



THE CITY OF WINNIPEG

REQUEST FOR PROPOSAL

RFP NO. 102-2017

**REQUEST FOR PROPOSAL FOR A LEGAL ADVISOR FOR THE CITY OF
WINNIPEG'S NORTH END SEWAGE TREATMENT PLANT (NEWPCC) UPGRADE
PROJECT**

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 A LEGAL ADVISOR FOR THE CITY OF WINNIPEG'S NORTH END SEWAGE TREATMENT PLANT (NEWPCC) UPGRADE PROJECT

B2. SUBMISSION DEADLINE

B2.1 The Submission Deadline is 12:00 noon Winnipeg time, August 9, 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 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 Design Build Project, which is described in detail in D3.

B3.2 The Project Team consists of key staff from the City and the Winnipeg Sewage Treatment Program (WSTP).

B3.3 The following firms are, or have been, on retainer to provide specific advice to the Project Team. The City's advisors are:

(a) Technical: AECOM Canada Ltd., including their sub-consultants:

- (i) Stantec Consulting Ltd.;
- (ii) The Louis Berger Group, Inc.;
- (iii) ODC Synergy; and
- (iv) LMDG Building Code Consultants Ltd.

(b) Fairness Advisor: P1 Consulting Inc.

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, 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 Request for Proposal 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 Request for Proposal 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 Proponents 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 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.

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;
- (b) Fees (Section B) in accordance with B9.

B7.2 The Proposal should also consist of the following components:

- (a) Experience of Proponent and Subconsultants (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 three (3) copies (copies can be in any size format) 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 contain a table of contents, page numbering and should be 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 B24.1(a).
- 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 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.

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 Proponent shall complete Form B: Fees with prices for all Services identified in D4, more specifically broken down as follows:

B9.1.1 The Proposal shall include a separate lump sum Fixed Fee for:

- (b) attendance at commencement meeting as specified in D4.3(a);
- (c) the review of documents, and provision of comments and recommended changes as specified in D4.3(b);
- (d) the review of documents, and provision of comments and recommended changes as specified in D4.3(c);
- (e) the review of documents, and provision of comments and recommended changes as specified in D4.3(d);
- (f) the provision of the Services and attendance at CCMs as specified D4.3(f); and
- (g) the review of documents, and provision of comments as specified in D4.3(g).

B9.1.2 The Proposal shall include blended rates for:

- (a) the personnel assigned to the development and finalization of DBA, RFQ and Design Build RFP as specified in D4.3(e). The City will use two hundred-eighty (280) hours for the purposes of evaluation; and
- (b) the personnel assigned to provide Services as specified in D4.3(h). The City will use one hundred (100) hours for the purposes of evaluation.

B9.1.3 Any Fees related to D4.3(i) shall be included in the Fees proposed in B9.1.1.

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 C11.1, 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(b).

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 AND SUBCONSULTANTS (SECTION C)

B10.1 Proposals should include details that demonstrate the experience of the Proponent and Subconsultants::

- (a) The information should include sufficient detail for the City to evaluate the Proponent's qualifications for the role of Legal Advisor, by providing detail(s) of their experience with water and wastewater Design Build projects of similar complexity, scope and contract value, which have reached the project award stage (procurement phase concluded and a project design build agreement has been awarded) within the last five (5) years, and to demonstrate knowledge of current best practices for Design Build 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 water and wastewater design build projects of similar complexity, scope and contract values, which have reached the project award stage (procurement phase concluded and a project design build agreement has been awarded) within the last five (5) years. Include experience as a lawyer specializing in design build procurements and design build 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 design build procurement and design build agreements in the Canadian market;
- (b) experience drafting design build agreements;
- (c) knowledge and experience relevant to public sector infrastructure procurement, with a focus on design build procurements for municipal governments;
- (d) knowledge and experience relevant to municipal water and wastewater design build projects;
- (e) broad commercial or professional knowledge and experience; and
- (f) 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, and division of responsibilities outlined for each team member and the team lead. Include elaboration on the integration of any Subconsultants.

