of such use, repair or replacement of the goods or services being a violation of any patent, trademark, or other right.

19 SUBCONTRACTORS AND CONSORTIUM BIDS

- 19.1 The use of subcontractors is permitted and encouraged where this will result in skills and technology transfer to Halifax Water.
- 19.2 Names of all Subcontractors and/or Consortium members and the services they will provide, must be listed on or attached to the Bid, if requested.
- 19.3 If a Consortium Bid is being submitted, one of the Bidders must be prepared to take overall responsibility for successful provision of the goods or services, and this must be defined in the Bid. Failure to do so may result in disqualification of the Bid.
- 19.4 "Own Forces" may only be named as Subcontractors when the Bidder is equipped to carry out and normally carries out the work noted.
- 19.5 If Subcontractors (including "own forces") are named, work must be carried out by the named forces and substitution of others will not be allowed without prior approval of Halifax Water.

20 RIGHT TO REJECT; FINANCIAL STABILITY; NON-COMPLIANCE

- 20.1 Failure to comply with any of the mandatory terms or conditions contained or referenced in the Invitation documents may result in the rejection of the Bid.
- 20.2 All of the terms, conditions and/or specifications stated or referenced in the Invitation are assumed to be accepted by the Bidder and incorporated in the Bid.
- 20.3 Bidders may be required to demonstrate financial stability, authorization to provide the goods/services being acquired, and/or regulatory agency approval, licensing or registration as needed, or otherwise clarify Bidder's capability to satisfy the Invitation requirements. Halifax Water reserves the right to reject Bids from any Bidder that it feels is incapable of providing the necessary labour, materials, equipment, financing or management resources to perform the work or supply the goods in a satisfactory and timely manner.
- 20.4 Halifax Water reserves the right to waive minor non-compliance where such non-compliance is not of a material nature in its sole and absolute discretion, or to accept or reject, in whole or in part any or all Bids, with or without giving notice. Such minor non-compliance will be deemed substantial compliance and capable of acceptance. Halifax Water will be the sole judge of whether a Bid is accepted or rejected.
- 20.5 Halifax Water reserves the right to split an award amongst Bidders as deemed in the best interest of Halifax Water.

21 CANCELLATION; NO AWARD

- 21.1 Issuing an Invitation implies no obligation on Halifax Water to accept any Bid or a portion of any Bid submitted. The lowest or any Bid will not necessarily be accepted.
- 21.2 Invitations may be cancelled in whole or in part without penalty, when a) the price Bid exceeds the funds allocated for the purchase; b) there has been a substantial change in the requirements after the Invitation has been issued; c) information has been received by Halifax Water after the Invitation has been issued that Halifax Water feels has substantially altered the procurement; or d) there was insufficient competition in order to provide the level of service, quality of good or pricing required.
- 21.3 If no compliant Bids are received in response to an Invitation, Halifax Water reserves the right to enter into negotiations with one or more vendors in order to complete the procurement.
- 21.4 Halifax Water will be the sole judge of whether there is sufficient justification to cancel any Invitation.
- 21.5 No action or liability will lie or reside against Halifax Water in its exercise of its rights under this section.

22 GOVERNING LAWS AND TRADE AGREEMENTS – LOCAL PREFERENCE

- 22.1 Unless the Invitation documents specifically state otherwise, the Invitation, all Bids, and any subsequent contracts will be construed and interpreted in accordance with the laws of the Province in which the Invitation was issued.

- 22.2 Invitations subject to the Atlantic Procurement Agreement, the Agreement on Internal Trade, or any other inter-provincial agreement, will be specifically identified as such in the public notice and/or the Invitation documents.
- 22.3 Copies of any applicable trade or procurement agreements and/or legislation can be obtained by contacting Halifax Water.
- 22.4 Bidders agree to comply with all applicable laws, regulations and standards, including all labour, occupational health and safety, and workers compensation requirements of the province.
- 22.5 Halifax Water may consider and evaluate any Bids from other jurisdictions on the same basis that the purchasing authorities in those jurisdictions would treat a similar Bid from a supplier located in this province. Halifax Water will be the sole judge of whether these conditions will be used and the extent to which they will be applied.
- 22.6 Under Canadian law (and international agreements) your bid must be arrived at separately and independently, without conspiracy, collusion or fraud.

23 CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 23.1 All Bids submitted become the property of Halifax Water. By submitting Bid, the Bidder hereby grants Halifax Water a license to distribute, copy, print or translate the Bid for the purposes of the Invitation. Any attempt to limit Halifax Water's rights in this area may result in rejection of the Bid.
- 23.2 During the delivery and installation of goods and/or services, the Bidder or Bidder's staff may have access to confidential information belonging to Halifax Water. Should this occur, the Bidder must ensure that such information is not released by any third parties or unauthorized individuals; failure to comply may result in criminal or civil charges and/or the Bidder's disqualification from any further Invitations issued by Halifax Water.

