



## **Bidding System Terms of Use Agreement**

Welcome to our Bid Opportunities website (the "Bidding System").

The Bidding System provides information about and access to "Bid Opportunities" and related "bid documents" (e.g. RFP's RFT's) made available on-line by the City of Vaughan.

Use of this Bidding System constitutes bidding entity's agreement to comply with and be bound by this Terms of Use Agreement, as written (as may be amended by City from time-to-time, the "Agreement" or "Terms of Use").

Individuals who create Vendor accounts (as contemplated below) and use this Bidding System on behalf of a company or other legal entity are deemed to be authorized representatives of the named entity with authority to bind said entity to the terms herein (fraudulent behavior will be prosecuted).

The term "City" or "Owner" or "us" or "we" or "our" refers to The Corporation of the City of Vaughan.

The term "you" or "bidder" refers to the legal entity/Vendor whose representative(s) is using or viewing the Bidding System.

The term "Service Provider" means the Owner's contracted Bidding System Provider.

In order to be eligible to "bid" on City of Vaughan Bid Opportunities, you must use the Bidding System. Bidders who require accommodations due to a disability should contact the Procurement Services main line at 905-832-8555.

### **A. ACCEPTANCE OF AGREEMENT**

This Agreement may be amended by us from time to time without specific notice to you, by updating this posting.

This Agreement constitutes the entire and only agreement on the use of this Bidding System between us and you, and supersedes all prior or contemporaneous agreements, representations, warranties and understandings with respect to the Bidding System and the content provided by or through the Bidding System.

**B. BIDDING SYSTEM VENDOR ACCOUNT**

You must create a Vendor account to gain access to the Bidding System.

By creating and using a Vendor account on behalf of an entity, both the user and that entity represent and warrant to us that the user has authority to do so.

When creating a Vendor account you must list the individual contact(s) who may access the account. You will be required to provide identifiable personal information about each contact. You agree to provide us with real names and accurate, complete information. Each individual Vendor representative will be given a personal login and password to the same shared Vendor account.

Users are not permitted to (a) allow any other person to use their login to the Vendor account, or (b) use any other person's login to the Vendor account. You are responsible for preventing such unauthorized use.

You are solely responsible for ensuring that your information in the Vendor account (including but not limited to your current delivery or invoicing address, fax number and email address) is accurate and up to date; City shall have no liability for your failure to do so and no obligation to correct/update.

The City is not responsible or liable for misdirected notices which may result from incorrect or outdated contact information and/or company contacts that have failed to create their own login to the Bidding System.

**C. PASSWORD**

Users must login to the Bidding System using the email address and the password they created.

Users are entirely responsible for maintaining the confidentiality of their password.

You agree to ensure that users do not to use the e-mail address or password of another individual at any time.

You agree to notify us immediately if you suspect any unauthorized use of your Vendor account or improper password sharing or use.

You and the other contacts at your company are solely responsible for any and all use of your Vendor account.

User login information is for their own use only (and not for any other person) on behalf of the corporate or other legal entity who the user is representing.

It is understood and agreed that the City and Service Provider, its affiliates and agents are under no obligation to confirm the actual identity or authority of any individual Bidding System user and have no liability for damages or harm the bidder

may incur from misuse of its Vendor account. Bidders are liable for acts and omissions of individuals accessing and using the Bidding System on their behalf. Bidders shall make best efforts to ensure that their users/representatives abide by these Terms of Use.

**D. REGISTERED PLAN TAKERS**

In order to be able to (i) download bid documents, (ii) be notified by the Bidding System via email of any addendums pertaining to the Bid Opportunity, (iii) submit bids electronically through the Bidding System, (iv) withdraw/edit bids electronically, and/or (v) electronically acknowledge addendum/addenda and meet certain other submission requirements which may be outlined in the bid document, you must register as a Plan Taker for each applicable Bid Opportunity.

**E. ACCESS NOT TRANSFERABLE**

Your right to use the Bidding System is not transferable or assignable. Any login or right given to you to obtain information or documents is not transferable or assignable from one person to another, or one company to another.

**F. USE OF THE BIDDING SYSTEM**

All City issued documentation and information regarding a particular Bid Opportunity will be posted on the Bidding System. The City assumes no responsibility to you or any third party for the consequences of any errors or omissions or your reliance on any other source of information.

When using our Bidding System, information, including but not limited to any documents and drawings made available for download on the Bidding System and information you submit through the Bidding System, will be transmitted over a medium that may be beyond our control and jurisdiction. As such, we assume no liability for or relating to the delay, failure, interruption or corruption of any data or other information transmitted in

connection with this Bidding System and any delay, failure, interruption or corruption of any data or other information transmitted by you.

**G. INTELLECTUAL PROPERTY**

The materials located on our Bidding System are protected by copyright, trademark and other forms of proprietary rights and are owned or controlled by us or any other party credited as the provider of that information.

The content, organization, graphics, design, compilation, magnetic translation, digital conversion and other matters related to the Bidding System are protected under applicable laws including without limitation laws copyrights, trademark and intellectual property laws. By registering as a Plan Taker for a specific Bid Opportunity posted on this Bidding System, you are authorized to view or download

the contents of that specific Bid Opportunity and its related documents and screens but not any other contents from this Bidding System.

