



**THE CITY OF WINNIPEG**

# **REQUEST FOR PROPOSAL**

**RFP NO. 906-2016**

**REQUEST FOR PROPOSAL FOR PROFESSIONAL CONSULTING SERVICES FOR  
AN INDEPENDENT FAIRNESS COMMISSIONER**

**Proposals shall be submitted to:**

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

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## **PART B - BIDDING PROCEDURES**

### **B1. CONTRACT TITLE**

B1.1 REQUEST FOR PROPOSAL FOR PROFESSIONAL CONSULTING SERVICES FOR AN INDEPENDENT FAIRNESS COMMISSIONER

### **B2. SUBMISSION DEADLINE**

B2.1 The Submission Deadline is 12:00noon Winnipeg time, January 17, 2017.

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 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. ENQUIRIES**

B3.1 All enquiries shall be directed to the Contract Administrator identified in D2.

B3.2 If the Proponent finds errors, discrepancies or omissions in the Request for Proposal, or is unsure of the meaning or intent of any provision therein, the Proponent shall promptly notify the Contract Administrator of the error, discrepancy or omission at least five (5) Business Days prior to the Submission Deadline.

B3.3 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.

B3.4 Responses to enquiries which, in the sole judgment of the Contract Administrator, require a correction to or a clarification of the Request for Proposal will be provided by the Contract Administrator to all Proponents by issuing an addendum.

B3.5 Responses to enquiries which, in the sole judgment of the Contract Administrator, do not require a correction to or a clarification of the Request for Proposal will be provided by the Contract Administrator only to the Proponent who made the enquiry.

B3.6 All correspondence or contact by Proponents with the City in respect of this RFP must be directly and only with the City's Contract Administrator. Failure to restrict correspondence and contact to the Contract Administrator may result in the rejection of the Proponents Proposal Submission.

B3.7 The Proponent shall not be entitled to rely on any response or interpretation received pursuant to B3 unless that response or interpretation is provided by the Contract Administrator in writing.

### **B4. CONFIDENTIALITY**

B4.1 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 Contract Administrator. 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.

B4.2 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 Contract Administrator.

## **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 Request for Proposal, 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 Division website at <http://www.winnipeg.ca/matmgt/bidopp.asp>
- B5.2.2 The Proponent is responsible for ensuring that he/she 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.
- B5.3 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.

## **B6. PROPOSAL SUBMISSION**

- B6.1 The Proposal shall consist of the following components:
- (a) Form A: Proposal in accordance with B7; and
  - (b) Form B: Fees in accordance with B8.
- B6.2 The Proposal should also consist of the following components:
- (a) Form C: Person Hours in accordance with B10.3;
  - (b) Experience of Proponent (Section C) in accordance with B9;
  - (c) Experience of Key Personnel Assigned to the Project (Section D), in accordance with B10; and
  - (d) Project Understanding and Methodology (Section E) in accordance with B11.
- B6.3 Further to B6.1 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.
- B6.4 Further to B6.2, 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, to constitute a responsive Proposal.
- B6.4.1 Proponents should submit one (1) unbound 8.5" x 11" original (marked "original") including drawings and three (3) bound copies for sections identified in B6.1 and B6.2.
- B6.5 Proponents are advised not to include any information/literature except as requested in accordance with B6.1 and B6.2.
- B6.6 Proposal format, including type of binding, size of pages, font, etc. will not be regulated, except that the Proposal should contain a table of contents, page numbering and should be outlined in the sections identified above. Proponents are encouraged to limit the response to forty (40) pages, not including resumes and use their creativity to submit a Proposal which provides the requested information for evaluation and information which illustrates the strength of their team.
- B6.7 Proponents are advised that inclusion of terms and conditions inconsistent with the Request for Proposal will be evaluated in accordance with B19.1.

B6.8 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.

B6.9 Proposals submitted by facsimile transmission (fax) or internet electronic mail (e-mail) will not be accepted.

B6.10 Proposals shall be submitted to:

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

B6.11 Any cost or expense incurred by the Proponent that is associated with the preparation of the Proposal shall be borne solely by the Proponent.

