



**REQUEST FOR PRE-QUALIFICATION
for
DESIGN-BUILD CONTRACTORS for
SCUGOG MEMORIAL PUBLIC LIBRARY RENOVATION/EXPANSION
and
PARKING STRUCTURE**

CONTRACT NO. S2009-W3

ADDENDUM #1

August 12, 2009

1. Section C.6 Form of Contract

Correction: after "Supplementary Conditions", insert, "Appendix I"

2. Section E.1 Format

Correction: Delete "copies" and insert "hardcopies".

3. Section E.2 Proponent Capability

Correction: after "Design-Build Contract", insert ", alternatively, submit a letter from a surety company confirming the Proponent's ability to provide the Agreement to Bond and confirming all bonding requirements can be met."

4. Section E.3 Part B – Designers

Correction: delete "Appendix E" and insert "Appendix F".

Clarification: Each design firm named on the Project Team must complete 1 (one) Appendix F – Design Team Information form.

5. Appendix D – Proponent Capability Form

Correction: home addresses for corporate officers are not required.

6. Appendix E – Proponent Experience Form

Clarification: This form is for Proponent experience only; credentials of Design Team members may be expressed in their résumés.

7. Appendix F – Design Team Information Form

Correction: home addresses for corporate officers are not required.

8. Appendix I – Supplementary Conditions

Add the following to the end of the document:

APPENDIX I - SUPPLEMENTARY CONDITIONS

DEFINITIONS OF THE DESIGN-BUILD STIPULATED PRICE CONTRACT

3. Construction

Delete item in its entirety and replace with the following:

“Construction means the total construction and related services required by the Contract Documents and includes, without limitation, the full commissioning and handover of all Products and facilities to the Operator.”

13. Owner's Statement of Requirements

Delete item in its entirety and replace with the following:

“The Owner's Statement of Requirements consists of (a) the Owner's requirements, (b) the Design-Builder's promises, undertakings or obligations, and (c) the specifications, plans, drawings, terms, conditions, program requirements, design objectives and parameters, performance requirements, constraints and criteria, spatial and functional requirements and relationships, flexibility and potential for expansion, special equipment and systems, site requirements and descriptions contained or referred to in Appendix 2 (including, without limitation, any of the foregoing contained in the RFP or the Proposal)

as it or they may be amended by the Design-Builder and Owner in writing from time to time.”

20. Substantial Performance of the Work

Replace “*Consultant*” with “*Owner*”. Add the following:

“In addition to the above, *Substantial Performance of the Work* shall have been reached when, without limitation of the foregoing, an Occupancy Permit has been received and the Facility has been fully commissioned and all required manuals, including the required As-Built Drawings and Legal Survey, are received and approved by the Owner.”

General Conditions of the Design-Build Stipulated Price Contract

Part 1 General Provisions

GC 1.2 Owner Supplied Information

Paragraph 1.2.1

Add to the end of the sentence, the following:

", provided, however, the foregoing shall not excuse the Design-Builder from its own negligence or the negligence of those for whom the Design-Builder is responsible at law nor for any breach of the Contract by the Design-Builder."

Paragraph 1.2.6

Add to the end of the sentence, the following:

", provided, however, the foregoing shall not excuse the Design-Builder from its own negligence or the negligence of those for whom the Design-Builder is responsible at law nor for any breach of the Contract by the Design-Builder."

Paragraph 1.2.7

Add to the end of the sentence, the following:

", provided, however, the foregoing shall not excuse the Design-Builder from its own negligence or the negligence of those for whom the Design-Builder is responsible at law nor for any breach of the Contract by the Design-Builder."

GC 1.5 Assignment

Paragraph 1.5.1

Add to the end of this paragraph:

"Notwithstanding the foregoing, (a) the Owner may withhold its consent to an assignment by the Design-Builder at the Owner's sole discretion and (b) any assignment by the Owner is conditional upon the Owner remaining bound by the terms of the Contract."

