



THE CITY OF WINNIPEG

REQUEST FOR PROPOSAL

RFP NO. 601-2014

**REQUEST FOR PROPOSAL FOR A LEGAL ADVISOR FOR THE CITY OF WINNIPEG'S
CAPITAL INTEGRATION PROJECT (SOUTHWEST TRANSITWAY – STAGE 2 AND THE
PEMBINA HIGHWAY UNDERPASS WIDENING)**

Proposals shall be submitted to:

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

TABLE OF CONTENTS

PART A - PROPOSAL SUBMISSION

Form A: Proposal	1
Form B: Fees	3
Form C: Person-Hours	4

PART B - BIDDING PROCEDURES

B1. Contract Title	1
B2. Submission Deadline	1
B3. City's Project Team	1
B4. Enquiries	1
B5. Confidentiality	2
B6. Addenda	2
B7. Proposal Submission	2
B8. Proposal (Section A)	3
B9. Fees (Section B)	4
B10. Experience of Proponent (Section C)	5
B11. Experience of Key Personnel Assigned to the Project (Section D)	5
B12. Project Understanding and Methodology (Section E)	6
B13. Person-Hours	6
B14. Qualification	6
B15. Conflict of Interest and Good Faith	7
B16. Opening of Proposals and Release of Information	7
B17. Irrevocable Offer	8
B18. Withdrawal of Offers	8
B19. Substitution of Resources	8
B20. Interviews	9
B21. Negotiations	9
B22. Evaluation of Proposals	9
B23. Award of Contract	10

PART C - GENERAL CONDITIONS

C0. General Conditions	1
------------------------	---

PART D - SUPPLEMENTAL CONDITIONS

General

D1. General Conditions	1
D2. Project Manager	1
D3. Background	1
D4. Scope of Services	2
D5. Definitions	3
D6. Ownership of Information, Confidentiality and Non Disclosure	4

Submissions Prior to Start of Services

D7. Authority to Carry on Business	5
D8. Insurance	5

Schedule of Services

D9. Commencement	6
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PART B - BIDDING PROCEDURES

B1. CONTRACT TITLE

B1.1 REQUEST FOR PROPOSAL FOR A LEGAL ADVISOR FOR THE CITY OF WINNIPEG'S CAPITAL INTEGRATION PROJECT (SOUTHWEST TRANSITWAY – STAGE 2 AND THE PEMBINA HIGHWAY UNDERPASS WIDENING)

B2. SUBMISSION DEADLINE

B2.1 The Submission Deadline is 4:00 p.m. Winnipeg time, September 5, 2014.

B2.2 Proposals 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 Project Manager 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. CITY'S PROJECT TEAM

B3.1 The City has appointed a Project Team to oversee all aspects of the procurement and construction of the P3 Project, which is described in detail in D3.

B3.2 The Project Team consists of a Project Lead, Bjorn Radstrom, P. Eng., Winnipeg Transit, assisted by key City staff.

B3.3 The following firms are, or have been, on retainer to provide specific advice to the Project Team on technical, financial, procurement process, P3 Project administration and communication issues. The City's advisors are:

(a) Technical and Financial Advisors: Dillon Consulting Limited, including their sub consultants:

(i) Deloitte LLP

(ii) AECOM Canada Ltd.(all work completed, no longer on retainer)

(iii) McGowan Russell Group Inc. (all work completed, no longer on retainer)

(iv) Landmark Planning and Design Inc. (all work completed, no longer on retainer)

(b) Fairness Monitor: To be advised.

B4. ENQUIRIES

B4.1 All enquiries shall be directed to the Project Manager identified in D2.

B4.2 If the Proponent finds errors, discrepancies or omissions in the Request for Proposal (RFP), or is unsure of the meaning or intent of any provision therein, the Proponent shall promptly notify the Project Manager of the error, discrepancy or omission at least five (5) Business Days prior to the Submission Deadline.

B4.3 If the Proponent is unsure of the meaning or intent of any provision therein, the Proponent should request clarification as to the meaning or intent prior to the Submission Deadline.

B4.4 Responses to enquiries which, in the sole judgment of the Project Manager, require a correction to or a clarification of the RFP will be provided by the Project Manager to all Proponents by issuing an addendum.

B4.5 Responses to enquiries which, in the sole judgment of the Project Manager, do not require a correction to or a clarification of the RFP will be provided by the Project Manager only to the Proponent who made the enquiry.

- B4.6 All correspondence or contact by Proponents with the City in respect of this RFP must be directly and only with the City's Project Manager. Failure to restrict correspondence and contact to the Project Manager may result in the rejection of the Proponent's Proposal Submission.
- B4.7 The Proponent shall not be entitled to rely on any response or interpretation received pursuant to B4 unless that response or interpretation is provided by the Project Manager in writing.

B5. CONFIDENTIALITY

- B5.1 Information provided to a Proponent by the City or acquired by a Proponent by way of further enquiries or through investigation is confidential. Such information shall not be used or disclosed in any way without the prior written authorization of the Project Manager. The use and disclosure of the confidential information shall not apply to information which:
- (a) was known to the Proponent before receipt hereof; or
 - (b) becomes publicly known other than through the Proponent; or
 - (c) is disclosed pursuant to the requirements of a governmental authority or judicial order.
- B5.2 The Proponent shall not make any statement of fact or opinion regarding any aspect of the Request for Proposals to the media or any member of the public without the prior written authorization of the Project Manager.

