

1.1 BID CALL

1.1.1 Bids will be received before 04:00:00 PM local time on **Thursday August 8th, 2024** (the “Bid closing time”) via email at flacaria@stlawrencedaycare.com AND scott@scottbarker.ca [ADD.01]

1.1.2 For the purposes of this Bid process, the Owner and the Procurement Authority is identified as follows:

St Lawrence Co-Operative Daycare
230 The Esplanade., Toronto, ON M5E 1M6

1.1.3 The official Bid closing time will be determined by the timestamp as recorded by the Procurement Authority’s email server.

1.1.4 Bids received after the specified Bid closing time will be marked as late and will not be considered. The Owner reserves the right to extend the Bid closing time or cancel the Bid call by addendum.

1.1.5 This Bid call is by invitation only. Submit bids only in the name indicated in the letter of invitation to Bid. Bids submitted in a name different to that indicated in the invitation, or from Bidders not invited to Bid, will not be considered.

1.1.6 Bids will be opened in private.

1.2 COMPLIANCE

1.2.1 The bidder acknowledges that by submitting a compliant Bid, it has accepted an offer by the Owner to enter into a “Bid Contract” for the evaluation of bids and the award of the Contract, if an award is made. The bidder acknowledges that the terms of the “Bid Contract” are represented by the Bid Documents.

1.2.2 A Bid which fails to comply with the requirements of these Instructions to Bidders may cause a Bid to be declared non-compliant.

1.3 DESCRIPTION

1.3.1 The Owner intends to solicit bids to obtain an offer to perform Work to complete a Project located for a CCDC2, 2020 Contract, in accordance with the Contract Documents.

1.3.2 The Project’s description is generally as follows:

1.3.2.1 Interior alterations to an existing daycare will be conducted in two phases. The first phase will cover approximately 217 square meters, and the second phase will cover approximately 245 square meters.

1.4 PLACE OF THE WORK

1.4.1 The Place of the Work is located at:

230 The Esplanade, Toronto (Convenience Address) (246 The Esplanade)
Toronto, ON

M5A 4J6

1.5 BID DOCUMENT AVAILABILITY

1.5.1 Bid Documents are made available in electronic format and emailed to bidders for the purpose of obtaining bids for this Project. It does not confer a license to use the Bid Documents for any other purpose.

1.5.2 Printing of hard copy sets of Bid Documents will be at Bidder's expense.

1.6 EXAMINATION OF BID DOCUMENTS

1.6.1 Examine the Bid Documents and promptly notify the person designated to receive inquiries of any perceived errors, omissions, conflicts or discrepancies in the Bid Documents.

1.7 SITE EXAMINATION

1.7.1 Bidders shall visit the site and familiarize themselves with conditions affecting the Work before submitting a Bid.

1.7.2 Bidders' only opportunity to visit the Place of the Work will be in conjunction with the specified pre-Bid meeting and site visit.

1.7.3 Refer to 00 31 00 - Available Project Information which identifies available information pertaining to the Project.

1.7.4 By inference of the "Concealed or Unknown Conditions" GC in the General Conditions of the Contract, Bidders shall include in their Bid price for non-concealed and known conditions that are either visible or can be reasonably inferred from a site examination at the Place of the Work before Bid submission.

1.8 SPECIAL REQUIREMENTS IN PLACE AT OWNER'S FACILITY

1.8.1 Bidders visiting the Place of the Work shall be accompanied at all times by a representative of the Owner and shall comply with Owner's policies in place at the Place of the Work.

1.9 INFORMATION MADE AVAILABLE TO BIDDERS

1.9.1 Refer to Document 00 30 00 for Reports and other documents prepared or obtained with respect to the Place of the Work. [ADD.01]

1.9.2 Designated Substances:

1.9.2.1 The term "Designated Substances" has the meaning given in the Occupational Health and Safety Act (Ontario) ("OHSA ") and includes without limitations materials such as lead, mercury, silica, asbestos containing materials ("ACM"), benzene, arsenic, and similar substances.