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;
 - (ii) the Project deliverables and how they will be met;
 - (iii) the Project schedule;
 - (iv) Project communications, including with the Project Manager and as otherwise contemplated; and
- (b) the role of the Legal Advisor; any risks or challenges, specific to the Project, that they anticipate may be encountered through the design build procurement process, supported by experience from previous similar engagements, including mitigation strategies that may be employed.

B13. PERSON HOURS

B13.1 The Proposal should also include the following detailed fees:

- (a) Form C: Person Hours setting out the all-inclusive hourly rates for the Proponent's team members and detailing the tasks and the hours for each task (including totals) 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. DISCLOSURE

B14.1 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.

B14.2 The Persons are:

- (a) N/A

B15. QUALIFICATION

B15.1 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;

B15.2 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/matmgt/debar.stm>

B15.3 The Proponent and/or any proposed Subconsultant (for the portion of the Services proposed to be subcontracted to them) shall:

- (a) have successfully carried out services for the programming; design, management of construction and contract administration for architectural and/or engineering projects of similar complexity, scope and value; and to those required for this Project; and
- (b) be fully capable of performing the Services required to be in strict accordance with the terms and provisions of the Contract; and
- (c) have a written workplace safety and health program, if required, pursuant to The Workplace Safety and Health Act (Manitoba);
- (d) have the knowledge and resources to administer the requirements of The Workplace Safety and Health Act (Manitoba) during the construction works associated with this Contract; and
- (e) undertake to meet all licensing and regulatory requirements of the appropriate governing authorities and associations in the Province of Manitoba.

B15.4 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.

B15.5 The Proponent shall provide, on the request of the Project Manager, full access to any of the Proponent's equipment and facilities to confirm, to the Project Manager's satisfaction, that the Proponent's equipment and facilities are adequate to perform the Services.

B16. CONFLICT OF INTEREST AND GOOD FAITH

B16.1 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 Design Build Project; or
 - (ii) participate in the provision of any goods, services or construction to be provided for the Design Build Project, by the successful proponent or bidder.

B16.2 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 Design Build Project, 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.

B16.3 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.

B16.4 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.

B16.5 Failure to comply with B16 may result in disqualification of your Submission from the RFP process.

B17. ELIGIBILITY

B17.1 No Persons involved with the City, or acting as a consultant or sub-consultant to the City with respect to the NEWPCC Upgrade Project, are eligible to submit a Proposal Submission for this RFP.

B17.2 As a result of their involvement in the NEWPCC Upgrade Project, the following Persons are ineligible for this RFP:

- (a) AECOM Canada Ltd.;
- (b) Stantec Consulting Ltd.;
- (c) The Louis Berger Group, Inc.;
- (d) ODC Synergy;
- (e) P1 Consulting Inc.;
- (f) LMDG Building Code Consultants Ltd.; and
- (g) Veolia Water North America (Winnipeg) Inc. (Veolia).

B18. OPENING OF PROPOSALS AND RELEASE OF INFORMATION

B18.1 Proposals will not be opened publicly.

B18.2 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/>

B18.3 To the extent permitted, the City shall treat all Proposal Submissions as confidential, however the Proponent is advised any information contained in any Proposal Submission may be released if required by The Freedom of Information and Protection of Privacy Act (Manitoba), by other authorities having jurisdiction, or by law or by City policy or procedures (which may include access by members of City Council).

B18.4 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 Project Manager.

B19. IRREVOCABLE OFFER

B19.1 The Proposal(s) submitted by the Proponent shall be irrevocable for the time period specified in Paragraph 10 of Form A: Proposal.

B19.2 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 Work until a Contract for the Work 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.

B20. WITHDRAWAL OF OFFERS

B20.1 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.

- B20.1.1 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.
- B20.1.2 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.
- B20.1.3 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 B20.1.3(b), declare the Proposal withdrawn.
- B20.2 A Proponent who withdraws its Proposal after the Submission Deadline but before its offer has been released or has lapsed as provided for in B19.2 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.

