



556-2024B ADDENDUM 11

ST. JAMES CIVIC CENTER FACILITY EXPANSION

URGENT

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

ISSUED: November 22, 2024
BY: Kathy Roberts
TELEPHONE NO. 204-470-7380

**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

Revise: D18.4 to read: The City intends to award this Contract by April 3, 2025.

Revise: D22.2 to read: The amounts specified for liquidated damages in D22.1 are based on a genuine pre-estimate of the City's losses in the event that the Contractor does not achieve Substantial Performance or Total Performance by the days fixed herein for same, but shall be subject overall to a maximum limit of 10% of the Contract Price. Without diminishing the Contractor's obligations or the City's powers anywhere else in this Contract, the Liquidated Damages represent the City's sole financial remedy for delays in the Contractor's achievement of Substantial Performance or Total Performance under this Contract.

Add: D37

D37 TERMINATION FOR NON-PAYMENT

D37.1 The Contractor may suspend or terminate this Contract by notice to the City only:

- (a) 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.

Add: D38

D38 LIMITATION OF LIABILITY AND WAIVER OF CONSEQUENTIAL DAMAGES

D38.1 Notwithstanding C17, the indemnities under this Contract shall not apply and there shall be no right to claim damages for breach of this Contract, in tort or on any other basis whatsoever, to the extent that loss claimed by either Party is:

- (a) for punitive, exemplary or aggravated damages; or

- (b) for loss of profit (but does not include the parties' rights to payments expressly provided for in this contract), loss of use, loss of production, loss of business, claims of customers or loss of business opportunity; or
 - (c) is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either party, (collectively, "indirect losses").
- D38.2 Subject to D38.3, the maximum aggregate liability of:
- (a) Contractor in respect of all claims under or in connection with the Contract shall not exceed the sum of 50% of the Contract Price;
 - (b) The City, in respect of all claims under or in connection with the Contract (except for the obligation to make payment to the Contractor for Work performed pursuant to the Contract) shall not exceed the sum of 50% of the Contract Price.
- D38.3 The limits set out in D38.2 shall be exclusive of any insurance proceeds received or which will be received pursuant to policies maintained in accordance with this Contract, or which would have been received if the Contractor had complied with its obligation to insure under this Contract or the terms of any policy of insurance required under this Contract each in the "not less than" value as set out in the Contract; and shall not apply in cases of gross negligence or wilful misconduct.
- D38.4 The Contractor's obligation to indemnify the City pursuant to C17.1 shall only be triggered in the event that said costs, damages or expenses arising from actions, claims, demands and proceedings, by whomsoever brought, made or taken are brought as a result of negligent acts or omissions of the Contractor, their Subcontractors, employees or agents in the performance or purported performance of the Work; or from breach of this Contract by same; or from wilful misconduct by same.

QUESTIONS AND ANSWERS

- Q1: **Waiver of Consequential Damages:** Proponent requires a mutual waiver of consequential damages.
- A1: See wording added above
- Q2: **Aggregate Limitation of Liability:** Proponent requests an aggregate limitation of liability of 50% of the contract value for all circumstances, no matter the cause subject to standard exceptions (willful misconduct, receipt of proceeds of insurance, etc). Proponent also should only indemnify for third party damages to the extent cause by our negligence, for injury, death, and destruction of tangible property. Proponent should not be liable for trespass (especially for property not owned by the City), lien (without reference to City's obligation to pay), IP, inaccuracies of information given to the City (regardless of intent). The City currently has unilateral control to settle such claims, and Proponent requests some control over this process.
- A2: See wording added above and modifications to the indemnity section.
- Q3: **Liquidated Damages:** Proponent requests wording indicating that liquidated damages are the Owner's sole remedy for delay and a subcap of delay damages to 10% of the contract value.
- A3: See wording revised above.
- Q4: **Relief/Compensation Events:** other events causing delay need to be included including City/Contract Administrator caused delays by other contractors, stop work orders not caused by Proponent, discover of artifacts, pre-existing hazardous substances, etc. Determination of Contract Time is subjective to Contract Administrator, not objectively entitled. Proponent needs to have a right to dispute such determination.
- A4: The City does not consider it necessary to make an amendment. Any events causing delay can be dealt with under the Change in Work process under C7 on a case by case basis. The opportunity to dispute such a determination is (a) partially granted within C7 and (b) granted within the dispute resolution clause of the General Conditions

- Q5: **Investigation of Site/Concealed Conditions:** Proponent requests a review of C3 and D4.1 as they are not consistent. Proponent requests industry standard wording similar to what is found in the CCDC contracts indicating that subsurface conditions are Owner's risk.
- A5: D4.1 overrides C3 by the inclusion of the word "notwithstanding". In the event of inconsistency, D4.1 prevails. The City does not believe any change is necessary.
- Q6: **Defects and Deficiencies:** C13 needs to tie to the requirements of the contract otherwise it is subjective and unreasonable determination of the Contract Administrator. A 'defect or deficiency' could be a design error which is not Proponent's scope. Proponent requests those terms to be defined and tied to performing the Work in accordance with the Contract Documents.
- A6: C13 requires the Work to be free from defects and deficiencies. Work is defined as:
- "Work" means the carrying out and the doing of all things, whether of a temporary or permanent nature, that are to be done by the Contractor pursuant to the Contract and, without limiting the generality of the foregoing, includes the furnishing of all Plant, Material, labour and services necessary for or incidental to the fulfilment of the requirements of the Contract, including all Changes in Work which may be ordered as herein provided;*
- The definition of Work already envisions that it only includes such things as are the Contractor's responsibility under the Contract. As such, the City does not believe a change is necessary.
- Q7: **Warranties:** C13.2.2 creates an evergreen warranty. Proponent requests a sunset or ultimate end date no longer than 2 years past substantial completion.
- A7: C13.2.2 does not create a perpetual warranty. It allows for the extension of the warranty on specific items which have not yet been made fully compliant with the requirements of the Contract prior to the expiry of the main warranty. The City does not believe a change is necessary.
- Q8: **Payment:** C5.4 conflicts with C11.7 that allows the Contract Administrator to reject work without defining that or tying it to the Contract Documents.
- A8: See A6 regarding definition of Work. The City does not believe there is a conflict.
- Q9: **Contractor Termination Right:** Proponent requests the right to suspend or terminate the Contract due to late or nonpayment from the City.
- A9: See added clause above.
- Q10: **Dispute Resolution Process:** The whole DRP is complicated, unclear, biased and slow. The Final Determination process is completely controlled by the Owner and its personnel without further recourse which is unreasonable. Proponent requests one simple process for all disputes that includes opportunity for disputes to be resolved in a fair, impartial and prompt resolution of disputes. There are too many provisions that allow the Contract Administrator discretionary powers that may not be able to be challenged through a DRP.
- A10: The City has been holding off making a change to the Dispute Resolution sections of the General Conditions because Prompt Payment is to be coming into effect and has a fulsome adjudication process that could have essentially replaced this. Accordingly, the City is not agreeable to making a change to this section as an isolated instance at this time.