



# THE REGIONAL MUNICIPALITY OF YORK REQUEST FOR TENDERS

RFTC-709-23-22021

**Warehouse Upgrades at 145 Harry Walker Parkway,  
Newmarket**

Date of Release of RFTC: October 4, 2024

Accessible formats or communication supports are available upon request.

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# PART 1 INVITATION AND SUBMISSION INSTRUCTIONS

## 1.1 Invitation to Bidders

This Request for Tenders (the “**RFT**”) is an invitation by The Regional Municipality of York (the “**Region**”) to prospective bidders to submit bids for construction of warehouse upgrades at 145 Harry Walker Parkway in the Town of Newmarket, as further described in Section A of the RFT Particulars (Appendix A) (the “**Work**”).

The following is a list of prequalified bidders that have been approved to submit bids in response to this RFT under Request for Prequalification No. RFPQ-708-23-22021.

- BDA Inc.
- M.J. Dixon Construction Limited
- Buttcon Limited
- Percon Construction Inc.
- RossClair Contractors Inc.

Any bids received from bidders not listed above shall be rejected from further consideration.

## 1.2 Communications with the Region

To contact the Region in relation to this RFT, bidders must register for this bid opportunity in the Region’s bidding system at [york.bidsandtenders.ca](http://york.bidsandtenders.ca) (the “**Bidding Website**”) and initiate communication electronically using the ‘Submit a Question’ function. The Region will not accept communications from bidders by any other means except as specifically stated in the RFT.

Bidders and their representatives are not permitted to contact any employees, officers, agents, consultants, elected or appointed officials or other representatives of the Region in connection with this RFT, other than the Region’s Purchasing Representative identified in the Bidding Website. Bidders should only contact the Purchasing Representative where specifically instructed to in this RFT. Failure to adhere to this rule may result in the disqualification of the bidder and the rejection of their bid.

## 1.3 RFT Timetable

Refer to the Bidding Website for a list of key dates in this RFT process. The dates may be changed by the Region at any time, in its sole discretion.

## 1.4 Site Visit / Information Meeting

Bidders are invited to attend a site visit / information meeting to be held on the date, time and place set out on the Bidding Website. Attendance is recommended but not mandatory.

Bidders are encouraged to submit any questions to the Region using the 'Submit a Question' feature on the Bidding Website a minimum of three (3) business days before the site visit / information meeting.

Bidders are prohibited from the use of any technology, including without limitation artificial intelligence, to record the content of any site visit / information meeting without prior written authorization from the Purchasing Representative. Failure to adhere to this rule may result in the disqualification of the bidder and the rejection of their bid.

## 1.5 Electronic Submissions

Bids must be submitted electronically through the Bidding Website. Any bids not received through the Bidding Website will not be accepted by the Region and will be returned to the bidder unopened.

Bidders must have a bidding system vendor account and be registered as a plan taker for this procurement, which will enable them to download the RFT documents and addenda, receive notifications, and submit their bids electronically through the Bidding Website.

## 1.6 Submission Deadline

Bids must be submitted, and received by the Region, on or before the bid closing date and time indicated on the Bidding Website (the **"Submission Deadline"**), which will be determined by the Bidding Website clock. Bidders are cautioned that the timing of their submission is based on when the bid is received in the Bidding Website, not when it is submitted by the bidder.

As transmission can be delayed due to internet traffic, file transfer size, transmission speed or other technical factors, the Region recommends that bidders allow sufficient time to upload their bid and to resolve any issues that may arise.

Bidders will receive a confirmation email from the Bidding Website once they have successfully submitted their bid. Bidders should not consider their bid to have been submitted until they have received the confirmation email.

The Region accepts no responsibility if the bidder is unable to submit its bid before the Submission Deadline, for any reason whatsoever, including computer system failures of

either the bidder or the Region's service provider. The bidder agrees that the Region shall have no liability for delays caused by internet/network traffic, degraded operation or failure of any computer system element including, but not limited to, any computer system, power supply, telephone or data connection or system or software or browser of any type whatsoever.

## **1.7 Amendment of Bid**

Bidders may amend their bids prior to the Submission Deadline.

To amend a bid after it has been submitted, the bidder must withdraw its bid from the Bidding Website, make the necessary revisions, and resubmit its bid before the Submission Deadline.

The bidder is solely responsible for ensuring that the amended bid is received in the Bidding Website by the Submission Deadline.

## **1.8 Withdrawal of Bid**

Bidders may withdraw their bid at any time prior to the Submission Deadline.

