

1. Administrative Records

- 1.1 The successful Bidder shall maintain accurate records, payrolls, and accounts, which pertain to the Contract to permit their verification and audit and they shall have no claim for payment unless such books, payrolls, accounts, and records have been so maintained and kept. All such documents shall be retained by the Bidder for a period of seven (7) years from the date of substantial completion.
- 1.2 The successful Bidder shall furnish all time sheets, records, and other vouchers which pertain to the Contract for verification, on request by the agency.

2. Purchase Orders

- 2.1 No orders conveyed to the Bidder shall be recognized unless printed on the official Purchase Order of the Board and duly signed by a Purchasing Services representative. Progress payments may be allowed under certain conditions.

3. Payment

- 3.1 Payment for the portion of Work agreed by the Board to be complete shall be made within twenty-one (28) days of either the receipt of monthly billings in instances where the approved Contract duration exceeds sixty (60) days, or the Contract value exceeds \$30,000, or upon completion of the Work, and in all cases, upon the provision to the Board of a Proper Invoice, as defined in the Construction Act (Ontario), unless the Board provides notice to the Bidder within seven (7) days receipt of the Proper Invoice that it disputes part/all of the amount invoiced. Holdback funds will be retained until the applicable statutory lien period expires on all Contracts and until the Bidder has submitted to the Board a sworn statement that all accounts for labour, subcontracts, products, construction machinery and equipment and other indebtedness which may have been incurred by the Bidder in the performance of the Project and for which the Board might in any way be held responsible have been paid in full except holdback monies properly retained. The percentage of Holdback will be 10% TOGETHER WITH ANY LIEN CLAIM AMOUNTS.

3.1.1 “Proper Invoice” means a written bill or other request for payment for services or materials in respect of an improvement under a contract, if it contains the following information and meets any other requirements that the contract specifies:

1. The contractor’s name and address;
2. The date of the proper invoice and the period during which the services or materials were supplied.
3. Information identifying the authority, whether in the contract or otherwise, under which the services or materials were supplied.
4. A description, including quantity where appropriate, of the services or materials that were supplied.
5. The amount payable for the services or materials that were supplied, and the payment terms.
6. The name, title, telephone number and mailing address of the person to whom payment is to be sent.
7. Any other information that may be prescribed.

- 3.2 Prior to release of the holdback, the Bidder shall submit to the Board:

- 3.2.1 An acceptable Statutory Declaration signed by the Bidder stating that all material work and services in connection with the Work have been paid in full, except for statutory holdbacks, and that no liens exist; and
 - 3.2.2 A receipt from each of the Bidder's consultants and subcontractors stating that the consultant or subcontractor has, except for statutory holdbacks, been paid in full for all materials, labour and services in connection with the Work completed, invoiced and approved for payment and
 - 3.2.3 A statement from the Workers' Compensation Board to the effect that all assessments from the Workers' Compensation Board to the end of the Work have been paid in full.
- 3.3 The Board's fiscal year ends August 31st of each year. It is the Bidder's responsibility to ensure that all invoicing for Work completed is forwarded to the Board for payment, well prior to this date. Failure to do so may result in payment delays.
- 3.4 The HST amount must be shown separately at the bottom of each application for payment. The Bidder's HST Registration Number must be shown at the top of each application for payment.

4. Conflicts and Omissions

The Bidder shall not take advantage of any apparent error or omission in any of the Contract Documents. Any Work not specified which is necessary for the proper performance and completion of any part of the Work contemplated, which may be implied as included in the Contract Documents shall, at the sole discretion of the agency, be done by the Bidder as if such Work had been specified, shall not be construed as a variation in the Work to be done, and shall not be subject to any claim by the Bidder for additional compensation.

5. Non-Performance of Work

If the Bidder should neglect to perform the Work properly or otherwise fails to comply with the requirements of the Contract Documents to a substantial degree, the Board may notify the Bidder, in writing, that they are in default of their Contractual obligations and instruct them to correct the default within five (5) Working days, immediately following receipt of such notice. If the Bidder fails to correct the default in the specified time, the Board, without prejudice to any other right or remedy, may:

- Correct such default and deduct the cost from any payment then or thereafter due to the Bidder.
- Terminate the Bidder's right to continue with the Work in whole or in part or terminate the Contract.
- If the Bidder does not meet performance expectations at any time during the Contract period, the Board reserves the right to withhold participation of this Bidder in future bid opportunities.
- Where there is a question of non-performance, payment in whole or in part may be withheld at the discretion of the Board.
- The Board reserves the right to contact an alternative Bidder when the original Bidder is unable to perform the desired Work within the time required AND/OR WITHIN THE GUIDELINES AS PRESCRIBED IN THIS DOCUMENT. THIS MAY RESULT IN THE CANCELLATION OF THE CONTRACT IN WHOLE OR IN PART AND THE REMAINDER OF THE CONTRACT BEING AWARDED TO THE NEXT MOST RESPONSIBLE AND RESPONSIVE BIDDER. THE BOARD ALSO RESERVES THE RIGHT TO RE-TENDER THE INCOMPLETE PORTION OF THE ORIGINAL CONTRACT.

