



209-2010 ADDENDUM 3

PRINT SOLUTIONS AND RELATED SERVICES

URGENT

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

ISSUED: August 5, 2010
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**THIS ADDENDUM SHALL BE INCORPORATED
INTO THE BID OPPORTUNITY AND SHALL
FORM A PART OF THE CONTRACT
DOCUMENTS**

Template Version: A20070419

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 9 of Form A: Bid may render your Bid non-responsive.

PART A – PROPOSAL SUBMISSION

Replace: 209-2010 Addendum 2 - Bid Submission with 209-2010 Addendum 3 - Bid Submission. The following is a summary of changes incorporated in the replacement Bid Submission:

Form B(R1): changes to mandatory requirements.

Page numbering on some forms may be changed as a result.

PART B – BIDDING PROCEDURES

Revise: B2.1 to read:

B2.1 The Submission Deadline is **12:00 noon**, Winnipeg time, **August 23, 2010**.

Revise: B11.5 to read:

B11.5 Bidders shall complete Form B: Prices for all three volume class devices for both black & white and colour. The City seeks the greatest flexibility possible. It is **NOT** mandatory that at least one device within each Volume category include all the desired options. However, the City desires the most possible options at the lowest possible costs.

Revise B12.1 to read

B12.1 The Bidder shall complete Form N with approximate numbers of existing devices that will remain in the City fleet grouped by low, medium and high volume classes. The pricing model column shall also be completed as per B14.10.2. All Kyocera KM copiers/MFP's and all Library copiers listed in Appendix B are not City owned and must not be included in Form N data submitted.

Add: B14.10.3(ii)

B14.10.3(ii) All Kyocera KM copiers/MFP's and all Library copiers listed in Appendix B are not City owned and must not be included in Form N data submitted.

Revise: B22.4

B22.4 Further to B22.1(c) the Total Bid Price shall be calculated by adding total cost of the assessment of organization, cost of the print behavior software and licenses/maintenance, total print charges using the

average cost per page for each of the low, mid and high class printers times the volumes specified for evaluation, any monthly payments, buy out at contract end charges and short term rental charges taking into account the cost per page in your Form N submission. For example: Calculation of Prices Presented on Form B and Form N =

- Assessment of Organization
- + Print Behaviour Software
- + Print Behaviour Software/Maintenance
- + total print charges (using the average cost per page for each of the low, medium and high volume printers X volumes specified for evaluation)
- + monthly payments
- + buy out at contract end charges
- + short term rental charges
- + Form N costs

PART D – SUPPLEMENTAL CONDITIONS

Add D3 (j)

D3(j) “**Contractor Tools**”, means certain proprietary tools developed, owned and used by the Contractor to provide services and any modifications, enhancements, improvements and derivative works thereof.

Add: D6.2.1 to read:

D6.2.1 Notwithstanding D6.2:

- (a) Each party (and third party licensors) shall retain full ownership of its proprietary material/intellectual property; and
- (b) The City shall not disclose Contractors tools, developments and pre-existing work, and the Contractors procedures or operations manuals provided under the Contract, to any third party.

Add: D6.4

D6.4 With respect to Contractor Tools:

- (a) The City agrees that it shall have no rights to use, access, or operate Contractor Tools.
- (b) Contractor Tools will be installed and operated only by the Contractor.
- (c) The City will have access via a web portal to data and reports generated by Contractor Tools (which data and reports shall be the City’s property) and stored in a provided database to the extent set forth in the applicable Scope of Work.
- (d) All Contractor Tools may be removed by the Contractor at the expiration of the Contract, pursuant to which they were used.
- (e) The City acknowledges that the Contractor does not license Contractor Tools independently or in connection with this Contract.
- (f) Notwithstanding anything to the contrary in the Contract, Contractor Tools are Contractors confidential information and shall not be subject to:
 - (i) any term of confidentiality as imposed by the Contract; and
 - (ii) any limitations of liability contained in the Contract where the City has misappropriated or infringed the Contractor Tools or otherwise breached its obligations of confidentiality regarding the Contractor Tools.

Add: D20

D20 INDEMNITY

D20.1 Notwithstanding C16, the Indemnity shall be in accordance with D20.

D20.2 The Contractor shall save harmless and indemnify the City in the amount of five million dollars (\$5,000,000), against all costs, damages or expenses arising from actions, claims, demands and proceedings, by whomsoever brought, made or taken as a result of acts or omissions of the Contractor, his Subcontractors, employees or agents in the performance or purported performance of the Work, and more particularly from:

- (a) accidental injury to or death of any person whether retained by or in the employ of the Contractor or not, arising directly or indirectly by reason of the performance of the Work, or by reason of any trespass on or damage to property;
- (b) damage to any property owned in whole or in part by the City, or which the City by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;
- (c) damage to, or trespass or encroachment upon, property owned by persons other than the City;
- (d) any claim for lien or trust claim served upon the City;
- (e) failure to pay a Workers Compensation assessment, or Federal or Provincial taxes;
- (f) unauthorized use of any design, device, material or process covered by letters patent, copyright, trademark or trade name in connection with the Work;
- (g) inaccuracies in any information provided to the City by the Contractor.

D20.1.1 Notwithstanding D20.1, the Contractor will not be responsible for indirect, incidental, consequential, special, punitive or exemplary damages arising out of this Contract.

D20.2 Subject to D20.3, the City has the right, acting reasonably and upon notice to the Contractor, to settle any such action, proceeding, claim or demand and charge the Contractor with the amount so paid or to be paid in effecting a settlement.

D20.3 The City and the Contractor agree that the applicable insurer will have a priority right to defend insured claims. Within fourteen (14) Calendar Days after the date on which the insurer is provided with a copy of the notice of claim, the insurer must advise the City and the Contractor if it intends to exercise its priority right to defend the claim.

D20.4 In the event that the claim is settled by the insurer, all costs incurred in effecting the settlement are the responsibility of the Contractor and not the City.

D20.5 In the event that the claim is unsuccessfully defended, either in whole or in part, then the City may charge the Contractor with the amount to be paid to satisfy the judgment or order.

D20.6 The Contractor shall pay to the City the value of all reasonable legal fees and disbursements required to settle any such claim or to defend the City against any such action, proceeding, claim or demand, notwithstanding that the settlement or defence of the said action, proceeding, claim or demand was undertaken on behalf of the City by a salaried employee of the City.

D20.7 If the Contractor fails to make any payment required to be made to the City pursuant to the foregoing, the City shall be entitled to deduct the amount of such payment from any payment required to be made by the City to the Contractor under the Contract and/or take whatever other remedies against the Contractor that the City may have at law.

Add: D21

D21 CITYS RIGHTS AND REMEMDIES

D21.1 C18.13 is replaced with the following

If an event of default has occurred, the City may, subject to D20 Indemnity, demand payment from the Contractor for amounts paid or costs incurred by the City in connection with the event of default.

Page numbering on some forms may be changed as a result.