## **B7. PROPOSAL (SECTION A)**

B7.1 The Proponent shall complete Form A: Proposal, making all required entries.

B7.2 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.

B7.2.1 If a Proposal is submitted jointly by two or more persons, each and all such persons shall identify themselves in accordance with B7.2.

B7.3 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.

B7.4 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 his/her 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.

B7.4.1 The name and official capacity of all individuals signing Form A: Proposal should be printed below such signatures.

B7.5 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.

## **B8. FEES (SECTION B)**

- B8.1 The Proponent shall state a price in Canadian funds for each item of the Project identified on Form B: Fees. Total Fees shall be the sum of the quantities multiplied by the unit prices for each item shown on Form B: Fees.
- B8.2 Adjustments to Fees will only be considered based on increases to the Scope of Services.
- B8.3 Notwithstanding C1.1(b), 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.
- B8.4 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.
- B8.5 Payments to Non-Resident Consultants are subject to Non-Resident Withholding Tax pursuant to the Income Tax Act (Canada).

## **B9. EXPERIENCE OF PROPONENT (SECTION C)**

- B9.1 Proposals should include:
- (a) Proponents should demonstrate their competency and experience by identifying at least five (5) projects of similar size and complexity, scope and value involving compliance and performance audits of real estate transactions for municipal, provincial, federal governments with ideally one project from each of these sectors:
    - (i) Acquisition of property;
    - (ii) Sale of property;
    - (iii) Expropriation of property;
    - (iv) Lease of property where the subject is the Lessee;
    - (v) Lease of property where the subject is the Lessor;
- B9.2 For each project listed in B9.1(a), the Proponent should submit:
- (a) a clear and comprehensive description of the project – include project owner, project objectives, size, assignment outcomes, achievements and other relevant information;
  - (b) a clear and comprehensive description of the role of the consultant;
  - (c) the project's original contracted cost and final cost;
  - (d) schedule (anticipated project schedule and actual project delivery schedule); and
  - (e) reference information (two current names with telephone numbers per project).  
References should have worked directly on the projects described, such as the Project Manager or Contract Administrator.
- B9.3 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.
- B9.4 For evaluation purposes, higher scores will be given to Proponents with experience in each of the projects listed in B9.1(a) . Demonstrated experience with Canadian municipal governments would be considered an asset.

## **B10. EXPERIENCE OF KEY PERSONNEL ASSIGNED TO THE PROJECT (SECTION D)**

- B10.1 The Proponent should submit the experience of the Key Personnel assigned to this project as described in this section and in Form C: Person Hours, including:
- (a) Provide a description of the following qualifications and skill sets of all Key Personnel, including but not limited to the following:

- (i) Working knowledge and experience in reviewing real estate transactions including major, complex and diverse transactions related to lease, acquisition, sale, expropriation and real estate valuation;
  - (ii) Knowledge in legal analysis pertaining to real estate transactions and understanding related municipal by-laws, policies and processes;
  - (iii) Experience, relevant educational background and professional recognition in an area of real estate such as Accredited Appraiser Canadian Institute (AACI), Canadian Residential Appraiser (CRA), Certified Property Manager (CPM), Certified Leasing Officer (CLO), Fellow of the Real Estate Institute (FRI), or Senior Right-of-Way Professional (SR/WA);
  - (iv) Experience, relevant educational background and professional recognition in an area of project auditing including contemporary auditing and project management with designations such as Chartered Professional Accountant (CPA) or Certified Internal Auditor (CIA); and
  - (v) Job title, years of experience in current position and years of experience with existing employer.
- (b) Include an organizational chart for the Project, defining the roles of each of the Key Personnel in the Project.
- B10.2 For each person identified as Key Personnel, list at least two comparable projects in which they have played a primary role. If a project selected for a key person is included in B9, provide only the project name and the role of the key person. For other projects provide the following:
- (a) a clear and comprehensive description of the project – include project owner, project objectives, size, assignment outcomes and achievements and other relevant information;
  - (b) a clear and comprehensive description of the role of the consultant;
  - (c) the project's original contracted cost and final cost;
  - (d) schedule (anticipated Project schedule and actual project delivery schedule); and
  - (e) reference information (two current names with telephone numbers per project).  
References should have worked directly on the projects described, such as the Project Manager or Contract Administrator.
- B10.3 For each person identified as Key Personnel in your submission, list the estimated hours to be dedicated to the Project on Form C: Person Hours, in accordance with the Scope of Services identified in D4.

