



Corporate Finance Department
Purchasing Division

593-2024B ADDENDUM 8

CONSTRUCTION OF NORTH GARAGE REPLACEMENT

URGENT

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

ISSUED: May 5, 2025
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**THIS ADDENDUM SHALL BE INCORPORATED
INTO THE BID/PROPOSAL AND SHALL FORM
A PART OF THE CONTRACT DOCUMENTS**

Template Version: Add 2024-02-01

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

PART D – SUPPLEMENTAL CONDITIONS

Revise D23.4 to read:

The amount specified for liquidated damages in D23.3 is based on a genuine pre-estimate of the City's damages in the event that the Contractor does not achieve Total Performance by the day fixed herein for same **but shall be subject overall to a maximum limit of 1% 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, and shall not exceed the sum of \$3,500.00 per Calendar Day of delay.**

Revise D32.4 to read:

The limits set out in C17.1 shall be exclusive of any insurance proceeds received or which will be received pursuant to policies maintained in accordance with this Contract, **but shall not include proceeds from insurance policies placed by the Contractor that exceed the minimum requirements specified under 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; and shall not apply in cases of gross negligence or wilful misconduct.

Add D37

D37.1: C13.2.2 is modified to the following:

If all outstanding defects or deficiencies have not been corrected to the satisfaction of the Contract Administrator by at least two (2) weeks prior to the date on which the warranty would expire except for this C13.2.2, then the Contract Administrator may require the Contractor to extend the warranty period for a further period of one (1) year for those defects or deficiencies in the Work identified by the Contract Administrator as still outstanding and uncorrected or for any portion of the Work whose use or operation is prevented by such defects or deficiencies. In no event shall the warranty period be extended beyond a further one (1) year period.

Add D38

D38.1: C16.1 is modified to the following:

If the Contractor is delayed in the performance of the Work by reason of strikes, lock-outs (including lock-outs decreed for its members by a recognized contractors' association of which the Contractor is a member), an act of God, or any other cause which the Contractor satisfies the Contract Administrator to be **reasonably** ~~totally~~ beyond their control, the work schedule shall be adjusted by a period of time equal to the time lost due to such delays and costs related to such delays will be determined in accordance with C7.

Add D39

D39.1: C18.1(g) and C18.1 (h) are modified to the following:

(g) subject to the City meeting its payment obligations, fails to make prompt payment to their Subcontractors, their employees or on account of the purchase or rental of Plant or Material in compliance with the terms of their applicable contract with the same third party; or

(h) subject to the City meeting its payment obligations, fails to promptly secure a discharge of a claim for lien or trust claim served upon the City pursuant to The Builders' Liens Act; or

QUESTIONS AND ANSWERS

Q1: **Bid Validity Period:** The Contractor requests its bid validity period to be 30 days (as opposed to 90 days) due to the volatility of the current markets.

A1: The City cannot make this change. Internal City evaluation and award of contract timelines cannot accommodate a thirty day validity period.

Q2: **Waiver of Consequential Damages:** The Contractor requests a waiver of consequential damages.

A2: Please refer to existent D32.6. The City is unwilling to make further changes.

Q3: **Limit of Liability:** The Contractor requests a limit of liability of \$10M, which is in line with the scale and potential risks associated with the project.

A3: Please refer to the limit contained with respect to the Contractor's obligations under D32.2.

Q4: **Liquidated Damages:** The Contractor proposes to limit damages for delays to those actually incurred, thereby enabling the City to recover its genuine losses resulting from delays, while avoiding the imposition of excessive penalties. The provision specifying a maximum daily amount ensures that the Contractor will not be subject to double penalties for the same delay. The Contractor suggests the inclusion of an aggregate cap on delay damages to provide a predictable limit on potential liability, ensuring fairness and clarity for both parties.

A4: Please refer to revisions to D23.4.

Q5: **Payment of Insurance Deductible** The party responsible for the insurable event should pay for the deductible to ensure that they bear the initial risk and responsibility for the claim, incentivizing proper risk management and minimizing unnecessary financial burdens on the other party.

A5: The City will not make revisions to the insurance provisions of the Contract.