B21. SUBSTITUTION OF RESOURCES

- B21.1 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.
- B21.2 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.
- B21.3 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 of resource(s); and
 - (c) sufficient information and documentation to allow the City to properly evaluate the request.
- B21.3.1 The Proponent must submit any further information requested by the Project Manager for the purpose of evaluating the proposed substitution.
- B21.4 The City may, in its sole discretion, by written notice from the Project Manager, approve or deny the proposed substitution.
- B21.4.1 Approval of the substitution, by the City, may be on such terms and conditions as the City in its sole discretion may consider appropriate

B22. INTERVIEWS

- B22.1 The Project Manager may, in his/her sole discretion, interview Proponents during the evaluation process.

B23. NEGOTIATIONS

- B23.1 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.
- B23.2 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.
- B23.3 If, in the course of negotiations pursuant to B23.2 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.

B24. EVALUATION OF PROPOSALS

- B24.1 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 and the Subconsultants, if any, pursuant to B15: | (pass/fail) |
| (c) Fees; (Section B) | 20% |
| (d) Experience of Proponent and Subconsultant; (Section C) | 20% |
| (e) Experience of Key Personnel Assigned to the Project; (Section D) | 50% |
| (f) Project Understanding and Methodology (Section E) | 10% |
- B24.2 Further to B24.1(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.
- B24.3 Further to B24.1(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.
- B24.4 Further to B24.1(c), Fees will be evaluated based on Fees submitted in accordance with B9.
- B24.5 Further to B24.1(d), Experience of Proponent and Subconsultants will be evaluated considering the experience of the organization, their response to B10, as well as other information requested.
- B24.6 Further to B24.1(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 design build procurement and Design Build Agreements in the Canadian market;. | 14% |
| (b) experience drafting design build agreements; | 10% |
| (c) knowledge and experience relevant to public sector infrastructure procurement, with a focus design build procurements for municipal governments; | 8% |
| (d) knowledge and experience relevant to municipal water and waste water design build projects; | 13% |

- (e) broad commercial or professional knowledge and experience; and 3%
- (f) a one page resume, including legal education and professional affiliations. 2%

B24.7 Further to B24.1(f), Project Understanding and Methodology will be evaluated considering your firm's understanding of the Project, their methodology and their response to B12, and the time allocations indicated on Form C: Person Hours.

B24.8 Notwithstanding B24.1(d) to B24.1(f), where Proponents fail to provide a response to B7.2(a) to B7.2(d), the score of zero may be assigned to the incomplete part of the response.

B24.9 Further to B24.1, a Proposal should receive a minimum of sixty (60) percent of the available points for each of B24.1(d), B24.1(e) and B24.1(f) to be considered for award of Contract.

B24.10 Proposals will be evaluated considering the information in the Proposal Submission and any interviews held in accordance with B22.

B25. AWARD OF CONTRACT

B25.1 The City will give notice of the award of the Contract, or will give notice that no award will be made.

B25.2 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.

B25.2.1 Without limiting the generality of B25.2, 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.

B25.3 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.

B25.4 The City may, at its discretion, award the Contract in phases.

B25.5 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.

B25.6 The form of Contract with the City of Winnipeg will be based on the Contract as defined in C1.1(o).

B25.7 Following the award of Contract, a Proponent will be provided with information related to the evaluation of its Proposal upon written request to the Project Manager.

B25.8 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 2017-03-24) 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.

D1.2 The Consultant acknowledges and agrees that C13.2 is replaced with the following:

The Consultant shall indemnify and save harmless the City from and against all claims, losses, damages, costs, expenses and fees, actions and other proceedings made, sustained, brought or prosecuted in any manner based upon, occasioned by or attributable to any injury, infringement or damage arising from any negligent act, defect, error or omission of the Consultant, its servants or agents or persons for whom it has assumed responsibility, including Subconsultants, in the performance or purported performance of this Contract to a maximum of five million dollars.

D2. PROJECT MANAGER

D2.1 The Project Manager is:

Brian Shortt

Telephone No. 204 986-8641

Email Address: bshortt@winnipeg.ca

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.