GC 1.6 Confidentiality

Paragraph 1.6.1

Add to the end of this paragraph:

"The Design-Builder acknowledges that the Owner is subject to the requirements of the *Municipal Freedom of Information and Protection of Privacy Act*, the requirements of which supersede any of the provisions of this Contract and that the Owners intends to make the Contract part of the public record."

Part 2 Design Services and Administration of the Contract

GC 2.1 Consultant

Paragraph 2.1.1

Delete the first sentence and replace with the following:

"The Design Builder shall engage the Consultant under a contract pursuant to which the Consultant's services, duties, and responsibilities will include all of the following services, duties, and responsibilities set forth in this paragraph 2.1.1 or otherwise required to be performed by the Consultant pursuant to the Contract. Notwithstanding the foregoing, the Design Builder shall be fully responsible and liable to the Owner for the full and complete performance of the services, duties, and responsibilities set forth in this paragraph 2.1.1 or otherwise required to be performed by the Consultant pursuant to the Contract in accordance with and pursuant to the provisions of this Contract."

Paragraph 2.1.3

Delete in its entirety.

Paragraph 2.1.5

Delete in its entirety.

Paragraph 2.1.6

Delete the last sentence and replace with the following:

"The Design-Builder shall not terminate the Consultant and the Consultant may not resign without the prior written consent of the Owner, which consent may be arbitrarily withheld (but for greater certainty may be withheld until the Owner has approved a replacement consultant upon reasonable grounds)."

Paragraph 2.1.7

Add the following:

"2.1.7 The Design Builder, as being responsible to the Owner for all aspects of design, will ensure that the Consultant, and where necessary, all other consultants performing any work related to the Design Services, are accredited professionals as necessary for final completion and commissioning of the Facility as contemplated by the Owner's Statement of Requirements."

GC 2.3 Review and Inspection of the Work

Paragraph 2.3.5

Delete "on request" and insert the word "all" immediately before the word "certificates"

Paragraph 2.3.8

Delete "the building permit" and replace with "all required permits for any part of the Work."

Paragraph 2.3.9

Add a new paragraph 2.3.9 as follows:

"2.3.9 The Design Builder shall be responsible to perform (and for the costs of) all tests and re-tests which are required to confirm the appropriateness of conditions and materials in accordance with good and accepted design and construction practice throughout the term of design and construction."

GC 2.4 Defective Work

Paragraph 2.4.1

After the word "Consultant" add the words "or Owner"

Part 3 Execution of the Work

GC 3.1 Control of the Work

Paragraph 3.1.3

Add the following sentence:

"The Design-Builder shall provide the Owner with regular written construction reports in a form satisfactory to the Owner."

Paragraph 3.1.4

After the phrase "the quality of the Work and shall" add "at a minimum"
Delete "or, if none are specified" and replace with "but is solely responsible for providing and executing a quality control plan".

GC 3.2 Construction Documents

Paragraph 3.2.2

Delete the last sentence and replace it with the following:

"The Design-Builder and Owner will comply with the Construction Documents Submission, Review, Comment and Approval Schedule and Protocol."

Paragraph 3.2.6

Delete in its entirety and replace with the following:

"3.2.6 When a change is required to the Construction Documents, that have been reviewed by the Owner, it shall be made as follows:

.1 If requested by the Design-Builder to improve the design or constructability, the Design-Builder shall provide a written request for review and comment. The submission will be reviewed by the Owner in accordance with paragraphs 3.2.3 and 3.2.4.

.2 If the change is a revision to the Owner's Statement of Requirements, it shall be made in accordance with GC 6.1 - Changes, GC 6.2 - Change Order, or GC 6.3 - Change Directive."

GC 3.3 Construction by Owner or Other Contractors

General

Delete paragraphs 3.3.2.1 and 3.3.2.2 in their entirety.

Paragraph 3.3.3

Add a new paragraph as follows:

".5 retain overall responsibility for compliance with the applicable health and construction safety legislation at the Place of Work."

GC 3.5 Construction Safety

Paragraph 3.5.1

Delete "Subject to paragraph 3.3.2.2 of GC 3.3 - Construction by Owner or Other Contractors,"

Add the following:

"3.5.2. Without restricting the generality of GC 3.5.1, the Design-Builder acknowledges that it is the "constructor" and "employer" within the meaning of the *Occupational Health and Safety Act* (Ontario) and the Design-Builder will carry out the duties and responsibilities of the constructor and employer with respect to the Work."

