



**THE CITY OF WINNIPEG**

# **BID OPPORTUNITY**

**BID OPPORTUNITY NO. 361-2007**

**NEWPCC - SUPPLY AND DELIVERY OF CIRCULAR  
PRIMARY CLARIFIER EQUIPMENT**

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## **PART B - BIDDING PROCEDURES**

### **B1. PROJECT TITLE**

#### **B1.1 NEWPCC - SUPPLY AND DELIVERY OF CIRCULAR PRIMARY CLARIFIER EQUIPMENT**

### **B2. SUBMISSION DEADLINE**

B2.1 The Submission Deadline is 4:00 p.m. Winnipeg time, July 5, 2007.

B2.2 Bid Submissions determined by the Manager of Materials to have been received later than the Submission Deadline will not be accepted and will be returned upon request.

B2.3 The Contract Administrator or the Manager of Materials may extend the Submission Deadline by issuing an addendum at any time prior to the time and date specified in B2.1.

### **B3. SITE INVESTIGATION**

B3.1 Further to GC.2.01, the Contract Administrator or an authorized representative will be available at the Site from 1 p.m. to 3 p.m. on Friday, June 15, 2007 to provide Bidders access to the site.

B3.2 The Bidder shall not be entitled to rely on any information or interpretation received at the Site investigation unless that information or interpretation is the Bidder's direct observation, or is provided by the Contract Administrator in writing.

### **B4. ENQUIRIES**

B4.1 All enquiries shall be directed to the Contract Administrator identified in D4.1.

B4.2 If the Bidder finds errors, discrepancies or omissions in the Bid Opportunity, or is unsure of the meaning or intent of any provision therein, the Bidder shall notify the Contract Administrator of the error, discrepancy or omission, or request a clarification as to the meaning or intent of the provision at least five (5) Business Days prior to the Submission Deadline.

B4.3 Responses to enquiries which, in the sole judgment of the Contract Administrator, require a correction to or a clarification of the Bid Opportunity will be provided by the Contract Administrator to all Bidders by issuing an addendum.

B4.4 Responses to enquiries which, in the sole judgment of the Contract Administrator, do not require a correction to or a clarification of the Bid Opportunity will be provided by the Contract Administrator only to the Bidder who made the enquiry.

B4.5 The Bidder shall not be entitled to rely on any response or interpretation received unless that response or interpretation is provided by the Contract Administrator in writing.

### **B5. ADDENDA**

B5.1 The Contract Administrator may, at any time prior to the Submission deadline, issue addenda correcting errors, discrepancies or omissions in the Bid Opportunity, or clarifying the meaning or intent of any provision therein.

B5.2 The Contract Administrator will issue each addendum at least two (2) Business Days prior to the Submission Deadline, or provide at least two (2) Business Days by extending the Submission Deadline.

- B5.2.1 Addenda will be available on the Bid Opportunities page at The City of Winnipeg, Corporate Finance, Materials Management Branch internet site at <http://www.winnipeg.ca/matmgt>.
- B5.2.2 The Bidder is responsible for ensuring that he has received all addenda and is advised to check the Materials Management Branch internet site for addenda regularly and shortly before the Submission Deadline, as may be amended by addendum.
- B5.3 The Bidder shall acknowledge receipt of each addendum in Paragraph 10 of Form A: Bid. Failure to acknowledge receipt of an addendum may render a Bid non-responsive.
- B6. SUBSTITUTES**
- B6.1 The Work is based on the materials, equipment, methods and products specified in the Bid Opportunity.
- B6.2 Substitutions shall not be allowed unless application has been made to and prior approval has been granted by the Contract Administrator in writing.
- B6.3 Requests for approval of a substitute will not be considered unless received in writing by the Contract Administrator at least seven (7) Business Days prior to the Submission Deadline.
- B6.4 The Bidder shall ensure that any and all requests for approval of a substitute:
- (a) provide sufficient information and details to enable the Contract Administrator to determine the acceptability of the material, equipment, method or product as either an approved equal or alternative;
  - (b) identify any and all changes required in the applicable Work, and all changes to any other Work, which would become necessary to accommodate the substitute;
  - (c) identify any anticipated cost or time savings that may be associated with the substitute;
  - (d) certify that, in the case of a request for approval as an approved equal, the substitute will fully perform the functions called for by the general design, be of equal or superior substance to that specified, is suited to the same use and capable of performing the same function as that specified and can be incorporated into the Work, strictly in accordance with the Contract;
  - (e) certify that, in the case of a request for approval as an approved alternative, the substitute will adequately perform the functions called for by the general design, be similar in substance to that specified, is suited to the same use and capable of performing the same function as that specified and can be incorporated into the Work, strictly in accordance with the Contract.
- B6.5 The Contract Administrator, after assessing the request for approval of a substitute, may in his sole discretion grant approval for the use of a substitute as an “approved equal” or as an “approved alternative”, or may refuse to grant approval of the substitute.
- B6.6 The Contract Administrator will provide a response in writing, at least two (2) Business Days prior to the Submission Deadline, only to the Bidder who requested approval of the substitute.
- B6.6.1 The Bidder requesting and obtaining the approval of a substitute shall be entirely responsible for disseminating information regarding the approval to any person or persons he wishes to inform.
- B6.7 If the Contract Administrator approves a substitute as an “approved equal”, any Bidder may use the approved equal in place of the specified item.
- B6.8 If the Contract Administrator approves a substitute as an “approved alternative”, any Bidder bidding that approved alternative shall base his Total Bid Price upon the specified item but may also indicate an alternative price based upon the approved alternative. Such alternatives will be evaluated in accordance with B15.

