

INSTRUCTIONS TO BIDDERS

(name of Community)_

INSTRUCTIONS TO BIDDERS

1 BACKGROUND

- 1.1 The _____ (the "Community") is seeking tenders for the delivery of a Wheel Loader (the "Goods") **[Optional: Community to insert description of the Work/Services to be performed]** as set out on the list of Specifications described as follows:

[Community to insert particulars of Specifications for Wheel Loader, or attach as Schedule "A"].

- 1.2 The Community will receive sealed tenders until 2:00:00 p.m. MST on **[Community to insert date]** ("Tender Closing"). Faxed tenders will not be accepted and will be returned to the Bidder.

2 SUBMISSION OF TENDERS

- 2.1 Each Tender shall be addressed to the Community in a sealed envelope clearly marked with the Bidder's name, address and tender number. The sealed envelope containing the Tender shall be delivered before the Tender Closing to the Community in accordance with the Invitation to Tender and the Instructions to Bidders at:

_____ **(Community to insert contact information)**

- 2.2 In the event of a dispute or issue about whether or not a tender complies with the Instructions to Bidders, the Community reserves the right to retain and open a copy of the tender in question in order to seek and obtain a legal opinion in relation thereto.

3 TENDER FORM

- 3.1 Each Bidder shall submit a complete tender on the Tender Form which forms part of the Tender Documents with the blank spaces filled in. The Tender Sum must be written in words as well as figures, and must be for a sum in Canadian Dollars including all tariffs, freight, duties and taxes other than the Goods and Services Tax which must be shown as a separate amount unless otherwise specifically stipulated (hereinafter referred to as the "Tender Sum"). In the event of a discrepancy between an amount written in words and an amount written in figures, the amount written in words shall be deemed the intended amount. Tenders shall be written in English.
- 3.2 Notwithstanding the foregoing, the Community shall be entitled to accept a Tender in such form as the Community in its sole and unfettered discretion deems acceptable irrespective of irregularities whether of a trivial **[optional] or substantial**

nature, or whether the Tender is noncompliant in a trivial **[optional] or substantial** manner.

- 3.3 The Community shall not be obligated to accept Tenders that are unsigned, incomplete, conditional, illegible, unbalanced, obscure, contain irregularities of any kind, or mathematical or calculation errors of any kind. On Unit Price Tenders, if there is a discrepancy found between the unit price and the extended amount, the unit price shall be deemed to represent the intention of the Bidder. Discrepancies between words and figures will be resolved in favour of the words. Discrepancies between the indicated sum of any figures and the correct sum thereof will be resolved in favour of the correct sum. Any discrepancies between the Tender Form and a post Tender Closing submission required by the Tender Documents will be resolved in favour of the post Tender Closing submission.
- 3.4 Tenders shall not be withdrawn, modified or clarified after being delivered in accordance with the Tender Documents unless such withdrawal, modification or clarification is made in writing and actually received by **[insert name of Community's representative]** of the Community prior to the Tender Closing. Any withdrawal, modification or clarification of the Tender must be followed by a letter of confirmation signed and sealed in the same manner as the Tender and delivered to the address for the Community in the Invitation to Tender within 48 hours of the Notice of the Withdrawal, Modification or Clarification.

4 THE ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT

- 4.1 All documents submitted to the Community will be subject to the protection and disclosure provisions of Access to Information and Protection of Privacy Act ("AOIP"). AOIP allows persons a right of access to records in the Community's custody or control. It also prohibits the Community from disclosing the Bidder's personal or business information where disclosure would be harmful to the Bidder's business interests or would be an unreasonable invasion of personal privacy as defined in section 24 of AOIP, and elsewhere in AOIP. Bidders are encouraged to identify what portions of their submissions are confidential and what harm could reasonably be expected from its disclosure. However, the Community cannot assure Bidders that any portion of the Bidder's documents can be kept confidential under AOIP.

5 TENDER DOCUMENTS

- 5.1 The documents for the Tender are:
- Invitation to Tender
 - Instructions to Bidders
 - **[insert particulars of Specifications if applicable]**
 - Addenda No. _____
 - Contract attached as Schedule “B” hereto.

(hereinafter collectively referred to as the “Tender Documents”)

By submitting its Tender, the Bidder acknowledges and agrees that it has received and reviewed the Tender Documents.