GC 3.6 Supervisor

Paragraph 3.6.1

Add to the end of this paragraph "and upon notice to the Owner and upon the prior written consent of the Owner, which consent shall not be unreasonably withheld."

GC 3.7 Other Consultants, Subcontractors, and Suppliers

Paragraph 3.7.4

Delete in its entirety.

GC 3.8 Labour and Products

Paragraph 3.8.2

Amend 3.8.2 by adding the words "that required by the Contract Documents, the Project's intended use and design and" after the words "consistent with" in line two.

GC 3.10 Shop Drawings

Paragraph 3.10.5

Add the following sentence to the end of this paragraph:

"The Design-Builder must have accepted and signed off on the shop drawings before they are submitted to the Owner."

GC 3.11 Use of the Work

Add the following:

"3.11.3 If work or storage areas in addition to areas provided at the Place of the Work are required, the Design-Builder shall be responsible for making arrangements to obtain the additional areas, whether adjacent to the Place of the Work or not, and for making all permit and rental payments that may be required.

3.11.4 The Owner shall have the right to enter and occupy the Facility in whole, or in part, for the purpose of placing fittings, chattels, fixtures and equipment or for other uses before completion of the Contract, if, in the opinion of the Consultant, such entry and occupation does not prevent or substantially interfere with the Contractor in completion of the Contract within the time specified. Such entry and occupation shall not be considered as acceptance of the work or in any way relieves the Design-Builder from responsibility to complete the Contract."

GC 3.13 Clean Up

Add the following:

"3.13.4 The Design Builder shall leave the work site in a condition satisfactory to the Owner.

3.13.5 The owner shall have the right to back charge cleaning to the Design-Builder if not done by the Design-Builder within 24 hours of written notice to clean.

3.13.6 The owner shall have the right to back charge the Design-Builder for cost of damage to the site in relation to transportation in and out of the site caused by the Design-Builder or any Contractor, agent, employee or licensee of the Design-Builder, or by any other person or company authorized by the Design-Builder to be on the site, in the event such damage is not repaired by the Design-Builder before final payment."

GC 3.14 Signage

Paragraph 3.14.1

Delete in its entirety.

Paragraph 3.14.2

Add the following at the end of the sentence as follows:

", upon the prior written approval of the Owner, which approval if given may be conditional on full compliance with any of the Owner's present or future policies or requirements (including site specific policies or requirements), if and to the extent in existence prior to the sign being erected, with respect to such temporary signage during the period of construction."

Part 4 Allowances

GC 4.1 Cash Allowances

Paragraph 4.1.4

Delete "a" and replace with "the total of the".

Delete "allowance" to read "allowances" in each place where the word allowance appears.

Paragraph 4.1.5

Delete "each" and replace with "the".

Revise "allowance" to read "allowances".

Part 5 Payment

GC 5.1 Financing Information Required of the Owner

Delete paragraphs 5.1.1 and 5.1.2 in their entirety.

GC 5.2 Applications for Progress Payment

5.2.2 Add the following:

"Applications for payment shall be submitted to the Payment Certifier on or before the tenth (10th) day of each month for work completed up to and including the last day of the preceding month."

5.2.4 Add the following:

"in respect of which payment is due and title will pass immediately upon payment" to the end of the third sentence.

5.2.6 Add to the end of the sentence:

"and that payment is due and title will pass immediately upon payment" after the words "Place of Work"

Add the following paragraph:

"5.2.7 At the time of execution of the Contract and prior to receiving payment of the holdback after Substantial Completion of the Work, the Design-Builder shall submit a declaration in form and content as reasonably required by the Owner that all taxes and/or penalties imposed on the Design-Builder by the *Corporations Tax Act* of the Province of Ontario are paid.

