



THE CITY OF WINNIPEG

REQUEST FOR PROPOSAL

RFP NO. 300-2023

**PROVISION OF INFORMATION TECHNOLOGY SERVICE MANAGEMENT (ITSM)
SOLUTION**

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SECTION 1 - INTRODUCTION

1.1 General

1.1.1 The City of Winnipeg (the “**City**”) is issuing the RFP Documents to retain a vendor/service provider to provide the goods and/or services briefly described in the Data Sheet (the “**Goods and/or Services**”). The RFP number is set out in the Data Sheet (the “**RFP Number**”).

1.1.2 The City intends to award the final agreement that will be entered into pursuant to the RFP Process (the “**Final Agreement**”) through an open, fair, and competitive RFP process. The work of the Final Agreement will be carrying out and doing all things of every kind, whether of a temporary or permanent nature, that are expressly or impliedly required for, or incidental to, the provision of the Goods and/or Services and the fulfillment of the terms of this RFP and the Final Agreement (“**Work**”).

1.1.3 In the RFP Documents, Persons that submit documents in response to the RFP Process are referred to as “**Proponents**”. The Person or Persons that the City selects to negotiate an agreement with in respect of the Goods and/or Services are referred to as “**Negotiations Proponent(s)**”. The Proponent that the City enters into the Final Agreement with is referred to as the “**Successful Proponent**”. For ease of reference, prospective proponents, whether or not they submit a response to the RFP Process (a “**Proposal**”), are also referred to as “**Proponents**”.

1.1.4 The process to select the Negotiations Proponent for the purposes of the Goods and/or services will commence with the issuance of the RFP Documents and will terminate when the City selects a Negotiations Proponent or Negotiations Proponents (the “**RFP Process**”).

1.2 Contact Person

1.2.1 The Proponents are required to submit all questions and other communications regarding the RFP Documents, the RFP Process and their Proposals in writing to the contact person named in the Data Sheet (the “**Contact Person**”) using the communication method specified in the Data Sheet. During the RFP Process, Proponents may contact the City only through the Contact Person.

1.3 Proponent Representatives

1.3.1 All correspondence from the City to a Proponent will be sent to the person identified by the Proponent to receive information and notices on behalf of the Proponent (the “**Proponent Representative**”). Each Proponent will provide the Contact Person with the name and contact information of the Proponent’s Proponent Representative in Schedule C – Intent to Bid Form. Each Proponent is solely responsible to ensure that all contact information of the Proponent Representative is accurate and updated at all times during the RFP Process. Proponents may update or revise their Proponent Representatives’ information by notifying the Contact Person, in writing.

1.4 RFP Process Timetable

1.4.1 The general timetable for the RFP Process (the “**Timetable**”) is set out in the Data Sheet. The City may, without liability, cost or penalty and in its sole discretion amend the Timetable at any time. If the City extends any deadline, all requirements applicable to Proponents will thereafter be subject to the extended deadline.

SECTION 2 - THE RFP DOCUMENTS

2.1 Request for Proposal Documents

2.1.1 The Request for Proposal documents (the “**RFP Documents**”) are:

- (a) the Request for Proposal (the “**RFP**”);
- (b) Schedule A – Data Sheet;
- (c) Schedule B – High Level Business Goals;
- (d) Schedule C – Intent to Bid Form;
- (e) Schedule D – Pricing Form;
- (f) Schedule E – Pricing Proposal Submission Form;
- (g) Schedule F – City of Winnipeg Standard Legal Terms (including all related schedules, appendices and attachments thereto) (the “**Standard Legal Terms**”); and
- (h) Addenda to the RFP Documents, if any.

2.1.2 The Proponents are instructed to read the RFP Documents as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference.

2.1.3 The City may also provide Proponents with background information (the “**Background Information**”). Whether or not Background Information will be provided to Proponents is noted in the Data Sheet. Documents containing Background Information are not RFP Documents and do not amend the RFP Documents. Background Information is provided only for the convenience of Proponents.

2.2 Distribution of Documents to Proponents

2.2.1 The City will circulate this RFP and all other RFP Documents, including Addenda, as well as any Notices through MERX. If the City chooses to notify Proponent Representatives that documents have been posted to MERX, such notification is a courtesy only and Proponents are solely responsible to ensure that they have reviewed all documents on MERX in accordance with 2.2.2 and, in particular, have reviewed all documents circulated or posted on MERX immediately prior to submitting Proposals.

2.2.2 The City may add, delete or amend documents circulated on MERX pursuant to 2.2(1) at any time. Each Proponent is solely responsible to ensure that it:

- (a) notifies MERX Customer Support if the Proponent is having difficulty viewing the RFP Documents, Addenda, Notices or responses to RFIs or if the Proponent is having difficulty submitting RFIs or bid responses by submitting an enquiry to MERX addressed to:

MERX Customer Support
Phone: 1-800-964-6379
Email: merx@merx.com

- (b) has the appropriate software to access and download RFP Documents, Notices, Addenda and responses to RFIs and submit its Proposal on MERX; and
- (c) checks MERX frequently for the addition, deletion or amendment of RFP Documents, Notices, Addenda and responses to RFIs and, at all times during the RFP Process, keeps itself informed of and takes into account the most current RFP Documents, Notices, Addenda and responses to RFIs.

2.3 Proponent Investigations

2.3.1 Each Proponent is solely responsible, at its own cost and expense, to carry out its own independent research and due diligence and to perform any other investigations, including seeking independent advice, considered necessary by the Proponent to satisfy itself as to all existing conditions affecting the Goods and/or Services. The Proponent's obligations set out in this 2.3 apply irrespective of any Background Information or any information contained in the RFP Documents or in responses to RFIs.

2.3.2 The City does not represent or warrant the accuracy or completeness of any information set out in the RFP Documents or made available to Proponents as Background Information or of any other background or reference information or documents prepared by the City or by third parties and which may be made available to Proponents by or through the City. Proponents will make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by Proponents on any and all such information will be at the Proponents' sole risk and without recourse against the City.

