



THE CITY OF WINNIPEG

OFFER OF SURPLUS GOODS

SURPLUS GOODS OFFER NO. 23-2021

**EXCESS COMPOST MATERIAL FROM BRADY ROAD RESOURCE MANAGEMENT
FACILITY**

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PART B - BIDDING PROCEDURES

B1. CONTRACT TITLE

B1.1 EXCESS COMPOST MATERIAL FROM BRADY ROAD RESOURCE MANAGEMENT FACILITY

B2. SUBMISSION DEADLINE

B2.1 The Submission Deadline is 4:00 p.m. Winnipeg time, March 1, 2021.

B2.2 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. INSPECTION OF SURPLUS GOODS

B3.1 Further to C2.2, the Offeror may make an appointment to inspect the Surplus Goods by contacting the Contract Administrator.

(a) Appointment for the inspection of Surplus Goods shall be arranged with the Contract Administrator and shall take place not later than the close of the next Business Day, after being notified that Surplus Compost Material is available.

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

B4. ENQUIRIES

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

B4.2 If the Offeror finds errors, discrepancies or omissions in the Offer of Surplus Goods, or is unsure of the meaning or intent of any provision therein, the Offeror shall promptly notify the Contract Administrator of the error, discrepancy or omission at least five (5) Business Days prior to the Submission Deadline.

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

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

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

B4.6 Any enquiries concerning submitting through MERX should be addressed to:
MERX Customer Support
Phone: 1-800-964-6379
Email: merx@merx.com

B5. CONFIDENTIALITY

B5.1 Information provided to an Offeror by the City or acquired by an Offeror 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 Offeror before receipt hereof; or

- (b) becomes publicly known other than through the Offeror; or
- (c) is disclosed pursuant to the requirements of a governmental authority or judicial order.

B5.2 The Offeror shall not make any statement of fact or opinion regarding any aspect of the Offer of Surplus Goods to the media or any member of the public without the prior written authorization of the Contract Administrator.

B6. ADDENDA

B6.1 The Contract Administrator may, at any time prior to the Submission deadline, issue addenda correcting errors, discrepancies or omissions in the Offer of Surplus Goods, or clarifying the meaning or intent of any provision therein.

B6.2 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.

B6.3 Addenda will be available on the MERX website at www.merx.com.

B6.4 The Offeror is responsible for ensuring that he/she has received all addenda and is advised to check the MERX website for addenda regularly and shortly before the Submission Deadline, as may be amended by addendum.

B6.5 The Offeror shall acknowledge receipt of each addendum in Paragraph 5 of Form A: Offer of Surplus Goods. Failure to acknowledge receipt of an addendum may render an Offer non-responsive.

B6.6 Notwithstanding B4, enquiries related to an Addendum may be directed to the Contract Administrator indicated in D4.

B7. OFFER SUBMISSION

B7.1 The Offer shall consist of the following components:

- (a) Form A: Offer of Surplus Goods;
- (b) Form B: Offer.

B7.2 All components of the Offer shall be fully completed or provided, and submitted by the Offeror no later than the Submission Deadline, with all required entries made clearly and completely.

B7.3 The Offer shall be submitted electronically through MERX at www.merx.com.

B7.3.1 Offers will **only** be accepted electronically through MERX.

B7.4 Offerors are advised that inclusion of terms and conditions inconsistent with the Offer of Surplus Goods document, including the General Conditions, will be evaluated in accordance with B16.1(a).

B8. OFFER

B8.1 The Offeror shall complete Form A: Offer of Surplus Goods, making all required entries.

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

- (a) if the Offeror is a private individual carrying on business in his/her own name, his/her name shall be inserted;
- (b) if the Offeror is a sole proprietor carrying on business in his/her own name, his/her name shall be inserted;
- (c) if the Offeror is a partnership, the full name of the partnership shall be inserted;

- (d) if the Offeror is a corporation, the full name of the corporation shall be inserted;
- (e) if the Offeror 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 an Offer 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: Offer of Surplus Goods, the Offeror shall identify a contact person who is authorized to represent the Offeror for purposes of the Offer.

B8.4 Paragraph 10 of Form A: Offer of Surplus Goods shall be signed in accordance with the following requirements:

- (a) if the Offeror is a private individual carrying on business in his/her own name, it shall be signed by the Offeror;
- (b) if the Offeror is a sole proprietor carrying on business in his/her own name, it shall be signed by the Offeror;
- (c) if the Offeror is a partnership, it shall be signed by the partner or partners who have authority to sign for the partnership;
- (d) if the Offeror is a corporation, it shall be signed by its duly authorized officer or officers and;
- (e) if the Offeror 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, if applicable of all individuals signing Form A: Offer of Surplus Goods should be entered below such signatures.