B6.9 No later claim by the Contractor for an addition to the price(s) because of any other changes in the Work necessitated by the use of an approved equal or an approved alternative will be considered.

**B7. BID SUBMISSION**

B7.1 The Bid Submission consists of the following components:

- (a) Form A: Bid;
- (b) Form B: Prices;
- (c) Form G1: Bid Bond and Agreement to Bond, or  
Form G2: Irrevocable Standby Letter of Credit and Undertaking, or  
a certified cheque or draft;

B7.2 All components of the Bid Submission shall be fully completed or provided, and submitted by the Bidder no later than the Submission Deadline, with all required entries made clearly and completely in ink, to constitute a responsive Bid.

B7.3 The Bid Submission shall be submitted enclosed and sealed in an envelope clearly marked with the Bid Opportunity number and the Bidder's name and address.

B7.3.1 Samples or other components of the Bid Submission which cannot reasonably be enclosed in the envelope may be packaged separately, but shall be clearly marked with the Bid Opportunity number, the Bidder's name and address, and an indication that the contents are part of the Bidder's Bid Submission.

B7.4 Bid Submissions submitted by facsimile transmission (fax) or internet electronic mail (e-mail) will not be accepted.

B7.5 Bid Submissions shall be submitted to:

The City of Winnipeg  
Corporate Finance Department  
Materials Management Branch  
185 King Street, Main Floor  
Winnipeg MB R3B 1J1

**B8. BID**

B8.1 The Bidder shall complete Form A: Bid, making all required entries.

B8.2 Paragraph 2 of Form A: Bid shall be completed in accordance with the following requirements:

- (a) if the Bidder is a sole proprietor carrying on business in his own name, his name shall be inserted;
- (b) if the Bidder is a partnership, the full name of the partnership shall be inserted;
- (c) if the Bidder is a corporation, the full name of the corporation shall be inserted;
- (d) if the Bidder is carrying on business under a name other than his own, the business name and the name of every partner or corporation who is the owner of such business name shall be inserted.

B8.3 In Paragraph 3 of Form A: Bid, the Bidder shall identify a contact person who is authorized to represent the Bidder for purposes of the Bid.

- B8.4** Paragraph 12 of Form A: Bid shall be signed in accordance with the following requirements:
- (a) if the Bidder is a sole proprietor carrying on business in his own name, it shall be signed by the Bidder;
  - (b) if the Bidder is a partnership, it shall be signed by the partner or partners who have authority to sign for the partnership;
  - (c) if the Bidder is a corporation, it shall be signed by its duly authorized officer or officers and the corporate seal, if the corporation has one, should be affixed;
  - (d) if the Bidder is carrying on business under a name other than his own, it shall be signed by the registered owner of the business name, or by the registered owner's authorized officials if the owner is a partnership or a corporation.
- B8.4.1** The name and official capacity of all individuals signing Form A: Bid shall be printed below such signatures.
- B8.4.2** All signatures shall be original and shall be witnessed except where a corporate seal has been affixed.

## **B9. PRICES**

- B9.1** The Bidder shall state a price in Canadian funds for each item of the Work identified on Form B: Prices.
- B9.1.1** Prices on Form B: Prices shall include:
- (a) duty;
  - (b) freight and cartage;
  - (c) Provincial and Federal taxes [except the Goods and Services Tax (GST) and Manitoba Retail Sales Tax (MRST, also known as PST), which shall be extra where applicable] and all charges governmental or otherwise paid;
  - (d) profit and all compensation which shall be due to the Contractor for the Work and all risks and contingencies connected therewith.
- B9.1.2** Prices on Form B: Prices shall not include the Manitoba Association for Resource Recovery Corporation (MARRC) Environmental Handling Charge (EHC) which shall be extra where applicable.