To withdraw a bid prior to the Submission Deadline, the bidder must withdraw their bid through the Bidding Website.

Bidders are not permitted to withdraw bids after the Submission Deadline.

## **1.9 Irrevocability Period**

Bids shall be irrevocable for a period of 60 days after the Submission Deadline.

## **1.10 Contact for Technical Issues**

Bidders that encounter technical issues with the Bidding Website should contact technical support at bids&tenders™ via email at [support@bidsandtenders.ca](mailto:support@bidsandtenders.ca) and copy the Purchasing Representative.

[End of Part 1]

## PART 2 EVALUATION AND SELECTION

The Region will conduct the evaluation of bids in the following stages:

### 2.1 Stage I – Mandatory Submission Requirements

Stage I will consist of a review to determine which bids comply with all of the mandatory submission requirements as set out in Section C of the RFT Particulars (Appendix A).

Other than inserting the information requested on the mandatory submission forms set out in the RFT, a bidder may not make any changes to any of the forms. Any bid containing any such changes, whether on the face of the form or elsewhere in the bid, may be disqualified at the Region's sole discretion.

Bids that do not meet all of the mandatory submission requirements will be rejected.

### 2.2 Stage II – Evaluation

Stage II will consist of the following sub-stages:

#### 2.2.1 Mandatory Technical Requirements

The Region will review the bids to determine whether the mandatory technical requirements as set out in Section D of the RFT Particulars (Appendix A) have been met. Questions or queries on the part of the Region as to whether a bid has met the mandatory technical requirements will be subject to the verification and clarification process set out in subsection 2.2.2.

Bids that do not meet all of the mandatory technical requirements will be rejected.

#### 2.2.2 Verify, Clarify, and Supplement

The Region may, in its sole discretion, request further information from the bidder or third parties in order to verify, clarify, or supplement the information provided in the bid.

### 2.3 Stage III – Pricing

Stage III will consist of evaluating the submitted prices for each compliant bid in accordance with the evaluation method set out in Appendix B - Pricing. The evaluation of pricing will be undertaken after the evaluation of mandatory requirements has been completed.

## **2.4 Stage IV – Selection of Lowest Compliant Bidder**

### **2.4.1 Selection of Lowest Compliant Bidder**

Subject to the reserved rights of the Region, the compliant bidder with the lowest price will be selected to enter into a contract with the Region for the provision of the Work. In the event of a tie the selected bidder will be determined in accordance with the Region's Tied Bid Procedure.

### **2.4.2 Notice of Award**

The Region will notify the selected bidder, in writing, that its bid has been accepted.

The selected bidder shall satisfy all of the pre-conditions of award specified in Section E of the RFT Particulars (Appendix A), within 8 business days of the Region's request. This provision is solely for the benefit of the Region and may be waived by the Region.

### **2.4.3 Failure to Satisfy Pre-Conditions of Award**

If the selected bidder fails to satisfy any of the pre-conditions of award listed in Section E of the RFT Particulars (Appendix A) within 8 business days of the Region's request, the Region may, without incurring any liability, proceed with the selection of another bidder and pursue all other remedies available to the Region.

[End of Part 2]

## PART 3 TERMS AND CONDITIONS OF THE RFT PROCESS

### 3.1 General Information and Instructions

#### 3.1.1 RFT Incorporated into Bid

All provisions of the RFT are deemed to be accepted by the bidder and incorporated into its bid. A bidder who submits conditions, options, variations or contingent statements inconsistent with the terms set out in the RFT, including the terms of the contract attached as Appendix C, either as part of its bid or after receiving notice of selection, may be disqualified. If a bidder is not disqualified despite such changes or qualifications, the provisions of the RFT, including the contract attached as Appendix C, will prevail over any such changes or qualifications in the bid.

#### 3.1.2 Bidders to Follow Instructions

Bidders should structure their bids in accordance with the instructions in the RFT. Where information is requested in the RFT, bids should reference the applicable section numbers of the RFT.

#### 3.1.3 Bids in English

Bids shall be in English only.

#### 3.1.4 No Incorporation by Reference

The entire content of a bid should be submitted in a fixed format, and the content of websites or other external documents referred to in a bid but not attached will not be considered to form part of the bid.

#### 3.1.5 Past Performance

In the selection process, the Region may consider the bidder's past performance or conduct on previous contracts with the Region.

#### 3.1.6 Information an Estimate

Any quantities shown or data contained in the RFT are estimates only, and are for the sole purpose of indicating the general scale and scope of the Work. It is the bidder's responsibility to obtain all information necessary to prepare a bid in response to this RFT.