24 BIDDERS LOCATED OUTSIDE CANADA

- 24.1 If a Bid is given in currency other than Canadian dollars, the Bidder assumes the risk of variations in international exchange rates, and Bidder's prices must include all associated costs and overheads connected with foreign currency transactions.
- 24.2 The Bidder must arrange for clearance of goods through the Canada Border Service Agency, along with all brokerage fees and payment of applicable Canadian taxes and duties. For information pertaining to the Canada Board Services Agency please visit <http://www.cbsa.asfc.gc.ca>.
- 24.3 The Bidder must arrange all visas, insurance, work permits, passports, etc. for personnel required to visit Canada in association with the Bid.
- 24.4 All warranties on goods must be valid in Canada. To the extent that facilities are available, warranty service should be provided in Canada.
- 24.5 There must be no conflict with authorized Canadian distributors of the goods and/or services being Bid.

- 24.6 All goods must be compliant with Canadian operating environments (i.e. common domestic electricity is 60Hz 115v 1 phase) and, where applicable, must be certified by the appropriate Canadian regulatory agencies (reference para 14.1).
- 24.7 Professional personnel (medical staff, engineers, architects, lawyers, accountants etc.) must be registered with the appropriate Canadian professional and/or regulatory authorities, or must be eligible to register with such authorities if accepted for the work being tendered.
- 24.8 Where any of the requirements set out in Paragraphs 24.1 to 24.7 inclusive are not met, Halifax Water reserves the right to reject the Bid, or to require bonds or sureties to ensure compliance.
- 24.9 Sale of Goods Act – Bidder's acceptance of any Purchase Order(s) resulting from this Invitation, in writing or by delivery, must include all of, and must be limited to, the terms and conditions of the Purchase Order only. Formal objection is hereby made to any additional or different terms a Bidder might propose in acceptance of any Purchase Order(s).

25 INQUIRIES AND CONTACTS

- 25.1 In case of any dispute over the completeness, accuracy and/or interpretation of any Invitation documents, the versions of such documents held by Halifax Water will be considered correct.
- 25.2 Information, offers, commitments or instructions obtained from any source other than Halifax Water will not be binding.
- 25.3 Inquiries regarding the Invitation must be made to the contact(s) named in the Invitation documents (or their designates); quote the Invitation number on any correspondence.
- 25.4 If an envelope was included with the Invitation documents, this envelope must not be used to submit an inquiry; these envelopes are not opened before the closing time for receipt of Bids.
- 25.5 Inquiries and the responses given may be recorded and may be distributed to all other Bidders as Addenda. No response shall be binding on Halifax Water unless made in writing.
- 25.6 All inquiries regarding the interpretation of these Terms and Conditions, general procurement policy or procedures must be made to Halifax Water.

26 ACCURACY OF THE INVITATION; RIGHT TO CLARIFY

- 26.1 While Halifax Water has tried to ensure accuracy in the Invitation, it is not guaranteed or warranted by Halifax Water to be accurate, nor is it necessarily comprehensive or exhaustive.
- 26.2 Halifax Water will assume that all Bidders have resolved any questions they might have about the Invitation and have informed themselves to existing conditions and limitations, site restrictions, etc. before submitting their Bids.

- 26.3 Nothing in the Invitation is intended to relieve Bidders from forming their own opinions and conclusions with respect to the matters addressed in the Invitation or its associated documents.
- 26.4 Halifax Water reserves the right in its sole discretion to clarify any Bid after closing by seeking further information from that Bidder, without becoming obligated to clarify or seek further information from any or all other Bidders. However, Bidders are cautioned that any clarifications sought will not be an opportunity either to correct errors or change their bids in any substantive manner.

27 LANGUAGE

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

28 ELIGIBILITY AND CONFLICT OF INTEREST

- 28.1 A Bid may not be eligible for acceptance if current or past corporate or other interests of the Bidder may, in Halifax Water's opinion, give rise to a conflict of interest in connection with a project.
- 28.2 Bidders are cautioned that acceptance of their Bid may preclude them from bidding on subsequent phases where a conflict of interest may arise; Bidders should study the project implementation strategy to determine whether or not they plan to submit Bids on subsequent phases.
- 28.3 If the Bid covers the first phase of what may prove to be a multi-phase project, the successful Bidder on the initial phase may be permitted to bid on subsequent phases as long as, in Halifax Water's opinion, no conflict of interest would be created in performance of the work by that Bidder.
- 28.4 Sub-contracting to any firm or individual whose current or past corporate or other interests may, in Halifax Water's opinion, give rise to a conflict of interest in connection with this acquisition will not be permitted. This includes, but is not limited to, any firm or individual involved in the preparation of the Invitation documents.