1.9.2.2 If applicable, a list and/or report indicating the condition and location of any Designated Substances, present at the Place of the Work, will be provided to Bidders by the Owner and/or the Consultant.

- 1.9.2.3 Unless The Work of the Contract is intended to handle or handle and remove Designated Substances, in carrying out The Work under the Contract, Bidders shall ensure they do not handle, deal with, disturb or remove any Designated Substance identified in the list or indicated in the report.
- 1.9.2.4 Should a Bidder determine, prior to Bid Closing, that The Work cannot be completed without handling, dealing with, disturbing or removing any Designated Substance identified in either the list or the report, it shall immediately notify the Owner and the Consultant in writing so that, if necessary, instructions and/or clarifications may be issued in the form of Addenda.

1.10 PRE-BID MEETING AND SITE VISIT

- 1.10.1 A pre-Bid meeting and site visit at the Place of the Work has been scheduled for 9:30 AM local time on Monday July 22nd, 2024 Attendees shall meet at the following location: 230 The Esplanade – SCLD School-Age Centre [ADD.01]
- 1.10.2 Attendance by prime Contract Bidders is mandatory
- 1.10.3 Bidders may be required to sign an attendance sheet during the meeting. Failure of a Bidder's representative to attend and sign the attendance sheet will cause the Bid to be rejected as non-compliant.
- 1.10.4 Issues arising from the pre-Bid meeting and site visit will be addressed as required in an addendum to the Bid Documents. No meeting minutes will be issued. Bidders may not rely upon any information given verbally or otherwise at the pre-Bid meeting and site visit that is not confirmed by addendum.

1.11 BID FORM SUPPLEMENTS

- 1.11.1 Submit the following Bid Form Supplements together with the Bid Form:
 - 1.11.1.1 Contract security (Consent of Surety) as specified.
 - 1.11.1.2 Section 00 43 00 - Bid Form Supplements.
 - 1.11.1.3 A realistic, preliminary GANTT chart, of size required to display entire schedule for entire construction period, but not less than tabloid size (11 inch x 17 inch).
- 1.11.2 The Owner may, after the Bid closing time and before Contract award, require any Bidder to submit additional supplementary information about any aspect of the Bidder's Bid to verify compliance with the Bid Documents.

1.12 BONDING CONTRACT SECURITY (CONSENT OF SURETY)

- 1.12.1 Submit with the Bid an agreement to bond issued by the same surety company that provides the Bid bond, undertaking to provide a fifty percent (50%) performance bond and a fifty percent (50%) labour and material payment bond, both to be delivered to the Owner if the bidder is awarded the Contract.
- 1.12.2 Refer to Section 00 73 63 for additional requirements.

1.13 MANDATED SUBCONTRACTORS

1.13.1 The Owner mandates the following Subcontractors. Only the named Subcontractors may perform the Work they are designated to perform and shall be carried in the Bidder's Bid:

1.13.1.1 Company: Fire Protection & Building Services Inc.

1.13.1.2 Scope:

- .1 Sprinkler
- .2 Fire Alarm
- .3 Security

1.13.1.3 Contact:

- .1 Contact Person: Eugene Caswell
- .2 Cell: 416-357-8051
- .3 Email: fireprotection@rogers.ca

~~1.13.1.4 Micheal Murphy for City of Toronto Community Centre – Facilities Supervisor~~

- ~~.1 416.508.9633~~
- ~~.2 michael.murphy@toronto.ca~~

~~1.13.1.5 Jeremy Sokalsky for City of Toronto Community Centre – Maintenance Lead~~

- ~~.1 416.392.1347~~

~~1.13.1.6 Melody Arnold for Berkeley Castle (Parking Garage)~~

- ~~.1 416.366.3704 [ADD4]~~

1.13.2 Include in Bid price all taxes and customs duties in effect at the time of the Bid closing, except for Value Added Taxes as defined in the CCDC standard form of Contract.