SECTION 3 - RFP PROCESS STAGES

3.1 Overview

3.1.1 The RFP Process will proceed in the following six stages:

- (a) Stage 1 – Intent to Bid;
- (b) Stage 2 – Interview;
- (c) Stage 3 – Demonstration;
- (d) Stage 4 – Pricing Proposal;
- (e) Stage 5 – Negotiations, and
- (f) Stage 6 – Conditions for Award.

as described in further detail in this Section 3 - .

	Stage 1: Intent to Bid	Stage 2: Interview	Stage 3: Demonstration	Stage 4: Pricing Proposal	Stage 5: Negotiations	Stage 6: Award
	Posting on MERX → Long List X Proponents	Telephone/ Teams Interview → Short List Proponents	Scripted Demo → Final Proponents	Pricing Proposal → Negotiation Proponent(s)	Negotiations → Selected Proponent	Award → Awarded Proponent
Documents to reference	• RFP Documents	• Telephone interview questions and detailed requirements (sent to long-listed proponents in advance)	• Demo scripts (sent to short-listed proponents in advance)	• RFP Documents	• Contractual documents as determined by negotiation process	• Contractual documents as determined by negotiation process
Proponent deliverables	• Intent to Bid (Schedule C)	• No documents to submit • Participation in telephone/ Teams interview • Interview will be recorded	• No documents to submit • Provision of solution demo via video-conference • Demo will be recorded	• Pricing Form (including pricing model) • Pricing Proposal Submission Form	• Contractual documents as determined by negotiation process	• Contractual documents as determined by negotiation process

3.2 Stage 1 – Intent to Bid

3.2.1 The City's procurement objectives for the Work are set out in the Schedules, including Schedule A – Data Sheet and Schedule B – High Level Business Goals, which cover (among other things):

- (a) the City's objectives for the Goods and/or Services;

- (b) Conditions for Award; and
- (c) the City's maximum budget for the Goods and/or Services (the "**Affordability Threshold**"),

collectively, the "**Procurement Objectives**".

- 3.2.2** In determining whether or not they can meet the City's Procurement Objectives, Proponents are advised to consult the City's standard legal terms at Schedule F – Standard Legal Terms, as these will be incorporated into the Final Agreement. Proponents must be willing to meet the Standard Legal Terms, or negotiate with the City to develop alternative terms agreeable to both parties.
- 3.2.3** Interested parties that can meet the City's Procurement Objectives, including providing the Goods and/or Services for a price that is at or below the City's Affordability Threshold, and would like to participate in the RFP Process are required to submit a complete and executed Intent to Bid form through MERX in the format set out in Schedule C – Intent to Bid Form (an "**Intent to Bid Form**") before the deadline to do so set out in the Timetable (the "**Intent to Bid Deadline**"). The City may, in its sole discretion, accept or reject Intent to Bid Forms that are submitted after the Intent to Bid Deadline. Intent to Bid Forms will only be accepted electronically through MERX.
- 3.2.4** The evaluation team established by the City (the "**Evaluation Team**") will review all Intent to Bid Forms received to ensure they each provide confirmation satisfactory to the City that the Proponent is able to meet the City's Procurement Objectives. In the event that the City determines a Proponent has not provided adequate confirmation that it is able to meet the City's Procurement Objectives, the Proponent will be informed and will not be permitted to participate in the RFP Process.
- 3.2.5** While the City will provide all Proponents with the Conditions for Award at the outset along with other Procurement Objectives, please note that Conditions for Award will not be assessed or confirmed until Stage 6 – Conditions for Award. Proponents must self-assess and satisfy themselves that they both understand and can meet the Conditions for Award as described. Proponents are responsible for seeking clarification from the City if any part of the Conditions for Award are unclear.
- 3.2.6 Additional Screening**
 - 3.2.6.1** The City will set out the maximum number of proponents that can progress to Stage 2 – Interview in the Data Sheet.
 - 3.2.6.2** If the number of Proponents who are found to have provided adequate confirmation that they are able to meet the City's Procurement Objectives is lower than the maximum number of proponents that can progress to Stage 2 – Interview, all such Proponents will proceed to Stage 2 - Interview.
 - 3.2.6.3** If the number of Proponents who are found to have provided adequate confirmation that they are able to meet the City's Procurement Objectives exceeds the maximum number of proponents that can progress to Stage 2 – Interview, the City reserves the right to conduct an additional screening process for the purpose of determining who will move forward to Stage 2 – Interview.

- 3.2.6.4** If the City chooses to conduct an additional screening process, all Proponents will be required to participate in order to be considered to proceed to Stage 2 – Interview. The additional screening process may take the form of a written submission or a short interview, in the City’s sole discretion, which shall allow Proponents to provide further detail regarding their ability to meet the City’s Procurement Objectives. The City will evaluate such submission or interview in accordance with the evaluation criteria set out in the Data Sheet, and the highest scoring Proponents, up to an amount equivalent to the Proponent Threshold, will proceed to Stage 2 – Interview.

3.3 Stage 2 – Interview

- 3.3.1** Each of the Proponents that proceed to Stage 2 - Interview in accordance with Section 3.2.4, (the “**Initial Proponents**”) will be invited to participate in a detailed interview with the Evaluation Team conducted via telephone or video conference.
- 3.3.2** The anticipated timeframe for the interviews is set out in the Timetable. Scheduling of these interviews will be arranged by the Contact Person. Failure to comply with the scheduling procedure may result in disqualification.
- 3.3.3** The City will provide the Initial Proponents with more detailed information regarding the City’s requirements for the Goods and/or Services prior to the interviews
- 3.3.4** The City reserves the right to record the interviews for the purposes of assisting in the evaluation process.
- 3.3.5** The Evaluation Team will evaluate and determine the score of each Initial Proponent’s interview (the “**Stage 2 Score**”) based on the evaluation criteria set out in the Data Sheet.
- 3.3.6** Failure to achieve any minimum passing score(s) set out in the RFP Data Sheet may prevent an Initial Proponent from being considered further in the RFP Process.
- 3.3.7** The City intends to select up to a maximum number (as identified in the Data Sheet) of the highest rated Initial Proponents based on the Stage 2 Score who will proceed to Stage 3 - Demonstration (the “**Shortlisted Proponents**”).
- 3.3.8** Notwithstanding 3.3.6, in the event of a tie in the Stage 2 Score between two or more Initial Proponents, the City may increase the number of Shortlisted Proponents to permit any tied Initial Proponents to proceed to Stage 3 - Demonstration.
- 3.3.9** The City may, in its sole discretion, determine that it wishes to increase the number of Shortlisted Proponents (or replace a Shortlisted Proponent that declines to participate in Stage 3 - Demonstration or does not achieve any minimum passing score in respect of Stage 3 - Demonstration) by adding other Initial Proponents, based on their Stage 2 Score, to the list of Shortlisted Proponents, even if those Proponents were not Shortlisted Proponents in the first instance.