6 VARIATION IN TENDER DOCUMENTS AND NO IMPLIED OBLIGATIONS

- 6.1 The Bidder shall carefully examine the Tender Documents. Any errors, omissions, discrepancies or clauses requiring clarification shall be reported in writing to the Community at least 10 calendar days prior to the Tender Closing. Where necessary the Community shall respond to reported errors, omissions, discrepancies or clauses requiring clarification by way of Addenda.
- 6.2 Should a Bidder fail to report any such errors, omissions, discrepancies or clauses requiring clarification at least 10 calendar days prior to the Tender Closing, the Community shall be the sole judge as to the intent of the Tender Documents.
- 6.3 No implied obligation of any kind by or on behalf of the Community shall arise from anything in the Tender Documents, and the express covenants and agreements contained in the Tender Documents and made by the Community, are and shall be the only covenants and agreements that apply.
- 6.4 Without limiting the generality of Article 6.3, the Tender Documents supercede all communications, negotiations, agreements, representations and warranties either written or oral relating to the subject matter of the Tender made prior to the Tender Closing, and no changes shall be made to the Tender Documents except by written Addenda.

7 ADDENDA

- 7.1 Any changes to the Tender shall be in writing in the form of Addenda. Any Addenda issued to the Tender shall form part of the Tender Documents, whether or not the receipt of same has been acknowledged by a Bidder, and the cost for doing the work therein shall be included in the Tender Sum. Verbal representations shall not be binding on the Community nor form part of the Tender Documents. Technical inquiries into the meaning or intent of the Tender Documents must be submitted in writing to the person identified in section 2.1 of the Instructions to Bidders.

8 TENDER

- 8.1 Bidders submitting Tenders shall be actively engaged in the line of work required by the Tender Documents and shall be able to refer to work of a similar nature

performed by them. They shall be fully conversant with the general technical phraseology in the English language of the lines of work covered by the Tender Documents.

- 8.2 Each Bidder shall review the Tender Documents provided by the Community and confirm that it is in possession of a full set of Tender Documents when preparing its Tender.
- 8.3 Tenders shall be properly executed in full compliance with the following requirements:
- 8.3.1 The signatures of persons executing the Tender must be in their respective handwriting; and
 - 8.3.2 If the Tender is made by a limited company, the full name of the company shall be accurately printed immediately above the signatures of its duly authorized officers and the corporate seal shall be affixed;
 - 8.3.3 If the Tender is made by a partnership, the firm name or business name shall be accurately printed above the signature of the firm and the Tender shall be signed by a partner or partners who have authority to sign for the partnership;
 - 8.3.4 If the Tender is made by an individual carrying on business under the name other than its own, its business name together with its name shall be printed immediately above its signature or
 - 8.3.5 If the Tender is made by a sole proprietor who carries on business in its own name, the proprietor shall print its name immediately below its signature.
- 8.4 Tenders received from agents representing principals must be accompanied by a Power of Attorney signed by the said principals showing that the agents are duly authorized to sign and submit the Tender and have full power to execute the Contract on behalf of their principals. The execution of the Contract will bind the principals and have the same effect as if it were duly signed by the principals.

9 TENDER DEPOSIT

The Bidder is required to submit with its Tender, **[Optional: a Consent of Surety]** and a Bid Bond in a form acceptable to the Community, or in lieu of a Bid Bond, a Bidder may submit, **[Optional: along with a Consent of Surety]**, a certified cheque or an irrevocable letter of credit in favour of the Community equal to 10% of the Tender Sum as a guarantee that, if awarded the contract for the **Goods/Services/Work**, the Bidder will execute the Contract attached as Schedule "B" hereto **[Optional: and submit the Performance Bond and the Labour and Material Payment Bond referred to in Article 10 within the specified time frames]**.

- 9.1 The Bid Bonds, certified cheques or irrevocable letters of credit of the unsuccessful Bidders shall be returned as soon as possible after the Contract has been duly executed by the Successful Bidder.

- 9.2 The Community will not pay any interest on money furnished as security.
- 9.3 The Bid Bond [**Optional: and Consent of Surety**] shall be issued by a Surety Company licensed in the Northwest Territories and satisfactory to the Community.

10 PERFORMANCE AND LABOUR AND MATERIAL PAYMENT BONDS

[Optional: Article 10 if the Community wants tender for provisions of provision of work as opposed to purchasing items such as equipment]

