

PART D

SUPPLEMENTAL CONDITIONS

PART D - SUPPLEMENTAL CONDITIONS

GENERAL

D1. GENERAL CONDITIONS

- D1.1 In addition to the General Conditions for the Supply and Delivery of Goods, these Supplemental Conditions are applicable to the Work of the Contract.
- D1.2 The General Conditions are amended by striking out "The City of Winnipeg Act" wherever it appears in the General Conditions and substituting "The City of Winnipeg Charter".
- D1.3 The General Conditions are amended by striking out "Board of Commissioners" or "Commissioner" wherever it appears in the General Conditions and substituting the "Chief Administrative Officer".

D2. SCOPE OF WORK

- D2.1 The Work to be done under the Contract shall consist of the supply and delivery of low floor transit diesel buses for the period January 1, 2004 to December 31, 2006 with the option to renew on an annual basis until December 31, 2013.
- D2.2 The major components of the Work are as follows:
- (a) Alternative A consists of supplying and delivering approximately thirty (30) buses for the year 2004 and a commitment to purchase in years 2005 to 2013 subject to D2.4.2. These buses are to have a structural warranty period of seven (7) years.
 - (b) Alternative B consists of supplying and delivering approximately thirty (30) buses for the year 2004 and a commitment to purchase in years 2005 to 2013 subject to D2.4.2. These buses are to have a structural warranty period of eighteen (18) years.
- D2.3 Firm unit prices are for 2004, and subsequent prices are to be adjusted based on the following
- (a) Annual price adjustments for inflation to be no more than that indicated in Statistics Canada Monthly Product Price CANSIM Matrix V1575599, Canadian Market, North American Heavy Trucks.
 - (b) Price adjustment for government mandated build changes or environmental enhancements to be demonstrably equivalent to or lower than competitor manufacturers, for the class of unit.
 - (c) Price adjustment for technological improvements to be justifiable on a life cost basis and demonstrably equivalent to or lower than competitor manufacturers, for the class of unit.
- D2.4 The Work shall be done on an annual basis during the term of the Contract.
- D2.4.1 The type and quantity of Work to be performed under this Contract shall be as authorized from time to time by the Contract Administrator and/or Users.
- D2.4.2 Subject to GC.4.08, the City shall have no obligation under the Contract to purchase any quantity of any item in excess of its actual operational requirements. The City will have, at its sole discretion, the right to vary the amounts, or to not place an order, in any year if budgets or operational changes occur, or if it is in the best interest of the City to vary the amounts.
- D2.5 From 2007 to 2013, either party may terminate the contract with nine (9) months written notice.

D3. DEFINITIONS

D3.1 When used in this Tender Package:

- (a) "**Business Day**" means any Calendar Day, other than a Saturday, Sunday, or a Statutory or Civic Holiday;
- (b) "**Submission Deadline**" and "**Time and Date Set for the Final Receipt of Bids**" mean the time and date set out in the Bidding Procedures for final receipt of Bids;
- (c) "**First Year Bid Price**" means the price submitted in Form B: Prices, and is the price per unit for the first year of the contract only. Subsequent year pricing is calculated using appropriate price adjustments in D2.3;
- (d) "**Annual Total Performance**" means the completion of each annual portion of the Contract, which is the annual order.

D4. CONTRACT ADMINISTRATOR

D4.1 The Contract Administrator is:

Mr. Tony Dreolini, P.Eng.
Manager of Plant and Equipment
421 Osborne Street
Winnipeg, MB R3L 2A2
Telephone No. (204) 986-5774
Facsimile No. (204) 453-7385

D4.2 General Enquiries may be directed to:

Mr. Don Devisser
Superintendent of Vehicle Overhaul
421 Osborne Street
Winnipeg, MB R3L 2A2
Telephone No. (204) 986-5801
Facsimile No. (204) 986-3672

D5. NOTICES

D5.1 GC.7.05 is hereby amended to delete reference to "registered mail" and to replace same with "ordinary mail".

D5.2 GC.7.05 is further amended hereby to include delivery by facsimile transmission (fax) as an acceptable means of delivering notices, consents, approvals, statements, authorizations, documents or other communications required or permitted to be given under this Contract. Deliveries by fax will be deemed to have been received on the day of delivery, if a business day, or if not a business day, on the business day next following the day of delivery.

D5.3 Further to GC.7.05, all notices, consents, approvals, statements, authorizations, documents or other communications to the City, except as expressly otherwise required in D5.4, D5.5 or elsewhere in the Contract, shall be sent to the attention of the Contract Administrator at the address or facsimile number identified in D4.1.