3.4 Stage 3 – Demonstration

- 3.4.1** The Shortlisted Proponents will be invited through MERX to participate in a videoconference demonstration of their solution to the Evaluation Team.

- 3.4.2 The anticipated timeframe for the demonstrations is set out in the Timetable. Scheduling of the demonstrations will be arranged by the Contact Person. Failure to comply with the scheduling procedure may result in disqualification.
- 3.4.3 The City will provide the Shortlisted Proponents with a detailed list of functionalities that will need to be covered during the demonstration. Proponents will be allowed to demonstrate solution functionality in an order of their own choosing. However, the Proponent must provide to the Contact Person a copy of the proposed order of demonstration topics no later than two (2) business days prior to the scheduled demonstration.
- 3.4.4 If the Shortlisted Proponent's solution is available for a trial download, the Shortlisted Proponent may elect to make the solution available to the City to satisfy the obligation to provide a demonstration provided the Shortlisted Proponent provides assistance to the City as required. The Proponent acknowledges and agrees that the decision to provide a trial download to satisfy the obligation to provide a demonstration is at the Proponent's own risk and that the Proponent's Demonstration Score may be impacted.
- 3.4.5 The Evaluation Team will evaluate and determine the score of each Shortlisted Proponent's demonstration (the "**Stage 3 Score**") based on the evaluation criteria set out in the Data Sheet.
- 3.4.6 Failure to achieve the minimum passing score(s) set out in the RFP Data Sheet on the Demonstration Score may prevent a Shortlisted Proponent from being considered further in the RFP Process.
- 3.4.7 All Shortlisted Proponents that achieve the minimum passing Stage 3 Score set out in the Data Sheet will proceed to Stage 4 - Pricing Proposal (the "**Final Proponents**").
- 3.5 **Stage 4 – Pricing Proposal**
- 3.5.1 Following conclusion of Stage 3 - Demonstration, the City will reissue the RFP Documents on MERX to only the Final Proponents. The Final Proponents will be requested to submit a pricing proposal that is prepared in accordance with Schedule D – Pricing Form and includes a complete and executed pricing proposal submission form in the format set out in Schedule E – Pricing Proposal Submission Form (the "**Pricing Proposal**"). The deadline for submission of the Pricing Proposal (the "**Pricing Proposal Submission Deadline**") will be set out in the revised Timetable included in the reissued RFP Documents. Pricing Proposals will only be accepted electronically through MERX.
- 3.5.2 Proponents are cautioned to review the provisions of the Standard Legal Terms and to take all provisions into account when completing their Pricing Proposal.
- 3.5.3 The City may, in its sole discretion, accept or reject Pricing Proposals that are submitted after the Pricing Proposal Submission Deadline.
- 3.5.4 The Evaluation Team will evaluate and determine the score of each Final Proponent's Pricing Proposal (the "**Stage 4 Score**").
- 3.5.5 The score for each Final Proponent will be tallied and finalized and an "**Overall Score**" shall be established based on the weighting of the components of the Stage 2 Score set out in the Data Sheet, Stage 3 Score, and Stage 4 Score set out in the Data Sheet. Some elements of the Additional Screening (if applicable), the Stage 2 Score, and the Stage 3 Score may carry forward

as part of the Overall Score. Please consult the Data Sheet for further details. In the event there is a tie in the Overall Score of two or more Final Proponents, the Final Proponent with the higher Stage 4 Score shall be ranked highest.

3.6 Stage 5 – Negotiations

3.6.1 The City may, in its sole discretion, enter into negotiations with one or more Negotiations Proponent(s) for the purpose of finalizing the Final Agreement. The City will notify the Negotiations Proponent(s) that it has been selected to enter into negotiations with the City. The City may, at any time:

- (a) identify the highest ranked Proponent and either negotiate with such Proponent or accept such Proponent's Proposal as submitted; or
- (b) identify the two highest ranking Proponents as the first negotiations proponent (the "**First Negotiations Proponent**") (highest ranked) and the second negotiations proponent (the "**Second Negotiations Proponent**") (second highest ranked) and enter into negotiations with the First Negotiations Proponent and, failing successful negotiations, enter into negotiations with the Second Negotiations Proponent and identify the Proponent with whom the City conclude successful negotiations as the Successful Proponent.

3.6.2 Each Negotiations Proponent will be required to provide reference information with respect to all organizations referred to by the Negotiation Proponent in either Stage 2 – Interview or Stage 3 – Demonstration. The City may, in its sole discretion, confirm the Negotiation Proponent's experience and representations made during Stage 2 – Interview and Stage 3 – Demonstration by contacting the Negotiation Proponent's references. The City's reference checks to confirm such information may not be restricted to only those references submitted by the Negotiations Proponent, and may include organizations representing persons known to have done business with the Negotiations Proponent.

3.6.3 After notification pursuant to 3.6.1, the City will make arrangements to commence negotiations. The City reserves the right to specify time limits for the conclusion of successful negotiations. Both the City and the Negotiations Proponent may withdraw from negotiations at any time. The Standard Legal Terms will be the basis for negotiations and ultimately, subject to negotiations, the Final Agreement between a Successful Proponent and the City.

3.6.4 Subject to 9.1, the City will determine whether to enter into Final Agreements with one or more Proponents based on the best overall value, capabilities and availability of the Proponents. The City may, in its sole discretion, retain more than one Proponent to provide the Goods and/or Services.