#### 3.1.7 Errors and Omissions

The Region shall not be held liable for any errors or omissions in the RFT. While the Region has used reasonable efforts to ensure an accurate representation of information in the RFT, the information contained in the RFT is supplied solely as a guideline for



bidders. The Region does not guarantee or warrant that the information is accurate, comprehensive or exhaustive. Nothing in the RFT is intended to relieve bidders from forming their own opinions and conclusions with respect to the matters addressed in the RFT.

### 3.1.8 Bidders to Bear Their Own Costs

Bidders shall bear all costs associated with or incurred in preparing and presenting their bid including, if applicable, costs incurred for interviews or demonstrations.

### 3.1.9 Bid to be Retained by the Region

The Region will not return the bid or any accompanying documentation submitted by a bidder.

### 3.1.10 No Guarantee of Volume of Work or Exclusivity of Contract

The Region makes no guarantee of the value or volume of Work that may be required. Any contract entered into as a result of this RFT will not be an exclusive contract for the provision of the described Work. The Region may contract with others for work that is the same as or similar to the Work or may obtain such work internally.

### 3.1.11 Procurement Bylaw

Bids will be called, received, evaluated, accepted and processed in accordance with the Region's [Procurement Bylaw](#) and all applicable protocols (the "**Bylaw**"), as amended or replaced from time to time. By submitting a bid, the bidder agrees to be bound by the terms and conditions of the Bylaw.

### 3.1.12 Suspended Suppliers

The Region will not open bids received from bidders that are suspended pursuant to the [Supplier Suspension Protocol](#).

## 3.2 Blackout Period

Bidders shall not initiate communication with any Regional official, consultant or employee with respect to this RFT from the Submission Deadline up to, and including, the date that the contract has been awarded (the "**Blackout Period**") or the RFT has been cancelled. Any communication initiated by a bidder during the Blackout Period to any Regional official, consultant or employee other than the Purchasing Representative may be grounds for disqualifying the offending bidder from consideration for the award of this or any future Regional procurements.

### 3.3 Questions and Clarifications

If a bidder finds discrepancies or omissions in the RFT, or is in doubt as to its meaning, the bidder shall direct its questions, or seek additional information, in writing using the 'Submit a Question' function on the Bidding Website on or before the question deadline indicated on the Bidding Website (the "**Question Deadline**"). It is the responsibility of the bidder to seek clarification on any matter it considers to be unclear. The Region is not responsible for any misunderstanding on the part of the bidder concerning this RFT or its process.

The Region shall make reasonable efforts to provide bidders with written responses to questions that are submitted during the RFT process, subject to the provisions of this section.

Questions and answers will be distributed in the form of an addendum. The Region may, in its sole discretion:

- edit question(s) for clarity;
- exclude questions that are either unclear, irrelevant or inappropriate;
- answer similar questions from various bidders only once; and
- not answer questions received after the Question Deadline.

### 3.4 All New Information by Way of Addenda

All amendments, new information, and clarifications to the RFT will be posted to the Bidding Website in the form of an addendum.

No employee or agent of the Region is authorized to amend or waive the requirements of this RFT in any way unless the amendment or waiver is issued in an addendum. Under no circumstances shall bidders rely upon any information or instructions from the Region, its employees, or its agents, unless the information or instructions are provided in writing in the form of an addendum.

The Region will notify bidders of the issuance of addenda via email. The onus remains with bidders to ensure that they have downloaded all addenda prior to submitting their bid. The Region will not be liable for misdirected notices of addenda resulting from a bidder's failure to update its contact information in the Bidding Website or check for addenda prior to submitting its bid, or for any other reason.

Bidders shall acknowledge receipt of all addenda in the Bidding Website prior to submitting their bid. Bids that do not contain evidence of receipt of all addenda will be deemed to be "incomplete" and will not be accepted in the Bidding Website.

If an addendum is issued after a bidder has submitted its bid, the Bidding Website will change the status of their submission to "incomplete" and the bidder will be required to

acknowledge the addendum and resubmit its bid prior to the Submission Deadline. The Region recommends that after submitting its bid, the bidder regularly checks for addenda up until the Submission Deadline.

## 3.5 Notification and Debriefing

### 3.5.1 Notification to Other Bidders

Once the selected bidder has satisfied all of the pre-conditions of award listed in Section E of the RFT Particulars (Appendix A) the other bidders will be notified by public posting of the outcome of the procurement process on the Bidding Website.