D3. BACKGROUND

D3.1 The goal of the Design Build Project is to upgrade the City's North End Sewage treatment Plant to meet new regulatory license requirements regarding the maximization of nutrients and biosolids reuse and new effluent limits for nitrogen and phosphorous. The upgrade will add wet weather treatment capability; add a new facility to treat sludge; and replace end of life equipment. The design for the Design Build Project is expected to accommodate expected inflows and loads to 2037. The design will also take into account future regulatory trends and long term planning to year 2067 to facilitate effective process or facility modifications should they be required. The Design Build Project is complicated by the need to maintain operations of the existing facility to ensure the required degree of wastewater treatment while replacing over 75% of the existing facility. Construction, commissioning, and operations will be staged for different parts of the facility upgrade. The City of Winnipeg Counsel approved budget for the Design Build Project is \$795 million.

The delivery method for the Design Build Project is design build. Once completed, the Design Build Project will be the City's largest infrastructure project to date, and is anticipated to be Canada's largest wastewater project.

Next Steps

It is anticipated that a RFQ will be issued in the Fall of 2017. The RFQ is designed to identify up to three (3) consortiums that may bid on the Design Build Project and to review their qualifications. Once the RFQ is complete and a shortlist of qualified bidders is determined, a Design Build RFP will be issued to those short-listed through the RFQ process, in early Spring of 2018.

Construction of the Design Build Project is expected to begin in 2019, with construction completion in 2023. After construction of the Design Build Project is complete, operator training and facility commissioning will be carried out with City personnel commencing in step with the completion of different phases of the Design Build Project.

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 procurement documents (e.g. Request for Qualifications and Request for Proposals) and in design-build agreements concerning municipal water and waste water design-build projects. The City and/or other consultants on the Design Build Project will be responsible for drafting the RFQ, Design Build RFP, and Design Build Agreement, for the Design Build Project.
- D4.2 The Contract for Services for the Legal Advisor is intended to commence as soon as the Contract for Services is awarded and continue until the completion of advisory Services which is projected to be the second quarter of 2019 (anticipated time frame for the award of the Design Build Agreement for the Design Build Project).
- 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 of internal draft RFQ for the Design Build Project and provide comments on how it relates to best practices for municipal water and waste water design-build projects, and provide recommended changes;
 - (c) Review of internal draft Design Build RFP for the Design Build Project and provide comments on how it relates to best practices for municipal water and waste water design-build projects, and provide recommended changes;
 - (d) Review of internal draft of the Design Build Agreement and:
 - (i) provide comments on relative strengths and weaknesses relative to applicable and similar design build agreement templates;
 - (ii) provide comments on how it compares to best practices for municipal water and waste-water design-build projects; and
 - (iii) provide recommended changes
 - (e) Provide professional services for the development and finalization of the Design Build Agreement, RFQ, and Design Build RFP, including:
 - (i) On an as requested basis, respond to written and verbal enquiries from the Project Manager concerning the Design Build Agreement and related matters and provide comments and recommendations, including recommended changes for the Design Build Agreement;
 - A. It is anticipated that D4.3(e)(i) will occur throughout the time period beginning with Project commencement and continuing until the award of the Design Build Project. Such enquiries are expected to be made on a weekly or more frequent basis
 - (ii) On an as requested basis from the Project Manager, participate in meetings with the Project Manager and the WSTP and its consultants, to comment on general legal principles being considered and proposed in the drafting of the RFQ, the Design Build RFP, and the DBA
 - A. It is anticipated D4.3(e)(ii) will occur throughout the time period beginning with Project commencement and continuing until the date of closing of the Design Build RFP. For proposal purposes assume a minimum of 20 half day sessions