3.6.5 Notwithstanding any other provision contained in the RFP Documents or a Proponent's Pricing Proposal, selection of a Proponent as a Negotiations Proponent does not oblige the City to enter into an agreement with the Successful Proponent. The purpose of the RFP Process is solely to choose a negotiating partner or negotiation partners. The selection of a Negotiations Proponent or Negotiations Proponents will simply initiate the process of negotiations which may lead to the Final Agreement with the City to provide the Goods and/or Services if the City and the Negotiations Proponent or Negotiations Proponents can successfully negotiate a Final Agreement.

- 3.6.6** The Successful Proponent acknowledges and agrees that the entering into of an agreement by the City is conditional on and subject to the City obtaining any necessary authorizations and approvals required in connection with the Goods and/or Services.
- 3.6.7** Notwithstanding anything else to the contrary in the RFP Documents, if the City, in its sole discretion, is of the opinion that a Proponent has submitted a price that is too low to be sustainable and to ensure the delivery of the Goods and/or Services, the City may decline to select that Proponent to be a Negotiations Proponent.
- 3.7** **Stage 6 – Conditions for Award**
- 3.7.1** The conditions for award are those conditions that are essential to ensure that a Proponent has the legal and financial capacities, and the commercial and technical abilities, to undertake the Work (the **“Conditions for Award”**). There are five (5) Conditions for Award, each comprised of a number of considerations: The Services Condition, the Technology Condition, the Data and Information Security Condition, the Privacy Condition, and the Records Management Condition. The City will be assessing each Condition for Award on a holistic pass/fail basis, having taken into account all enumerated considerations, and in doing so will consider whether the Proponent and the Proposed Solution can meet any given Condition for Award as-is, or if there are alternative arrangements (including accommodations on the City’s end) that can be used to ensure Conditions are met. Determinations as to whether or not alternative arrangements are acceptable, and whether Conditions are met, will be made at the City’s sole, absolute, and unfettered discretion.
- 3.7.2** After the City has selected the Proponent who has submitted, in the City’s sole discretion, the most advantageous Proposal (taking into account each Stage of the RFP Process), the Evaluation Team will begin the process of determining whether or not the Proponent and its Proposed Solution meet the City’s Conditions for Award. During this process the City may contact and negotiate with the Proponent to determine whether any gaps identified by the City can be met through alternative arrangements. If the City determines, in its sole, absolute, and unfettered discretion that one or more Conditions have not been met, and that no acceptable alternative arrangements can be made, the Proponent in question will be deemed unqualified and the City will begin the vetting process with the next highest rated Proponent. If no Proponent can meet the Conditions for Award, no award will be made and the RFP will be cancelled.
- 3.7.3** As a public institution, the City is obliged to follow certain regulatory and procedural processes with respect to the evaluation and award of procurement contracts, which may occasionally result in delays between the time when evaluations conclude and award is approved. In order to ensure that the award which is approved by the appropriate award authority is consistent with the Final Agreement, all commitments made to the City in a Proponent’s interview, demonstration, and/or Pricing Proposal, including all prices contained in a Pricing Proposal, must be maintained by the Proponent for a period of six (6) months after the Pricing Proposal Submission Deadline or such other timeline as set out in the Data Sheet. If a Proponent fails to maintain its commitments or its prices in accordance with this section, the City may, in its sole discretion and irrespective of the score or ranking of that Proponent, refuse to enter into negotiations or discontinue negotiations with, or rescind an offer of award to, that Proponent.

3.8 Notification If Successful Or Not

3.8.1 The City will post a Notice that identifies the Successful Proponent. Proponents acknowledge that this notification may disclose the pricing information submitted by the Successful Proponent.

3.9 Clarification and Verification

3.9.1 The City may,

- (a) require the Proponent to verify or clarify the contents of any information submitted to the City, including in its Intent to Bid Form, Pricing Proposal or any statement made by the Proponent, including during an interview or demonstration;
- (b) require the Proponent to submit supplementary documentation clarifying or verifying any matters set out in Section 3.9.1(a); and
- (c) seek a Proponent's acknowledgement of an interpretation by the City of any matters set out in Section 3.9.1(a).

3.9.2 The City is not obliged to seek clarification or verification of any aspect of a Proposal or any statement by a Proponent, including any ambiguity in a Proposal or in a statement made by a Proponent.

3.9.3 Any written information received by the City from a Proponent pursuant to a request for clarification or verification from the City as part of the RFP Process may, in the City's discretion, be considered in the evaluation process.

SECTION 4 - THE RFP PROCESS

4.1 Requests for Information

4.1.1 In addition to the requirement set out in 1.2, the following rules will apply to Proponents when submitting questions or requests for clarifications or information ("**RFIs**") to the City during the RFP Process:

- (a) Proponents are required to submit all RFIs through MERX using MERX Q&A (Question and Answer) functionality and in accordance with the deadlines set out in the Timetable;
- (b) Proponents must submit only one question per entry;
- (c) If the Proponent wishes to submit an attachment as part of an RFI, the Proponent must submit the RFI first through MERX, and then submit the attachment by email to the Contact Person, referencing in the email the MERX Question Number (e.g. Q1) and date the RFI was submitted;
- (d) Proponents are advised to indicate in their RFI whether the RFI should be categorized as:
 - (i) of general application and applicable to other Proponents ("**General RFIs**"); or
 - (ii) considered by the Proponent to be commercially sensitive or confidential to that particular Proponent ("**Commercially Confidential RFIs**");
- (e) If the City agrees, in its sole discretion, with the Proponent's categorization of an RFI as a General RFI, the City may issue a clarification to all Proponents participating in the current Stage;
- (f) If the City disagrees with the Proponent's categorization of an RFI as a Commercially Confidential RFI, the City will give the Proponent an opportunity to either categorize the RFI as a General RFI or to withdraw the RFI;

- (g) If the City determines, in its sole discretion, that a Commercially Confidential RFI, even if it is withdrawn by a Proponent, is of general application or would provide a significant clarification of the RFP Documents or RFP Process to Proponents, the City may issue a clarification that deals with the same subject matter as the withdrawn Commercially Confidential RFI to all Proponents participating in the current Stage; and
- (h) If the City agrees with the Proponent's categorization of a Commercially Confidential RFI, then the City will provide a response to that RFI to only the Proponent that submitted the RFI.