B8.5 If an Offer is submitted jointly by two or more persons, the word "Offeror" shall mean each and all such persons, and the undertakings, covenants and obligations of such joint Offerors in the Offer and the Contract, when awarded, shall be both joint and several.

B9. PRICES

B9.1 The Offeror shall state a price in Canadian funds for each item of the Work identified on Form B: Offer.

B9.1.1 Compost Material offered for sale shall be a minimum of one thousand (1,000) cubic metres.

B9.2 Prices are subject to applicable taxes (G.S.T. and M.R.S.T.).

B10. DISCLOSURE

B10.1 Various Persons provided information or services with respect to the Offer of Surplus Goods. 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.

B10.2 The Persons are:

- (a) N/A

B11. CONFLICT OF INTEREST AND GOOD FAITH

B11.1 Offerors, by responding to this Offer of Surplus Goods, declare that no Conflict of Interest currently exists, or is reasonably expected to exist in the future.

B11.2 Conflict of Interest means any situation or circumstance where a Offeror or employee of the Offeror proposed for the Work has:

- (a) other commitments;
- (b) relationships;
- (c) financial interests; or
- (d) involvement in ongoing litigation;

that could or would be seen to:

- (i) exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment of the City with respect to the evaluation of Offers or award of the Contract; or
 - (ii) compromise, impair or be incompatible with the effective performance of a Offeror's obligations under the Contract;
- (e) has contractual or other obligations to the City that could or would be seen to have been compromised or impaired as a result of its participation in the Offer of Surplus Goods process or the Work; or
 - (f) has knowledge of confidential information (other than confidential information disclosed by the City in the normal course of the Offer of Surplus Goods process) of strategic and/or material relevance to the Offer of Surplus Goods process or to the Work that is not available to other Offerors and that could or would be seen to give that Offeror an unfair competitive advantage.

B11.3 In connection with its Offer, each entity identified in B11.2 shall:

- (a) avoid any perceived, potential or actual Conflict of Interest in relation to the procurement process and the Work;
- (b) upon discovering any perceived, potential or actual Conflict of Interest at any time during the Offer of Surplus Goods process, promptly disclose a detailed description of the Conflict of Interest to the City in a written statement to the Contract Administrator; and
- (c) provide the City with the proposed means to avoid or mitigate, to the greatest extent practicable, any perceived, potential or actual Conflict of Interest and shall submit any additional information to the City that the City considers necessary to properly assess the perceived, potential or actual Conflict of Interest.

B11.4 Without limiting B11.3, the City may, in its sole discretion, waive any and all perceived, potential or actual Conflicts of Interest. The City's waiver may be based upon such terms and conditions as the City, in its sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately avoided or mitigated, including requiring the Offeror to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to the City, in its sole discretion, to avoid or mitigate the impact of such Conflict of Interest.

B11.5 Without limiting B11.3, and in addition to all contractual or other rights or rights at law or in equity or legislation that may be available to the City, the City may, in its sole discretion:

- (a) disqualify a Offeror that fails to disclose a perceived, potential or actual Conflict of Interest of the Offeror or any of its employees proposed for the Work;
- (b) require the removal or replacement of any employees proposed for the Work that has a perceived, actual or potential Conflict of Interest that the City, in its sole discretion, determines cannot be avoided or mitigated;
- (c) disqualify a Offeror or employees proposed for the Work that fails to comply with any requirements prescribed by the City pursuant to B11.4 to avoid or mitigate a Conflict of Interest; and
- (d) disqualify a Offeror if the Offeror, or one of its employees proposed for the Work, has a perceived, potential or actual Conflict of Interest that, in the City's sole discretion, cannot be avoided or mitigated, or otherwise resolved.

B11.6 The final determination of whether a perceived, potential or actual Conflict of Interest exists shall be made by the City, in its sole discretion.

B12. OPENING OF OFFERS AND RELEASE OF INFORMATION

- B12.1 Offers will not be opened publicly.
- B12.2 Following the Submission Deadline, the names of the Offeror and their Offer (unevaluated and pending review and verification of conformance with requirements) will be available on the MERX website at www.merx.com.
- B12.3 After award of Contract, the name(s) of the successful Offeror(s) and their Offer amount(s) will be available on the MERX website at www.merx.com.
- B12.4 The Bidder is advised that any information contained in any Offer 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).
- B12.4.1 To the extent permitted, the City shall treat as confidential information, those aspects of a Offer Submission identified by the Offeror as such in accordance with and by reference to Part 2, Section 17 or Section 18 or Section 26 of The Freedom of Information and Protection of Privacy Act (Manitoba), as amended.