- Q6: **Tariffs:** Given the volatile and dynamic nature of international trade policies, including the imposition of tariffs and counter-tariffs, the Contractor is requesting relief in both the project schedule and cost due to the unforeseen and unavoidable impacts caused by these trade measures. The current wording is too ambiguous as to whether or not the Contractor would be entitled to relief.
- A6: The City has already included language to respond to tariffs in D35 under which adjustments in Contract Price shall be made provided the Contractor can meet certain conditions. Adjustments to project schedule may be requested under existent Change in Work provisions (C7).
- Q7: **Final Limitation Period:** The Contractor proposes that the contract be amended to include a tail period for the submission of claims, consistent with the CCDC 6-year standard, which would begin from the date of Substantial Performance.
- A7: The City will not make revisions to the Contract in this fashion. Limitation periods already exist within applicable law and the terms of the Contract.
- Q8: **Dispute Resolution:** While the Contractor is comfortable with the process proceeding to the Contract Administrator's Officer, there is concern about potential bias given the CAO's position. The Contractor requests the opportunity to pursue mediation, arbitration, or litigation if the CAO's determination is disputed, rather than the decision being final and non-appealable. This would ensure a fair and impartial resolution process for both parties.
- A request has also been made to make arbitration mandatory.
- A8: The City's dispute resolution terms do not preclude a contractor from seeking litigation. Additionally, Contractors now have access to alternate, mandatory dispute resolution mechanisms through the Prompt Payment provisions of the Builders Liens Act in certain situations. Accordingly, the City will not make revisions to its Dispute Resolution terms at this time.
- Q9: **Indemnity Cap:** This requested change excludes the Contractor's excess insurance coverage from an indemnity cap, as such excess insurance was procured and paid for by the Contractor.
- A9: See revision to D32.4 above.
- Q10: **Surface Conditions and Hazardous Subsurface Conditions C7.2.1:** Removing the term "substantial" ensures that any difference, regardless of its perceived significance, is accounted for in the Contractor's assessment of site conditions, thereby providing a clearer and more consistent basis for addressing variations in surface or subsurface conditions without relying on subjective interpretations of what constitutes "substantial".
- A10: Clause C7.2.1 exists to benefit the Contractor but also imposes obligations upon the Contractor to issue RFIs. There is nothing preventing a Contractor from issuing an RFI outside of the mandatory obligations contained in C7.2.1. As such no change is needed.
- Q11: **Force Majeure:** Reasonably beyond their control should be used to reflect the correct burden, ensuring that delays outside the Contractor's reasonable control are accounted for, while maintaining responsibility for managing foreseeable risks.
- A11: See modification to D37 above.

- Q12: **Change Regime:** There should be a clear entitlement to a change in the Contract for any compensable delay or event, including, but not limited to, those caused by the City, the Contract Administrator, other contractors, etc.
- A12: The Change in Work section (C7) allows for requests by the Contractor for modification to the Contract's schedule.
- Q13: **Owner's Right to Termination for Default:** The Contractor's obligations, such as making prompt payments to Subcontractors or securing the discharge of claims, are contingent upon the City fulfilling its own payment duties under the Contract, thus preventing the Contractor from being penalized for delays caused by the City's failure to make timely payments.
- A13: See updates to C18.1
- Q14: **Long Lead time:** Since the City is responsible for procuring the necessary equipment and the Contractor is not accountable for the procurement process, any delays in the supply and delivery of long lead electrical equipment, essential to the critical path of the project, should be recognized as a compensable event.
- A14: Bidders are to note that Tender 1045-2024 for the long lead equipment is not being awarded. The equipment listed in that tender will be added into this contract 593-2024B in a future Addendum.
- Q15: **Site Access:** The Contractor should not be subject to continued liability for areas no longer under their control.
- A15: The City will not make changes to C8.2 and believes the intent of this clause has been misunderstood. It is intended to allow City employees, agents, or contractors access or use of the Site while the Contractor carries on Work for any reason related to City operations. A certain amount of access and use is critical given the nature of the construction and the broad definition of Site.
- Q16: **Audit Rights:** In a lump sum construction contract, it is industry practice for audits not to include lump sum amounts or agreed upon unit rates.
- A16: The wording of D34. has been flowed through to this third party contract as a condition of provincial and/or federal funding agreements and cannot be modified.
- Q17: **Warranties:** The original language is excessively burdensome due to the potential for a one-year warranty extension based on unresolved defects. The updated language better aligns with the principles set out in C13.2.1 which extends the warranty for the period of time required to complete the repair. The Contractor requests warranties are the sole and exclusive remedy.
- A17: See modification contained in D37 above. Warranties will not be the City's sole remedy for deficiencies.
- Q18: **D34.3.1: Third Party Agreements: Indemnification by Contractor.** A request has been made to modify the wording of this section.
- A18: The wording of D34. has been flowed through to this third party contract as a condition of provincial and/or federal funding agreements and cannot be modified.
- Q19: Requested modifications to C18.1: Events of Default in the General Conditions as follows:
- or(c)is not **materially** performing or has not been **materially** performing the Work, or any part thereof, in a sound and workmanlike manner and in all respects in strict conformity with the Contract; or

~~(d) is not progressing continuously with the Work or any part thereof, and in such a manner as to ensure the completion of the Work or any part thereof, in accordance with the works schedule~~ intentionally deleted; or

(g) fails to make prompt payment to their Subcontractors, their employees or on account of the purchase or rental of Plant or Material, except where the Contractor has a bona fide claim for setoff;

- A19: The City will not modify (c) nor (d). See amendments made to C18.1(g) above.
- Q20: Insert definition of “gross negligence”.
- A20: Gross negligence is a legal term of art and not necessary to define under this Contract.