- D5.4 All notices of appeal to the Chief Administrative Officer shall be sent to the attention of the Chief Financial Officer at the following address or facsimile number:

The City of Winnipeg
Chief Administrative Officer Secretariat
Administration Building, 3rd Floor
510 Main Street
Winnipeg MB R3B 1B9
Facsimile No.: (204) 949-1174

- D5.5 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications required to be submitted or returned to the City Solicitor shall be sent to the following address or facsimile number:

The City of Winnipeg
Corporate Services Department
Legal Services Division
185 King Street, 3rd Floor
Winnipeg MB R3B 1J1
Facsimile No.: (204) 947-9155

SUBMISSIONS

D6. PERFORMANCE SECURITY

- D6.1 The Contractor shall provide and maintain performance security until the expiration of the warranty period in the form of:
- (a) Performance Bonds of a company registered to conduct the business of a surety in Manitoba in the forms attached to these Supplemental Conditions (Form H1: Performance Bonds); the first ("Initial Performance Security") for one year in the amount of twenty percent (20%) of the First Year Bid Price of the Contract, and subsequent performance bonds ("Renewal Performance Security"). Each such Renewal Performance Security shall be one (1) year in duration and in the amount of twenty percent (20%) of the annual value of the Contract; or
 - (b) an irrevocable standby letter of credit issued by a bank or other financial institution registered to conduct business in Manitoba and drawn on a branch located in Manitoba, in the form attached to these Supplemental Conditions (Form H2: Irrevocable Standby Letter of Credit), in the amount of twenty percent (20%) of the First Year Bid Price; or
 - (c) a certified cheque or draft payable to "The City of Winnipeg", drawn on a bank or other financial institution registered to conduct business in Manitoba, in the amount of twenty percent (20%) of the First Year Bid Price.
- D6.2 If the bid security provided in his Tender Submission was not a certified cheque or draft pursuant to B11.1(c), the Contractor shall provide the City Solicitor with the required performance security within seven (7) Calendar Days of notification of the award of the Contract by way of letter of intent and prior to the commencement of any Work on the Site but in no event later than the date specified in GC.3.01 for the return of the executed Contract.
- D6.3 Further to D6.1(a), the Renewal Performance Security shall be provided to the City no later than sixty (60) days prior to expiry of the Current Performance Security.

SCHEDULE OF WORK**D7. COMMENCEMENT**

D7.1 The Contractor shall not commence any Work until he is in receipt of a letter of intent from the Award Authority authorizing the commencement of the Work.

D8. TOTAL ANNUAL PERFORMANCE

D8.1 Further to GC.8.04(2) of the General Conditions, the Contractor shall achieve Total Annual Performance by September 30 of the year of order.

D8.2 Further to GC.1.01(26) of the General Conditions, the day the final bus of each annual order of the Contract has been inspected in accordance with E5.3 and is certified as meeting the requirements of the Contract Documents by the Contract Administrator through the issue of a Certificate of Total Annual Performance is the date that Total Annual Performance of the Work has been achieved.

D9. LIQUIDATED DAMAGES

D9.1 Further to GC.8.04(3) of the General Conditions, should the Contractor fail to complete the Work in accordance with the Contract Documents by the day fixed herein for the Total Annual Performance of the Work, the Contractor shall pay the City \$67.00 per unaccepted bus per Calendar Day for each and every calendar Day following the day fixed herein for Total Annual Performance as provided in GC.8.04(3).

D9.2 The amount specified for Liquidated Damages in D9.1 is based on a genuine pre-estimate of the City's loss in the event that the contractor does not achieve Total Annual Performance of the Work by the Day fixed herein for same. In the event that the actual amount of loss suffered by the City is less than the amount specified in D9.1 for Liquidated Damages, the City shall deduct the actual amount of its loss only to a maximum of the amount specified in D9.1.

D9.3 Liquidated Damages are to be adjusted annually by the Statistics Canada Monthly Industrial Product Price CANSIM Matrix V1575599, Canadian Market, North American Heavy Trucks.

MEASUREMENT AND PAYMENT**D10. PAYMENT SCHEDULE**

D10.1 Payment will be in Canadian funds net Thirty (30) Calendar Days after receipt and approval of the Contractor's invoice.

D10.2 Bidders may offer early payment discounts relative to specified terms of payment. Acceptance of any discount offer will be at the sole option of the City.

WARRANTY**D11. WARRANTY**

D11.1 Further to GC.10.01 of the General Conditions, the Contractor shall, at its sole cost and expense, maintain the Work against any and all defects or deficiencies or otherwise which may arise during the one (1) year period following the date on which each bus is inspected in accordance with E5.4 and is certified by the Contract Administrator as meeting the requirements of the Contract Documents (the "Comprehensive Warranty"). Each bus shall have a separate

Comprehensive Warranty for a period of one (1) year following completion of the post-delivery inspection.