B6. ADDENDA

- B6.1 The Project Manager may, at any time prior to the Submission Deadline, issue Addenda correcting errors, discrepancies or omissions in the Request for Proposal, or clarifying the meaning or intent of any provision therein.
- B6.2 The Project Manager 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.
- B6.2.1 Addenda will be available on the Bid Opportunities page at The City of Winnipeg, Corporate Finance, Materials Management Division website at <http://www.winnipeg.ca/matmgt/bidopp.asp>
- B6.2.2 The Proponent is responsible for ensuring that it has received all Addenda and is advised to check the Materials Management Division website for Addenda regularly and shortly before the Submission Deadline, as may be amended by addendum.
- B6.3 The Proponent shall acknowledge receipt of each addendum in Paragraph 9 of Form A: Proposal. Failure to acknowledge receipt of an addendum may render a Proposal non-responsive.

B7. PROPOSAL SUBMISSION

- B7.1 The Proposal shall consist of the following components:
- (a) Form A: Proposal (Section A) in accordance with B8; and
 - (b) Fees (Section B) in accordance with B9.
- B7.2 The Proposal should also consist of the following components:
- (a) Experience of Proponent (Section C) in accordance with B10;
 - (b) Experience of Key Personnel Assigned to the Project (Section D), in accordance with B11;
 - (c) Project Understanding and Methodology (Section E), in accordance with B12; and
 - (d) Form C: Person-Hours.

- B7.3 Further to B7.1, all components of the Proposal shall be fully completed or provided in the order indicated, and submitted by the Proponent no later than the Submission Deadline, with all required entries made clearly and completely, to constitute a responsive Proposal.
- B7.4 Further to B7.2, all components of the Proposal should be fully completed or provided in the order indicated, and submitted by the Proponent no later than the Submission Deadline, with all required entries made clearly and completely.
- B7.5 Proponents should submit one (1) unbound 8.5" x 11" original (marked "original") including drawings and six (6) copies for sections identified in B7.1 and B7.2.
- B7.6 Proposal format, including type of binding, number of pages, size of pages and, font, etc., will not be regulated, except that the Proposal should be presented in the Sections identified above. Proponents are encouraged to use their creativity to submit a Proposal which provides the requested information for evaluation and other information which illustrates the strength of their team.
- B7.7 Proponents are advised that inclusion of terms and conditions inconsistent with the Request for Proposal, will be evaluated in accordance with B22.1(a).
- B7.7.1 Should the Proponent consider any terms contained in the RFP including the General Conditions unacceptable, the Proposal should include a list identified as Section F, of such unacceptable terms and the exact wording of any proposed alternate or additional terms.
- B7.7.2 The City will not be obliged to accept any additional or alternate terms submitted with a Proposal.
- B7.8 The Proposal shall be submitted enclosed and sealed in an envelope/package clearly marked with the RFP number and the Proponent's name and address.
- B7.9 Proposals submitted by facsimile transmission (fax) or internet electronic mail (e-mail) will not be accepted.
- B7.10 Proposals shall be submitted to:
The City of Winnipeg
Corporate Finance Department
Materials Management Division
185 King Street, Main Floor
Winnipeg MB R3B 1J1
- B7.11 Any cost or expense incurred by the Proponent that is associated with the preparation of the Proposal shall be borne solely by the Proponent.

B8. PROPOSAL (SECTION A)

- B8.1 The Proponent shall complete Form A: Proposal, making all required entries.
- B8.2 Paragraph 2 of Form A: Proposal shall be completed in accordance with the following requirements:
- (a) if the Proponent is a sole proprietor carrying on business in his/her own name, his/her name shall be inserted;
 - (b) if the Proponent is a partnership, the full name of the partnership shall be inserted;
 - (c) if the Proponent is a corporation, the full name of the corporation shall be inserted;
 - (d) if the Proponent is carrying on business under a name other than his/her own, the business name and the name of every partner or corporation who is the owner of such business name shall be inserted.
- B8.2.1 If a Proposal is submitted jointly by two or more persons, each and all such persons shall identify themselves in accordance with B8.2.

- B8.3 In Paragraph 3 of Form A: Proposal, the Proponent shall identify a contact person who is authorized to represent the Proponent for purposes of the Proposal.
- B8.4 Paragraph 11 of Form A: Proposal shall be signed in accordance with the following requirements:
- (a) if the Proponent is a sole proprietor carrying on business in his/her own name, it shall be signed by the Proponent;
 - (b) if the Proponent is a partnership, it shall be signed by the partner or partners who have authority to sign for the partnership;
 - (c) if the Proponent 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 Proponent is carrying on business under a name other than its 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: Proposal should be printed below such signatures.
- B8.5 If a Proposal is submitted jointly by two or more persons, the word "Proponent" shall mean each and all such persons, and the undertakings, covenants and obligations of such joint Proponents in the Proposal and the Contract, when awarded, shall be both joint and several.