- (f) Attendance at three (3) rounds of Commercially Confidential Meetings (CCMs) for each of the three (3) short-listed proponents from the RFQ. Participation in a debriefing and synopsis of each respective CCM, and after each round of CCMs provide written comment and advice on requested changes to the Design Build RFP and Design Build Agreement as a result of the CCMs and provide advice and recommended changes to the Design Build RFP and Design Build Agreement, within seven (7) Business days of each set of CCMs, for use in subsequent versions of the Design Build RFP and Design Build Agreement that are issued;
 - (i) For proposal purposes, assume there will be three (3) rounds of CCMs for each of the three (3) short-listed proponents from the RFQ. Assume that each set of CCMs will span three (3) Business Days (one (1) day per short-listed proponent);
 - (ii) Attendance will be in-person unless otherwise directed by the Project Manager;
 - (iii) For proposal purposes, assume that there will be three (3) versions of the Design Build RFP, and three (3) versions of the Design Build Agreement, issued as part of the procurement process under the Design Build RFP;
- (g) Provide a review of legal risks associated with the final form of the Design Build Agreement, which identifies risk of commercial exposure, the legal precedent for the risk, and the reasonably anticipated response(s) from the short-listed proponents from the RFQ;
- (h) As requested by the Project Manager:
 - (i) Opine on legal matters specifically related to;
 - A. the RFQ, Design Build RFP, and Design Build Agreement that arise during the procurement phase of the Design Build Project;
 - B. other legal matters related to the procurement;
 - (ii) Provide professional services including:
 - A. Review and provide comments and advice on RFI's;
 - B. Preparing the Project Team for attendance at CCMs; and
 - C. Consolidating comments (legal) for the City within five (5) Business Days of a set of CCMs.
 - (i) Any other tasks necessarily incidental to the Services, but within the scope outlined within this Request for Proposal.

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) "**Commercially Confidential Meetings**" or "**CCMs**" means one-on-one confidential meetings held by the City's Project Team with individual short-listed proponents from the RFQ to discuss their comments on the Design Build Agreement, after receipt of each round of comments from the short-listed proponents;
- (c) "**Consultant**" or "**Legal Advisor**" means the person undertaking the performance of the Services under the terms of the Contract;;
- (d) "**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;
- (e) "**Design Build Agreement**" and "**DBA**" mean the contract intended to be awarded for performance of the design, build, obligations required by the Design Build Project in the two stage procurement process commenced by issuance of the RFQ;
- (f) "**Design Build Project**" means the NEWPCC Upgrade Project;

- (g) **"FIPPA"** means The Freedom of Information and Protection of Privacy Act (Manitoba);
- (h) **"Design Build RFP"** means the Request for Proposal for the Design Build Project, including its schedules, the draft form of Design Build Agreement and any addenda issued to short-listed proponents from the RFQ;
- (i) **"NEWPCC"** means the North End Sewage Treatment Plant, also known as the North End Water Pollution Control Center.
- (j) **"Project"** has the meaning ascribed to it C1.1(ff);
- (k) **"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 Design Build RFP;
- (l) **"RFI"** means a Request for Information submitted by a short-listed proponent from the RFQ in respect of the Design Build RFP;
- (m) **"RFQ"** means the Request for Qualifications to be issued as the first stage of the procurement process for the Design Build Project; and
- (n) **"WSTP"** means the Winnipeg Sewage Treatment Program, which is a long term strategic partnership between the City of Winnipeg and Veolia Water North America (Winnipeg) Inc. The WSTP has staff from both organizations dedicated to project development, maintenance and operational enhancement initiatives.

D6. OWNERSHIP OF INFORMATION, NO PUBLIC STATEMENT

- 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.
- D6.2 The Consultant shall not at any time make any public announcement or press release nor make any statement of fact or opinion regarding the Contract, the Project, the Services or the Deliverables without the prior written authorization of the Project Manager.

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 \$2 million . per claim and \$5 million 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 each of its Subconsultants to provide comparable insurance to that set forth under D8.2.
- 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 D8.8.
- 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 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 project kick off meeting with the Project Manager, or the Project Manager has waived the requirement for a meeting.

D9.3 Further to D9.1 and D9.2, the Consultant shall be prepared to commence Services immediately upon the award of Contract.