B13. IRREVOCABLE OFFER

- B13.1 The Offer(s) submitted by the Offeror shall be irrevocable for the time period specified in Paragraph 8 of Form A: Offer of Surplus Goods.
- B13.2 The acceptance by the City of any Offer shall not release the Offers of the next two lowest evaluated responsive Offerors and these Offerors shall be bound by their Offers on such Work for the time period specified in Paragraph 8 of Form A: Offer of Surplus Goods.

B14. WITHDRAWAL OF OFFERS

- B14.1 A Bidder may withdraw his/her Bid without penalty at any time prior to the Submission Deadline.

B15. NEGOTIATIONS

- B15.1 The City reserves the right to negotiate details of the Contract with any Offeror. Offerors are advised to present their best offer, not a starting point for negotiations in their Offer of Surplus Goods.
- B15.2 The City may negotiate with the Offerors submitting, in the City's opinion, the most advantageous Offer of Surplus Goods. The City may enter into negotiations with one or more Offerors without being obligated to offer the same opportunity to any other Offerors. Negotiations may be concurrent and will involve each Offeror individually. The City shall incur no liability to any Offeror as a result of such negotiations.
- B15.3 Offerors are advised that this Offer of Surplus Goods may be subject to a Reserve. The City is not obligated to disclose the Reserve.
- (a) When a Reserve is not met, the highest Offeror may be contacted to purchase the Surplus Goods at the Reserve. If the high Offeror does not purchase the Surplus Goods the next highest Offeror may be given the opportunity to purchase the Surplus Goods at the Reserve. The City retains the right to lower the Reserve at any time.
- B15.4 If, in the course of negotiations pursuant to B15.2, the Offeror amends or modifies a Form A: Offer of Surplus Goods, 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

B16. EVALUATION OF OFFERS

- B16.1 Award of the Contract shall be based on the following Offer evaluation criteria:
- (a) compliance by the Offeror with the requirements of the Offer of Surplus Goods, or acceptable deviation therefrom (pass/fail);
 - (b) Offer Price.
- B16.2 Further to B16.1(a), the Award Authority may reject an Offer as being non-responsive if the Offer to purchase 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 Offer, or waive any noncompliance with the requirements of the Offer to Purchase Surplus Goods if the interests of the City so require.
- B16.3 Further to B16.1(b), the Offer Price shall be the price shown on Form B: Offer.
- B16.3.1 Notwithstanding B17.5, the City shall not be obligated to award to the responsible Offeror submitting the highest evaluated responsive Offer.
- B16.4 The City will establish a Call-Out List for the items listed on Form B: Offer. When the City has Surplus Compost Material, the City will telephone the high responsive Offeror.
- B16.4.1 The first called Offeror has the option to accept or decline the City's Offer.
- (a) Acceptance of the Offer shall be made not later than 4:00 p.m. on the next Business Day of being made the Offer.
- B16.4.2 Where the first called Offeror does not accept the City's Offer by 4:00 p.m. on the next Business Day, the City shall move to the next highest responsive Offeror, and so on, until the Surplus Material is depleted.

B17. AWARD OF CONTRACT

- B17.1 The City will give notice of the award of the Contract or will give notice that no award will be made.
- B17.2 The City will have no obligation to award a Contract to or accept the Offer of an Offeror, even though one or all of the Offerors are determined to be qualified, and the Offers are determined to be responsive.
- B17.3 The City will give notice of the acceptance of an Offer(s) or will give notice that no Offers were accepted will be made.
- B17.4 The City reserves the right to accept or to reject any or all Offers, and the highest Offer of Surplus Goods will not necessarily be accepted.
- B17.4.1 Without limiting the generality of B17.2, the City will have no obligation to award a Contract where:
- (a) the Reserve is not met; or
 - (b) in the judgment of the Award Authority, the interests of the City would best be served by not awarding a Contract.
- B17.5 Where an award of Contract is made by the City, the award shall be made to the qualified Offeror submitting the highest evaluated responsive Offer, in accordance with B15.

PART C - GENERAL CONDITIONS

C0. GENERAL CONDITIONS

C0.1 These General Conditions are applicable to the Work of the Contract.