## **B10. QUALIFICATION**

- B10.1** The Bidder shall:
- (a) undertake to be in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba, or if the Bidder does not carry on business in Manitoba, in the jurisdiction where the Bidder does carry on business;
  - (b) be responsible and not be suspended, debarred or in default of any obligation to the City;
  - (c) be financially capable of carrying out the terms of the Contract;
  - (d) have all the necessary experience, capital, organization, and equipment to perform the Work in strict accordance with the terms and provisions of the Contract;
  - (e) have successfully carried out work, similar in nature, scale, in cold weather climate, scope and value to the Work;
  - (f) employ only Subcontractors who:
    - (i) are responsible and not suspended, debarred or in default of any obligation to the City (a list of suspended or debarred individuals and companies is available on the

Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Branch internet site at <http://www.winnipeg.ca/matmgt>); and

- (ii) have successfully carried out work similar in nature, scope and value to the portion of the Work proposed to be subcontracted to them, and are fully capable of performing the Work required to be done in accordance with the terms of the Contract;
  - (g) have a written workplace safety and health program in accordance with The Workplace Safety and Health Act (Manitoba);
- B10.2 The Bidder shall be prepared to submit, within three (3) Business Days of a request by the Contract Administrator, proof satisfactory (including positive equivalent project references) to the Contract Administrator of the qualifications of the Bidder and of any proposed Subcontractor.
- B10.3 The Bidder shall provide, on the request of the Contract Administrator, full access to any of the Bidder's equipment and facilities to confirm, to the Contract Administrator's satisfaction, that the Bidder's equipment and facilities are adequate to perform the Work.

## **B11. BID SECURITY**

- B11.1 The Bidder shall provide bid security in the form of:
- (a) a bid bond, in the amount of at least ten percent (10%) of the Total Bid Price, and agreement to bond of a company registered to conduct the business of a surety in Manitoba, in the form included in the Bid Submission (Form G1: Bid Bond and Agreement to Bond); or
  - (b) an irrevocable standby letter of credit, in the amount of at least ten percent (10%) of the Total Bid Price, and undertaking issued by a bank or other financial institution registered to conduct business in Manitoba and drawn on a branch located in Winnipeg, in the form included in the Bid Submission (Form G2: Irrevocable Standby Letter of Credit and Undertaking); or
  - (c) a certified cheque or draft payable to "The City of Winnipeg", in the amount of at least fifty percent (50%) of the Total Bid Price, drawn on a bank or other financial institution registered to conduct business in Manitoba.
- B11.1.1 If the Bidder submits alternative bids, the bid security shall be in the amount of the specified percentage of the highest Total Bid Price submitted.
- B11.2 The bid security of the successful Bidder and the next two lowest evaluated responsive and responsible Bidders will be released by the City when a Contract for the Work has been duly executed by the successful Bidder and the performance security furnished as provided herein. The bid securities of all other Bidders will be released when a Contract is awarded.
- B11.2.1 Where the bid security provided by the successful Bidder is in the form of a certified cheque or draft pursuant to B11.1(c), it will be deposited and retained by the City as the performance security and no further submission is required.
- B11.2.2 The City will not pay any interest on certified cheques or drafts furnished as bid security or subsequently retained as performance security.
- B11.3 The bid securities of all Bidders will be released by the City as soon as practicable following notification by the Contract Administrator to the Bidders that no award of Contract will be made pursuant to the Bid Opportunity.

## **B12. OPENING OF BIDS AND RELEASE OF INFORMATION**

- B12.1 Bid Submissions will not be opened publicly.
- B12.2 Within two (2) Business Days following the Submission Deadline, the names of the Bidders and their Total Bid Prices (unevaluated, and pending review and verification of conformance with requirements) will be available on the Closed Bid Opportunities (or Public/Posted Opening & Award Results) page at The City of Winnipeg, Corporate Finance, Materials Management Branch internet site at <http://www.winnipeg.ca/matmgt>.
- B12.3 After award of Contract, the name(s) of the successful Bidder(s) and the Contract Amount(s) will be available on the Closed Bid Opportunities (or Public/Posted Opening & Award Results) page at The City of Winnipeg, Corporate Finance, Materials Management Branch internet site at <http://www.winnipeg.ca/matmgt>.

## **B13. IRREVOCABLE BID**

- B13.1 The Bid(s) submitted by the Bidder shall be irrevocable for the time period specified in Paragraph 11 of Form A: Bid.
- B13.2 The acceptance by the City of any Bid shall not release the Bids of the next two lowest evaluated responsive Bidders and these Bidders shall be bound by their Bids on such Work for the time period specified in Paragraph 11 of Form A: Bid.