1.14 CONTRACT TIME

1.14.1 State in the Bid Form the time required to attain Substantial Performance of the Work and Ready for Takeover. This will not be considered in Bid evaluation but will become the Contract Time under the Contract.

1.15 SUBSTITUTIONS

1.15.1 No Substitutions During Bidding Permitted Where the Bid Documents specify particular Products by proprietary name, Bidders shall base their bids on the named Products only. The Consultant will not consider requests for approval of substitutions during the Bid period. Refer to Section 01 25 00 – Substitution Procedures for substitutions after Contract award.

1.16 ALTERNATIVES

1.16.1 Provide requested alternatives by completing and submitting Section 00 43 – Bid Form Supplements – Alternative Prices.

- 1.16.2 Do not submit unsolicited alternatives.
- 1.16.3 The Owner will determine before Contract award which alternatives will be accepted or not accepted. Each Bidder's alternative prices for all accepted alternatives will be used to adjust that Bidder's base Bid price and the lowest compliant Bidder will be determined based on the adjusted base Bid price.
- 1.16.4 The Owner may select any, all, or none of the specified alternatives, at the Owner's sole discretion.

1.17 LIST OF SUBCONTRACTORS

- 1.17.1 Complete and submit Section 00 43 00 – Bid Form Supplements – List of Subcontractors, indicating those Subcontractors or Suppliers whose bids have been received by the Bidder, which names the Bidder would be prepared to accept for the performance of the Work indicated.
- 1.17.2 The purpose of this requirement is to protect the interests of subcontract bidders and the integrity of the bidding process. Provided the List of Subcontractors has been properly completed and submitted, the information will not be used in evaluating the Bids to determine the lowest compliant bidder.

1.18 UNIT PRICES

- 1.18.1 Where required by the Bid Documents, a Bidder shall submit a Supplementary Bid Form – Unit Prices.
- 1.18.2 Unit prices shall be in effect for the duration of the Contract and may be used to calculate the cost of additional Work under the Contract.
- 1.18.3 The Owner reserves the right to accept or reject any or all unit prices submitted, and such prices shall remain in effect for the duration of the Contract. Failure to submit a unit price where required may result in the Bid being declared non-compliant.

1.19 PRELIMINARY SCHEDULE

- 1.19.1 Submit with Bid, a realistic, preliminary GANTT chart, of size required to display entire schedule for entire construction period, but not less than tabloid size (11 inch x 17 inch).
- 1.19.2 Time Frame: Extend schedule from date assumed for the Notice of Award to date of Substantial Performance of the Work and Ready-for-Takeover.
 - 1.19.2.1 Activities: Treat each major portion of The Work or separate area as a separate numbered activity for each main element of the Work.
 - 1.19.2.2 Submittal Review Time: Include review and resubmittal times indicated in Section 01 33 00 in schedule. Coordinate submittal review times in Contractor's construction schedule with submittal schedule.
 - 1.19.2.3 Substantial Performance of the Work and Ready for Takeover: Indicate completion in advance of date established for Substantial Performance of the Work and Ready for Takeover, and allow time for Consultant's procedures necessary for certification.
 - 1.19.2.4 Deficiency List: Include not more than 30 days for completion of deficiency list items and final completion.

- 1.19.2.5 Constraints: Include constraints and Work restrictions indicated in the Contract Documents schedule, and show how the sequence of the Work is affected.
- 1.19.2.6 Work Restrictions: Show the effect of Owner's Work hours and constraints on schedule:
 - .1 Phases: Indicate important phases of construction for each major portion of the Work.
 - .2 Construction Areas: Identify each major area of construction for each major portion of the Work.
- 1.19.2.7 Milestones: Include milestones, including, but not limited to, the Contract Award, Substantial Performance of the Work, and Ready-for-Takeover.