4.1.2 The City will respond to RFIs using MERX Q&A functionality and in accordance with the schedule set out in the Timetable. The City may, in its sole discretion, distribute responses to RFIs of a minor or administrative nature to only the Proponent who submitted the minor or administrative RFI.

4.1.3 If the City determines, in its sole discretion, that a question posed by a Proponent during a Stage 2 – Interview or Stage 3 – Demonstration is of general application or would provide a significant clarification of the RFP Documents or RFP Process to Proponents, the City may consider said question to be a verbal General RFI, and may issue a clarification that deals with the same subject matter as the question to all Proponents participating in the current Stage.

4.1.4 Responses to RFIs prepared and circulated by the City are not RFP Documents and do not amend the RFP Documents. If, in the City's sole discretion, responses to RFIs require an amendment to the RFP Documents, such amendment will be prepared and circulated by Addendum in accordance with 4.3. Only a response to an RFI that has been incorporated into or issued as an Addendum will modify or amend the RFP Documents and, otherwise, responses to RFIs will have no force or effect whatsoever and will not be relied upon by any Proponent.

4.1.5 It is the Proponent's obligation to seek clarification from the City of any matter it considers to be unclear in accordance with 4.1. The City is not responsible in any way whatsoever for any misunderstanding by the Proponent of the RFP Documents, Background Information, responses to RFIs, any documents circulated or posted for Proponents, or any other type of information provided by or communication made by the City or any third party.

4.2 Notices

4.2.1 The City may, in its sole discretion, issue Notices to Proponents, distributed in accordance with 2.2.1, for the purpose of communicating on issues of importance to the RFP Process. Such Notices are not RFP Documents and do not amend the RFP Documents.

4.3 Addenda/Changes to the RFP Documents

4.3.1 The City may, in its sole discretion, amend or supplement the RFP Documents prior to the Pricing Proposal Submission Deadline. The City will issue changes to the RFP Documents by Addenda distributed in accordance with 2.2.1 only. No other statement, whether oral or written, made by the City or the City's Advisors, including, for clarity, the Contact Person, or any other person, will amend the RFP Documents. The approximate final date that the City will issue an Addendum is set out in the Timetable.

4.3.2 The City will issue each Addendum at least two Business Days prior to the Pricing Proposal Submission Deadline, or will provide at least two Business Days by extending the Pricing Proposal Submission Deadline.

4.3.3 The Proponent is solely responsible to ensure that it has downloaded from MERX and reviewed all Addenda issued by the City.

4.4 General Proponents Meeting(s)

4.4.1 The City may, in its sole discretion, convene general Proponents meetings (each, a “**Proponents Meeting**”). Whether or not the City intends to convene Proponents Meeting(s) is set out in the Data Sheet. If the City does convene Proponents Meeting(s), the approximate date(s) of the Proponents Meeting(s) are set out in the Timetable. While attendance at a Proponents Meeting is not mandatory, Proponents are strongly encouraged to attend. A Proponent’s failure to attend a Proponents Meeting is at the Proponent’s sole risk and responsibility. If Proponents are required to execute a confidentiality agreement in accordance with 4.11, a Proponent will not be permitted to attend a Proponents Meeting unless it has complied with 4.11.

4.4.2 The locations and particulars with respect to Proponents Meetings are set out in the Data Sheet. The City reserves the right, in its sole discretion, to limit the number of Proponent attendees that may attend any Proponents Meeting by setting out any such limitation in the Data Sheet.

4.4.3 Proponents may ask questions and seek clarifications at a Proponents Meeting. Notwithstanding that the City may give spoken answers at a Proponents Meeting, those answers will not be considered final unless issued in writing. Therefore, Proponents are strongly encouraged to submit these questions in accordance with 4.1 for response in accordance with 4.1.

4.4.4 No statement, consent, waiver, acceptance, approval or anything else said or done in any Proponents Meeting by the City or its Advisors will amend or waive any provision of the RFP Documents, or be binding on the City or be relied upon in any way by Proponents or their Advisors, except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with 4.3.

4.5 Prohibited Contacts

4.5.1 Proponents and their respective Advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFP Process.

4.5.2 Without limiting the generality of 4.5.1, neither Proponents nor any of their respective Advisors, employees or representatives will contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following Persons on matters related to the RFP Process, the RFP Documents, or their Proposals:

- (a) any Advisor to the City;
- (b) any employee or representative of,
 - (i) the City; or
 - (ii) any other Person listed in the Data Sheet;
- (c) any Ineligible Person; or
- (d) any directors, officers, employees, agents, representatives or consultants of any entity listed in 4.5.2(a), 4.5.2(b) and 4.5.2(c).

- 4.5.3 If a Proponent or any of its respective Advisors, employees or representatives, in the opinion of the City, contravenes 4.5.1 or 4.5.2, the City may, in its sole discretion,
- (a) take any action in accordance with 7.1; or
 - (b) impose conditions on the Proponent's continued participation in the RFP Process that the City considers, in its sole discretion, to be appropriate.

For clarity, the City is not obliged to take the actions set out in this 4.5.3.

4.6 **Ineligible Persons**

4.6.1 As a result of their involvement with respect to the Goods and/or Services, the Persons named as "Ineligible Persons" in the Data Sheet (collectively, "**Ineligible Persons**") and their respective Advisors engaged in respect of the Goods and/or Services and, subject to 4.6.2, any Person Controlled by, that Controls or that is under common Control with the Ineligible Persons (each an "**Ineligible Person's Affiliate**") are not eligible to participate as a Proponent or Advisor to a Proponent. The City may amend the Ineligible Persons list in the Data Sheet from time to time during the RFP Process.

4.6.2 An Ineligible Person's Affiliate may be eligible to participate as a Proponent or an Advisor to a Proponent only after it has obtained written consent from the City permitting it to participate as a Proponent or an Advisor to a Proponent. The City will, in its sole discretion, make a determination as to whether the City considers there to be a perceived, potential or actual Conflict of Interest and whether the impact of such perceived, potential or actual Conflict of Interest can be appropriately managed, mitigated or minimized.