B9. FEES (SECTION B)

- B9.1 The Proposal shall include Form B: Fees for all Services identified in D4, more specifically broken down as follows:
- B9.1.1 The Proposal shall include separate lump sum Fixed Fees for:
 - (a) the review of documents as specified in D4.3(b) and D4.3(c);
 - (b) survey work as specified in D4.3(d) and D4.3(e); and
 - (c) the written report as specified in D4.3(f).
 - B9.1.2 The Proposal shall include separate lump sum Fixed Fees for:
 - (a) attendance at commencement meeting as specified in D4.3(a);
 - (b) attendance at meeting to discuss report and findings as specified in D4.3(g);
 - (c) attendance at CCMs and provision of advice as specified in D4.3(h).
 - B9.1.3 The Proposal shall include a Blended Rate for the personnel assigned to provide Services as specified in D4.3(i). The City will use one hundred (100) hours for the purposes of evaluation.
 - B9.1.4 Any Fees related to D4.3(j) shall be included in the Fees proposed in B9.1.1 to B9.1.3.
- B9.2 Notwithstanding C1.1(b), Fixed Fees shall include costs for out of town travel, related meals and accommodations for the duration of the Project and shall not be considered an Allowable Disbursement.
- B9.3 Further to B9.2, the Fee Proposal shall also include an allowance for Allowable Disbursements as defined in C1.1(b) and further, including file opening fees, photocopying, printing, courier, faxing, and any other similar office expenses, which will be the maximum payable.
- B9.4 Notwithstanding C10.1, Fees submitted shall not include the Goods and Services Tax (GST) or Manitoba Retail Sales Tax (MRST, also known as PST), which shall be extra where applicable.
- B9.5 Payments to Non-Resident Consultants are subject to Non-Resident Withholding Tax pursuant to the Income Tax Act (Canada).

B9.6 Adjustments to Fees will only be considered based on increases to the scope of Services; and will be based on the rates provided in B13.1.

B9.7 The City will not consider an adjustment to the Fees based on changes in the Project budget or the Final Total Construction Cost.

B10. EXPERIENCE OF PROPONENT (SECTION C)

B10.1 Proposals should include:

- (a) information in sufficient detail for the City to evaluate the Proponent's qualifications for the role of Legal Advisor, by providing detail of their experience with Public Private Partnership (P3) projects of similar complexity, scope and contract value, which have reached Financial Close within the last five (5) years, and to demonstrate knowledge of current best practices for DBF(O)M Agreements.

B10.2 For each project listed in B10.1(a), the Proponent should submit:

- (a) description of the project;
- (b) scope of work assigned to the consultant;
- (c) project cost;
- (d) project owner;
- (e) reference information (two current names with telephone numbers per project).

B10.3 The Proposal should include general firm profile information, including years in business, average volume of work, number of employees and other pertinent information for the Proponent.

B11. EXPERIENCE OF KEY PERSONNEL ASSIGNED TO THE PROJECT (SECTION D)

B11.1 Proposals should include the experience and qualifications of each key individual assigned to the Project for P3 projects of similar complexity, scope and contract values, which have reached Financial Close within the last five (5) years.. Include experience as a lawyer specializing in P3 procurements and DBF(O)M Agreements. The experience provided should include at a minimum and in the following order of importance:

- (a) knowledge and experience relevant to best practices in P3 procurement and DBF(O)M Agreements in the Canadian market.
- (b) experience drafting DBF(O)M Agreements;
- (c) experience with and understanding of public private partnerships;
- (d) knowledge and experience relevant to public sector infrastructure procurement, with a focus on P3 procurements for municipal governments;
- (e) knowledge and experience in delivering P3 procurements that involve PPP Canada;
- (f) knowledge and experience in understanding how funding agreements from Canada and/or Provincial governments are incorporated into the P3 procurement;
- (g) broad commercial or professional knowledge and experience; and
- (h) a one page resume, including legal education and professional affiliations.

B11.2 For the Key Personnel identified, list comparable projects. If a project selected for a key individual is included in B10, provide only the project name and the role of the key individual. For other projects provide the following:

- (a) description of project;
- (b) scope of work assigned to the key personnel, including the extent of involvement in the project (e.g. hours spent on project, value of advisory services, etc.)
- (c) project owner; and

- (d) reference information (two current names with telephone numbers and email addresses per project).

B11.3 Should the Proponent propose a team, the team lead shall be identified.

B12. PROJECT UNDERSTANDING AND METHODOLOGY (SECTION E)

B12.1 Proposals should include the Proponent's approach and methodology to successfully manage the Project with details outlining:

- (a) the Proponent's understanding and methodology to undertake each of:
 - (i) the Project requirements, including the P3 structure;
 - (ii) the Project deliverables and how they will be met;
 - (iii) the Project schedule; and
- (b) the role of the Legal Advisor; any risks or challenges, specific to the Project, that they anticipate may be encountered through the P3 procurement process, supported by experience from previous similar engagements, including mitigation strategies that may be employed.

B13. PERSON-HOURS

B13.1 The Proposal should include the following details on Form C: Person-Hours:

- (a) the all-inclusive hourly rates for the Proponent's team members and detailing the tasks and the percentage of the scope of Services to be undertaken by each team member for each task identified in D4; and
- (b) the cost per trip to Winnipeg, excluding hourly rate while working in Winnipeg.

B13.1.1 Form C: Person-Hours is provided in .xls format for the convenience of Proponents.

B14. QUALIFICATION

B14.1 The Proponent 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 Proponent does not carry on business in Manitoba, in the jurisdiction where the Proponent does carry on business; and
- (b) be financially capable of carrying out the terms of the Contract;
- (c) have all the necessary experience, capital, organization, and equipment to perform the Services in strict accordance with the terms and provisions of the Contract.

