



176-2010 ADDENDUM 3

PROVISION OF INSPECTION AND TESTING OF SPRINKLER SYSTEMS AND FIRE ALARM SYSTEMS INCLUDING EMERGENCY LIGHTING

URGENT

PLEASE FORWARD THIS DOCUMENT TO WHOEVER IS IN POSSESSION OF THE BID OPPORTUNITY

ISSUED: May 27, 2010
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THIS ADDENDUM SHALL BE INCORPORATED INTO THE BID OPPORTUNITY AND SHALL FORM A PART OF THE CONTRACT DOCUMENTS

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Please note the following and attached changes, corrections, additions, deletions, information and/or instructions in connection with the Bid Opportunity, and be governed accordingly. Failure to acknowledge receipt of this Addendum in Paragraph 8 of Form A: Bid may render your Bid non-responsive.

PART B – BIDDING PROCEDURES

Revise: B2.1 to read:

B2.1 The Submission Deadline is 4:00 p.m. Winnipeg time, **June 1, 2010**.

PART D – SUPPLEMENTAL CONDITIONS

Revise: D2.2 to read:

D2.2 The Work shall be done on an "as required" **and scheduled** basis during the term of the Contract.

Delete: D14.3(c)

Delete: D14.3(d)

Delete: D14.3(e)

Revise: D20.1 to read:

D20.1 Notwithstanding C12, a one year Warranty shall apply to the total performance of the Work performed on individual work orders, not based on the Total Performance of the Contract.

This is a request for clarifications pursuant to Sections B4.2 and C6.7 of the City's Bid Opportunity 176-2010. Our questions are numbered as in the Bid Opportunity.

Q1. C1 (ee) Total Performance. This defined term purports to apply to the "entire work" and is tied to risk of loss (C9.3) payment (C11.6), the warranty period (C12.2). In our opinion, this is inconsistent with the principle set forth in D2.2 that the work is only "as required" as well is with a contract with such a long term (potentially until December 31, 2018: D2.1). This would mean that the City would require a warranty of a 2010 inspection or repair that would only expire in 2019. We do not believe that this is the intention of the City. We think that "Total Performance", if that term is to be retained, should be determined for each work order. Please confirm the City's intentions.

- A1.** The City expects the Contractor to be responsible to carry out the Work of the Contract and be responsible for the inspection/testing for the entire Contract. The Warranty and payment will apply to each individual work order as approved by the City. Warranty is addressed in Addendum 3.
- Q2.** C3.1 We assume this only applies to the “work” generally since the precise requirements (such as repairs) will not be known until after inspections. Please confirm.
- A2.** Site Investigation would apply to access to Sites, etc. Repairs would not be known at this time.
- Q3.** C6.11 We cannot know whether the systems to be inspected comply with applicable law until after the inspection. We assume that any repairs or corrections required for the systems that “relate to the Work” will be extra as contemplated elsewhere in the bid documents and are not to be included in our initial price. Please confirm.
- A3.** We agree that Bidders cannot know if the systems comply with the applicable law until after inspection, but the repair of such systems must comply in accordance with C6.11.
- Q4.** C9.3 Please see our earlier comment on “Total Performance”. We do not think the City expects Contractor to be responsible for all systems upon which it might work until the end of the contract – possibly several years after the inspection. Please clarify the City’s expectation. It seems that this condition should only apply when Contractor has effective “care, custody and control”.
- A4.** The definition for Work included the Inspection and Testing of Sprinkler Systems and Fire Alarm Systems. The risk and responsibility applies to the “inspection and testing”.
- Q5.** C9.4 We do not understand how this can apply to an inspection or repair contract. Please clarify.
- A5.** Again, it applies to the “Work” which is “inspection and testing”.
- Q6.** C12 See comments on “Total Performance”. Please clarify the warranty period. In addition, the work will likely require repairs of systems provided by parties other than bidder. These parties might be competitors of Contractor. Normally third party products carry the warranty of their supplier only. Please confirm that this is the City’s intention.
- A6.** The Warranty applies to this Contract. If others work on the system, a warranty under that contract would apply. Warranty on third party products are the responsibility of the contractor paid to install such product.
- Q7.** C15 Force Majeure. We do not understand why the definition of force majeure is different for Contractor (15.1) and the City (15.3). C15.3 would be the standard and more reasonable definition. Please confirm.
- A7.** C15.1 is the standard force majeure clause for all the City’s contracts. C15.3 was written in the City’s favour in order to provide for situations where City resources may be consumed providing essential services such as flood relief.
- Q8.** C16.1 Indemnity. We understand the obligation to indemnify up to an amount of \$2 million, but we think that the phrase “plus a minimum of twice the Contract value” is a mistake and should read “plus a MAXIMUM of twice the Contract value”, so that the cap on liability would be \$2 million plus twice the contract value. Furthermore, since the contract value will not be known until the City issues work orders, we assume that “Contract value” refers to the amount of the contract as of the time of the claim. Please confirm. Also we assume that the “acts and omissions” giving rise to liability would be “negligent acts and omissions”. Please confirm.
- A8.** The Contract value is the estimated value of the Contract over the term of the Contract. The City will consider “negligent or wilful acts and omissions”.

- Q9.** C17 Events of default. We assume that, where a default is subject to correction, the City will first give Contractor a reasonable opportunity to cure the default. Please confirm.
- A9.** C17. (e) provides the Contractor with an opportunity to cure the default.
- Q10.** C18.3 Right to withhold. We assume that this right to withhold will only be applied to individual work orders. Please confirm.
- A10.** Yes.
- Q11.** D14 Safety. D14.1 is stated in very broad terms. See also C6.2.3. Our interpretation is that these obligations are limited to the safety of Contractor's staff performing work on site and do not require Contractor to assume any other obligations. Much of the required work will be for inspection services only. It is difficult to understand the meaning of requirements such as those in 14.3 that seem to have been drafted with a construction project in mind. Our interpretation is therefore that these enumerated items would only be required if they would be required by normal industry practices for the activity involved. Please confirm.
- A11.** See Addendum 3.
- Q12.** E2.12, 6.1 and 7. We are uncertain whether procurements of repairs in excess of \$10 would be governed by the terms and conditions of the Bid Opportunity or by other terms and conditions. E6.1 implies that there would be separate negotiations, possibly during the finalization of the contract after award. This would be understandable since there are too many sites and too many suppliers of existing equipment to quote a price lists. Please confirm how the City would like to proceed. See also our questions in relation to warranty (C12).
- A12.** Any repairs agreed to, at the time of need, would be considered extra Work under this Contract and would be governed under the terms of this Contract.