4.7 **Media Releases, Public Disclosures and Public Announcements**

4.7.1 Proponents are prohibited from, and will ensure that their Advisors are prohibited from, issuing or disseminating any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) that relates to the RFP Process, the RFP Documents or the Goods and/or Services or any matters related thereto, without the prior written consent of the City, which consent may be withheld in the City's sole discretion.

4.7.2 Neither the Proponents nor any of their respective Advisors, will make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without the City's prior written consent, which consent may be withheld in the City's sole discretion.

4.7.3 For the purpose of greater clarity, 4.7.2 does not prohibit disclosures necessary to permit the Proponent to discuss the Goods and/or Services with prospective subcontractors but such disclosure is permitted only to the extent necessary to solicit those subcontractors' participation with respect to the Goods and/or Services.

4.8 **Restrictions on Communications between Proponents – No Collusion**

4.8.1 Neither a Proponent nor its respective Advisors or representatives will discuss or communicate, directly or indirectly, with any other Proponent (or such Proponent's respective Advisors or representatives), any information whatsoever regarding the preparation of its own Proposal or the Proposal of any other Proponent in a fashion that would contravene Governing Law.

Proponents are required to prepare and submit Proposals independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proponent.

4.9 Disclosure of Proposal Information

4.9.1 The Proponent is advised that the RFP Documents and any information contained in any Proposal may be released if required by *The Freedom of Information and Protection of Privacy Act* (Manitoba), by other authorities having jurisdiction, by Governing Law or by City policy or procedures (which may include access by members of City Council).

4.9.2 To the extent permitted, the City shall treat as confidential information, those aspects of a Proposal identified by the Proponent 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.

4.9.3 Notwithstanding 4.9.2, the City may disclose the name and address of the Successful Proponent and the value and term of the contract, including any pricing information provided by a Proponent in its Proposal.

4.9.4 Proponents are advised that the City will not hold a public opening of Proposals.

4.10 Confidential Information

4.10.1 For the purpose of the RFP Process, "**Confidential Information**" means all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise provided by the City or the City's Advisors, in connection with the RFP Process, the RFP Documents or the Goods and/or Services, whether supplied, obtained from or provided before or after the RFP Process.

4.10.2 The Proponent agrees that all Confidential Information:

- (a) will remain the sole property of the City and the Proponent will treat it as confidential;
- (b) will not be used by the Proponent for any purpose other than developing and submitting a Proposal in response to the RFP Process or the performance of any subsequent agreement relating to the Goods and/or Services with the City;
- (c) will not be disclosed by the Proponent to any Person who is not involved in the Proponent's preparation of its Proposal or the performance of any subsequent agreement relating to the Goods and/or Services with the City, without prior written consent of the City, in its sole discretion;
- (d) will not be used in any way detrimental to the City; and
- (e) if requested by the City, all Confidential Information will be destroyed by the Proponents no later than 10 Business Days after that request.

4.10.3 Each Proponent will be responsible for any breach of the provisions of this 4.10 by any Person to whom it discloses the Confidential Information including, for clarity, the Proponent's Advisors. Each Proponent will indemnify the City and each of its Advisors and related entities and each of their respective directors, officers, consultants, employees, agents and representatives and save each of them fully harmless from and against any and all loss, cost, damage, expense, fine, suit, claim, penalty, demand, action, obligation and liability of any kind or nature (including, without limitation, professional fees on a full indemnity basis) suffered or incurred by any of them

arising as a result of or in connection with any breach of any of the provisions of this 4.10 by the Proponent or by any Person to whom the Proponent has disclosed the Confidential Information. Each Proponent agrees that the City acts as trustee for each of its Advisors and related entities and each of their respective directors, officers, consultants, employees, agents and representatives with respect to all rights contemplated hereunder arising in favour of an Advisor, a related entity or any of their respective directors, officers, consultants, employees, agents or representatives and that the City has agreed to accept such trust and hold and enforce such rights on behalf of each such Advisor or related entity and each of their respective directors, officers, consultants, employees, agents and representatives.

4.10.4 Each Proponent acknowledges and agrees that a breach of the provisions of this 4.10 would cause the City, its Advisors, and its related entities to suffer loss that could not be adequately compensated by damages, and that the City and its Advisors and related entities may, in addition to any other remedy or relief, enforce any of the provisions of this 4.10 upon application to a court of competent jurisdiction without proof of actual damage to the City, its Advisors, or its related entities.

4.10.5 Notwithstanding anything else to the contrary in the RFP Documents, the provisions of this 4.10 will survive any cancellation of the RFP Process and the conclusion of the RFP Process and, for greater clarity, will be legally binding on all Proponents, whether or not a Proponent submits a Proposal.

4.10.6 The confidentiality obligations of the Proponent will not apply to any information which falls within the following exceptions:

- (a) information that is lawfully in the public domain at the time of first disclosure to the Proponent, or which, after disclosure to the Proponent, becomes part of the public domain other than by a breach of the Proponent's confidentiality obligations or by any act or fault of the Proponent;
- (b) information which was in the Proponent's possession prior to its disclosure to the Proponent by the City, and provided that it was not acquired by the Proponent under an obligation of confidence; or
- (c) information which was lawfully obtained by the Proponent from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of secrecy with respect to such information.

4.11 Confidentiality Agreements

4.11.1 If specified in the Data Sheet, the Proponent will cause each of its representatives and Advisors who are in receipt of Confidential Information, to execute and deliver to the City a confidentiality agreement in a form prescribed by and with terms and conditions acceptable to the City, in its sole discretion, by the deadline set out in the Timetable. Proponents are advised that they will not be provided with responses to RFIs unless and until they comply with this 4.11.

4.12 Copyright and Use of Information in Proposals

4.12.1 Proponents will not use or incorporate into their Proposals any concepts, products or processes which are subject to copyright, patents, trademarks or other intellectual property rights of third parties unless Proponents have, or will procure through licensing without cost to the City, the right to use and employ such concepts, products and processes in and for the Goods and/or Services.