## **B11. PROJECT UNDERSTANDING AND METHODOLOGY (SECTION E)**

- B11.1 Describe your firm's approach and team organization during the performance of Services, so that the evaluation committee has a clear understanding of the methods the Proponent will use in the delivery of this Project.
- B11.2 Proposals should address:
- (a) the process/method to conduct a jurisdictional review, including what will be delivered by the Proponent and expected outcomes and benefits to the City;
  - (b) a description of the approach to develop criteria for evaluating compliance of various types of real estate and management services transactions;
  - (c) a complete definition of the process of compliance review that will be employed by the Key Personnel to meet the objectives of this Project, (e.g. approach to be taken, etc.);
  - (d) the identification of all facts and assumptions made by the Proponent in developing the Submission and the relevance that these facts and assumptions have had on the proposed methodology and team composition (e.g., data availability, level of involvement of City staff, etc.);
  - (e) a detailed description of any information, resources, or services required to be provided by The City of Winnipeg; and

- (f) any potential risks and solutions to minimize these risks (e.g.: tight timeline for completion of each compliance review).

B11.3 Methodology should be presented in accordance with the Scope of Services identified in D4.

## **B12. DISCLOSURE**

B12.1 Various Persons provided information or services with respect to this Work. In the City's opinion, this relationship or association does not create a conflict of interest because of this full disclosure. Where applicable, additional material available as a result of contact with these Persons is listed below.

B12.2 The Persons are:

- (a) N/A

## **B13. QUALIFICATION**

B13.1 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;

B13.2 The Proponent 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/matmgt/debar.stm>
- (b) have successfully carried out Services similar in nature, scope and value to the Project; and
- (c) be fully capable of performing the Services required to be in strict accordance with the terms and provisions of the Contract; and
- (d) have a written workplace safety and health program, if required, pursuant to The Workplace Safety and Health Act (Manitoba).

B13.3 The Proponent shall submit, within three (3) Business Days of a request by the Contract Administrator, further proof satisfactory to the Contract Administrator of the qualifications of the Proponent.

## **B14. OPENING OF PROPOSALS AND RELEASE OF INFORMATION**

B14.1 Proposals will not be opened publicly.

B14.2 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/>

B14.3 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.



B14.4 Following the award of Contract, a Proponent will be provided with information related to the evaluation of his/her submission upon written request to the Contract Administrator.

**B15. IRREVOCABLE OFFER**

B15.1 The Proposal(s) submitted by the Proponent shall be irrevocable for the time period specified in Paragraph 10 of Form A: Proposal.

B15.2 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 and the performance security furnished 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.

**B16. WITHDRAWAL OF OFFERS**

B16.1 A Proponent may withdraw his/her Proposal without penalty by giving written notice to the Manager of Materials at any time prior to the Submission Deadline.

B16.1.1 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.

B16.1.2 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.

B16.1.3 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 B16.1.3(b), declare the Proposal withdrawn.

B16.2 A Proponent who withdraws its Proposal after the Submission Deadline but before its offer has been released or has lapsed as provided for in B15.2 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.

**B17. INTERVIEWS**

B17.1 The Contract Administrator may, in his/her sole discretion, interview Proponents during the evaluation process.

**B18. NEGOTIATIONS**

B18.1 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.

B18.2 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.

B18.3 If, in the course of negotiations pursuant to B18.2 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.

## **B19. EVALUATION OF PROPOSALS**

B19.1 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: | (pass/fail) |
| (b) qualifications of the Proponent, pursuant to B13:  | (pass/fail) |
| (c) Fees; (Section B)  | 40%         |
| (d) Experience of Proponent; (Section C)   | 15%         |
| (e) Experience of Key Personnel Assigned to the Project; (Section D)   | 30%         |
| (f) Project Understanding and Methodology (Section E)  | 15%         |

B19.2 Further to B19.1(a), 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.