5.2.8 The Design-Builder shall submit with second and all subsequent applications for payment, a Statutory Declaration, verifying distribution of all payments as required from the previous months payment. The Design-Builder shall also submit with all applications for payment a certificate of clearance from the WSIB which indicates that the Design-Builder has complied with all requirements, paid all assessments and compensations payable and is a member in good standing."

GC 5.3 Progress Payment

Paragraph 5.3.2

Delete "15" and replace with "20"

GC 5.5 Payment of Holdback upon Substantial Performance of the Work

Paragraph 5.5.2

Add to the end of this paragraph "to the Owner for review and acceptance"

Paragraph 5.5.3

Delete in its entirety.

GC 5.8 Withholding of Payment

Paragraph 5.8.1

Add the words "Subject to applicable lien legislation" at the beginning.

GC 5.10 Liens

Add the following:

5.10.1 Notwithstanding anything else in this Part 5, the Owner shall be entitled to withhold from any payment otherwise due to the Design-Builder:

- (a) the amount claimed in any claim for lien which has been registered against the Lands;
- (b) the amount claimed in any written notice of lien received by the Owner or mortgagee of the Lands; and
- (c) an amount representing the value of Products or materials in respect of which the Design-Builder has made an application for payment where the Owner has received a written notice that any party has purported to retain title to the Products or materials,

until such time as such claims have been dealt with.

5.10.2 In the event that a written notice of a lien from the performance of the Work is received by the Owner or mortgagee of the Lands, the Design-Builder shall, within ten (10) calendar days, at its sole expense, arrange for the withdrawal or other disposal of the written notice of a lien pursuant to the Construction Lien Act.

5.10.3 In the event that a construction lien arising from the performance of the Work is registered against the Lands, the Design-Builder shall, within ten (10) calendar days, at its sole expense, vacate or discharge the lien from title to the Lands. If the lien is merely vacated, the Design-Builder shall, if requested, undertake the Owner's defence of any subsequent lawsuit commenced in respect of the lien at the Design-Builder's sole expense.

5.10.4 In the event. that the Design-Builder fails or refuses to vacate or discharge a construction lien or written notice of lien within the time prescribed above, the Owner shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by the Owner in so doing (including, without limitation, legal fees on a solicitor and client basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be for the account of the Design-Builder, and the Owner may deduct such amounts from amounts otherwise due or owing to the Design-Builder.

5.10.5 Without limiting any of the foregoing, the Design-Builder shall indemnify the Owner for all costs (including, without limitation, legal fees on a solicitor and client basis) it may incur in connection with the Claim for Lien or subsequent lawsuit brought in connection with the lien, or in connection with any other claim or lawsuit brought against the Owner by any person that provided services or materials to the Lands which constituted a part of the Work.

5.10.6 This GC 5.10 does not apply to construction liens claimed by the Design-Builder.

Part 6 Changes in the Work

GC 6.1 Changes

Paragraph 6.1.6

Revise "advise" to read "request prior approval from"

GC 6.2 Change Order

Paragraph 6.2.1 and 6.2.2

Replace "Owner's Statement of Requirements" with "Contract Documents"

Paragraph 6.2.4

Add new paragraphs 6.2.4

"6.2.4. No further claim for change in Contract time, delay, prolongation charges, impact costs, or other such claims will be accepted as having resulted from a Change Order, after it has been accepted by the Owner."

GC 6.3.8

Add a new 6.3.8 as follows:

The Owner and the Design-Builder agree to a value for mark-up for Change Orders and Change Directives as follows:

Design-Builder: Work completed by its own forces 10% Overhead and 5% Profit

Work completed by subcontractors 5% Overhead and 5% Profit

Subcontractor: Work completed by its own forces 10% Overhead and 5% Profit

Work completed by its subcontractors 5% Overhead and 5% Profit

GC 6.4 Concealed or Unknown Conditions

Add the following:

“6.4.4 If the Concealed or Unknown Condition is of such a significant and material nature such that the increased costs of proceeding or required additional time required to complete the Work are so substantial that the Owner on bona fide grounds decides not to proceed with the design and construction of the Facility and notifies the Design-Builder within 30 days of being made aware of the problem of its election to terminate the Contract because of the Concealed or Unknown Condition, then the Owner may terminate the Contract and thereupon shall be obligated to pay the Design-Builder all its direct and indirect costs of performing the Work or preparing to perform the Work, including contract breakage costs, incurred up to the date of termination plus reasonable demobilization costs in full satisfaction of its obligation to the Design-Builder upon such termination (but in no event consequential damages or lost revenues or profits or anticipated revenues or profits).