### 3.5.2 Procurement Debriefing

Bidders may request a debriefing in accordance with the [Bid Debriefing Protocol](#).

### 3.5.3 Procurement Dispute Process

If a bidder wishes to challenge the procurement process, it should provide written notice to the Purchasing Representative in accordance with the [Bid Dispute Protocol](#).

## 3.6 Conflict of Interest and Prohibited Conduct

### 3.6.1 Conflict of Interest

For the purposes of this RFT, the term “**Conflict of Interest**” includes, but is not limited to, any situation or circumstance where:

- (a) in relation to the procurement process, the bidder has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to:
  - (i) having, or having access to, confidential information of the Region that is not available to other bidders;
  - (ii) having been involved in the development of the RFT, including having provided advice or assistance in the development of the RFT;
  - (iii) receiving advice or assistance in the preparation of its bid from any individual or entity that was involved in the development of the RFT;
  - (iv) communicating with any person with a view to influencing preferred treatment in the procurement process (including but not limited to the lobbying of decision makers involved in the procurement process); or
  - (v) engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive procurement process or render that process non-competitive or unfair; or

- (b) in relation to the performance of its contractual obligations under a contract for the Work, the bidder's other commitments, relationships, or financial interests could, or could be seen to:
  - (i) exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgement; or
  - (ii) compromise, impair or be incompatible with the effective performance of its contractual obligations.

Bidders shall declare in their bid all Conflicts of Interest or any situation that may reasonably be perceived as a Conflict of Interest.

### **3.6.2 Disqualification for Conflict of Interest**

The Region may disqualify a bidder for:

- (a) any conduct, situation or circumstances determined by the Region, in its sole discretion, to constitute a Conflict of Interest or perceived Conflict of Interest; or
- (b) failure to disclose a Conflict of Interest in its bid.

### **3.6.3 Bidders Not to Communicate with Media**

Bidders must not at any time directly or indirectly communicate with the media in relation to this RFT or any contract entered into pursuant to this RFT without first obtaining the written permission of the Purchasing Representative.

### **3.6.4 No Lobbying**

Bidders, including their subcontractors, consultants, agents, officials and employees, shall not engage in any form of political or other lobbying whatsoever with respect to influencing the outcome of this procurement process. This anti-lobbying clause extends to all members of Regional Council and municipal councillors within the Region, their respective staff members and their appointees, and members of the Region's consulting and RFT evaluation teams.

This anti-lobbying clause extends from the release date of this RFT until the date and time when a contract for the Work has been awarded or alternatively, when the procurement process has been terminated.

This section shall not be construed as prohibiting any activity which is duly authorized as part of the procurement process, including meetings, interviews, tours of facilities or presentations, which activities may include the participation of Council members from the Region or its local area municipalities.

### 3.6.5 Illegal or Unethical Conduct

Bidders must not engage in any illegal business practices including, but not limited to, activities such as bid-rigging, price-fixing, bribery, fraud, coercion, or collusion. Bidders must not engage in any unethical conduct, including lobbying (as described above) or other inappropriate communications; offering gifts to any employees, officers, agents, elected or appointed officials, or other representatives of the Region; deceitfulness; submitting bids containing misrepresentations or other misleading or inaccurate information; or any other conduct that compromises or may be seen to compromise the competitive procurement process.

### 3.6.6 Past Performance or Past Conduct

The Region may prohibit a bidder from participating in this procurement process based on past performance or based on inappropriate conduct in a prior procurement process including, but not limited to, the following:

- (a) illegal or unethical conduct as described above;
- (b) its refusal to honour its submitted pricing or other commitments; or
- (c) any conduct, situation or circumstance determined by the Region, in its sole discretion, to have constituted an undisclosed Conflict of Interest.

### 3.6.7 Misleading Information

Any bids which contain information which the Region deems, in its sole discretion, to be inaccurate or misleading, shall be rejected, whether or not the bidder intended to include the inaccurate or misleading information. This stipulation shall survive the termination of the procurement process and, should the Region determine, at a later date, that any information contained in a bid which is or was inaccurate or misleading, the Region reserves the right to disqualify any bidder from the process at any time, including at any time prior to award of the contract and in the event that a contract was awarded, may terminate the contract for cause. Such bidder shall not have any claims against the Region for any disqualifications or terminations of contracts made pursuant to this provision.

### 3.6.8 Disqualification for Prohibited Conduct

The Region may disqualify a bidder, rescind a notice of selection, or terminate a contract subsequently entered into if the Region determines that the bidder has engaged in any conduct prohibited by this RFT.