- 10.1 The Successful Bidder shall be required to furnish at its own expense a Performance Bond and Labour and Materials Payment Bond. For the purposes of this Article, both of these bonds shall be referred to as the "Bonds".
- 10.2 The Performance Bond shall guarantee the faithful performance of the Contract, and in default thereof, shall protect the Community against any losses or damage arising by reason of failure of the Successful Bidder to faithfully perform the Contract.
- 10.3 The Bonds are to be issued by a Surety Company licensed in the Northwest Territories and satisfactory to the Community in the amount of 50% of the Contract Price [insert 100% if so desired].
- 10.4 The Performance Bond shall remain in force as a Maintenance Bond for the Warranty Period as defined in the Contract.
- 10.5 The Bonds shall be in the form set out in the Tender Documents or in such other form as may be acceptable to the Community.
- 10.6 The Community may consider alternate forms of security in lieu of the Bonds. The Bidder shall make known any alternative form of security it wishes the Community to consider and obtain the Community's approval prior to submitting a Tender.
- 10.7 The Successful Bidder shall provide all required Bonds to the Community no later than 10 working days after receipt of the Letter of Intent from the Community provided in accordance with Article 16.
- 10.8 The Successful Bidder shall supply all required Bonds before any Work is undertaken by the Successful Bidder.
- 10.9 No payment shall be made by the Community to the Successful Bidder for any of the Work performed by the Successful Bidder until the required Bonds have been provided.

11 INSURANCE

[Optional: Article 11 may not apply to tender for purchase of items such as equipment but would be applicable for tenders for the performance of work or provision of services]

- 11.1 The Tender shall be accompanied by a Certificate of Insurance, certifying that the insurance as required by the Contract, is in place or, if the required insurance is not in place, by a Letter of Insurability or Undertaking of Insurance in standard form from the Bidder's Insurance Broker certifying that the required insurance will be issued to the Bidder if the Bidder is the Successful Bidder.**
- 11.2 The Successful Bidder shall be required to secure and maintain at its own expense the insurance provided for in the Contract.**
- 11.3 The Successful Bidder shall provide all required insurance to the Community no later than 10 working days after receipt of a Letter of Intent from the Community provided in accordance with Article 16.**

12 DELIVERY OF GOODS **[Optional: or COMMENCEMENT AND COMPLETION OF WORK]**

- 12.1 The Successful Bidder shall deliver the Goods **[Optional: or commence the Work within 10 working days after receipt of the Letter of Intent from the Community and shall complete the Work]** by the date specified in the Invitation to Tender **[Community to insert date—the same date as noted in the Invitation to Tender]**.**

13 SITE CONDITIONS

[Optional: Article 13 may not apply to tender for purchase of items such as equipment but would be applicable for tenders for the performance of work or provision of services]

- 13.1 The Bidder is responsible for inspecting the site of the Work and for making whatever inquiries or arrangements necessary for it to become fully informed of the nature of the site of the Work, including the soil structure and topography of the site, and of the Work to be performed and all matters which may in any way affect the Work. Without limiting the foregoing, by the submission of its Tender, the Bidder acknowledges that it has investigated and satisfied itself as to:**
 - a) the nature of the Work;**
 - b) the location and all conditions relating to the location of the Work including, but not limited to, accessibility, general character, surface and sub-surface conditions, soil structure, utilities, road, uncertainties of seasonal weather and all other physical, topographical, geological and geographic conditions;**
 - c) the general character, conditions, laws and restrictions applicable to the Work that might affect the performance of the Work;**

- d) all environmental risks, conditions, laws and restrictions applicable to the Work that might affect the Work; and
- e) the magnitude of the construction work required to execute and complete the Work.

13.2 The Bidder is fully responsible for obtaining all information required for the preparation of its Tender and for the execution of the Work. The Community is not responsible for undertaking any investigations to assist the Bidder. Any information, plans, drawings, shop drawings or existing equipment or facilities, photos of the original construction, reports or other documents which are not included or referred to in the Tender Documents (the “Non-Tender Information”), form no part of this Tender. The Community and the Community’s Consultants assume no responsibility of any kind whatsoever arising from or relating to its failure to include or refer to such Non-Tender Information. Bidders who obtain or rely upon such Non-Tender Information or other documents, do so entirely at their own risk.

13.3 The Bidder’s obligation to become familiar with the information described in Article 13.1 is not lessened or discharged by reason of any technical reports, including soils reports or data, test hole drilling reports or other soils information, made available or supplied in conjunction with the tendering process. Any technical reports so provided are for information only and neither the Community nor the Community’s Consultants accept or assume any responsibility for the contents or accuracy of such technical reports and the Bidder agrees that the Community, the Community’s Consultants and their representatives shall not be liable in any way to the Bidder in respect of such technical reports. The Bidder further agrees that it shall not rely upon any oral information provided to it by the Community, the Community’s Consultants or their representatives.

14 PRIME COST AND CONTINGENCY SUMS

14.1 The Bidder shall include in its Tender Sum any prime cost sums or contingency sums. The Goods and Services Tax shall be shown as a separate amount.