- 4.12.2** All requirements, designs, documents, plans and information supplied by the City to the Proponents in connection with the RFP Process are and will remain the property of the City. Upon request of the City, all such designs, documents, plans and information (and any copies thereof in any format or medium created by or on behalf of the Proponent) must be destroyed.
- 4.12.3** The Proponent will grant to the City a non-exclusive, perpetual, irrevocable, world-wide, fully paid and royalty free licence (fully assignable without the consent of the Proponent and with the right to sub-licence without the consent of the Proponent) to use the Proposal Information for the purposes of evaluation of Proposals and the negotiation and execution of any Final Agreement (the "**Proposal Information Licence**"). Under no circumstances will the Proponent, except the counterparty to the City in the Final Agreement in relation to the Goods and/or Services, be liable to the City or to any other Person for any damages, losses, costs, expenses, claims or actions whatsoever arising directly or indirectly from the use of the Proposal Information pursuant to the Proposal Information Licence.
- 4.12.4** For the purpose of this 4.12, "**Proposal Information**" includes all information contained in a Proposal or which is disclosed by or through a Proponent to the City during the evaluation of Proposals or during the process of executing any Final Agreement; and any and all ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by or through a Proponent and revealed to or discovered by the City, including any and all those which may be connected in any way to the preparation, submission, review or negotiation of any Proposal or the Final Agreement.
- 4.12.5** Proponents will ensure that all intellectual property rights associated with any and all of the Proposal Information (including copyright and moral rights but excluding patent rights) provide for and give the City the rights set out in this 4.12. It is expressly understood and agreed that any actual or purported restriction in the future on the ability of the City to use any of the Proposal Information as contemplated in this 4.12, or anything else obtained by or through Proponents, will be unenforceable as against the City and each of their respective Advisors, and that the provisions of this 4.12 will take precedence and govern.
- 4.13** **Governing Law and Attornment**
- 4.13.1** The RFP Documents and any Final Agreement will be governed and construed in accordance with Governing Law.
- 4.13.2** The Proponent agrees that,
- (a) any action or proceeding relating to the RFP Process will be brought in any court of competent jurisdiction in the Province of Manitoba and for that purpose each Proponent and the City irrevocably and unconditionally attorns and submits to the jurisdiction of that Manitoba court;
 - (b) it irrevocably waives any right to oppose, and will not oppose, any Manitoba action or proceeding relating to the RFP Process on any jurisdictional basis, including *forum non conveniens*; and
 - (c) it will not oppose the enforcement of any judgment or order duly obtained from a Manitoba court as contemplated by this 4.13.2 in any other jurisdiction.

4.14 Licences and Permits

4.14.1 If a Proponent is required by Governing Law to hold or obtain a licence, permit, consent or authorization to carry on an activity contemplated in its Proposal, neither acceptance of the Proposal nor execution of the Final Agreement will be considered to be approval by the City of carrying on such activity without the requisite licence, permit, consent or authorization.

4.15 Persons Permitted to Submit Proposals

4.15.1 A Proposal may be submitted by:

- (a) a single Person as the Proponent;
- (b) a collection of Persons as the Proponent (a “**Joint Venture Proponent**” and each Person being a “**Joint Venture Participant**”); or
- (c) a prime contractor and subcontractors.

4.15.2 Where a Proposal is submitted by a prime contractor and subcontractors, the prime contractor shall submit a Proposal on its own behalf and on behalf of its subcontractors and the prime contractor shall be responsible for ensuring its subcontractors perform their obligations under the Final Agreement.

4.16 Proponent’s Costs

4.16.1 The Proponent will bear all costs and expenses incurred by the Proponent relating to any aspect of its participation in the RFP Process.

4.16.2 In no event will the City be liable to pay any costs or expenses or to reimburse or compensate a Proponent under any circumstances, regardless of the conduct or outcome of the RFP Process.

4.17 Delay and Costs of Delay

4.17.1 The Proponent will not hold the City liable for any error or omission in any part of the RFP Documents or for any delay, or costs associated with delays, in the RFP Process.

4.18 Unfair Labour Practices

4.18.1 The City of Winnipeg is committed to, and requires its Contractors and their Subcontractors to be committed to, upholding and promoting international human and labour rights, including fundamental principles and rights at work covered by the United Nations Universal Declaration of Human Rights (the “**UDHR**”, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>) and the International Labour Organization (the “**ILO**”, [https://www.ilo.org/global/lang--en/index.htm](https://www.ilo.org/global/lang-en/index.htm) conventions as ratified by Canada).

4.18.2 The Proponent declares that in submitting an Intent to Bid Form that the Proponent and any proposed direct Subcontractor(s) conduct their respective business in accordance with established international codes embodied in the ILO eight (8) fundamental conventions and the UDHR.

4.18.3 Proponents are directed to F12.11 for further details, including a potential penalty for violations of the foregoing.

SECTION 5 - CONFLICTS OF INTEREST

5.1 Conflicts of Interest

- 5.1.1 Proponents and each of their Advisors shall disclose, in the Intent to Bid Form, all Conflicts of Interest. If a Proponent or any of their respective Advisors, following submission of the Intent to Bid Form, discovers any Conflict of Interest, the Proponent shall promptly disclose the Conflict of Interest to the City in a written statement to the Contact Person. For clarity, Proponents have an ongoing obligation to comply with this 5.1
- 5.1.2 At the request of the City, the Proponent shall provide the City with the Proponent's proposed means to mitigate and minimize to the greatest extent practicable any Conflict of Interest. The Proponent shall submit any additional information to the City that the City considers necessary to properly assess the Conflict of Interest.
- 5.1.3 Each Proponent and each of their Advisors shall avoid any Conflict of Interest in relation to this RFP Process.
- 5.1.4 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 Proponent that fails to disclose a Conflict of Interest of the Proponent or any Advisor;
 - (b) require the removal and replacement of any Advisor that has a Conflict of Interest that the City, in its sole discretion, determines cannot be managed, mitigated, minimized or otherwise resolved;
 - (c) disqualify any Proponent that fails to comply with any requirements prescribed by the City pursuant to 5.1.5 to mitigate, manage or minimize a Conflict of Interest; and
 - (d) disqualify a Proponent if that Proponent or any Advisor have a Conflict of Interest that, in the City's sole discretion, cannot be mitigated, managed, minimized or otherwise resolved.
- 5.1.5 Without limiting 5.1.4, the City may, in its sole discretion, waive any and all Conflicts of Interest of Proponents or any of their respective Advisors. A waiver may be upon such terms and conditions as the City, in its sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately managed, mitigated and minimized, including requiring the Proponent 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 manage, mitigate and minimize the impact of such Conflict of Interest.
- 5.1.6 For the purposes of this RFP Process, "**Conflict of Interest**" includes any perceived, potential, or actual situation or circumstance where, in relation to this RFP Process, a Proponent or any of its Advisors have commitments, relationships, financial interests, knowledge or involvement in litigation that conflicts, may conflict, or may be perceived to conflict, with the City's obligation to conduct an objective, unbiased, and impartial procurement, and includes circumstances where the Proponent or any of its Advisors:
- (a) have contractual or other obligations with the City that may or may be seen to be compromised or impaired as a result of their participation in the RFP Process;
 - (b) are, or employ, a former employee of the City that has relevant knowledge of this RFP Process;