## **B14. WITHDRAWAL OF BIDS**

- B14.1 A Bidder may withdraw his Bid without penalty by giving written notice to the Manager of Materials at any time prior to the Submission Deadline.
- B14.1.1 Notwithstanding GC.7.05(2), the time and date of receipt of any notice withdrawing a Bid shall be the time and date of receipt as determined by the Manager of Materials.
- B14.1.2 The City will assume that any one of the contact persons named in Paragraph 3 of Form A: Bid or the Bidder's authorized representatives named in Paragraph 12 of Form A: Bid, and only such person, has authority to give notice of withdrawal.
- B14.1.3 If a Bidder gives notice of withdrawal prior to the Submission Deadline, the Manager of Materials shall:
- (a) retain the Bid Submission until after the Submission Deadline has elapsed;
  - (b) open the Bid Submission to identify the contact person named in Paragraph 3 of Form A: Bid and the Bidder's authorized representatives named in Paragraph 12 of Form A: Bid; and
  - (c) if the notice has been given by any one of the persons specified in B14.1.3(b), declare the Bid withdrawn.
- B14.2 A Bidder who withdraws his Bid after the Submission Deadline but before his Bid has been released or has lapsed as provided for in B13.2 shall be liable for such damages as are imposed upon the Bidder by law and subject to such sanctions as the Chief Administrative Officer considers appropriate in the circumstances. The City, in such event, shall be entitled to all rights and remedies available to it at law, including the right to retain the Bidder's bid security.

## **B15. EVALUATION OF BIDS**

- B15.1 Award of the Contract shall be based on the following bid evaluation criteria:
- (a) compliance by the Bidder with the requirements of the Bid Opportunity (pass/fail);
  - (b) qualifications of the Bidder and the Subcontractors, if any, pursuant to B10 (pass/fail):

- (c) Total Bid Price;
- (d) economic analysis of any approved alternative pursuant to B6.

- B15.2 Further to B15.1(a), the Award Authority may reject a Bid as being non-responsive if the Bid Submission is incomplete, obscure or conditional, or contains additions, deletions, alterations or other irregularities. The Award Authority may reject all or any part of any Bid, or waive technical requirements if the interests of the City so require.
- B15.3 Further to B15.1 (b), the Award Authority shall reject any Bid submitted by a Bidder who does not demonstrate, in his Bid Submission or in other information required to be submitted, that he is responsible and qualified.
- B15.4 Further to B15.1(c), the Total Bid Price shall be the sum of the quantities multiplied by the unit prices for each item shown on Form B: Prices.
- B15.4.1 If there is any discrepancy between the Total Bid Price written in figures, the Total Bid Price written in words and the sum of the quantities multiplied by the unit prices for each item, the sum of the quantities multiplied by the unit prices for each item shall take precedence.
- B15.5 This Contract will be awarded as a whole.

## **B16. AWARD OF CONTRACT**

- B16.1 The City will give notice of the award of the Contract or will give notice that no award will be made.
- B16.2 The City will have no obligation to award a Contract to a Bidder, even though one or all of the Bidders are determined to be responsible and qualified, and the Bids are determined to be responsive.
- B16.2.1 Without limiting the generality of B16.2, the City will have no obligation to award a Contract where:
- (a) the prices exceed the available City funds for the Work;
  - (b) the prices are materially in excess of the prices received for similar work in the past;
  - (c) the prices are materially in excess of the City's cost to perform the Work, or a significant portion thereof, with its own forces;
  - (d) only one Bid is received; or
  - (e) in the judgment of the Award Authority, the interests of the City would best be served by not awarding a Contract.
- B16.3 Where an award of Contract is made by the City, the award shall be made to the responsible and qualified Bidder submitting the lowest evaluated responsive Bid, and whose bid meets or best meets the specified delivery requirements.

## **PART C - GENERAL CONDITIONS**

### **C1. GENERAL CONDITIONS**

C1.1 The *General Conditions for the Supply and Delivery of Goods* (Form 21: 88 03) are applicable to the Work of the Contract.

C1.1.1 The *General Conditions for the Supply and Delivery of Goods* are available on the Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Branch internet site at <http://www.winnipeg.ca/matmgt>.

## 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".
- D1.4 The General Conditions are amended by striking out "Tender Package" wherever it appears in the General Conditions and substituting "Bid Opportunity".
- D1.5 The General Conditions are amended by striking out "Tender Submission" wherever it appears in the General Conditions and substituting "Bid Submission".
- D1.6 The General Conditions are amended by striking out "Bidding Instructions" wherever it appears in the General Conditions and substituting "Bidding Procedures".

#### D2. SCOPE OF WORK

- D2.1 The Work to be done under the Contract shall consist of supply and delivery to the City of Winnipeg – North End Water Pollution Control Center, 3 circular primary clarifier systems as specified.

#### D3. DEFINITIONS

- D3.1 When used in this Bid Opportunity:
- (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) "**Install Contractor**" means contractor engaged by the City to install the Clarifier systems supplied under this contract.