C1. DEFINITIONS

C1.1 Where used in these General Conditions and in the other documents forming part of the Contract:

- (a) **“Award Authority”** means the authority having the jurisdiction to award the Contract according to the City’s by-laws, policies or procedures;
- (b) **“Business Day”** means any Calendar Day, other than a Saturday, Sunday, or a statutory or civic holiday;
- (c) **“C”** designates a section, clause or subclause in these General Conditions;
- (d) **“Calendar Day”** means the period from one midnight to the following midnight;
- (e) **“City”** means The City of Winnipeg as continued under The City of Winnipeg Charter, Statutes of Manitoba 2002, c. 39, and any subsequent amendments thereto;
- (f) **“Contract”** means the combined documents consisting of either: (i) the agreement forwarded to the Contractor pursuant to C4 and all schedules thereto (consisting of the Offer Opportunity and any documents and Drawings referred to and incorporated therein) together with the Offer and any submissions required to be made by the Contractor after award, and all amendments to the foregoing; or (ii) the Purchase Order prepared and forwarded to the Contractor which shall be deemed to include the Offer of Surplus Goods and any documents and Drawings referred to and incorporated therein, together with the Offer and any submissions required to be made by the Contractor after award and all amendments to the foregoing;
- (g) **“Contract Administrator”** means the person designated as such in the Supplemental Conditions;
- (h) **“Contract Price”** means the price agreed upon payable by the Contractor to the City for the purchase of Surplus Goods;
- (i) **“Contractor”** means the person purchasing the Surplus Goods and undertaking the performance of the Work under the terms of the Contract;
- (j) **“Drawings”** means drawings which show the nature and scope of the Surplus Goods or Work to be performed and which have been prepared or approved by the Contract Administrator and are referred to in the Contract;
- (k) **“may”** indicates an allowable action or feature which will not be evaluated;
- (l) **“must” or “shall”** indicates a mandatory requirement which will be evaluated on a pass/fail basis;
- (m) **“Offer”** means the documents and other things, including but not limited to forms contained in the Offer of Surplus Goods, which must be completed or provided and submitted by the Submission Deadline in order to constitute a responsive offer;
- (n) **“Offer Opportunity”** means the Offer of Surplus Goods, the Offering Procedures, these General Conditions, the Supplemental Conditions, the Specifications, the Drawings and all addenda;
- (o) **“Offeror”** means any person submitting an Offer;
- (p) **“Offering Procedures”** means the portion of the Offer Opportunity by that name which sets out the terms and conditions governing the Offer, and a reference to a section, clause or subclause with the prefix “B” designates a section, clause or subclause in that portion of the Offer Opportunity;

- (q) **“Offer of Surplus Goods”** means that portion of the Offer Opportunity by the name which contains forms to be included in the Offer;
- (r) **“Person”** means an individual, firm, partnership, association or corporation, or any combination thereof, and includes heirs, administrators, executors or legal representatives of a person;
- (s) **“Reserve Offer”** means a price the City considers prior to receiving Offers as the lowest it is willing to accept for the item(s) within the Offer of Surplus Goods. The Reserve is not an indication, warranty, or representation of the value of the Surplus Goods;
- (t) **“should”** indicates a desirable action or feature which will be evaluated on a relative scale;
- (u) **“Site”** means the City property at which the Surplus Goods are stored and are to be removed from by the Contractor;
- (v) **“Subcontractor”** means a person contracting with the Contractor for the performance of a part or parts of the removal of Surplus Goods and includes a Subcontractor’s subcontractor;
- (w) **“Submission Deadline”** means the time and date set out in the Bidding Procedures for final receipt of Offers;
- (x) **“Supplemental Conditions”** means the portion of the Offer of Surplus Goods by that name which sets out terms and conditions specific to the Contract, and supplements or modifies the General Conditions, and a reference to a section, clause or subclause with the prefix “D” designates a section, clause or subclause in that portion of the Offer of Surplus Goods;
- (y) **“Surplus Goods”** means the Surplus Goods offered for sale by the City and identified as such in the Offer Opportunity;
- (z) **“Work”** means the carrying out and the doing of all things, whether of a temporary or permanent nature, that are to be done by the Contractor pursuant to the Contract in order to remove the Surplus Goods from the Site.

C2. BIDDING PROCEDURES

- C2.1 The Offer must be submitted on the forms provided, with all required entries made clearly in ink or legible text.
- C2.2 The Offeror is responsible for inspecting the Surplus Goods, the nature of the Work to be done , and all conditions that might affect his/her Offer or his/her performance of the Work, and shall assume all risk for conditions existing or arising in the course of the Work which have been or could have been determined through such inspection.
- C2.3 The Offer must be submitted enclosed and sealed in an envelope clearly marked with the Offer of Surplus Goods Number and the Offeror's name and address. Each envelope must contain only the Offer for one Offer of Surplus Goods for Sale.
- C2.4 The Offer must be submitted to the Materials Management Division at the address specified no later than the Submission Deadline specified. Offers received after the Submission Deadline will not be considered.
- C2.5 The Offer may be withdrawn without penalty at any time prior to the Submission Deadline.
- C2.6 The Offer shall be open for acceptance, binding and irrevocable for the period of time specified on Form A: Offer of Surplus Goods. A Offeror who withdraws his Offer after the Submission Deadline but before his/her Offer has been released or has lapsed shall be liable for such damages as are imposed upon the Offeror by law and subject to such sanctions as the City considers appropriate in the circumstances.