6. Mediation / Arbitration

- 6.1 If a dispute occurs between the Parties concerning any matter governed by the Contract, the disputing Party shall promptly advise the other Party and the Parties together shall use all reasonable efforts to resolve the dispute.
- 6.2 Except for those disputes enumerated in paragraph 6.10 below, any dispute between the Parties arising out of or relevant to the Contract which cannot be resolved by the Parties shall be referred to mediation for mandatory Alternative Dispute Resolution, and a Mediator shall be selected from the list of approved Mediators of the Superior Court of Justice, Regional Municipality of York, and such mediation is to take place within thirty (30) days of such referral.
- 6.3 Any dispute between the Parties which cannot be resolved by such mediation shall be settled and determined by any court of competent jurisdiction, provided, however, that the Board reserves the right to submit such dispute for settlement and determination by arbitration pursuant to the Arbitration Act of Ontario (the “Act”), in which case the following provisions shall apply. Either Party may, at any time, give written notice to the other of its desire to submit such dispute to arbitration, stating with reasonable particularity the subject matter of such dispute. In the case of the Bidder giving notice to the Board, if the Board does not consent to submitting such matter to arbitration, the Bidder may refer such matter to a court of competent jurisdiction. If the Board generates the notice or if the notice is generated by the Bidder and consented to by the Board, then the following provisions shall apply. Within five (5) business days after receipt of such notice, the Parties shall appoint a single arbitrator with appropriate experience to determine such dispute. If the Parties fail to appoint an arbitrator, either Party may apply to a Judge of the Superior Court of Justice to appoint an arbitrator to determine such dispute. The costs of the arbitration shall be paid by the Party as determined by the arbitrator, which jurisdiction shall include the determination of the costs to be paid by the unsuccessful Party. The award of the arbitrator shall be final and binding upon the Parties. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction and enforced in the normal course.
- 6.4 The Bidder agrees to indemnify, hold harmless and defend the Board and its trustees, officers, agents and employees and all those for whom they may be responsible, from and against any and all losses, claims, liability, action, damage or expense (including without limitation costs and legal fees), loss of life, personal injury, damage to property or any other loss of injury whatsoever arising from any negligent act or omission or any breach or default in the performance of any obligation of the Bidder under the Contract to be entered into pursuant to the terms hereof.
- 6.5 It is mutually agreed and understood that the Bidder shall not assign, transfer, convey, sublet or otherwise dispose of their Contract or their right, title or interest therein, or their power to execute the Contract, to any other person, firm, company or corporation without the previous written consent of the Board which may not unreasonably be withheld.
- 6.6 The laws of the Province of Ontario and the By-laws of the Region and Municipalities will govern in any dispute occasioned through the performance or non- performance of materials and/or Workmanship resulting from their submission.
- 6.7 The Bidder shall be responsible for any legal or other costs due to construction liens related to this project. The Bidder fully indemnifies the Board for any expenses, including legal costs incurred by the Board due to any lien actions.
- 6.8 The Board reserves the right to provide that construction lien claims may be secured by an increased hold back.
- 6.9 The Bidder will bear the whole cost of any permits, tests and inspections required by the Board or by any regulatory body having jurisdiction with the exception of the Building Permit which, if required, will be applied for and paid for by the Board.

6. Mediation / Arbitration Cont'

- 6.10 Notwithstanding the foregoing, either the Bidder or the Board may submit the following disputes to construction dispute interim adjudication (“Interim Adjudication”) as defined in Part II.1 of the Construction Act (Ontario) (the “Act”):
- 6.10.1. The valuation of services or materials provided under the Contract.
 - 6.10.2. Payment under the Contract, including in respect of a Change Order, whether approved or not, or a Contemplated Change Order.
 - 6.10.3. Disputes that are the subject of a notice of refusal to pay or non-payment under Article 3 hereof and/or Part I.1. (Prompt Payment) of the Act.
 - 6.10.4. Amounts retained under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off) of the Act.
 - 6.10.5. Payment of a holdback under sections 26.1 (payment of holdback on annual basis) or 26.2 (payment of holdback on phased basis) of the Act.
 - 6.10.6. Non-payment of holdback by the Board under section 27.1 of the Act.
 - 6.10.7. Any other matter that the parties to the Interim Adjudication agree to in writing, or that may be prescribed by the Act.
- 6.11 An Interim Adjudication shall be conducted in accordance with the Act and the Regulations.
- 6.12 If the Board or the Bidder wish to refer a dispute to Interim Adjudication, it shall give to the other party, and any other party required by the Act, written notice thereof, including the following:
- 6.12.1 the names and addresses of the parties;
 - 6.12.2 the nature and a brief description of the dispute, including details respecting how and when it arose;
 - 6.12.3 the nature of the redress sought; and
 - 6.12.4 the name of a proposed adjudicator to conduct the Interim Adjudication.
- 6.13 A party (the “Responding Party”) who receives from the other party (the “Initiating Party”) notice of the referral of a dispute to Interim Adjudication, shall respond in writing in accordance with the Act. The Responding Party shall either confirm that the proposed adjudicator is acceptable or propose an alternative adjudicator. If the parties cannot agree to a proposed adjudicator within five (5) days of the delivery of the initial notice of the referral of the dispute to Interim Adjudication, then the parties shall ask the Authority under the Act to appoint one.
- 6.14 The adjudicator agreed upon by the parties (the “Adjudicator”) shall have the following powers:
- 6.14.1 Issuing directions respecting the conduct of the Interim Adjudication.
 - 6.14.2 Taking the initiative in ascertaining the relevant facts and law.
 - 6.14.3 Drawing inferences based on the conduct of the parties to Interim Adjudication.
 - 6.14.4 Conducting an on-site inspection of the Project.
 - 6.14.5 Obtaining the assistance of a merchant, accountant, actuary, building contractor, architect, engineer or other person in such a way as the adjudicator considers fit, as is reasonably necessary to enable him or her to determine better any matter of fact in question.
 - 6.14.6 Making a determination in the adjudication.
 - 6.14.7 Any other power that may be prescribed.
- 6.15 The parties agree that a determination by an Adjudicator shall be final and binding on each party and no party to an Interim Adjudication shall attempt to arbitrate, or otherwise contest, the determination under the provisions of Paragraphs 6.2 to 6.9 hereof, or through any other process, except in accordance with the Act.