#### D4. CONTRACT ADMINISTRATOR

- D4.1 The Contract Administrator is KGS Group, represented by:
- Rudy Derksen, P.Eng.  
Senior Mechanical Engineer  
3<sup>rd</sup> Floor – 865 Waverley Street  
Winnipeg, Manitoba  
R3T 5P4
- Telephone No. (204) 478-3246  
Facsimile No. (204) 896-0754

#### 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 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

D5.6 Revise: GC 4.02 (2) to read

All materials and equipment to be incorporated in the work shall be new and shall meet or exceed the kind, quality and quantity of same specified in the Contract Documents. If required, the Contractor shall provide at his own expense evidence satisfactory to the Contract Administrator that the foregoing requirements have been met.

D5.7 Delete: GC 4.03 (5)

D5.8 Add: GC 5.04 (5)

The above is subject to ARTICLE X-WARRANTY.

D5.9 Revise: GC 6.01 (4) to read

The Contractor is liable to the City for any loss or damage of material, equipment or Plant that is supplied or placed in the care, custody and control of the Contractor by the City for use in connection with the Contract, whether or not that loss or damage is attributable to causes beyond the Contractor's control.

D5.10 Revise: GC 7.01 (1) to read

The Contractor shall, at his own expense, procure permits, licences and certificates required by law, any ordinances, rules, regulations, codes and orders of the authorities having jurisdiction for the execution of the Work. The Contractor shall give the required Notices and comply with the laws, ordinances, rules, regulations, codes and orders of the authorities having jurisdiction which are or become in force during the performance of the Work and which relate to the Work and to

the preservation of the public health. The City will bear any costs or delays or modified performance associated with changes in law, decisions made by public authorities and/or court decisions, or engineering standards (i.e. written industry codes and standards, if mandatory) after the date of contract signature. Where there are two or more laws, ordinances, rules, regulations or codes applicable to the Work, the most restrictive shall apply.

D5.11 Revise: GC7.02 (1) to read

If the Contractor requires or the Contractor desires the use of any design, device, material or process covered by letters patent or copyright, trade mark or trade name, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner and a copy of the said agreement shall be filled with the City upon request.

Contractor's patent indemnity shall not apply to method or process claims over which Contractor has neither responsibility nor control.

D5.12 Add: GC 7.02 (5)

Contractor will defend and hold City harmless from suits to the extent based on a claim that the manufacturing methods used by Contractor, or the equipment, process or services provided by Contractor hereunder, constitute infringement of any Canadian patent that is in force at the effective date of this Agreement, except as set forth in the following sentence. This indemnification obligation shall not apply to (1) any claim caused by City's unauthorized use or modification, and (2) any claim based on (a) a combination of Contractor's products and/or services with those supplied by City or a third party, or (b) operation, maintenance or service by, or license or re-sale to, a third party, and (3) damages relating to City's wilful infringement. In addition to Contractor's obligation to defend City, Contractor's obligations, and City's remedies, under this indemnification provision are limited to any one of the following, at the City's election: (i) Contractor shall procure for City the right to use the subject equipment at no additional cost to City, (ii) Contractor shall modify the subject equipment, method or process so that it no longer infringes, (iii) Contractor shall replace the subject equipment, method or process with non-infringing alternatives, or (iv) Contractor shall refund to the City the purchase price paid for the infringing product or service. This indemnification is conditioned on City promptly giving Contractor written notice of any claimed infringement and providing such information and assistance as Contractor requests in the defence of any such suit and shall be subject article to "Limitation of Liability of this agreement.

D5.13 Revise: GC 7.04 (1) to read

Except as expressly provided otherwise in these contract documents, the duties and obligations imposed by the Contract Documents and the rights and remedies available to the City thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies available to the City by law

D5.14 Revise: GC 8.02 (7) to read

In case the cost to the City, as certified by the Commissioner, of completing the Work or portion thereof as aforesaid, be less than the amount to which the Contractor would have been entitled under the Contract for so doing, the Contractor shall have no claims in respect thereof against the City, but if such certified cost of the Work performed by the City is more than the amount to which the Contractor would have been entitled under the Contract for the same Work, then the City shall have a claim against the Contractor for all additional costs of the Work which have been incurred by the City, in addition to the amount of any liquidated damages that the City is entitled to hereunder from the date fixed for the Total Performance of the Work in Contract documents, and the Contractor shall pay the amount of such additional cost of the Work to the City upon Notice from the Commissioner setting out the amount so due. When any particular part of the work is being carried on by the City, by contract or otherwise, under the provisions of the Clause, the Contractor shall continue the remainder of the Work in conformity with the terms and conditions of the Contract, and in such manner as in no way to hinder or interfere with the persons, Other

Contractor, Contractors, or workers employed by the City. If the Contractor shall fail or neglect to timely perform any material provision of this agreement, and such failure or neglect continues for a period of ten (10) working days after Contractor's receipt of notice thereof, the City may at its option, without prejudice to any other available remedy, secure the same and deduct the reasonable additional cost thereof from the payments then or thereafter due to the Contractor; provided that if such failure or neglect is not capable of cure within such ten-day period, the cure period shall be extended as necessary to complete such cure, on the condition that Contractor commences a cure within such ten-day period and pursues such cure diligently to completion.