14.2 Any tax rebates that apply under current legislation will be claimed by and will be accrue to the benefit of the Community.

15 PERMITS AND INSPECTIONS [Optional: Article 1 may not apply to tender for purchase of items such as equipment but would be applicable for tenders for the performance of work or provision of services 5]

15.1 The Bidder shall include in its Tender Sum the cost of building and other permits and inspections required by any governmental or other authority having jurisdiction or as required to fully perform the Work in accordance with the Contract.

16 SUCCESSFUL BIDDER

16.1 Award of Contract by the Community occurs once the Bidder receives a Letter of Intent duly executed by [insert name of Community’s representative] of the

Community after **[insert name of Community's representative]** has been duly and legally authorized by the Community to send such Letter of Intent.

- 16.2 [Optional: Article 16.2-16.5 may not apply to tender for purchase of items such as equipment but would be applicable for tenders for the performance of work or provision of services]**

Following the receipt of the Letter of Intent, the Successful Bidder shall provide the Performance Bond and Labour and Material Payment Bond within the time required in Article 10.7. The Successful Bidder shall also provide a Certificate of Insurance unless previously provided.

16.2.1 Upon the Successful Bidder complying with the requirements of both Articles 16.2 and 16.4, the certified cheque or Bid Bond or irrevocable letter of credit, as the case may be, shall be returned to the Successful Bidder.

16.2.2 If the Successful Bidder fails to comply with either or both of the requirements of Articles 16.2 and 16.4, the certified cheque or Bid Bond or irrevocable letter of credit, as the case may be, shall be forfeited to the Community as compensation for damages the Community may suffer.

- 16.3 The forfeiture of a Successful Bidder's certified cheque or Bid Bond or irrevocable letter of credit shall not be construed as a waiver of any rights or remedies which the Community may have against such Bidder for loss or damages incurred or suffered in excess of the amount of such certified cheque or Bid Bond or irrevocable letter of credit.**
- 16.4 Within 10 working days of receipt of the Contract from the Community, the Successful Bidder shall duly execute the Contract and return the Contract to the Community.**
- 16.5 Within [Community to insert number of days] working days of receipt of a Letter of Intent in accordance with Article 16.1, the Successful Bidder shall submit a proposed Construction Schedule showing the anticipated time of commencement and completion of each of the various operations to be performed under the Contract.**

17. TENDER EVALUATION CRITERIA

- 17.1 Each Tender will be evaluated on the basis of the criteria listed below and the Community will have the sole and unfettered discretion to award up to the maximum number of points for each criteria as listed below. By submitting a Tender, the Bidder acknowledges and agrees that the Community has, and it is hereby entitled to exercise, the sole and unfettered discretion to award the points for the evaluation of the noted criteria.**
- 17.2 By submitting its Tender, each Bidder acknowledges and agrees that it waives any right to contest in any legal proceedings, the decision of the Community to award**

points in respect of the criteria noted below. The criteria and the maximum number of points for each criteria are as follows:

[Insert criteria and maximum number of points which can be awarded. The maximum number of points should total 100. Some examples are:

1. Price	30 points.
2. Responsiveness to Specifications	20 points
3. Delivery Date	20 points
4. Warranty	30 points
Total Points	100 points.]

18 WORKERS' COMPENSATION

[Optional: Article 18 may not apply to tender for purchase of items such as equipment but would be applicable for tenders for the performance of work or provision of services]

- 18.1 Each Bidder is to submit with its Tender, a letter of account from the Workers' Compensation Board – Northwest Territories. This letter is to be current and not dated 14 calendar days prior to the Tender Closing.**
- 18.2 The Bidders who do not have an account with the Workers' Compensation Board- Northwest Territories shall provide with their Tender evidence of a subcontractor or other company that will carry such coverage on their behalf.**
- 18.3 The Community will reject any Tender which fails to comply with the provisions set out in Article 18.**

18 REGISTRATION

- 19.1 Prior to commencing the Work, the Successful Bidder shall obtain all authorizations required by the laws of the Northwest Territories and of the Country of Canada enabling it to carry on business to complete the Work required under the Contract. Failure to be properly authorized shall entitle the Community to forthwith terminate the Contract without compensation.**

20 TENDERS EXCEEDING BUDGET

- 20.1 In addition to the rights contained within Article 20 herein, if the Tender Sum of every Bidder exceeds the amount the Community has budgeted for the **Goods/Services/Work**, the Community may reject all Tenders or attempt to negotiate a lower price with the Bidder who, in the sole and unfettered discretion of the Community, has submitted the most advantageous Tender.**
- 20.2 Each Bidder acknowledges and agrees that the Community has the sole and unfettered discretion to employ any criteria in order to determine the Tender most**

advantageous to the Community, that the Community has no obligation to disclose such criteria nor employ the criteria listed in Article 17 Tender Evaluation Criteria.