C3. SCOPE OF WORK

- C3.1 The Work to be done under this Contract shall consist of the purchase and removal of the Surplus Goods.
- C3.2 The Contractor shall provide and pay for all materials, labour, equipment, tools, utilities, licenses and fees necessary to complete the Work.

C4. PAYMENT AND REMOVAL OF SURPLUS GOODS

- C4.1 All Surplus Goods are sold on an "as is, where is" basis and the City makes no representation or warranty with respect to the fitness, merchantability, suitability or durability of any of the goods for any purpose.
- C4.2 The full balance of the Contract Price plus applicable taxes must be paid by certified cheque or money order (payable to The City of Winnipeg) and received by the City not later than 4:30 PM Winnipeg time seven (7) Business Days after the Contractor is notified of the City's acceptance of the Offer.
- C4.2.1 The certified cheque or money order will include Invoice No. as provided by the City and be addressed to:
- ◆ 1120 Waverley St
Winnipeg, MB R3T 0P4
- C4.3 Payments shall be delivered to the Contract Administrator at the location(s) and in the manner designated by the Contract Administrator.
- C4.4 Surplus Goods shall be removed between 7 :00 AM CT and 7:00 PM CT on a time and date as mutually agreed to between the Contract Administrator and Contractor, but in any event must not occur later than seven (7) Business Days after the Contractor is notified of the City's acceptance of the Offer. Removal shall not occur unless/until the Contract Price, plus applicable taxes, has been fully paid. To schedule a removal time and date, the Contractor shall contact the Contract Administrator
- C4.4.1 Extensions beyond seven (7) Business Days may be considered and accepted by the Contract Administrator due to inclement weather.
- C4.4.2 Agreement to remove the Goods beyond seven (7) Business Days is at the sole discretion of the Contract Administrator.
- C4.4.3 The Contractor must remove the material at a minimum rate of one thousand (1,000) cubic metres per seven (7) Business Days. Failure to meet this condition may result in a Default by Contractor/Offeror specified in C5
- C4.5 The Contractor shall inspect the Surplus Goods at the time of pick up. The City shall not be responsible for any damage, defect or deterioration of the goods purported to have occurred after any prior inspection by the Contractor unless such damage, defect or deterioration is identified at the time of pick up by the Contractor.
- C4.6 All risk of loss and damage to the Surplus Goods shall transfer from the City to the Contractor at the time of acceptance of the offer. Title in and to the Surplus Goods shall transfer from the City to the Contractor when the Surplus Goods have been removed by the Contractor from the City's Site.
- C4.7 The City shall not be liable for any loss of or damage to the Surplus Goods howsoever caused, including, without limitation, by reason of the negligence, gross negligence or willful misconduct of the City or those for whom it is responsible, and the Offeror shall indemnify and save harmless the City in all respects thereof.
- C4.8 Prices are subject to applicable taxes (G.S.T. and M.R.S.T.).

- C4.9 If payment has not been received, in the time specified in C4.2 the City will offer the Surplus Goods to the next highest Offeror.
- C4.10 The Offeror shall promptly report any delay or change to an agreed pick up date to the Contract Administrator.

C5. DEFAULT BY CONTRACTOR/OFFEROR

- C5.1 If the Contractor is in default of any of its obligations hereunder, including without limitation:
- (a) the Contractor has not paid for the Surplus Goods in full as required herein; or
 - (b) the Contractor has not, regardless of reason or cause, and regardless whether risk of loss and damage and/or title has transferred to the Contractor, removed the Surplus Goods as required herein on or before the time required,

the City shall be entitled to retain the deposit (if any) and/or the Contract Price, as the case may be, as the City's own property. The City may also terminate the award of Contract to the Contractor, and may sell the Surplus Goods to the next lowest Offeror. Whether or not the City has then terminated or thereafter terminates the City's right and obligation to sell and the Contractor's right and obligation to purchase under this agreement by virtue of the Contractor's default, retention of the deposit (if any) and/or Contract Price shall not itself constitute a termination of the agreement and shall not restrict the City from exercising any other rights or remedies which the City may have hereunder or at law or equity by virtue of the Contractor's default, including the right to claim damages from the Contractor which the City sustains in excess of the deposit (if any) and/or Total Offer Price.