D5.15 Add: GC 8.02 (8)

If City cancels or suspends its order for any reason other than Contractor's breach, City shall promptly pay Contractor for work performed prior to cancellation or suspension and any other direct costs incurred by Contractor as a result of such cancellation or suspension

D5.16 Revise: GC 8.04 (1) to read

Time shall be deemed to be of vital importance for this contract. Therefore the parties have agreed to Liquidated Damages for late delivery as stated in The Supplementary Conditions D16.

D5.17 Revise: GC 10.01 (1) to read

The Contractor, unless specifically stated otherwise in the Contract Documents, shall, at his sole cost and expense, maintain the Work against any and all defects or deficiencies or otherwise which may arise for a period of one (1) year from the date of the Certificate of Total Performance or 24 months from delivery whichever occurs sooner.

D5.18 Revise: GC 10.01 (5) (b) to read

All costs resulting from the need to undertake remedial work during the warranty period as aforesaid, whether by the Contractor, his Sub-contractor or by the City, as provided herein, shall be borne by the Contractor. In addition, the Contractor shall be liable to the City for all expenses, losses or damages incurred by the City as a result of such defects, deficiencies or otherwise referred to herein or as a result of the Contractor's failure to meet the warranty requirements specified herein, including, but without limiting the generality hereof, all costs of engineering, inspection and testing.

D5.19 Add: GC 10.01 (9)

Contractor's warranty is conditioned on City's (a) operating and maintaining the Equipment in accordance with contractor's instructions and (b) not being in default of any payment obligation to Contractor. the warranties set forth herein are contractor's sole and exclusive warranties and are subject to article D18. Indemnity. Contractor makes no other warranties of any kind, express or implied, including without limitation, any warranty of merchantability or fitness for purpose.

## SUBMISSIONS

### D6. AUTHORITY TO CARRY ON BUSINESS

D6.1 The Contractor shall be in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba, or if the Contractor does not carry on business in Manitoba, in the jurisdiction where the Contractor does carry on business, throughout the term of the Contract, and shall provide the Contract Administrator with evidence thereof upon request.

## **D7. WORKERS COMPENSATION**

D7.1 The Contractor shall be registered with the Workers Compensation Board of Manitoba, shall provide and maintain Workers Compensation coverage throughout the term of the Contract, and shall provide the Contract Administrator with evidence thereof upon request.

## **D8. INSURANCE**

D8.1 The Contractor shall provide and maintain commercial general liability insurance, in the amount of at least two million dollars (\$2,000,000.00) all inclusive, with The City of Winnipeg being added as an additional insured, with a cross-liability clause, to remain in place at all times during the performance of the Work.

D8.2 Deductibles shall be borne by the Contractor.

D8.3 The Contractor shall provide the Contract Administrator with a certificate of insurance of the policy at least two (2) Business Days 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.

D8.4 The Contractor shall not cancel, materially alter, or cause the policy to lapse without providing at least fifteen (15) Calendar Days prior written notice to the Contract Administrator.

## **D9. PERFORMANCE SECURITY**

D9.1 The Contractor shall provide and maintain performance security until the expiration of the warranty period in the form of:

- (a) a performance bond of a company registered to conduct the business of a surety in Manitoba, in the form attached to these Supplemental Conditions (Form H1: Performance Bond), in the amount of one hundred percent (100%) of the Contract Price; 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 Winnipeg, in the form attached to these Supplemental Conditions (Form H2: Irrevocable Standby Letter of Credit), in the amount of one hundred percent (100%) of the Contract 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 one hundred percent (100%) of the Contract Price.

D9.1.1 Where the performance security is in the form of a certified cheque or draft, it will be deposited by the City. The City will not pay any interest on certified cheques or drafts furnished as performance security.

D9.2 If the bid security provided in his Bid 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.

## **D10. SUBCONTRACTOR LIST**

D10.1 The Contractor shall provide the Contract Administrator with a complete list of the Subcontractors whom the Contractor proposes to engage (Form J: Subcontractor List\_ at least two (2) Business Days 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.

## **D11. DETAILED WORK SCHEDULE**

D11.1 The Contractor shall provide the Contract Administrator with a detailed work schedule (Form L: Detailed Work Schedule) at least two (2) Business Days prior to the commencement of any

Work but in no event later than the date specified in GC.3.01 for the return of the executed Contract.