1.20 BID FORM SIGNING

- 1.20.1 Complete the Bid Form as follows:
 - 1.20.1.1 Incorporated Company: Provide company name and name and signature of the duly authorized signing representative(s). Insert under each signature the representative's capacity to act on behalf of the company.
 - 1.20.1.2 Joint Venture: Each entity within the joint venture shall execute the Bid Form as specified.
 - 1.20.1.3 Partnership: Provide name of partnership and name and signature of duly authorized representatives of the partnership.
 - 1.20.1.4 Sole Proprietorship: Provide name of sole proprietorship and name and signature of sole proprietor in the presence of a witness who shall also sign.

1.21 BID SUBMISSION

- 1.21.1 Bids will be received in electronic form (in .pdf format) by email only. Submit Bid at the email address indicated in Article 1.1 "Bid Call" with the following information in the subject line: "BID SUBMISSION FOR SLCD RENOVATIONS (PHASE 1 & PHASE 2) – [CONTRACTOR NAME]"
- 1.21.2 Verbal, telephoned, fax, e-mail, or text message bids will not be accepted nor acknowledged.

1.22 BID MODIFICATION AND WITHDRAWAL

- 1.22.1 A Bid, including the Bid Form and Bid Form supplements, submitted in accordance with these bidding requirements may be modified or withdrawn, provided the modification or withdrawal request:
 - 1.22.1.1 is in the form of an email received at the address specified in "Bid Submission" article before the Bid closing time, and
 - 1.22.1.2 states the Project title, name of the Bidder, the nature of the modification or withdrawal request,
 - 1.22.1.3 and is signed by a duly authorized person.

- 1.22.2 For Bid closing time purposes, the official time of receipt of emailed Bid modifications or withdrawal requests will be the time of receipt on the receiver's email server.
- 1.22.3 If a Bid is withdrawn, a new Bid may be submitted in accordance with the specified requirements, provided it is received before the Bid closing time.
- 1.22.4 When submitting a modification directing a change in a Bid price, do not reveal the original amount nor the revised amount:
 - 1.22.4.1 On stipulated price bids, state only the amount to be added to or deducted from the original Bid price.
 - 1.22.4.2 On unit price bids, state only the amount to be added to or deducted from each original unit price or lump sum in the Schedule of Prices. The Owner will adjust extended amounts and the total Bid price as required by the modification.
- 1.22.5 When submitting a second or more modifications related to a particular Bid price, ensure that there is no ambiguity as to the intended Bid price.
- 1.22.6 State all addendum numbers received, if different from what was indicated on originally submitted Bid Form.
- 1.22.7 The Owner will assume no responsibility or liability for modifications or withdrawals that are, for any reason, delayed, illegible, unclear as to intent, ambiguous, contrary to these instructions, or otherwise improperly received. The Owner may disregard improperly received modifications or withdrawals.

1.23 BIDDING IRREGULARITIES

- 1.23.1 Bids with Bid Forms or required Bid Form Supplements that are improperly prepared, signed or submitted contrary to these Instructions to Bidders, or that contain added conditions or other irregularities of any kind, may, at the Owner's discretion, be rejected as non-compliant.
- 1.23.2 The Owner may accept or waive a minor and inconsequential irregularity. The determination of what is, or is not, a minor and inconsequential irregularity, the determination of whether or not to accept or waive such an irregularity, and the final determination of whether the Bid is compliant, will be at the Owner's sole discretion.
- 1.23.3 The following irregularities relate to what are considered mandatory bidding requirements. These will not be considered minor and inconsequential and will cause the Bid to be rejected as non-compliant:
 - 1.23.3.1 Bid or Bid Form Supplement is received after the specified Bid closing time.
 - 1.23.3.2 Required Bid Form or Bid Form Supplement is missing.
 - 1.23.3.3 Bid Form or Bid Form Supplement is not in the form provided or required.
 - 1.23.3.4 A Bid price is illegible, ambiguous or unclear.
 - 1.23.3.5 One or more conditions are added to or submitted with the Bid, the effect of which is a material modification of the Bid Documents.

- 1.23.3.6 Failure to indicate in the Bid Form the addendum number(s) of all addenda received.
- 1.23.3.7 Failure to comply with any other bidding requirement expressly characterized as mandatory in elsewhere in the Bid Documents.