- D11.2 In addition to the Comprehensive Warranty described above, the Contractor shall, at its sole cost and expense, maintain the Work against any and all structural defects or deficiencies which may arise during the six (6) years following the Comprehensive Warranty period (the "Structural Warranty"). A structural defect or deficiency is defined as the permanent deformation, cracking or failure of a structural member, its joints, welds or fasteners which compromises vehicle or passenger safety or vehicle performance. A structural member shall include, but not be limited to, the upper welded structure, frame, chassis, floor, body panels and suspension mounting brackets and support structures. Each bus shall have a separate Structural Warranty for a period of six (6) years following the Comprehensive Warranty period.
- D11.3 In addition to the Comprehensive Warranty and Structural Warranty described above, the Contractor shall, at its sole cost and expense, maintain the Work against any and all corrosion defects or deficiencies which may arise during the six (6) years following the Comprehensive Warranty period (the "Corrosion Warranty"). A corrosion defect or deficiency is defined as the corrosion perforation or corrosion fatigue failure of an exterior panel or a structural member, its joints, welds or fasteners. Each bus shall have a separate Corrosion Warranty for a period of six (6) years following the Comprehensive Warranty period.
- D11.4 In the event that, at any time prior to expiry of the Structural Warranty period of the last bus to be inspected and certified prior to the date of Total Annual Performance, the City has evidence that twenty percent (20%) or more of the total buses ordered pursuant to the Contract have experienced defects or deficiencies of a similar nature and has notified the Contractor of same, the Contractor warrants and agrees that it shall correct, at its sole cost and expense and in a timely manner, such defects or deficiencies for all buses in the order notwithstanding that the Comprehensive Warranty or Structural Warranty of any single bus may have expired prior to receiving such notice (the "Total Order Warranty").
- D11.5 The Contractor shall supply a statement of any other warranties provided by himself or by any of the manufacturers of major components and subsystems of the buses that extend beyond the above, and shall assign same to the City upon request.
- D11.6 Further to GC.10.01 of the General Conditions, the City and the Contractor may negotiate an agreement for the City's own forces to perform warranty repair work under the following conditions:
- (a) the time required to perform the warranty repairs will be agreed to before repairs commence;
 - (b) warranty repairs requiring over two hours will be performed on overtime after normal working hours or during weekends;
 - (c) warranty repairs requiring less than two hours may be performed on overtime to complete the repairs as quickly as possible if deemed necessary by the Contract Administrator;
 - (d) the Contractor will either supply all materials necessary to perform the warranty repair or reimburse to the City, the full costs of parts and materials supplied by the City within 30 Calendar Days of use;
 - (e) labour rates for warranty repair work performed by City forces during normal working hours will be \$65.00 per person hour, the overtime labour rate will be \$100.00 per person hour

FORM H1: PERFORMANCE BOND – INITIAL PERFORMANCE SECURITY
(See D6)

KNOW ALL MEN BY THESE PRESENTS THAT

_____ ,
(hereinafter called the "Principal"), and

_____ ,
(hereinafter called the "Surety"), are held and firmly bound unto **THE CITY OF WINNIPEG** (hereinafter called the "Obligee"), in the sum of

_____ dollars (\$_____.)

of lawful money of Canada to be paid to the Obligee, or its successors or assigns, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has entered into a written contract with the Obligee dated the

_____ day of _____, 20____, for:

TENDER NO. 24-2004

SUPPLY AND DELIVERY OF TRANSIT DIESEL BUSES

which is by reference made part hereof and is hereinafter referred to as the "Contract".

NOW THEREFORE the condition of the above obligation is such that if the Principal shall:

- (a) carry out and perform the Contract and every part thereof in the manner and within the times set forth in the Contract and in accordance with the terms and conditions specified in the Contract;
- (b) perform the Work in a good, proper, workmanlike manner;
- (c) make all the payments whether to the Obligee or to others as therein provided;
- (d) in every other respect comply with the conditions and perform the covenants contained in the Contract; and
- (e) indemnify and save harmless the Obligee against and from all loss, costs, damages, claims, and demands of every description as set forth in the Contract, and from all penalties, assessments, claims, actions for loss, damages or compensation whether arising under "The Workers Compensation Act", or any other Act or otherwise arising out of or in any way connected with the performance or non-performance of the Contract or any part thereof during the term of the Contract and the warranty period provided for therein;

THEN THIS OBLIGATION SHALL BE VOID, but otherwise shall remain in full force and effect. The Surety shall not, however, be liable for a greater sum than the sum specified above.

AND IT IS HEREBY DECLARED AND AGREED that the Surety shall be liable as Principal, and that nothing of any kind or matter whatsoever that will not discharge the Principal shall operate as a discharge or release of liability of the Surety, any law or usage relating to the liability of Sureties to the contrary notwithstanding.