## **SCHEDULE OF WORK**

### **D12. COMMENCEMENT**

- D12.1 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.
- D12.2 The Contractor shall not commence any Work on the Site until:
- (a) the Contract Administrator has confirmed receipt and approval of:
    - (i) evidence that the Contractor is in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba;
    - (ii) evidence of the workers compensation coverage specified in D7;
    - (iii) evidence of the insurance specified in D8;
    - (iv) the performance security specified in D9;
    - (v) the subcontract list specified in D10.
    - (vi) the detailed work schedule specified in D11; and
  - (b) the Contractor has attended a meeting with the Contract Administrator, or the Contract Administrator has waived the requirement for a meeting.
- D12.3 The Contractor shall commence the Work within seven (7) Calendar Days of receipt of the letter of intent.
- D12.4 The City intends to award this Contract within Sixty 60 calendar days from the submission deadline.

### **D13. CRITICAL STAGES & CO-ORDINATION WITH INSTALL CONTRACTOR**

- D13.1 The Contractor shall achieve critical stages of the Work in accordance with the following requirements:
- (a) *Clarifier 1 – Ready for Shipment – July 1, 2008*
  - (b) *Clarifier 2 – Ready for Shipment – August 1, 2008*
  - (c) *Clarifier 3 – Ready for Shipment – September 1, 2008*
- D13.2 On award of the installation contract, the Contractor shall co-ordinate his material delivery schedule and sequence to suit the Install Contractor's on-site requirements. Material can be delivered in full trailer loads, but as on-Site storage space is very limited, the Contractor shall store his material off-site until the Install Contractor is ready to receive it.
- The Contractor shall work closely with the Install Contractor and respond to his material requirement delivery schedule as agreed to in advance. The Contractor shall be responsible for Install Contractor claims resulting from late delivery or defective equipment related delays.
- D13.3 Material delivered which does not fit, or is damaged must be modified or replaced at the Contractor's expense. The Contract Administrator will determine if modification of non-fitting materials proposed is acceptable.
- D13.4 Should the installing contract be delayed for some reason, the Contractor shall be prepared to store his material for up to 4 month beyond the dates listed above.

#### **D14. SUBSTANTIAL PERFORMANCE**

- D14.1 The Contractor shall achieve Substantial Performance when all 3 clarifier systems are confirmed fully ready for shipment, no later than September 1, 2008 (See D13).
- D14.2 When the Contractor considers the Work to be substantially performed, the Contractor shall arrange, attend and assist in the inspection of the Work with the Contract Administrator for purposes of verifying Substantial Performance. Any defects or deficiencies in the Work noted during that inspection shall be remedied by the Contractor at the earliest possible instance and the Contract Administrator notified so that the Work can be reinspected.
- D14.3 The date on which the Work has been certified by the Contract Administrator as being substantially performed to the requirements of the Contract through the issue of a certificate of Substantial Performance is the date on which Substantial Performance has been achieved.

#### **D15. TOTAL PERFORMANCE**

- D15.1 The Contractor will achieve Total Performance once all 3 clarifier systems have been installed, successfully commissioned and deficiencies resolved. This should be no later than March 31, 2009.
- D15.2 When the Contractor or the Contract Administrator considers the Work to be totally performed, the Contractor shall arrange, attend and assist in the inspection of the Work with the Contract Administrator for purposes of verifying Total Performance. Any defects or deficiencies in the Work noted during that inspection shall be remedied by the Contractor at the earliest possible instance and the Contract Administrator notified so that the Work can be reinspected.
- D15.3 The date on which the Work has been certified by the Contract Administrator as being totally performed to the requirements of the Contract through the issue of a certificate of Total Performance is the date on which Total Performance has been achieved.

#### **D16. LIQUIDATED DAMAGES**

- D16.1 If the Contractor fails to achieve delivery to site one week after agreed on Ready for Shipment dates listed in D13.1 for each clarifier, or delays placing a clarifier back in operation by more than two weeks due to Contractor deficiencies, then the Contractor shall pay the City the following amounts per Calendar Day for each and every Calendar Day during which such failure continues:
- (a) Clarifier 1, 2 or 3 – One thousand dollars (\$1,000.00);
- D16.2 The amounts specified for liquidated damages in D16.1 are based on a genuine pre-estimate of the City's losses in the event that the Contractor does not achieve the objectives listed in D16.1, critical stages or Substantial Performance and are the sole and exclusive remedy for late delivery [but not as a penalty].
- D16.3 Contractor's liability for liquidated damages shall not exceed, twenty percent (20%) of the contract value and then only to the extent of Contractor's contribution to the actual damages paid by City.