B14.2 The Proponent and any proposed Subconsultant (for the portion of the Services proposed to be subcontracted to them) shall:

- (a) be responsible and not be suspended, debarred or in default of any obligations 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 Division website at <http://www.winnipeg.ca/matmgmt/debar.stm>

B14.3 The Proponent and/or any proposed Subconsultant (for the portion of the Services proposed to be subcontracted to them) shall:

- (a) be fully capable of performing the Services required to be in strict accordance with the terms and provisions of the Contract; and
- (b) have a written workplace safety and health program, if required, pursuant to The Workplace Safety and Health Act (Manitoba); and

- (c) undertake to meet all licensing and regulatory requirements of the appropriate governing authorities and associations in the jurisdiction of Call and Manitoba, if applicable.

B14.4 The Proponent shall submit, within three (3) Business Days of a request by the Project Manager, further proof satisfactory to the Project Manager of the qualifications of the Proponent and of any proposed Subconsultant.

B15. CONFLICT OF INTEREST AND GOOD FAITH

B15.1 The Proponent by submitting a proposal certifies that to the best of its knowledge or belief that:

- (a) no elected or appointed official of the City is financially interested, directly or indirectly, in their firm or in the provision, by the Proponent, of the Services as described in this RFP;
- (b) Neither the Legal Advisor, nor any person or organization with whom the Legal Advisor has a significant connection, shall:
 - (i) submit, or assist in the preparation of, a response to the City's request for qualifications or proposals, call for tenders or any other document that relates to the procurement process for the P3 Project; or
 - (ii) participate in the provision of any goods, services or construction to be provided for the P3 Project, by the successful proponent or bidder.

B15.2 Proponents must not include among their team, any business entity or individual who is, or is associated, in any way, with any consultant retained by the City or known to be a party involved in relation to the the P3 Project (Southwest Transitway– Stage 2 and the Pembina Highway Underpass Widening), including but not limited to consultants providing engineering, architectural, legal, process, finance or financial capacity advice or any person likely to create a conflict of interest or a perception of conflict of interest.

B15.3 If a Proponent considers that a particular relationship or association does not create a conflict of interest and will not create a perception of conflict of interest, but is concerned that the City could arrive at a different conclusion, the Proponent should fully disclose the circumstances to the Project Manager at the earliest possible date, and request that the Project Manager provide an advance interpretation as to whether the relationship or association will be likely to create a conflict of interest or a perception of conflict of interest.

B15.4 The Proponent declares that in submitting its response to this RFP, it does so in good faith and will disclose to the best of its knowledge, whether there are any circumstances whereby any member of City Council or any officer or employee of the City would gain any pecuniary interest, direct or indirect, as a result of the Proponents participation in this Project.

B15.5 Failure to comply with B15 may result in disqualification of your Submission from the RFP process.

B16. OPENING OF PROPOSALS AND RELEASE OF INFORMATION

B16.1 Proposals will not be opened publicly.

B16.2 After award of Contract, the names of the Proponents and the Contract amount of the successful Proponent will be available on the Closed Bid Opportunities (or Public/Posted Opening & Award Results) page at The City of Winnipeg, Corporate Finance, Materials Management Division website at <http://www.winnipeg.ca/matmgt/> .

B16.3 To the extent permitted, the City shall treat all Proposal Submissions as confidential. However, the Proponent is advised that any information contained in any Proposal may be released if required by City policy or procedures, by The Freedom of Information and Protection of Privacy Act (Manitoba), by other authorities having jurisdiction, or by law.

B16.4 Following the award of Contract, a Proponent will be provided with information related to the evaluation of its submission upon written request to the Project Manager.

B17. IRREVOCABLE OFFER

- B17.1 The Proposal(s) submitted by the Proponent shall be irrevocable for the time period specified in Paragraph 10 of Form A: Proposal.
- B17.2 The acceptance by the City of any Proposal shall not release the Proposals of the other responsive Proponents and these Proponents shall be bound by their offers on such Services until a Contract for the Services has been duly executed as herein provided, but any offer shall be deemed to have lapsed unless accepted within the time period specified in Paragraph 10 of Form A: Proposal.

B18. WITHDRAWAL OF OFFERS

- B18.1 A Proponent may withdraw its Proposal without penalty by giving written notice to the Manager of Materials at any time prior to the Submission Deadline.
- B18.1.1 The time and date of receipt of any notice withdrawing a Proposal shall be the time and date of receipt as determined by the Manager of Materials.
- B18.1.2 The City will assume that any one of the contact persons named in Paragraph 3 of Form A: Proposal or the Proponent's authorized representatives named in Paragraph 11 of Form A: Proposal, and only such person, has authority to give notice of withdrawal.
- B18.1.3 If a Proponent gives notice of withdrawal prior to the Submission Deadline, the Manager of Materials will:
- (a) retain the Proposal until after the Submission Deadline has elapsed;
 - (b) open the Proposal to identify the contact person named in Paragraph 3 of Form A: Proposal and the Proponent's authorized representatives named in Paragraph 11 of Form A: Proposal; and
 - (c) if the notice has been given by any one of the persons specified in B18.1.3(b), declare the Proposal withdrawn.
- B18.2 A Proponent who withdraws its Proposal after the Submission Deadline but before its offer has been released or has lapsed as provided for in B17.2 shall be liable for such damages as are imposed upon the Proponent 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.