6.4.5 Except for Concealed or Unknown Conditions, the Design-Builder shall not be entitled to any adjustment in the Contract Price or Contract time arising out of the conditions at the Place of Work.”

Part 7 Default Notice

GC 7.2 Design – Builder's Right to Suspend the Work or Terminate the Contract

General

Delete paragraphs 7.2.1, 7.2.3.1 and 7.2.3.4 in their entirety.

Paragraph 7.2.3.2

Add to the end of this paragraph "or".

Paragraph 7.2.4

Revise "5" to read "15".

Part 8 Dispute Resolution

GC 8.1 Authority of the Consultant

Paragraph 8.1.1

Add a sentence as follows at the end of this paragraph:

"The Consultant shall, prior to making any such finding or determination, consult with the Owner."

Paragraph 8.1.2

Delete the last sentence and replace it with the following:

"Prior to giving any such instructions, the Consultant will consult with the Owner."

Part 9 Protection of Persons and Property

GC 9.1 Protection of Work and Property

Paragraph 9.1.1

Add to the end of the sentence:

"provided the foregoing shall not relieve the Design-Builder from its own negligence or the negligence of those for whom the Design-Builder is at law responsible nor for any breach of the Contract by the Design-Builder."

GC 9.3 Toxic and Hazardous Substances and Materials

Add the following:

"9.3.10 Notwithstanding any other provision hereof, the Design Builder shall not be entitled to any increase in the Contract Price or Contract Time or other additional compensation arising out of substances or materials at the Place of Work specifically identified in the Environmental Reports. If unknown environmental conditions at the Place of Work are discovered and they are of such material nature such that the increased costs of proceeding or additional time required are so substantial that the Owner on bona fide grounds decides not to proceed with the design and construction of the Facility and notifies the Design Builder within 30 days of being made aware of the problem of its election to terminate the Contract because of such presence, then the Owner may terminate the Contract and thereupon shall be obligated to pay the Design Builder all its direct and indirect costs of performing Work or in preparing to perform the Work (including contract breakage costs) incurred up to the date of termination plus reasonable demobilization costs in full satisfaction of its obligations to the Design Builder hereunder but, in no event, consequential damages or lost revenues or profits or anticipated revenues or profits."

Part 10 Governing Regulations

GC 10.1 Taxes and Duties

Add the following to paragraph 10.1.2:

“The Design-Builder shall not be entitled to overhead and profit mark-up due to any such increase. The Design-Builder must provide a detailed breakdown of additional taxes if requested by the Owner, in a form satisfactory to the Owner. Profit and overhead shall not be included in the increase or decrease of costs incurred by the Design-Builder due to changes in the aforementioned taxes and duties.”

Add the following paragraphs:

“10.1.4 The Design-Builder shall, at the request of the Owner, assist, join in, or at the Owner's expense, make application on behalf of the Owner for any exemption, recovery or refund. The Design-Builder shall provide the Owner with copies, or where required original records, invoices, purchase orders or other documentation as may be necessary to support such application.

10.1.5 Any amount included in the Contract for tax or duty, whether or not paid, which is found to be inapplicable or for which a refund is obtained shall become the sole and exclusive property of the Owner.

10.1.6 Should Harmonized Sales Tax regulations come into force during the term of the Contract, remaining Provincial Sales Tax pertaining to the balance of the Contract shall be progressively deducted from subsequent Harmonized Sales Tax payments and identified on Payment Certificates.”

GC 10.2 Laws, Notices, Permits, and Fees

Add the following paragraphs:

“10.2.6 For the purpose of the Contract, the Design-Builder acknowledges that it is the Constructor within the meaning of the *Occupational Health and Safety Act* and amendments thereto.

