



291-2024 ADDENDUM 3

2024 BRIDGE MAINTENANCE - MAIN STREET AND NORWOOD BRIDGES

URGENT

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

ISSUED: June 11, 2024
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THIS ADDENDUM SHALL BE INCORPORATED INTO THE BID/PROPOSAL AND SHALL FORM A PART OF THE CONTRACT DOCUMENTS

Template Version: Add 2024-02-01

Please note the following and attached changes, corrections, additions, deletions, information and/or instructions in connection with the Bid/Proposal, and be governed accordingly. Failure to acknowledge receipt of this Addendum in Paragraph 10 of Form A: Bid/Proposal may render your Bid/Proposal non-responsive.

PART D – SUPPLEMENTAL CONDITIONS

Delete: D31 in its entirety.

Add: D32

D32 TERMINATION FOR NON-PAYMENT

D32.1 The Contractor may suspend or terminate this Contract by notice to the City only if the City has failed to pay any amount due to Contractor under this Contract, which amount or amounts, either singly or in the aggregate, exceed(s) \$5,000 (except to the extent that such amount is disputed in good faith through the Dispute Resolution Procedure) and the City does not remedy such failure within 30 Calendar Days of Contractor providing the City with notice to do so.

QUESTIONS AND ANSWERS

Q1: C21 Dispute Resolution - The City Dispute Resolution process is unreasonable as the clause states that the City's legal department has full unfettered discretion as what can be determined as a disputed matter. No disputes can go to arbitration unless approved by the CAO. Supplementary conditions include D29 Dispute resolution however, such provisions state that if the dispute cannot be resolved then the determination reverts back to C21 where CAO will issue a final determination. There does not appear any route to first go to mediation. Recommend C21 to its entirety be revamped to a balanced and fair approach similar to a CCDC process, or similar to the resolution process in the City's larger projects.

A1: The City had been holding off making a change to the Dispute Resolution sections of the General Conditions because Prompt Payment was to be coming into effect and had a fulsome adjudication process that could have essentially replaced this.

Since Prompt Payment hasn't come into effect and we are uncertain if it will now (with the change in government) the City, is prepared to revisit alternate processes and we will now re-engage our "industry discussions" and consider alternatives.

However, this is too substantive a change to make without further investigation and discussions with the industry more broadly, and accordingly the City is not agreeable to making a change to this section as an isolated instance at this time.

Q2: C18.1 Events of Default - The list of events that triggers a default is quite extensive and does not limit an event to a material breach of the contract. Recent changes to the City's standard GC's have added a reasonable cure

period which mitigates the risk, however the language as it currently reads grants the rights for the City to be punitive if they wanted to. Combine this with the one-sided Dispute Resolution process, it could be very detrimental to the Contractor. Recommend the list of Events of Default be based on material breaches of the contract only.

A2: The term “material breach” has a judicially considered meaning. It has been used and interpreted interchangeably with “substantial breach” and “fundamental breach”, with the defining feature being that the breach “goes to the root of” the contract. This is too high a threshold to agree to this change.

In the 2020 General Condition revisions the City had already added the words “acting reasonably” to C18.2 (reproduced below) regarding the City’s determination of an event of default, in response to industry discussions on this concern.

C18.2 If the City, acting reasonably, deems an event of default as defined in C18.1 to have occurred the Contract Administrator shall give the Contractor notice in writing, pursuant to C22, that the Contractor is in default of its obligations under the Contract, which notice shall include detailed information as to the nature of the default, and instruct the Contractor to correct the default within seven (7) Calendar Days immediately following the receipt of such written notice. If the default cannot be corrected in seven (7) Calendar Days or in such other time period as may be subsequently agreed in writing by the parties, the Contractor shall be in compliance with the City’s instructions if the Contractor.

The City does not agree that the current language would allow the City to be punitive and unreasonable in its use of these clauses.