C6. CONTRACTOR'S OBLIGATIONS AND WARRANTIES

- C6.1 The Contractor shall comply with, and shall be liable for the due and proper observance (both by itself, and by its employees, agents, and contractors) of, all applicable federal, provincial, municipal, state, or other laws, by-laws and regulations which are, or may hereafter become, applicable to the Surplus Goods, and to this agreement.
- C6.2 The Contractor represents, warrants, and covenants that the Surplus Goods shall be transported and disposed of in accordance with all applicable laws and regulations, including, without limitation, those concerning the environment and the handling and transportation of dangerous goods. The representation, warranty, and covenant in the immediately preceding sentence shall survive the entering into of any agreement of purchase and sale, and shall survive any termination of such agreement.
- C6.3 Registration and any/all permits required for transportation of the Surplus Goods (including export) are the sole responsibility of the Contractor. If deemed necessary by the Contractor, the Contractor is solely responsible for securing insurance for the Surplus Goods.

C7. ASSIGNMENT

- C7.1 The Contractor shall not assign the Contract without the prior written approval of the City.

C8. SUBCONTRACTING

- C8.1 If the Contractor subcontracts any portion of the Work, he/she shall:
- (a) employ only Subcontractors who have successfully carried out work similar in nature, scope and value to the portion of the Work proposed to be subcontracted to them, or who are fully capable of performing the Work required to be done in accordance with the terms of the Contract;
 - (b) enter into contracts or written agreements with his/her Subcontractors to require them to perform their work in complete conformance with and subject to the terms and conditions of the Contract; and

- (c) be as fully responsible to the City for acts and omissions of his/her Subcontractors and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by him.

C9. INDEMNITY

- C9.1 The Contractor shall save harmless and indemnify the City for twice the contract price, unless specifically stated otherwise in the contract documents, against all costs, damages or expenses arising from actions, claims, demands and proceedings, by whomsoever brought, made or taken as a result of acts or omissions of the Contractor, his/her subcontractors, employees or agents in the performance or purported performance of the Work, and more particularly from:
- (a) accidental injury to or death of any person whether retained by or in the employ of the Contractor or not, arising directly or indirectly by reason of the performance of the Work, or by reason of any trespass on or damage to property;
 - (b) damage to any property owned in whole or in part by the City, or which the City by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain;
 - (c) damage to, or trespass or encroachment upon, property owned by persons other than the City;
 - (d) failure to pay a workers compensation assessment, or federal or provincial taxes;
 - (e) unauthorized use of any design, device, material or process covered by letters patent, copyright, trademark or trade name in connection with the Work;
 - (f) inaccuracies in any information provided to the City by the Contractor.
- C9.2 The City has the right, acting reasonably and upon notice to the Contractor, to settle any such action, proceeding, claim or demand and charge the Contractor with the amount so paid or to be paid in effecting a settlement.
- C9.3 The Contractor shall pay to the City the value of all legal fees and disbursements required to settle any such claim or to defend the City against any such claim, action, proceeding, claim or demand notwithstanding that the settlement or defence of the said action, proceeding, claim or demand was undertaken on behalf of the City by a salaried employee of the City.

C10. MISCELLANEOUS

- C10.1 The Contract has been entered into in the Province of Manitoba and shall be governed by and construed and enforced in accordance with the laws of the Province of Manitoba and of Canada as applicable therein. The parties hereby irrevocably and unconditionally agree to the exclusive jurisdiction of the Courts in the Province of Manitoba and all courts competent to hear appeals therefrom.
- C10.2 The Contract shall inure to the benefit of and be binding on the respective heirs, executors, administrators, successors and assigns of the City and the Contractor.
- C10.3 If the Contractor is delayed in the performance of the Work by reason of strikes, lock-outs (including lock-outs decreed for its members by a recognized contractors' association of which the Contractor is a member), an act of God, or any other cause which the Contractor satisfies the Contract Administrator to be totally beyond his control, the work schedule shall be adjusted by a period of time equal to the time lost due to such delays. No extension for delay shall be approved unless a notice of the claim is received by the Contract Administrator from the Contractor within seven (7) Calendar Days of the date on which the cause of delay arose.
- C10.4 Any delay or failure by the City to perform its obligations under this Contract shall be excused, to the extent that the delay or failure is caused by an event or occurrence beyond the reasonable control of the City and without its fault or negligence, such as by way of example and not by way of limitation, strikes, lock-outs, or acts of God, provided that written notice of the

delay shall be given by the City within seven (7) Calendar Days of the date on which the cause of delay arose.