7. Criminal Background Checks

The Bidder acknowledges receipt of a copy of Regulation 521/01 (Collection of Personal Information) to the Education Act (Ontario) with respect to criminal background checks and offence declarations. The Bidder covenants and agrees to assist the Board in complying with same by providing the Board, or such other entity as the Board may designate, with a criminal background check covering offences under the Criminal Code, the Narcotics Control Act, and any other convictions, charges and occurrences which would be revealed by the long version Vulnerable Persons Search of the automated Criminal Records Retrieval System maintained by the RCMP at the Canadian Police Information Centre (“Criminal Background Check”), together with an Offence Declaration in Board-approved form for every individual or employee of the Bidder who may come into direct contact with students on a regular basis at a school site of the Board, prior to the occurrence of such possible direct contact and on or before September 1st each year thereafter with respect to Offence Declarations. For the purposes of this Tender, the Board shall determine in its sole and unfettered discretion whether an individual or employee of the Bidder may come into direct contact with students on a regular basis. The Bidder agrees to indemnify and save harmless the Board from all claims, liabilities, expenses, and penalties to which it may be subjected on account of the Bidder’s failure to provide a Criminal Background Check and an Offence Declaration, as aforesaid. This indemnity shall survive the expiration or sooner termination of the final Contract. In addition, and notwithstanding anything else herein contained, if the Bidder fails to provide a Criminal Background Check and an Offence Declaration for an individual or employee of the Bidder who may come into direct contact with students on a regular basis at a school site of the Board, prior to the occurrence of such possible direct contact, and on or before September 1st each year thereafter with respect to Offence Declarations, then the Board shall have the right to forthwith terminate the Contract without prejudice to any other rights which it may have in the Contract, in law or in equity. NOTE: THIS CLAUSE IS NOT APPLICABLE TO SINGLE PROJECT TENDERS. THIS CLAUSE MAY ONLY BE APPLICABLE TO LONG TERM SERVICE CONTRACTS AND MAYBE EXERCISED AT THE BOARD’S DISCRETION, AS A RESULT OF LEGISLATION.

8. Agreement to Abide by the Established Process

- 8.1. It is vital to the Board that the process leading to the acceptance of a submission and the conclusion of an agreement for the provision of this service be, and be seen to be, open and fair and that each of the Bidders be treated equally.
- 8.2. No Bidder can be seen to be deriving, intentionally or otherwise, an advantage or information, which is not equally available to all other Bidders. Nor is it acceptable that any advantage or information be sought or obtained from any unauthorized staff and representatives of the school boards, or any benefit be derived from any special or personal relationships or contacts.
- 8.3. Bidders shall sign, and return with their submission, the “Agreement to Abide by the Established Process” form. The signed form will indicate concurrence with the process. Failure to indicate concurrence by returning the signed form may result in disqualification of the submission.

9. Conflict of Interest – Employees (Board Policy #222.0)

- 9.1. Employees are responsible for not using their employment status with the Board, and/or Board equipment, facilities, time or human resources for personal or pecuniary gain for themselves, a direct relative or private entities or persons engaged in dealings with the Board.
- 9.2. Employees shall not sell to the Board, either directly or through the use of school or department funds, any goods or services without declaring their interest and removing themselves from the decision-making process and endeavouring to ensure that direct relatives comply with this clause.
- 9.3. Employees shall not promote the sale of personal products or services to students, staff members or others.
- 9.4. Employees are responsible for ensuring that they do not place themselves in a position where Working relationships are affected by personal or family relationships.