B19.3 Further to B19.1(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.

B19.4 Further to B19.1(c), the Fees will be evaluated based on Fees submitted in accordance with B8.

B19.5 Further to B19.1(d), Experience of Proponent will be evaluated considering the experience of the organization on projects of similar size and complexity as well as other information requested, in accordance with B9.

B19.6 Further to B19.1(e), Experience of Key Personnel Assigned to the Project will be evaluated considering the experience and qualifications of the Key Personnel on Projects of comparable size and complexity as well as other information requested in B10.

B19.7 Further to B19.1(f), Project Understanding and Methodology will be evaluated considering the information submitted in response to B11.

B19.8 Notwithstanding B19.1(d) to B19.1(f), where Proponents fail to provide a response to B6.2(a) to B6.2(d), the score of zero may be assigned to the incomplete part of the response.

B19.9 Proposals will be evaluated considering the information in the Proposal Submission and any interviews held in accordance with B17.

B19.10 Reference checks to confirm information provided may not be restricted to only those submitted by the Proponent, and may include organizations representing Persons, known to have done business with the Proponent.

B19.11 The City reserves the right to conduct an independent verification of information in any Proposal received and generally pertaining to the qualifications and experience of the Proponent and any proposed members of its team.

## **B20. AWARD OF CONTRACT**

B20.1 The City will give notice of the award of the Contract, or will give notice that no award will be made.

- B20.2 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.
- B20.2.1 Without limiting the generality of B20.2, 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.
- B20.3 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.
- B20.4 The City may, at its discretion, award the Contract in phases.
- B20.5 Notwithstanding Paragraph 6 of Form A: Proposal and C4, the City will issue a Letter of Intent to the successful Proponent in lieu of execution of a Contract.
- B20.5.1 The Contract documents as defined in C1.1(n)(ii) in their entirety shall be deemed to be incorporated in and to form a part of the Letter of Intent notwithstanding that they are not necessarily attached to or accompany said Letter of Intent.
- B20.6 The form of Contract with the City of Winnipeg will be based on the Contract as defined in C1.1(n)
- B20.7 Following the award of Contract, a Proponent will be provided with information related to the evaluation of its Proposal upon written request to the Contract Administrator.
- B20.8 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](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.
- D1.2 The Proponent shall not substitute or replace Key Personnel throughout the duration of the Contract without the permission of the Contract Administrator.
- (a) Experience and qualifications as specified in B10 shall be submitted for all requested substitute(s) and replacement(s).

#### **D2. CONTRACT ADMINISTRATOR**

- D2.1 The Contract Administrator is:  
Kim Fox  
Executive Assistant  
Telephone No. 204-986-3404  
Email Address: [kimfox@winnipeg.ca](mailto:kimfox@winnipeg.ca)
- D2.2 At the pre-commencement meeting, the Contract Administrator will identify additional personnel representing the Contract Administrator and their respective roles and responsibilities for the Services.
- D2.3 Proposal Submissions must be submitted to the address in B6.

#### **D3. BACKGROUND**

- D3.1 On July 9, 2014, City Council concurred in the recommendation of the Executive Policy Committee, to adopt the report for the City of Winnipeg Real Estate Management Review Findings and Recommendations Report dated June 19, 2014 prepared by Ernst & Young LLP and adopted the following recommendation:
- a) That the City of Winnipeg create an Independent Fairness Commissioner (IFC), who would have the power to review all Real Estate Transactions and Management Services before they are presented to the Standing Policy Committee and/or Council, and that they would report directly to Council, via and under the Office of the City Auditor;
- b) That the power to review and comment on all real estate transactions by the IFC, be retroactive to all potential transactions now underway and that the said IFC be reviewed by Council in 5 years;
- c) That the Auditor, in consultation with the City Solicitor, report to Council for the purpose of approving the mandate/model for the IFC and the financial resources required for the operation of the said Independent Fairness Commissioner.
- <http://clkapps.winnipeg.ca/dmis/ViewPdf.asp?SectionId=375300>
- D3.2 At its meeting on September 28, 2016, Council adopted a recommendation that the model for the Independent Fairness Commissioner role, for compliance review of all real estate transactions and management services prior to presentation to Standing Policy Committee and/or Council, be approved as an external award contract.