B19. SUBSTITUTION OF RESOURCES

- B19.1 If, following the Submission Deadline and prior to Contract Award, a Proponent becomes aware that a key individual identified to participate in this Project is unable, or will likely be unable, to participate in this Project, the Proponent must immediately advise the Project Manager and indicate the proposed substitute key individual.
- B19.2 Any proposed substitute key individual should have, in the City's opinion, equivalent or better qualifications than the key individual originally proposed. Proponents will not receive additional credit in the evaluation process if the qualifications of the substitute key individual exceed those of the original key individual.
- B19.3 Should a Proponent wish to request a substitution, it should be done in writing to the Project Manager, and should include the following at a minimum:
- (a) the reason for the proposed substitution;
 - (b) a comprehensive description of the proposed substitution; and
 - (c) sufficient information and documentation to allow the City to properly evaluate the request.
- B19.3.1 The Proponent must submit any further information requested by the Project Manager for the purpose of evaluating the proposed substitution.

B19.4 The City may, in its sole discretion, by written notice from the Project Manager, approve or deny the proposed substitution.

B19.4.1 Approval of the substitution, by the City, may be on such terms and conditions as the City in its sole discretion may consider appropriate.

B20. INTERVIEWS

B20.1 The Project Manager may, in his/her sole discretion, interview any one or more Proponent(s) during the evaluation process.

B20.2 Interviews will be by telephone video conference, or if in person at the Proponent's sole expense.

B21. NEGOTIATIONS

B21.1 The City reserves the right to negotiate details of the Contract with any Proponent. Proponents are advised to present their best offer, not a starting point for negotiations in their Proposal Submission.

B21.2 The City may negotiate with the Proponents submitting, in the City's opinion, the most advantageous Proposals. The City may enter into negotiations with one or more Proponents without being obligated to offer the same opportunity to any other Proponents. Negotiations may be concurrent and will involve each Proponent individually. The City shall incur no liability to any Proponent as a result of such negotiations.

B21.3 If, in the course of negotiations pursuant to B21.2 or otherwise, the Proponent amends or modifies a Proposal after the Submission Deadline, the City may consider the amended Proposal as an alternative to the Proposal already submitted without releasing the Proponent from the Proposal as originally submitted.

B22. EVALUATION OF PROPOSALS

B22.1 Award of the Contract shall be based on the following evaluation criteria:

- | | |
|---|-------------|
| (a) compliance by the Proponent with the requirements of the Request for Proposal or acceptable deviation therefrom: (including Section F, if applicable) | (pass/fail) |
| (b) qualifications of the Proponent and the Subconsultants, if any, pursuant to B14: | (pass/fail) |
| (c) Total Fees; (Section B) | 20% |
| (d) Experience of Proponent; (Section C) | 20% |
| (e) Experience of Key Personnel Assigned to the Project; (Section D) | 50% |
| (f) Project Understanding and Methodology (Section E) | 10% |

B22.2 Further to B22.1(a), and taking into consideration Section F if any, the Award Authority may reject a Proposal as being non-responsive if the Proposal 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 Proposal, or waive technical requirements or minor informalities or irregularities if the interests of the City so require.

B22.3 Further to B22.1(b), the Award Authority shall reject any Proposal submitted by a Proponent who does not demonstrate, in its Proposal or in other information required to be submitted, that it is responsible and qualified.

B22.4 Further to B22.1(c), Total Fees will be evaluated based on Fees submitted in accordance with B9.

B22.5 Further to B22.1(d), Experience of Proponent will be evaluated considering the experience of the organization and their response to B10.

- B22.6 Further to B22.1(e), Experience of Key Personnel assigned to the Project will be evaluated considering the experience and qualifications of the Key Personnel and their response to B11, as follows:
- (a) knowledge and experience relevant to best practices in P3 procurement and DBF(O)M Agreements in the Canadian market. 16%
 - (b) experience drafting DBF(O)M Agreements; 10%
 - (c) experience with and understanding of public private partnerships; 5%
 - (d) knowledge and experience relevant to public sector infrastructure procurement, with a focus on P3 procurements for municipal governments; 8%
 - (e) knowledge and experience in delivering P3 procurements that involve PPP Canada; 3%
 - (f) knowledge and experience in understanding how funding agreements from Canada and/or Provincial governments are incorporated into the P3 procurement; 3%
 - (g) broad commercial or professional knowledge and experience; and 3%
 - (h) a one page resume, including legal education and professional affiliations. 2%
- B22.7 Further to B22.1(f) Project Understanding and Methodology will be evaluated considering the Proponent's understanding of the Project, their methodology and their response to B12.
- B22.8 Notwithstanding B22.1(d) to B22.1(f), where Proponents fail to provide a response to B7.2(a), B7.2(b) and B7.2(c), the score of zero may be assigned to the incomplete part of the response.
- B22.9 Further to B22.1, a Proposal should receive a minimum of sixty (60) percent of the available points for each of B22.1(d), B22.1(e) and B22.1(f) to be considered for award of Contract.

B23. AWARD OF CONTRACT

- B23.1 The City will give notice of the award of the Contract, or will give notice that no award will be made.
- B23.2 The City will have no obligation to award a Contract to a Proponent, even though one or all of the Proponents are determined to be responsible and qualified, and the Proposals are determined to be responsive.
- B23.2.1 Without limiting the generality of B23.2, the City will have no obligation to award a Contract where:
- (a) the prices exceed the available City funds for the Services;
 - (b) the prices are materially in excess of the prices received for similar services in the past;
 - (c) the prices are materially in excess of the City's cost to perform the Services, or a significant portion thereof, with its own forces;
 - (d) only one Proposal 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.
- B23.3 Where an award of Contract is made by the City, the award shall be made to the responsible and qualified Proponent submitting the most advantageous offer.
- B23.4 Further to Paragraph 6 of Form A: Proposal and C4, the successful Proponent will be provided with Contract documents for execution following issuance of a Letter of Intent.
- B23.5 The form of Contract with the City of Winnipeg will be based on the Contract as defined in C1.1(n).
- B23.6 Following the award of Contract, a Proponent will be provided with information related to the evaluation of its Proposal upon written request to the Project Manager.