1.24 BID ACCEPTANCE PERIOD

- 1.24.1 Bids shall remain open to acceptance by the Owner and shall be irrevocable until expiry of the Bid acceptance period stated in the Bid Form (i.e. 60 days or until another Bidder enters into a Contract with the Owner for performance of the Work, whichever occurs first.
- 1.24.2 After Bid closing and before expiry of the Bid acceptance period stated in the Bid Form, the Owner may request all Bidders to agree to an extension of the originally specified Bid acceptance period. In such case the Bid acceptance period will be extended subject to the Bidder, whose Bid the Owner wishes to accept, having agreed in writing to the extension.

1.25 BID ACCEPTANCE

- 1.25.1 The lowest or any Bid will not necessarily be accepted and the Owner may reject any and all bids.
- 1.25.1 The Contract will be established if and when the successful Bidder receives from the Owner a written notification accepting the Bid without any conditions. If the Owner's written notification accepting the Bid contains, or is subject to, any conditions, the Contract will be established if and when the Bidder accepts all such conditions in writing or when the parties execute the agreement.
- 1.25.2 If the lowest compliant Bid exceeds the Owner's budget, and the Owner is unwilling or unable to award a Contract at the Bid price, the Owner may at its discretion:
 - 1.25.2.1 negotiate, with the lowest compliant Bidder only, changes to the Bid Documents and a reduced Bid price acceptable to the Owner, or
 - 1.25.2.2 invite the three lowest compliant Bidders (only) to re-Bid on modified Bid Documents under a new Bid call.

1.26 INTERPRETATION AND MODIFICATION OF BID DOCUMENTS

- 1.26.1 If an inquiry requires an interpretation or modification of the Bid Documents, the response to that inquiry will be issued in the form of a written Addendum only, to ensure that all Bidders base their bids on the same information.
- 1.26.2 Replies to inquiries or interpretations or modifications of the Bid Documents made by e-mail, verbally, or in any manner other than a written Addendum, will not form part of the Bid Documents and will not be binding.

1.27 OWNER'S RIGHTS

- 1.27.1 The Owner reserves the right to exercise any, all, or a combination of the rights described herein, in addition to any other express or implied rights contained in the Bid Documents.
- 1.27.2 A Bidder's submission or the opening and/or evaluation of any Bid does not obligate the Owner to:

- 1.27.2.1 Accept any Bid.
- 1.27.2.2 Award the Contract.
- 1.27.2.3 Proceed further with this Bid process.
- 1.27.3 The Owner may, in its sole discretion, and for any or no reason:
 - 1.27.3.1 Reject any or all Bids.
 - 1.27.3.2 Reject the whole or any part of any Bid(s).
 - 1.27.3.3 Accept the whole or any part of any Bid(s).
 - 1.27.3.4 If only one Bid is received, elect to accept or reject it.
 - 1.27.3.5 Cancel this Bid process in whole or in part at any time prior to the award of the Contract with no further actions or justifications.
 - 1.27.3.6 Cancel this Bid process at any time prior to the award of the Contract and issue a new competitive procurement process for Work which is the same or similar to The Work, with the same or different participants.
- 1.27.4 The Owner further reserves the right to:
 - 1.27.4.1 Disqualify any Bidder whose Bid contains misrepresentations or any other inaccurate or misleading information relating to matters which the Owner, in its sole discretion, considers material.
 - 1.27.4.2 Award the Contract to any Bidder, including a Bidder other than the Bidder with the lowest Bid.
 - 1.27.4.3 Award the Contract to the Bidder which, in the Owner's sole discretion, provides the best value based on the criteria described in the Bid Documents, including but not limited to:
 - .1 Base Bid Price.
 - .2 Base Bid Price as adjusted by the Owner pursuant to Alternative Prices or other prices provided in the Bid Documents.
 - .3 Clarifications provided pursuant to requirements indicated in Article "Requests for Clarification and Additional Information".
 - 1.27.4.4 Award the Contract to a Bidder which, in the Owner's sole discretion, has submitted a substantially compliant Bid.