## 3.7 Confidential Information

### 3.7.1 Confidential Information of the Region

All information provided by, or obtained from, the Region in any form in connection with this RFT, either before or after the issuance of this RFT:

- (a) is the sole property of the Region and must be treated as confidential;
- (b) must not be used for any purpose other than replying to this RFT and the performance of any subsequent contract for the Work;
- (c) must not be disclosed without prior written authorization from the Purchasing Representative; and
- (d) must be returned by the bidder to the Region immediately upon the request of the Region.

### 3.7.2 Confidential Information of Bidder

Bids shall be submitted by the bidder on the understanding that the bid will become the property of the Region and may be made public by the Region with notice to the bidder involved.

A bidder should identify any information in its bid or any accompanying documentation which has been supplied in confidence for which confidentiality is to be maintained by the Region. The confidentiality of such information will be maintained by the Region, except as otherwise required by law or by order of a court or tribunal.

Bidders are advised that their bids will, as necessary, be disclosed, on a confidential basis, to advisers retained by the Region to advise or assist with the RFT process, including the evaluation of bids.

Bidders shall submit any questions about the collection and use of personal information pursuant to this RFT to the Purchasing Representative.

## 3.8 Reserved Rights and Limitation of Liability

### 3.8.1 Region's Rights Under this RFT

The Region may, at any time during the procurement process:

- (a) elect not to proceed with the RFT;
- (b) alter the timetable, the procurement process or any other aspect of this RFT;
- (c) elect not to proceed with the Work in its entirety;
- (d) decline to evaluate any bid that, in the Region's opinion, is incomplete, obscure or does not contain sufficient information to carry out a reasonable evaluation;

- (e) retain for consideration any bid which fails to comply with this RFT in any manner, either in respect of the content of the bid submitted or the manner of its submission, and may select as the selected bidder a bidder submitting such a non-compliant bid;
- (f) reject a bid that:
  - (i) fails to comply, in a material way, with the technical requirements of the RFT, as identified in the RFT Particulars (Appendix A);
  - (ii) is incomplete, conditional, or restricted or altered in a way that is not acceptable to the Region; or
  - (iii) includes pricing which the Region deems, in its sole discretion, to be unbalanced;
- (g) reject any or all of the bids, including without limitation, the bid with the lowest cost;
- (h) accept any bid that the Region, in its sole discretion, deems appropriate;
- (i) if only one bid is received, elect to accept or reject it; and/or
- (j) if only one compliant bid is received and the bid is over budget, elect to enter into negotiations with the bidder for the purpose of awarding a contract that is within budget, which may include amending the scope of the Work.

For the purposes of clause (f)(iii) of this subsection 3.8.1, “unbalanced” means the price submitted, whether it be the total price or a price for an item, part, section or division, does not reflect reasonable, anticipated costs for the required labour, equipment and materials, plus a reasonable proportionate share of the bidder’s anticipated overhead and profit, or the bid creates a reasonable doubt that its acceptance will result in the lowest actual cost to the Region.

If the Region does not receive any bid satisfactory to the Region, in its sole discretion, the Region reserves the right to proceed in any manner it deems appropriate, including negotiating with any one or more persons whatsoever, including one or more of the bidders.

### 3.8.2 Limitation of Liability

By submitting a bid, the bidder:

- (a) agrees that neither the Region nor any of its employees, officers, agents, elected or appointed officials, advisors, or representatives will be liable, under any circumstances, for any claim arising out of this RFT process including, but not limited to, the bidder’s costs incurred in preparing its bid, loss of profits, loss of opportunity, or for any other claim; and

- (b) waives any claim for compensation of any kind whatsoever, including claims for the bidder's costs incurred in preparing its bid, loss of profit or loss of opportunity by reason of the Region's decision to not accept a bid, to enter into an agreement with any other bidder, or to cancel this RFT process, and the bidder shall be deemed to have agreed to waive such right or claim.

### 3.9 Trade Agreements

Procurements falling within the scope of the Canada-European Union Comprehensive Economic and Trade Agreement, the Canada-UK Trade Continuity Agreement, the Canadian Free Trade Agreement or the Trade and Cooperation Agreement between Quebec and Ontario are subject to such agreements.

### 3.10 Governing Law and Interpretation

The terms and conditions of the RFT process:

- (a) are intended to be interpreted broadly and independently (with no particular provision intended to limit the scope of any other provision);
- (b) are non-exhaustive and shall not be construed as intending to limit the pre-existing rights of the Region; and
- (c) are to be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein.

[End of Part 3]