B23.7 If, after the award of Contract, the Project is cancelled, the City reserves the right to terminate the Contract. The Consultant will be paid for all Services rendered up to time of termination.

PART C - GENERAL CONDITIONS

C0. GENERAL CONDITIONS

- C0.1 The *General Conditions for Consultant Services* (Revision 2010-10-01) are applicable to the Services of the Contract.
- C0.1.1 The *General Conditions for Consultant Services* are available on the Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Division website at http://www.winnipeg.ca/matmgt/gen_cond.stm.
- C0.2 A reference in the Request for Proposal to a section, clause or subclause with the prefix “**C**” designates a section, clause or subclause in the *General Conditions for Consultant Services*.

PART D - SUPPLEMENTAL CONDITIONS

GENERAL

D1. GENERAL CONDITIONS

D1.1 In addition to the *General Conditions for Consultant Services*, these Supplemental Conditions are applicable to the Services of the Contract.

D2. PROJECT MANAGER

D2.1 The Project Manager is:

Lisa R. Rowswell, B.A., LL.B., Solicitor

Email: lrowswell@winnipeg.ca

Telephone No. 204 986-8140

D2.2 At the pre-commencement meeting, the Project Manager will identify additional personnel representing the Project Manager and their respective roles and responsibilities for the Services.

D2.3 Proposal Submissions must be submitted to the address in B7.10

D3. BACKGROUND

D3.1 On June 25, 2014, City Council approved recommendations regarding the Capital Integration Project which combines the Pembina Highway Underpass project, Southwest Rapid Transit Corridor – Stage 2 project, and associated land drainage infrastructure, collectively the “P3 Project”.

Once completed, the P3 Project will be the City's largest infrastructure project to date and will utilize a public-private partnership (P3) with a Design-Build-Finance-Maintain (DBFM) procurement model. Under a DBFM P3 model, the private partner will develop the detailed design for the P3 Project, construct it, finance it and maintain it over a 30 year concession period extending from 2019 until 2049. This is very similar to the models used recently by the City of Winnipeg for the Disraeli Bridges Project and the Chief Peguis Trail Extension Project. It is anticipated that the City will operate the completed P3 Project.

Next Steps

It is anticipated that a Request for Qualifications (RFQ) for the P3 Project will be issued in the early Fall of 2014. The RFQ is designed to identify consortiums that may bid on the P3 Project and to review their qualifications. Once the RFQ is complete and a shortlist of qualified bidders is determined, and if an application for federal funding is successful, a P3 Request for Proposals (P3 RFP) will be issued to those short-listed through the RFQ process, in early 2015.

Construction of the P3 Project is expected to begin in 2016, with construction completion in 2019. After construction of the P3 Project is complete, operator training and facility commissioning will be carried out with operations commencing in April 2020.

Project Background Information

The P3 Project is comprised of significant infrastructure components in the southwest quadrant of the city including the completion of Stage 2 of the Southwest Transitway, the addition of Active Transportation infrastructure, and the renewal and expansion of the Pembina Underpass. Drainage works associated with the P3 Project will also be coordinated with the Cockburn-Calrossie combined sewer relief project that is currently underway.

Integration of these infrastructure improvements would accommodate anticipated population growth in southwest Winnipeg that will lead to an estimated 50 per cent traffic increase on Pembina Highway by 2031. Proposed improvements, which are consistent with the City Council-approved Transportation Master Plan (2011), would better accommodate modes of choice (cars, trucks, buses and active transportation) in a more sustainable way, right from P3 Project completion and well into the future.

By bundling Stage 2 of the Southwest Transitway, the widening of the Pembina Highway Underpass and the associated land drainage works together under one Capital Integration Project, the City is expected to save significant costs by eliminating the need to relocate the rail line at least twice during construction. By constructing the projects concurrently, construction timelines and traffic disruption will also be minimized.

For further information Proponents may refer to:

Item 1 of The Report of the Standing Committee on Infrastructure Renewal and Public Works dated June 3, 2014 available at the following link
<http://www.winnipeg.ca/CLKDMIS/ViewDoc.asp?DocId=13674&SectionId=&InitUrl>

and the following anticipated P3 Project timeline:

ISSUE RFQ	SEPT 2014
SHORTLIST RFQ	FEB 2015
ISSUE P3 RFP INCLUDING DBFM AGREEMENT	FEB 2015
SUBMISSION DEADLINE FOR P3 RFP	OCT 2015
PREFERRED PROPONENT ANNOUNCEMENT	JAN 2016
FINANCIAL CLOSE/COMMERCIAL CLOSE	MAR 2016