- C10.5 Any notice or claim for extension must state the cause of delay and the length of extension requested. In the case of a continuing cause of delay, only one claim for an extension shall be necessary.
- C10.6 The duties and obligations imposed upon the Contractor by the Contract and the rights and remedies available to the City hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed upon the Contractor or available to the City at law.
- C10.7 All notices, requests, nominations, consents, approvals, statements, authorizations, documents or other communications required or permitted to be given under the Contract shall be in writing and shall be delivered by hand, by facsimile transmission (fax) or by mail. All notices, requests, nominations, consents, approvals, statements, authorizations, documents or other communications shall be delivered to the applicable addresses set out in the Supplemental Conditions. Either party may, by giving notice, designate another address or addresses at which it will accept delivery of notices, requests, nominations, consents, approvals, statements, authorizations, documents or other communications. Delivery to the Contractor's designated supervisor at the Site shall constitute delivery to the Contractor. Any notices, requests, nominations, consents, approvals, statements, authorizations, documents or other communications given as provided herein shall: (a) if delivered by hand, be deemed to have been received on the day of receipt; (b) if delivered by facsimile transmission, be deemed to have been received on the day of transmission, if a Business Day, or if not a Business Day, on the Business Day next following the day of transmission; and (c) if delivered by mail, be deemed to have been received on the second Business Day on which mail is delivered by Canada Post following the date of mailing.

PART D - SUPPLEMENTAL CONDITIONS

GENERAL

D1. GENERAL CONDITIONS

D1.1 In addition to the *General Conditions for the Sale of Surplus Goods*, these Supplemental Conditions are applicable to the Work and purchase of Surplus Goods under this Contract.

D2. SURPLUS GOODS

D2.1 The purchase of Surplus Goods to be done under this Contract shall consist of the purchase and removal of Surplus Goods, and the provision of ancillary services in accordance with applicable specifications, photos, drawings and any addenda.

D2.2 The Contractor shall provide and pay for all materials, labour, equipment, tools, utilities, licenses and fees necessary to complete the Work.

D3. DETERMINATION OF THE AMOUNT OF SURPLUS GOODS AVAILABLE

D3.1 The Surplus Goods will be measured using GPS or Drone Survey to determine available quantity.

(a) The Survey shall be performed not more than forty-eight (48) hours prior to the offer from the City of Winnipeg for the sale of the Goods.

(b) The Survey shall be made available to the Offeror upon request.

D4. CONTRACT ADMINISTRATOR

D4.1 The Contract Administrator is:

Kimsong Bun
Technologist 3

Telephone No.: 204- 619-4171

Email Address: kbun@winnipeg.ca

D5. INSURANCE

D5.1 The Offeror shall provide and maintain the following insurance coverage:

(a) Commercial general liability insurance in the amount of at least two million dollars (\$2,000,000) with the City of Winnipeg to be added as an additional insured. Policy to include cross liability clause, contractual liability clause, unlicensed equipment liability, non-owned automobile and products and completed operations endorsement to remain in place at all times during the removal of the surplus goods.

(b) Automobile liability insurance covering all motor vehicles, owned and operated and used or to be used by the Offeror directly or indirectly in the removal of the surplus goods. The limit of liability shall not be less than \$2,000,000 inclusive for loss or damage including personal injury and death resulting from any one accident or occurrence.

(c) Property insurance for all Contractor's equipment to be used in the removal of the surplus goods.

D5.2 Deductibles shall be borne by the Offeror

D5.3 All policies shall be taken out with insurers licensed to carry on business in the Province of Manitoba.

- D5.4 The Offeror 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 removal of the surplus goods but in no event later than seven (7) Calendar Days from notification of the award.
- D5.5 The Offeror shall not cancel, materially alter, or cause each policy to lapse without providing at least thirty (30) Calendar Days prior written notice of the Contract Administrator.