IN WITNESS WHEREOF the Principal and Surety have signed and sealed this bond the

_____ day of _____, 20____ .

SIGNED AND SEALED
in the presence of:

(Witness)

(Name of Principal)

Per: _____ (Seal)

Per: _____

(Name of Surety)

By: _____ (Seal)
(Attorney-in-Fact)

FORM H1: PERFORMANCE BOND – RENEWAL PERFORMANCE SECURITY
(See D6)

KNOW ALL MEN BY THESE PRESENTS THAT

_____ ,
(hereinafter called the "Principal"), and

_____ ,
(hereinafter called the "Surety"), are held and firmly bound unto **THE CITY OF WINNIPEG** (hereinafter called the "Obligee"), in the sum of

_____ dollars (\$_____)

of lawful money of Canada to be paid to the Obligee, or its successors or assigns, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has entered into a written contract with the Obligee dated the

_____ day of _____, 20____, for:

TENDER NO. 24-2004

SUPPLY AND DELIVERY OF TRANSIT DIESEL BUSES

which is by reference made part hereof and is hereinafter referred to as the "Contract".

NOW THEREFORE the condition of the above obligation is such that if the Principal shall:

- (a) carry out and perform the Contract and every part thereof in the manner and within the times set forth in the Contract and in accordance with the terms and conditions specified in the Contract;
- (b) perform the Work in a good, proper, workmanlike manner;
- (c) make all the payments whether to the Obligee or to others as therein provided;
- (d) in every other respect comply with the conditions and perform the covenants contained in the Contract; and
- (e) indemnify and save harmless the Obligee against and from all loss, costs, damages, claims, and demands of every description as set forth in the Contract, and from all penalties, assessments, claims, actions for loss, damages or compensation whether arising under "The Workers Compensation Act", or any other Act or otherwise arising out of or in any way connected with the performance or non-performance of the Contract or any part thereof for the period from _____ (dd/mm/yyyy) to and including _____ (dd/mm/yyyy).

THEN THIS OBLIGATION SHALL BE VOID, but otherwise shall remain in full force and effect. The Surety shall not, however, be liable for a greater sum than the sum specified above. Notwithstanding the terms of the Contract, non-renewal of the bond shall not be considered a default hereunder.

AND IT IS HEREBY DECLARED AND AGREED that the Surety shall be liable as Principal, and that nothing of any kind or matter whatsoever that will not discharge the Principal shall operate as a discharge or release of liability of the Surety, any law or usage relating to the liability of Sureties to the contrary notwithstanding.

IN WITNESS WHEREOF the Principal and Surety have signed and sealed this bond the

_____ day of _____, 20____ .

SIGNED AND SEALED
in the presence of:

(Witness)

(Name of Principal)

Per: _____ (Seal)

Per: _____

(Name of Surety)

By: _____ (Seal)
(Attorney-in-Fact)

**FORM H2: IRREVOCABLE STANDBY LETTER OF CREDIT
(PERFORMANCE SECURITY)
(See D6)**

(Date)

The City of Winnipeg
Corporate Services Department
Legal Services Division
185 King Street, 3rd Floor
Winnipeg MB R3B 1J1

RE: PERFORMANCE SECURITY - 24-2004

SUPPLY AND DELIVERY OF TRANSIT DIESEL BUSES

Pursuant to the request of and for the account of our customer,

(Name of Contractor)

(Address of Contractor)

WE HEREBY ESTABLISH in your favour our irrevocable Standby Letter of Credit for a sum not exceeding in the aggregate

_____ Canadian dollars.

This Standby Letter of Credit may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you. It is understood that we are obligated under this Standby Letter of Credit for the payment of monies only and we hereby agree that we shall honour your demand for payment without inquiring whether you have a right as between yourself and our customer to make such demand and without recognizing any claim of our customer or objection by the customer to payment by us.

The amount of this Standby Letter of Credit may be reduced from time to time only by amounts drawn upon it by you or by formal notice in writing given to us by you if you desire such reduction or are willing that it be made.

Partial drawings are permitted.

We engage with you that all demands for payment made within the terms and currency of this Standby Letter of Credit will be duly honoured if presented to us at:

(Address)

and we confirm and hereby undertake to ensure that all demands for payment will be duly honoured by us.

All demands for payment shall specifically state that they are drawn under this Standby Letter of Credit.

Subject to the condition hereinafter set forth, this Standby Letter of Credit will expire on

(Date)

It is a condition of this Standby Letter of Credit that it shall be deemed to be automatically extended from year to year without amendment from the present or any future expiry date, unless at least 30 days prior to the present or any future expiry date, we notify you in writing that we elect not to consider this Standby Letter of Credit to be renewable for any additional period.

This Standby Letter of Credit may not be revoked or amended without your prior written approval.

This credit is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision), International Chamber of Commerce Publication Number 500.

(Name of bank or financial institution)

Per: _____
(Authorized Signing Officer)

Per: _____
(Authorized Signing Officer)