D4. SCOPE OF SERVICES

- D4.1 A Legal Advisor is being retained by the City to provide expertise on Canadian best practices regarding content and language used in RFP's and DBF(O)M Agreements related to P3 Projects. The City will be responsible for the drafting and revisions to the RFQ, RFP and DBFM Agreement for the P3 Project.
- D4.2 The Contract for Services for the Legal Advisor is intended to extend from September 2014 through to completion of advisory Services which is projected to be Spring 2016 (anticipated date for Financial Close).
- D4.3 The Scope of the Legal Advisor's engagement includes, but is not limited to:
- (a) Attendance at one (1) meeting with the Project Manager prior to commencement of the Services to discuss the Project, the then current timelines for the Project, the Legal Advisor's methodology/intended course of action, and any other matters determined necessary to maximize and expedite the Services of the Legal Advisor;
 - (i) It is anticipated that this will be less than one (1) Business Day;
 - (b) Review the City's current RFQ and RFP templates for P3 Projects and provide comments on how each compare to best practices;
 - (c) Review the City's current DBFM Agreement template for P3 projects and provide comments on how it compares to best practices;
 - (d) Conduct a national survey of the manner in which recent (within the last three years) P3 projects have been carried out, including what has worked well and not worked well, and what new directions public entities seem to be moving in, taking into consideration any applicable requirements imposed by their funders, such as P3 Canada;

- (e) Conduct a national survey of what clauses and forms of agreement are being utilized for RFP's and DBF(O)M's in recent (within the last three years) P3 Projects and what new directions public entities seem to be moving in, taking into consideration any applicable requirements imposed by their funders, such as P3 Canada;
- (f) Provide the results of their surveys in a written report including advice on suggested changes to the City's RFP template and DBFM Agreement template to maximize business efficiencies for the Project and to bring each document in line with best practices;
 - (i) this report shall be provided to the City within sixty (60) days of award of Contract;
- (g) Within ten (10) Business Days of submission of the report to the City, attendance at one (1) meeting with the Project Manager to discuss the report and advice with the intent of the Project Manager updating the City's RFP and DBFM Agreement to bring each in line with best practices and ready for issuance on or about February 16, 2015;
- (h) Attendance at two (2) sets of Commercially Confidential Meetings ("CCMs") for each of the three (3) short-listed Proponents from the RFQ and after each set of CCMs provide comment and advice regarding the requested changes to the DBFM Agreement as a result of the CCMs and provide advice for suggested changes to the DBFM Agreement, within ten (10) Business Days of each set of CCMs, for issuance for the next stage of the procurement process;
 - (i) It is anticipated that each set of CCM's will span three (3) Business Days (one (1) day per P3 Proponent);
 - (ii) It is anticipated that there will be three (3) versions of the DBFM issued;
- (i) As requested by the Project Manager, opine on legal matters specifically related to:
 - (i) the RFP and DBFM Agreement that arise during the procurement phase of the P3 Project;
 - (ii) Commercial Close;
 - (iii) Financial Close;
 - (iv) other legal matters related to the procurement;
- (j) Any other tasks necessarily incidental to the Services, but within the scope outlined within this Request for Proposal.

D4.3.1 The surveys outlined in D4.3(d) and D4.3(e) must include:

- (a) a minimum of five (5) Canadian P3 projects of over \$100M, two (2) of which must be with a municipality as the owner;
- (b) one (1) P3 project from each of Ontario, Alberta and British Columbia;
- (c) any provisions included in the relevant RFP and DBF(O)M's that were necessitated by related funding agreements.

D4.4 The City is not committed to purchase any additional legal advisory services from the Consultant and the City may choose to initiate a subsequent procurement process to retain legal advisors for additional services.

D5. DEFINITIONS

D5.1 When used in this Request for Proposal:

- (a) "**City Council**" means the Council of the City of Winnipeg;
- (b) "**Commercial Close**" means the date of execution of the DBFM Agreement;
- (c) "**Commercially Confidential Meetings**" or "**CCMs**" mean one-on-one confidential meetings held by the City's Project Team with individual P3 Proponents to discuss their comments on the DBFM Agreement, after receipt of each round of comments from the P3 Proponents;
- (d) "**Consultant**" or "**Legal Advisor**" means the person undertaking the performance of the Services under the terms of the Contract;

- (e) **“Contract Administrator”** or **“Project Manager”** means the City’s representative throughout the duration of the Contract who has the authority to act on behalf of the City to the extent expressly provided for in this Contract;
- (f) **“DBF(O)M”** means design, build, finance, and maintain, with operation as an option;
- (g) **“DBFM Agreement”** means the contract intended to be awarded for performance of the design, build, finance and maintain obligations required by the P3 Project in the two stage procurement process commenced by issuance of the RFQ;
- (h) **“Financial Close”** means the first date that the flow of funds to the Private Partner, from all of the Private Partner’s debt and equity providers, commences or is irrevocably committed;
- (i) **“FIPPA”** means The Freedom of Information and Protection of Privacy Act (Manitoba);
- (j) **“P3”** means ‘public-private-partnership’ and is an acronym for a method for public sector procurement and contracting intended to solicit innovative solutions and engage a well-qualified team of private sector participants in the design, construction, long-term financing, operation and/or maintenance of large public infrastructure projects;
- (k) **“P3 Project”** means the Capital Integration Project which combines the Pembina Highway Underpass project, Southwest Rapid Transit Corridor – Stage 2 project, and associated land drainage infrastructure;
- (l) **“P3 Proponent”** means any one of the three (3) private sector teams invited by the City, following the RFQ, to participate in the P3 RFP process;
- (m) **“P3 RFP”** means the Request for Proposal, including its schedules, the draft form of DBFM Agreement and any addenda issued to P3 Proponents;
- (n) **“Preferred Proponent”** means the private sector team selected by the City for award of the P3 Project;
- (o) **“Private Partner”** means the successful P3 Proponent that the City enters into a DBFM Agreement for the P3 Project;
- (p) **“Project”** has the meaning ascribed to it C1.1(ee);
- (q) **“Project Team”** means the group of City employees and the City’s other contracted consultants as set out in B3 responsible for overseeing the procurement and contracting process contemplated by the P3 RFP;
- (r) **“RFQ”** means the Request for Qualifications to be issued as the first stage of the procurement process for the P3 Project.