#### **MEASUREMENT AND PAYMENT**

##### **D17. PAYMENT SCHEDULE**

- D17.1 Further to GC.9.01 and GC.9.03, payment shall be in accordance with the following payment schedule:
- (a) Clarifier 1 – Acceptance of all Shop Drawings – 10%
- (b) Clarifier 1 – Complete System Delivery to Storage/Site – 80%
- (c) Clarifier 1 – Total Performance – 10%

- (d) Clarifier 2 - Acceptance of all Shop Drawings – 10%
- (e) Clarifier 2 – Complete System Delivery to Storage/Site – 80%
- (f) Clarifier 2 – Total Performance – 10%
- (g) Clarifier 3 – Acceptance of all Shop Drawings – 10%
- (h) Clarifier 3 – Complete System Delivery Storage/Site – 80%
- (i) Clarifier 3 – Total Performance – 10%

D17.2 All payments are due within 30 days from the date of invoice approved by the Contract Administrator. Contractor shall charge interest at the rate of 1½% per month on all amounts not paid by the due date.

#### **D18. INDEMNITY**

D18.1 Notwithstanding GC.7.03 (1), the maximum liability for this Contract shall be the Contract value, except to the extent due to the negligence or wilful misconduct of the City.

#### **D19. OWNERSHIP OF MATERIALS**

D19.1 All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information prepared or disclosed by Contractor, and all related intellectual property rights, shall remain Contractor's property. Contractor grants City a non-exclusive, non-transferable license to use any such material solely for City's use of the Equipment. City shall not disclose any such material to third parties without Contractor's prior written consent, except as may be require for the City's operation of the NEWPCC.

D19.2 City acknowledges that Contractor is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal and usage of the Equipment and Services provided under the Contract, including any export license requirements. City agrees that such Equipment and Services shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Contractor of its obligations hereunder that compliance with such export laws and regulations be maintained at all time. CITY AGREES TO INDEMNIFY AND HOLD CONTRACTOR HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO THE CITY'S NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

**FORM H1: PERFORMANCE BOND**  
(See D9)

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:

BID OPPORTUNITY NO. 361-2007

**NEWPCC - SUPPLY AND DELIVERY OF CIRCULAR  
PRIMARY CLARIFIER EQUIPMENT**

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 H2: IRREVOCABLE STANDBY LETTER OF CREDIT  
(PERFORMANCE SECURITY)**  
(See D9)

\_\_\_\_\_  
(Date)

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

RE: PERFORMANCE SECURITY - BID OPPORTUNITY NO. 361-2007

**NEWPCC - SUPPLY AND DELIVERY OF CIRCULAR  
PRIMARY CLARIFIER EQUIPMENT**

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)





## PART E - SPECIFICATIONS

### GENERAL

#### E1. GENERAL

E1.1 These Specifications shall apply to the Work.

E1.2 The following Drawings are applicable to the Work:

<u>Drawing No.</u>	<u>Drawing Name/Title</u>
SK-1	Primary Clarifier No. 1 and 2 – Plan and Section
SK-2	Primary Clarifier No. 3 – Plan and Section

E1.3 The following existing clarifier drawings are provided as reference. Before fabricating any part of the new clarifier system, dimensions must be field checked as required to ensure systems will fit. Final operating water levels will be provided by the Contract Administrator.

<u>Drawing No.</u>	<u>Prepared By</u>	<u>Drawing Title</u>
NEP-2104	City of Winnipeg	Details of Circular Clarifier –115 ft. Diameter
PE2	City of Winnipeg	145 ft. Diameter Settling Basin
NEP-747	The Dorr Company	145 ft. x 12 ft. General Drawing
NEP-748	The Dorr Company	145 ft. x 12 ft.
NEP-86	City of Winnipeg	Contract A – Clarifier Control Building – Structural Clarifier Bridges
NEP-94	City of Winnipeg	Contract A – Clarifier Control Building – Mechanical Clarifier Mechanisms

E1.4 Site Photos

The following photos are provided for Reference:

	<u>Photo No.</u>	<u>Title</u>
<u>Clarifier 1</u>	1-1	Effluent Weir
	1-2	Scum Trough & Discharge Box
<u>Clarifier 2</u>	2-1	Scum Trough Discharge Box
	2-2	Effluent Weir & Scum Baffle
	2-3	Clarifier Walkway Enclosure
	2-4	Clarifier Walkway Enclosure Connection
<u>Clarifier 3</u>	3-1	Concrete Clarifier Influent Pipe/Base
	3-2	Top of Concrete Clarifier Influent Pipe/Base
	3-3	Effluent Weir & Scum Baffle
	3-4	Scum Baffle
	3-5	Scum Baffle
	3-6	Effluent Weir & Launder
	3-7	Walkway Enclosure Hinged Scum Blade Access Panels
	3-8	Clarifier Drained
	3-9	Clarifier Drained
	3-10	Clarifier Drained
	3-11	Clarifier Drained
	3-12	Clarifier Drained
	3-13	Clarifier Drained
	3-14	Clarifier Walkway & Enclosure
3-15	Enclosure Hinged Scum Blade Access Panels	
3-16	Walkway Enclosure Hinged Scum Blade Access Panels	
3-17	Walkway Enclosure Hinged Scum Blade Access Panels	
3-18	Walkway Enclosure	