20.3 By submitting its Tender, each Bidder waives its right to contest in any action, application, case or legal proceeding in any court, the decision which the Community may pursue under Article 20.1 and 20.2 herein.

20.4 If the Tender Sum of every Bidder exceeds the amount budgeted for the **Goods/Services/Work** and the Community negotiates with the Bidder who has submitted the Tender considered most advantageous to the Community:

20.4.1 All statements made by either side in the course of negotiation are without prejudice and confidential;

20.4.2 In particular, the Community's attempt to negotiate with such Bidder does not constitute a rejection of its Tender; and

20.4.3 The Community will not attempt to obtain a lower price for the same **Goods/Services/Work** that the Bidder originally bid on, but may attempt to obtain a lower price for revised **Goods/Services/Work**. In no event will the Community be obliged to disclose the amount budgeted for the **Goods/Services/Work**.

21 CERTIFICATE OF RECOGNITION ("C.O.R.") SAFETY PROGRAM REQUIREMENT

[Optional: Article 21 may not apply to Wheel Loader tender]

21.1 Unless otherwise stated, Tenders will only be considered when the Bidder, prior to Tender Closing, has either full certification in a Northern Safety Association approved Certificate of Recognition ("C.O.R.") Program appropriate to their industry or a temporary letter of certification issued by the Northern Safety Association or other appropriate industry association.

21.2 Certification shall be evident by inclusion of the Bidders name on the Northern Safety Association ("N.S.A.") C.O.R. certification list current at the Tender Closing, or submission of a copy of the Northern Safety Association COR or a temporary letter of certification with the Tender.

21.3 The Community will assume no liability for the non-inclusion of any Bidder on the N.S.A. C.O.R. certification lists for any reason whatsoever.

21.4 The Community reserves the right to terminate the Contract during the course of which the Contractor is decertified from the C.O.R. program or has their temporary letter of certification expire.

21.5 The Community will reject any Tender which fails to comply with the provisions set out in Article 21.

22 AGREEMENT ON INTERNAL TRADE

22.1 The provisions of the Agreement on Internal Trade, Part IV, Chapter Five – Procurement and Annex 502.4, (“AIT”).

23 ACCEPTANCE OR REJECTION OF TENDERS

23.1 As it is the purpose of the Community to obtain the Tender most suitable and most advantageous to the interests of the Community, notwithstanding anything else contained within the Tender Documents, the Community reserves the right, in its sole and unfettered discretion, to reject or accept any Tender, including the right to reject all Tenders. Without limiting the generality of the foregoing, any Tender which

- a) is incomplete, obscure, irregular or unrealistic;
- b) [Optional] is non-compliant in a trivial/immaterial or substantial/material manner, or conditional;**
- c) has erasures or corrections;
- d) omits a price on any one or more items in the Tender;
- e) fails to complete the information required in the Tender;
- f) is accompanied by an insufficient certified cheque, irrevocable letter of credit or by a Bid Bond in an unsatisfactory form,

may at the Community’s sole and unfettered discretion be rejected or accepted. **[Optional] Further, a Tender may be rejected or accepted on the basis of the Community’s unfettered assessment of its best interest, which includes the Community’s unfettered assessment as to a Bidder’s past work performance for the Community or for anyone else or as to a Bidder’s financial capabilities, completion schedule, or ability to perform the Work, or the Community’s desire to reduce the number of different contractors on the location of the Work at any given time. The Community reserves the right to negotiate after Tender Closing time with the Bidder that the Community deems has provided the most advantageous Tender; in no event will the Community be required to offer any modified terms to any other Bidder prior to entering into a Contract with the Successful Bidder and the Community shall incur no liability to any other Bidders as a result of such negotiation or modification.**

24 LAW AND FORUM OF TENDER

24.1 The law to be applied in respect of the Tender Documents and the Contract shall be the law of the Northwest Territories and all civil actions commenced in relation to the Tender Documents or Contract shall be adjudicated by the Courts of the Northwest Territories and by submitting Tenders, Bidders are taken to have agreed to attorn to the jurisdiction of the Courts of the said Territory.

25 ACCEPTANCE PERIOD

25.1 The Tender shall be irrevocable and open for acceptance by the Community for the period of time contained in the Invitation to Tender, namely, sixty (60) days following the end of the day of the Tender Closing. The time and date of the Tender Closing is as defined in the Invitation to Tender.