<http://clkapps.winnipeg.ca/dmis/ViewPdf.asp?SectionId=447441>

- D3.3 Real estate transactions and management services primarily fall under the parameters of two divisions within the Planning, Property and Development Department. The Real Estate Division is responsible for all land acquisitions, exchanges, sales, expropriations and granting of property rights. The Municipal Accommodations Division is responsible for management services transactions relating to the lease of City owned property, granting encroachments and licences and the external lease of buildings for City use.
- D3.4 On January 28, 2009, Council approved the Delegation of Authority for Real Property Transactions, which is currently utilized by the Real Estate and Municipal Accommodations Divisions. <http://clkapps.winnipeg.ca/dmis/ViewPdf.asp?SectionId=216154>
- D3.5 The types of transactions outside of the current Delegation of Authority, with reporting requirements to Standing Policy Committee on Property and Development, Heritage and Downtown Development (SPCPDHDD) and Council could include but are not limited to:

Real Estate Transactions:

- (i) Sale of City-owned property with a transaction price of \$500,000+
- (ii) Sale at a transaction price less than 95% of the appraised value or less than 100% of SPCPDHDD pre-approved price
- (iii) Sale of property not through a public offering (with the exception of the sale of small lots, pedestrian walkways, closed lanes and similar parcels of land to an adjacent property owner)
- (iv) Sale at a transaction price of \$1.00 or at a non-market rate
- (v) Sale to a non-profit organization at less than market value
- (vi) Sale of any City-owned property designated/zoned or under the jurisdiction as park land that require approval by a 2/3 vote of Council
- (vii) Land exchange at any transaction price
- (viii) Acquisition of property with a transaction price of \$100,000+ for property identified under a Council approved project
- (ix) Acquisition of property that is not part of a Council approved program or project, or where the project has not yet been adopted by Council
- (x) Acquisition by way of property donation to the City
- (xi) Expropriation or acquisition settlements involving land exchange and a negotiated transaction price
- (xii) Expropriation offers of compensation of \$25,000+
- (xiii) Expropriation settlements of \$100,000+ (*this unique transaction has reporting requirements to Executive Policy Committee*)
- (xiv) Granting of a significant easement, option to purchase, or granting of any rights over, under and upon City property

Management Services Transactions:

- (i) Lease where the City is the Lessee and the term is more than 10 years with a gross value of \$1,000,000+
- (ii) Lease or Licence where the City is the Lessor and the gross value of the lease is \$500,000+
- (iii) Lease where the City is the Lessor where the lease is not based on current market value or is based on a term of 5+ years
- (iv) Lease where the City is the Lessor and the lease does not include a cancellation clause
- (v) Granting of encroachments of a commercial and unusual nature