1.28 ADDENDA

- 1.28.1 Addenda may be issued to modify the Bid Documents in response to Bidder inquiries or as may be considered necessary.
- 1.28.2 All addenda issued during the Bid period will become part of the Bid Documents.
- 1.28.3 Each Bidder shall ascertain before Bid submission that it has received all addenda issued during the Bid period and shall indicate in the Bid Form the addendum number(s) of all addenda received.
- 1.28.4 Please direct all questions and inquiries as soon as possible in the bid period, via email to scott@scottbarker.ca. The final day to submit inquiries is Tuesday July 30, 2024.
- 1.28.5 The final addenda will be issued no later than 72 hours prior to bid closing.
[ADD.01]

1.29 INQUIRIES

~~1.29.1 Please direct all questions and inquiries as soon as possible in the bid period, via email to scott@scottbarker.ca.~~

1.29.2 The final day to submit inquiries is Tuesday July 30, 2024. [ADD.01]

1.30 AWARD OF CONTRACT, EXECUTION OF THE CONTRACT AND DOCUMENTS TO BE DELIVERED

1.30.1 The Owner reserves the right in its absolute discretion to accept any Bid which it deems most advantageous to itself and the right to reject any or all bids, in each instance without giving any notice. The lowest or any Bid will not necessarily be accepted.

1.30.2 If the Owner decides to award the Contract to a bidder, it will issue a letter of Contract Award.

1.30.3 Bidders shall not issue or make any statements or news release concerning their Bid, the Bid process, the Owner's evaluation of the bids, or the Owner's award or cancellation of the Bid process without the express written consent of the Owner.

1.30.4 Prior to commencing the Work, the Contractor shall deliver to the Owner:

1.30.4.1 the performance bond and the labour and material payment bond described in the Bid Documents, the form of such bonds to comply with the requirements of the Contract;

1.30.4.2 certified true copies of the insurance policies required by the Bid Documents.

1.30.4.3 a current Clearance Certificate issued by the Workplace Safety and Insurance Board.

1.31 REQUESTS FOR CLARIFICATION AND ADDITIONAL INFORMATION

1.31.1 After the Bid closing time, Owner may contact any one or more Bidders to request additional information and clarification without any obligation to contact other Bidders.

1.31.2 Bidders shall respond, and Provide promptly to Consultant, all requests for Clarification and Additional Information. Failure to do so may result in the Bid being rejected.

1.31.3 Requests for clarification and additional information shall not be construed as award of the Contract, acceptance of a Bid, or the rejection of a Bid.

1.31.4 Additional information and clarification requested may include without limitations:

1.31.4.1 submission of a trade-by-trade breakdown of the Bid price;

1.31.4.2 submission of a preliminary construction schedule.

.1 Such preliminary construction schedule shall be consistent with the time for Substantial Performance of the Work stated in the Bid Documents or submitted by the Bidder.

.2 Such preliminary construction schedule may be in bar chart format and shall include all major sub-trades and show Project milestones and critical schedule items, such as start and

completion of major Project components; and/or clarification or any other information.

1.31.5 Information, prices, rates and documents submitted in response to a Request for Clarification and Additional Information shall form part of a Bidder's Bid.

1.32 BIDDERS' EXPENSES

1.32.1 The Owner shall not be responsible for, and every Bidder shall bear, all costs and expenses incurred relating to any aspect of its participation or intended participation in this Bid process including, without limitation, all costs and expenses related to its involvement in:

1.32.1.1 due diligence, investigations, and information gathering processes;

1.32.1.2 attendances and/or participation at any meetings;

1.32.1.3 preparation and submission of a Bid, including responding to Requests for Clarifications and Additional Information

1.33 LIMIT OF LIABILITY

1.33.1 The Owner shall not be liable to any Bidder for any claims arising out of this Bid process including:

1.33.1.1 claims arising from the Owner's negligence or other tortious conduct; and/or