#### **H. FUNCTIONALITY OF A VENDORS (COMPUTER) SYSTEM**

You must maintain the functionality of your own (computer) system. The City and the City's Provider do **not**;

- a. assume any responsibility for the functionality or compatibility of your computer system; or
- b. agree to provide any User or any other person or entity with an alternate mode or method of submitting its bid, **except** if permitted by written addendum by the Owner or specifically approved by the City's Director of Procurement.

#### **I. FEES**

It is understood and agreed that you may be required to pay a fee to (i) register as a Plan Taker for a bid, (ii) to obtain the bid document, and/or (iii) to be able to submit bids electronically through the Bidding System.

#### **J. CONFIDENTIALITY AND SECURITY**

Bids submitted through the Bidding System are held in confidence (utilizing an electronic lock box) until after the bid closing date and time; however, it is understood and agreed that the City and Service Provider cannot ensure the privacy and authenticity of any information that it sends or receives through the Internet, and it is further understood and agreed that the City and Service Provider will not be responsible for any damages incurred respecting confidential information sent over the Internet to the City.

#### **K. PRIVACY AND CONSENT TO USE OF NAME**

The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, CHAPTER M.56 governs the collection, use and / or disclosure of any personal information provided through the Bidding System. Bidders shall only submit personal information as required to submit a bid.

By using the Bidding System, individual users are deemed to consent to the collection, use and disclosure of its personal information for the following purposes (and Bidder is also deemed to have secured such consent):

- i. to contact you;
- ii. to resolve disputes;
- iii. to identify or troubleshoot problems;
- iv. to detect and protect the Bidding System, the City and Service Provider (and its agents and affiliates) against error, fraud and other illegal activity;
- v. to enforce these Terms of Use;

- vi. City's ordinary business purposes related to the bid opportunity;
- vii. for comparison and review to identify errors, omissions and accuracy; and
- viii. as otherwise described to the Bidder or individual user representative at the time of collection, use or disclosure.

The City is further authorized to make certain information submitted available to other registered Bidders and members of the public at any time and in any format for the purpose of meeting the requirements of law, the bid documents, City process or the Bidding System – examples of such information include:

- names and addresses of Plan Takers and Bidders
- Unofficial and Official Bid amount(s)
- and the name(s) of selected Bidder
- Bidder NAME, ADDRESS, EMAIL ADDRESS(ES) PROVIDED ON ANY SUBMISSIONS TO CITY

For certainty, personal information may also be disclosed (as/if required) to:

- i. Service Provider or agents engaged by the City respecting the provision of services for the Bidding System;
- ii. other Bidders in order to facilitate the use of the Bidding System and the bidding process;
- iii. City staff and organization(s) or entity(ies) engaged by the City to evaluate a bid or other submission for compliance, scoring etc.;
- iv. a person who, in the reasonable judgment of the City, is providing or seeking the information as the Bidder's agent;
- v. the City's insurers;
- vi. the public through the display of bid results;
- vii. any other third party or parties, where the Bidder or user consents to such disclosure; and/or
- viii. where disclosure is required or permitted by law.

The following information is automatically collected and stored whenever the Bidder accesses the Bidding System:

- the Internet Protocol Address and domain name used;
- the type of browser and operating system;
- the date and time of the visit; and
- the web pages or services accessed.

#### **L. SYSTEM INTEGRITY**

You may not use any device, software or routine to interfere or attempt to interfere with the proper working of the Bidding System. You may not take any action, which imposes an unreasonable or disproportionately large load on the system and infrastructure supporting this Bidding System.

**M. WEB SITE LINKING**

Links to other Web sites or references to other organizations, products, services or publications do not constitute endorsement or approval by the City and the City makes no representations whatsoever about any other Web site which you may access through this one. We cannot and do not warrant the accuracy, completeness, timeliness, non-infringement, merchantability or fitness for a particular purpose of any information available through these links and disclaims any opinions expressed on such sites.

**N. ERRORS, CORRECTIONS AND CHANGES**

We do not represent or warrant that the Bidding System will be error-free, free of viruses or other harmful components, or that defects will be corrected. We may make changes to the features, functionality or content of the Bidding System at any time. We reserve the right in our sole discretion to edit or delete any documents, information or other content appearing on the Bidding System.

**O. EXCLUSION OF LIABILITY**

The City shall not be liable to you and/or any third party for any damages of any kind arising out of or relating to the use of or your ability to access or use our Bidding System including, but not limited to, any lost profits, lost opportunities, special, incidental, direct, indirect, consequential or punitive damages. By using this Bidding System you have agreed to waive any claim against the City for such damages.

**P. RELEASE AND INDEMNITY OF THE CITY**

You agree and to indemnify, defend and hold the City, including members of Council, staff, agents and representatives, and our service providers harmless from any liability, loss, claim and expense, including reasonable legal fees, related to your violation of this Agreement or use of the Bidding System.

**Q. UNLAWFUL ACTIVITY**

We reserve the right to investigate complaints or reported violations of this Agreement and to take any action we deem appropriate, including but not limited to reporting any suspected unlawful activity to law enforcement officials, regulators, or other third parties and disclosing any information necessary or appropriate to such persons or entities relating to your profile, e-mail addresses, usage history, posted materials, IP addresses and traffic information.

**R. HOW TO CONTACT US**

Should you have any questions or concerns about these Terms of Use, please contact the City of Vaughan's Procurement Services Department at 905-832-8555.