D6. ENVIRONMENTAL PROTECTION

- D6.1 The Contractor will be solely responsible for the protection of the environment at the Site through compliance with the rules, regulations and practices required by all applicable legislation and requirements of all authorities having jurisdiction. The Contractor indemnifies and holds the City harmless from any and all liability which the City may incur or have related to the Contractor's failure to comply with all such rules, regulations, practices and requirements.
- D6.2 The Contractor must comply with all relevant statutes, by-laws, regulations and directions of all applicable authorities and jurisdictions in connection with the environment and the transport or use of hazardous or dangerous materials and substances. In addition to any environmental specifications expressly included elsewhere in the Contract, the Contractor must also comply strictly with all environmental specifications, regulations, publications and policies of the City with regard to protection of the environment, whether or not they are bound with or referred to elsewhere in the Contract, except to the extent where they are in conflict with this Contract or any permits and approvals provided by the regulatory authorities, in which case the most stringent and safest requirements and standards will prevail.
- D6.3 Compliance by the Contractor with any rules, directions or requirements of the Contract or the City in connection with health, safety and the environment will not relieve the Contractor from its sole responsibility and liability to perform the Work and complete the Contract without causing injury or damage to health and to perform the Work in a safe manner

SCHEDULE OF WORK

D7. COMMENCEMENT

- D7.1 Further to C4, the Contractor shall not pick up any Surplus Goods until he/she is in receipt of a notice of award from the City authorizing the Work and in receipt of confirmation from the Contract Administrator that the Contract Administrator has received full payment of the Contract Price.
- D7.2 The Offeror shall not pick up any Surplus Goods until:
- (a) the Contract Administrator has confirmed receipt and approval of:
 - (i) the insurance requirements identified in D5.

D8. PICK UP

- D8.1 Further to C4.4, Surplus Goods shall be picked up within seven (7) Business Days of notification of award, at a time mutually agreed upon between the Offeror and the Contract Administrator.
- D8.1.1 The Offeror shall promptly report any delay or change to an agreed pick up date to the Contract Administrator.
- D8.1.2 Extensions beyond seven (7) Business Days may be considered and accepted by the Contract Administrator due to inclement weather.
- D8.1.3 Agreement to remove the Goods beyond seven (7) Business Days is at the sole discretion of the Contract Administrator.

- D8.1.4 The Contractor must remove the material at a minimum rate of one thousand (1,000) cubic metres per seven (7) Business Days. Failure to meet this condition may result in a Default by Contractor/Offeror specified in C5
- D8.2 The Offeror shall inspect the Surplus Goods at the time of pick up. The City shall not be responsible for any damage, defect or deterioration of the Surplus Goods purported to have occurred after any prior inspection by the Offeror unless such damage, defect or deterioration is identified at the time of pick up by the Offeror.
- D8.3 Surplus Goods shall be picked up between 7:00 a.m. and 6:00 p.m. on Business Days.

MEASUREMENT AND PAYMENT

D9. PAYMENT

- D9.1 Further to C4, Payment is due from the Offeror, before or at the time of pickup.
(a) Payment shall be in the form of certified cheque payable to the City of Winnipeg.
- D9.2 Prices are subject to applicable taxes (G.S.T. and M.R.S.T.).
- D9.3 If payment has not been received, in the time specified in D8.1, the City will offer the Surplus Goods to the next highest Offeror.

PART E - SPECIFICATIONS

GENERAL

E1. APPLICABLE SPECIFICATIONS

E1.1 These Specifications shall apply to the Offer of Surplus Goods.

E2. SURPLUS GOODS

E2.1 The City invites offers to purchase surplus Category A Compost material from Operations at Brady Road Resource Management Facility in accordance with the requirements hereinafter specified.

E3. TESTING AND SAMPLING METHOD

E3.1 A representative compost sample was obtained according to the standardized sampling protocol set forth by the Compost Quality Alliance (CQA) from each batch, and sent to A&L Canada Laboratories Inc. for testing.

(a) The representative sample reflects the average nature of the batch from which it was collected.

E3.2 A&L Canada Laboratories Inc. in Ontario is the only CQA approved lab for compost analysis. The CQA program is Canada's compost quality assurance program that utilizes standardized testing methodologies and consistent operating protocols.

E3.3 The A&L Canada Laboratories Inc. analysis report specific to the compost batch purchased can be requested by the Offeror to the Contract Administrator prior to acceptance.

E4. PRODUCT AND PRODUCTION METHOD

E4.1 All compost is produced according to the Canadian Council of Ministers of the Environment (CCME) Guidelines for Compost Quality. Summary of Analysis of previous lab results can be found in Appendix A and Appendix B.

E4.2 All compost made available to the Offeror is stable and mature, certified Category A compost. Category A denotes unrestricted use for application. It contains a good percentage of total organic matter with low electrical conductivity and low pathogen and trace element content.

E4.3 The City of Winnipeg may choose to send out a follow-up survey to be completed by the Purchaser to identify quality and/or characteristics of the material from a market perspective.

E5. APPENDICES

E5.1 Appendix A – Summary of Analysis Report - Sample Date 4/28/2020

E5.2 Appendix B – Summary of Analysis Report - Sample Date 4/27/2020