#### **D4. SCOPE OF SERVICES**

- D4.1 The City requires the Services of a Consultant to act as an Independent Fairness Commissioner (IFC) to conduct compliance reviews of real estate transactions and management services which require presentation SPCPDHDD and/or Council. The Services shall include, but not be limited to the following:
- D4.2 Once annually:
- (a) Develop criteria for evaluating compliance of the different types of real estate and management services transactions, based on the preliminary review criteria attached as Appendix A, with additional input from the Department's internal Real Estate Transaction Management Framework and in coordination with the Director of Planning, Property & Development Department and the City Auditor;
  - (b) Develop a report template, to be agreed upon by the Director of Planning, Property & Development Department and the City Auditor; and
  - (c) Determine if the policies and procedures in place are consistent with leading practices observed in other jurisdictions.
- D4.3 Per transaction:
- (a) Produce an independent report on whether each transaction is compliance with all applicable City of Winnipeg by-laws, policies and procedures including the Department's internal Real Estate Transaction Management Framework and the requirements for fairness, openness and transparency;
  - (b) Submit an independent report on the compliance review through the City Auditor, at minimum five (5) days prior to the scheduled SPCPDHDD, Executive Policy Committee and/or Council meeting date. The report would be submitted to the appropriate Committee concurrently with the related administrative report prepared by Planning, Property & Development Department for transaction approval.
  - (c) Report on its findings for each transaction as to whether:
    - (i) the transaction is in compliance with the review criteria, by-laws, policies and procedures of the City of Winnipeg;
    - (ii) the transaction approval limits, delegated authority and reporting requirements were complied with;
    - (iii) all undertakings are in within the limitations of prescribed administrative rules and practices, guidelines, City by-laws and standards;
    - (iv) all undertakings are consistent with policy objectives, reflect ethical conduct, fairness, openness and transparency;
    - (v) security, independence and confidentiality have been maintained;
    - (vi) fairness, objectivity, impartiality, clarity, openness and transparency have been maintained; and
    - (vii) all relevant information was provided to decision makers in the administrative report submitted for approval of the transaction.
  - (d) Submit a report of its findings on the random sample of transactions one month prior to the end of the contract term.
- D4.4 At the onset of each transaction review, the IFC shall:
- (a) declare any conflict of interest as outlined in D6; and
  - (b) determine the complexity rating of the transaction, in accordance with the guidance provided in Appendix B: Transaction Complexity Assessment Tool.
- D4.5 Routine, complex or random sample transactions could include any of the types of transactions outlined in D3.5, any transaction in progress, closed or cancelled, retroactive to all transactions underway as at July 9, 2014. Random sample transactions could also include any transactions with approval/authority granted under the Delegation of Authority as outlined in D3.4.

D4.5.1 During the conduct of its review, should the IFC identify issues in a previous transaction, these issues shall be brought to the attention of the City Auditor for approval of a separate compliance review as a random sample transaction.

D4.6 The IFC shall attend in person to answer any questions at the SPCPDHDD's regular meetings and any special meetings where its report is tabled.

D4.7 The majority of the transaction documentation may only be available in hard copy format and the preference would be for all documentation to remain on site. The Services would ideally be performed at the offices of Planning, Property & Development, 65 Garry Street, Winnipeg, Manitoba. Some pertinent file documentation could be held in other City of Winnipeg department locations.

D4.8 Estimated Volume of Transactions:

	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
<b>Real Estate</b>	<b>23</b>	<b>23</b>	<b>23</b>	<b>23</b>	<b>23</b>
<i>Routine</i>	17	17	17	17	17
<i>Complex</i>	6	6	6	6	6
<b>Management Services</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>	<b>10</b>
<i>Routine</i>	5	5	5	5	5
<i>Complex</i>	5	5	5	5	5
<b>Random Sample</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>	<b>5</b>
<b>TOTAL</b>	<b>38</b>	<b>38</b>	<b>38</b>	<b>38</b>	<b>38</b>

D4.8.1 The estimated volume of transactions for the IFC to review is based on:

- consultation with the Director of the Planning, Property & Development Department;
- the type of transactions not authorized under the existing delegated authority or with no reporting requirement to SPCPDHDD and Council; and
- analysis of historic transaction volumes and a projection of future activity.

D4.9 It should be noted that the IFC's review and reporting process could potentially impact service delivery. Timeliness in reviewing transactions is critical to the performance of the real estate and management services divisions and is seen as a high priority. An expected turnaround time for a routine transaction is 3 business days and 5 business days for a complex transaction.

D4.10 A summary of all transaction reviews within the contract period shall be submitted to the Contract Administrator on a monthly basis, outlining the completed reviews and reviews in progress including the complexity rating of the transaction and the associated fees incurred to date.

D4.11 The Services to be provided under the Contract shall consist of the services of a Consultant to act as an Independent Fairness Commissioner (IFC) for the period of a one (1) year from date of award to January 31, 2018 with the option of four (4) mutually agreed upon one (1) year extensions.