1.33.1.2 claims arising from the Owner's breach of the Bid Contract or any other Contract or other obligation that may arise as a result of a Bidder's participation in this Bid process and/or submission of a Bid,

1.33.1.3 reasonable cost to the Bidder of preparing its Bid

1.34 FAIR WAGE POLICY

1.34.1 Comply with the requirements of the City of Toronto's Fair Wage Policy available at <https://www.toronto.ca/business-economy/doing-business-with-the-city/understanding-the-procurement-process/fair-wage-office-policy/fair-wage-policy/>

1.35 UNION LABOUR

1.35.1 Comply with requirements of the City of Toronto's labour trade contractual obligations in the construction industry (collective agreements) that apply to the Work, including the Voluntary Recognition Agreement (VRA) with Labourers' International Union of North America (LIUNA)– and abide by such requirements.

1.35.2 For additional information, refer to: <https://www.toronto.ca/business-economy/doing-business-with-the-city/understanding-the-procurement-process/purchasing-policies-legislation/voluntary-recognition-agreement-with-labourers-international-union-of-north-america-liuna/>

1.36 PROHIBITION ON LOBBYING / COLLUSION

1.36.1 Bidders, and/or any representatives employed or retained by them, are strictly prohibited from engaging in conduct which is, or could reasonably be considered

as, any form of political or other lobbying, or as an attempt to influence the outcome of this Bid process.

- 1.36.2 A Bidder shall not discuss or communicate directly or indirectly with any other Bidder any information whatsoever regarding the preparation of a Bid. Bidders shall prepare and submit Bids independently and without any communication, knowledge, comparison of information, or arrangement, directly or indirectly, with any other Bidder.
- 1.36.3 Failure of any Bidder to comply with this requirement may result in the disqualification of the Bidder and the rejection of its Bid.

1.37 DISPUTES

- 1.37.1 In the event of a dispute arising in connection with this Bid process including, without limitation, a dispute concerning the existence of the Bid Contract or a breach of the Bid Contract, or a dispute as to whether the Bid of any Bidder was submitted on time or whether a Bid meets the Mandatory Requirements, the parties to the dispute agree:
- 1.37.1.1 to use their best efforts to resolve the dispute through amicable and good faith negotiations for a period of at least ten (10) Days, having such written and oral communications and meetings as appropriate.
- 1.37.1.2 if a dispute is not resolved through negotiations any party may, at any time prior to the dispute being referred to arbitration in accordance with paragraph below, request that a mediator be retained to assist in resolving the dispute. In the event a request for mediation is made, the parties shall, within five (5) Working Days, make reasonable attempts to agree on a mediator and shall mediate the dispute;
- 1.37.1.3 if the dispute is not resolved through negotiations or within thirty (30) Days of a request for the appointment of a mediator pursuant to paragraph above, the Owner, in its unqualified subjective discretion, may refer the dispute to confidential binding arbitration before a single arbitrator, selected by the Owner, at Toronto, Ontario pursuant to the Arbitration Act, 1991 (Ontario), as amended. In the event that the Owner refers the dispute to arbitration, each Bidder agrees that it is bound to arbitrate such dispute with the Owner. Unless the Owner shall refer such dispute to arbitration, there shall be no arbitration of such dispute.
- 1.37.2 The Owner may give notice of a dispute to one or more or all of the Bidders, each of whom shall be a party to and shall be entitled to participate in the negotiation, mediation and/or arbitration, as the case may be and, in the case of arbitration, each of whom shall be bound by the arbitrator's award, whether or not they participated in the arbitration.
- 1.37.3 In the event the Owner refers a dispute to arbitration, the parties to the arbitration shall exchange brief statements of their respective positions on the dispute, together with the relevant documents, and submit to an arbitration hearing which shall last no longer than two Days, subject to the discretion of the arbitrator to increase such time. The parties further agree that there shall be no appeal from the arbitrator's award.

1.37.4 This Section is not intended to form part of any “Bid Contract” that may come into being between a Bidder and any prospective Subcontractor or Supplier of that Bidder.

END OF SECTION