10.2.7 The Design-Builder's compliance with statutes or regulations made thereunder or by-laws shall not relieve the Design-Builder of obligations set out in the Contract Documents which may be more extensive than the requirements of those statutes, regulations or by-laws.”

GC10.4 Workers' Compensation

In paragraph 10.4.1, add the words "and for each application for progress payment" after the words "application for final payment".

Part 11 Insurance –Bonds

GC 11.1 Insurance

Paragraph 11.1.1.1 Revised

Delete the first sentence in its entirety and replace it with the following:

"The policy shall be in the joint names of the Design Builder, the Owner, and the Consultant as Named Insured, and all other consultants and Subcontractors as additional insureds, with limits not less than \$5,000,000 per occurrence and aggregate and with property damage deductible of not more than \$10,000

The policy will include coverage for non-owned automobile liability.

Paragraph 11.1.1.2 Revised

Delete the first sentence in its entirety and replace it with the following:

"The Design Builder shall ensure that the Consultant engaged in the performance of the Design Services carry Professional Liability /Errors and Omissions Insurance that have limits not less than \$5,000,000 per claim and with an aggregate limit of not less than \$5,000,000 within any policy year. Other consultants engaged in the performance of the Design Services shall each carry Professional Liability /Errors and Omissions Insurance that have limits of not less than \$1,000,000 per claim and with an aggregate limit of not less than \$1,000,000 within any policy year. The consultant or other consultants found to be at fault will be responsible for the deductible amount."

Add Paragraph 11.1.1.7

".7 Environmental Impairment Liability Insurance

Environmental Impairment Liability coverage is required to a limit of \$5,000,000.00."

Add Paragraph 11.1.1.8

".8 Umbrella Liability Insurance

Umbrella Liability Coverage to a limit of \$5,000,000."

Part 12 Indemnification – Waiver - Warranty

GC 12.1 Indemnification

In paragraph 12.1.1, delete the last words of the paragraph reading "provided such claims are:" and delete clauses 12.1.1.1, 12.1.1.2 and 12.1.1.3 and the words "The Owner expressly waives the right to indemnify for claims other than those stated above." in their entirety.

GC 12.2 Waiver of Claims

Paragraph 12.2.1.4

With respect to this paragraph the Common Law version governs.

Revise "substantial defects" to read "defects"

Add the words "or upon the basis of any claim being discoverable" after the words "from the date of Substantial Performance of the Work".

Delete the last sentence in its entirety

GC 12.3 Warranty

Paragraph 12.3.1

Add the following to GC 12.3.3:

“The term "defect" shall not be construed as embracing such imperfections as would naturally follow misuse, failure to perform recommended maintenance, accident, or the wear and tear of normal use.

Generally, any manufactured item or material, which when used as directed, must be capable of such use for the duration of the specified warranty period. Failure to comply with this requirement shall be considered as being a "defect".

The costs of investigations, tests, repairs and/or replacement and the making good of any resulting damage shall be borne by the Design-Builder. The Design-Builder shall be responsible to see that all required work is performed without undue delay.

The carrying out of the replacement work and making good of defects shall be executed at such times as convenient with the Owner, which may entail overtime work on the part of the Design-Builder. The Owner shall give notice of observed defects promptly. Additional charges for overtime work in this regard must be borne by the Design-Builder. Prior to the expiry of the warranty period the Owner reserves the right to carry out a detailed and exhaustive inspection of the site with regard to all work carried out under the terms of this Contract and the Design-Builder shall be required to make good the defective or unsatisfactory materials and/or workmanship observed.”

Add the following:

“12.3.9 Any material or equipment requiring excessive servicing during the warranty period shall be considered defective and the warranty shall be deemed to take effect from the time that the defect has been corrected so as to cause excessive servicing to no longer be required.”

Add the following new General Condition

GC 13 Operation and Maintenance Manuals and Other Materials

“13.1 Prior to, and as a condition of Substantial Performance, all commissioning reports, certificates, letters of assurances, all additional manufacturer's guarantees and warranties, all maintenance recommendations, maintenance and operating manuals and instructions, and all project record documents will be handed over.”

END OF ADDENDUM #1