D4.11.1 The City may negotiate the extension option with the Proponent within ninety (90) Calendar Days prior to the expiry date of the Contract. The City shall incur no liability to the Proponent as a result of such negotiations. At the extension option period, the Contract Administrator may negotiate revised conditions and/or changes to the Scope of Services where all parties shall agree upon these changes.

D4.11.2 Changes resulting from such negotiations shall become effective on January 31<sup>st</sup> of the respective year. Changes to the Contract shall not be implemented by the Proponent without written approval by the Contract Administrator.

D4.11.3 The type and quantity of Services to be performed under this Contract shall be as authorized from time to time by the Contract Administrator.

D4.11.4 The Services shall be completed on an "as required" basis during the term of the Contract.



## **D5. DEFINITIONS**

D5.1 When used in this Request for Proposal:

- (a) "IFC" means Independent Fairness Commissioner.
- (b) "Key Personnel" means the person undertaking the performance of the Services under the terms of the Contract.
- (c) "Transacting Party" means any party to the individual real estate and management services transactions.
- (d) "City Personnel" means any Planning, Property and Development employee with direct involvement in the real estate and/or management services transaction.

## **D6. CONFLICT OF INTEREST AND GOOD FAITH**

D6.1 Consultants must declare if their team or any Key Personnel, any business entity or individual who is, or is associated with, in any way, any consultant retained by the City or known to be a party involved in relation to the Transacting Party or City Personnel involved in the real estate and management services transactions, including but not limited to consultants providing, legal, process, finance or financial capacity advice or any Person likely to create a conflict of interest or a perception of conflict of interest.

D6.2 If a Consultant 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 Consultant should fully disclose the circumstances to the City at the earliest possible date, and request that the City provide an advance interpretation as to whether the relationship or association will likely create a conflict of interest or a perception of conflict of interest.

D6.3 The Consultant declares that in submitting its response prior to the onset of each transaction review, it does so in good faith and will disclose to the best of its knowledge, whether there are any circumstances whereby any member of Council or any officer or employee of the City would gain any pecuniary interest, direct or indirect, as a result of the Consultant's participation in this Project.

D6.4 An accompanying Conflict of Interest Declaration and Undertaking form must be completed by the Key Personnel undertaking a particular transaction review, at the onset of the transaction. If at any time, Key Personnel become aware of a conflict with a Transacting Party or City Personnel, the conflict must either be mitigated to the satisfaction of the City, or an alternate Key Personnel must be assigned to that particular transaction review.

## **D7. OWNERSHIP OF INFORMATION, CONFIDENTIALITY AND NON DISCLOSURE**

D7.1 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.

D7.2 The Consultant shall not make any public announcements or press releases regarding the Contract, without the prior written authorization of the Contract Administrator.

D7.3 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 Contract Administrator;

- (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.

D7.4 A Consultant who violates any provision of D7 may be determined to be in breach of Contract.

## SUBMISSIONS

### D8. AUTHORITY TO CARRY ON BUSINESS

D8.1 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 Contract Administrator with evidence thereof upon request.

### D9. INSURANCE

D9.1 The Consultant shall procure and maintain, at its own expense and cost, insurance policies with limits no less than those shown below.

D9.2 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 \$ 500,000 per claim and \$ 1,000,000 in the aggregate.

D9.2.1 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.

D9.3 The policies required in D9.2(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.

D9.4 The Consultant shall provide the Contract Administrator with a certificate(s) of insurance, 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 D9.7.

- D9.5 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.
- D9.6 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.
- D9.7 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**

### **D10. COMMENCEMENT**

- D10.1 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.
- D10.2 The Consultant shall not commence any Services until:
- (a) the Contract Administrator has confirmed receipt and approval of:
    - (i) evidence of authority to carry on business specified in D8;
    - (ii) evidence of the workers compensation coverage;
    - (iii) evidence of the insurance specified in D9.
  - (b) the Consultant has attended a meeting with the Contract Administrator, or the Contract Administrator has waived the requirement for a meeting.
- D10.3 The City intends to award this Contract by February 7, 2017.