D6. OWNERSHIP OF INFORMATION, CONFIDENTIALITY AND NON DISCLOSURE

- D6.1 The Contract, all deliverables produced or developed, and information provided to or acquired by the Consultant are the property of the City and shall not be appropriated for the Consultants own use, or for the use of any third party.
- D6.1.1 For greater clarity, the City owns all templates for the P3 Project RFP and DBFM for the P3 Project, as amended throughout the P3 Project, as well as the report (D4.3(f)) produced by the Legal Advisor as a result of the Services.
- D6.2 The Consultant shall not make any public announcements or press releases regarding the Contract, without the prior written authorization of the Project Manager.
- D6.3 The following shall be confidential and shall not be disclosed by the Consultant to the media or any member of the public without the prior written authorization of the Project Manager;
 - (a) information provided to the Consultant by the City or acquired by the Consultant during the course of the Services;
 - (b) the Contract, all deliverables produced or developed; and
 - (c) any statement of fact or opinion regarding any aspect of the Contract.
- D6.4 A Consultant who violates any provision of D6 may be determined to be in breach of Contract.

SUBMISSIONS PRIOR TO START OF SERVICES

D7. AUTHORITY TO CARRY ON BUSINESS

D7.1 The Consultant 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 Consultant does not carry on business in Manitoba, in the jurisdiction where the Consultant does carry on business, throughout the term of the Contract, and shall provide the Project Manager with evidence thereof upon request.

D8. INSURANCE

D8.1 The Consultant shall procure and maintain, at its own expense and cost, insurance policies with limits no less than those shown below.

D8.2 As a minimum, the Consultant shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

(a) Comprehensive or Commercial General Liability Insurance including:

- (i) an inclusive limit of not less than \$2,000,000 for each occurrence or accident with a minimum \$2,000,000 Products and Completed Operations aggregate and \$5,000,000 general aggregate;
- (ii) all sums which the Consultant shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the Services or any operations carried on in connection with this Contract;
- (iii) coverage for Products/Completed Operations, Blanket Contractual, Consultant's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, Employees as Additional Insureds, and Non-Owned Automobile Liability;
- (iv) a Cross Liability clause and/or Severability of Interest Clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder in respect to any claim, demand, suit or judgment made against any other Insured;

(b) if applicable, Automobile Liability Insurance covering all motor vehicles, owned and operated and used or to be used by the Consultant directly or indirectly in the performance of the Service. The Limit of Liability shall not be less than \$2,000,000 inclusive for loss or damage including personal injuries and death resulting from any one accident or occurrence.

(c) Professional Errors and Omissions Liability Insurance including:

- (i) an amount not less than \$5,000,000 per claim and \$5,000,000 in the aggregate.

D8.2.1 The Consultant's Professional Errors and Omissions Liability Insurance shall remain in force for the duration of the Project and for twelve (12) months after total performance.

D8.3 The policies required in D8.2(a) shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.

D8.4 The Consultant shall require any Subconsultants to provide comparable insurance to that set forth under B8.2.

D8.5 The Consultant shall provide the Project Manager with a certificate(s) of insurance for itself and for all of its Subconsultants, in a form satisfactory to the City Solicitor, at least two (2) Business Days prior to the commencement of any Services, but in no event later than the date specified

in C4.1 for the return of the executed Contract. Such Certificates shall state the exact description of the Services and provide for written notice in accordance with D8.10.

- D8.6 The Consultant may take out such additional insurance as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City.
- D8.7 All insurance, which the Consultant is required to obtain with respect to this Contract, shall be with insurance companies registered in and licensed to underwrite such insurance in the Province of Manitoba.
- D8.8 If the Consultant fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to affect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Consultant.
- D8.9 The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Consultant or any Subconsultants shall not be held to waive or release the Consultant or Subconsultants from any of the provisions of the insurance requirements or this Contract. Any insurance deductible maintained by the Consultant or any Subconsultants under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Consultant as stated in D8.8.
- D8.10 The Consultant shall not cancel, materially alter, or cause any policy to lapse without providing at least thirty (30) Calendar Days prior written notice to the City.

SCHEDULE OF SERVICES

D9. COMMENCEMENT

- D9.1 The Consultant shall not commence any Services until it is in receipt of a notice of award from the City authorizing the commencement of the Services.
- D9.2 The Consultant shall not commence any Services until:
- (a) the Project Manager has confirmed receipt and approval of:
 - (i) evidence of authority to carry on business specified in D7;
 - (ii) evidence of the insurance specified in D8;
 - (b) the Consultant has attended a meeting with the Project Manager in accordance with D4.3(a).
- D9.3 Further to D9.1 and D9.2, the Consultant shall be prepared to commence Services immediately upon the award of Contract.
- D9.4 The City intends to award this Contract by September 30, 2014