- (c) have acted in an advisory or professional capacity regarding this RFP Process to:
 - (i) the City, or
 - (ii) another Proponent;
- (d) have a relationship with an employee or former employee of the City that works on, or has worked on, the City's project team, or with an Ineligible Person, that is:
 - (i) a personal relationship in the form of a spouse, child, brother, sister, parent, mother or father-in-law, son or daughter-in-law, or with another individual person who shares their home; or
 - (ii) a financial relationship;
- (e) have a financial interest in more than one Proponent's participating in the RFP Process;
- (f) have knowledge of confidential information (other than Confidential Information disclosed by the City in the normal course of the RFP Process) of strategic and/or material relevance to the RFP Process or to the Goods and/or Services that is not available to other Proponents and that may or may be seen to give the Proponent an unfair competitive advantage; or
- (g) have advance notice of a matter relating to this RFP Process that is so significant it gives the Proponent materially more time to investigate, plan, or prepare a response to the RFP Process that may or may be seen to give the Proponent an unfair competitive advantage.

5.1.7 The final determination of whether a Conflict of Interest exists shall be made by the City, in its sole discretion.

SECTION 6 - DISCLOSURE

6.1.1 Various Persons provided information with respect to the Goods and/or Services that are the subject of this RFP document, this information included cost estimates, descriptions, and/or demos of solutions that meet the City's objectives. In the City's opinion, this relationship or association does not create a conflict of interest because of this full disclosure. These companies and the nature of the information provided are set out in the Data Sheet.

SECTION 7 - PROPOSAL SUBMISSION, WITHDRAWAL AND MODIFICATION

7.1 Submission

7.1.1 It is the sole responsibility of the Proponent to ensure that its Intent to Bid Form is received by the City through MERX on or before the Intent to Bid Deadline and its Pricing Proposal is received by the City through MERX on or before the Pricing Proposal Submission Deadline.

7.1.2 An Intent to Bid Form or a Pricing Proposal that is not submitted in accordance with the requirements of this Section 7 - may be rejected by the City and the City will not be under any obligation to notify the Proponent that the Proposal was not submitted in accordance with the requirements of this Section 7 - .

7.1.3 Any enquiries concerning submitting through MERX should be addressed to:

MERX Customer Support
Phone: 1-800-964-6379
Email: merx@merx.com

7.2 Amendment of Pricing Proposals

7.2.1 Proponents may amend their Pricing Proposals after submission but only if the Pricing Proposal is amended and resubmitted on or before the Pricing Proposal Submission Deadline in accordance with the following:

- (a) the Proponent will withdraw its original Pricing Proposal by notifying the Contact Person through e-mail; and
- (b) the Proponent will submit a revised replacement Pricing Proposal in accordance with the RFP Documents and no later than the Pricing Proposal Submission Deadline.

7.3 Withdrawal of Proposals

7.3.1 A Proponent may withdraw its participation in the RFP Process at any time during the RFP Process by giving written notice that is signed by an authorized representative of the Proponent to the Contact Person.

7.4 One Proposal per Person

7.4.1 Except as set out in the Data Sheet and with the City's prior written consent,

- (a) a Person will submit or participate in only one Proponent team responding to this RFP;
- (b) no Person will be a subcontractor of a Proponent while also participating in the RFP Process individually or as part of a joint venture in the same RFP Process; and
- (c) no Person will be a subcontractor in respect of more than one Proponent.

7.4.2 If a Person submits or participates in more than one Proponent team in contravention of 7.4.1 the City may, in its sole discretion, disqualify any or all of the Proponent teams in which that Person is a participant.

SECTION 8 - DISQUALIFICATION

8.1 Disqualification

8.1.1 The City may, in its sole discretion, disqualify a Proposal or cancel its decision to identify a Proponent as a Negotiations Proponent or a Successful Proponent, at any time prior to the execution of the Final Agreement by the City, if:

- (a) the Proponent fails to cooperate in any attempt by the City to clarify or verify any information provided by the Proponent;
- (b) the Proponent is not, in the City's sole discretion, financially creditworthy;
- (c) the Proponent does not, in the City's sole discretion, satisfy the City's Conditions for Award;
- (d) the Proponent contravenes 4.5 or 7.4.1;
- (e) the Proponent fails to comply with Governing Law;
- (f) the Proposal contains false or misleading information or the Proponent provides false or misleading information in its interview (if an interview is conducted);
- (g) the Proponent is the acquiree in a change of Control;
- (h) the Proponent fails to disclose any information (including in any declaration or form attached to the Proposal in connection with the RFP Documents) that would materially adversely affect the City's evaluation of the Proposal;
- (i) The City becomes aware of a Conflict of Interest and,

- (i) the Proponent failed to disclose such Conflict of Interest;
- (ii) the Proponent fails to remove or replace the person or entity giving rise to the Conflict of Interest in accordance with 5.1.4(b);
- (iii) the Proponent fails to comply with any requirements prescribed by the City pursuant to 5.1.5;
- (iv) in the City's sole discretion, the Conflict of Interest cannot be mitigated, managed, minimized or otherwise resolved; or
- (v) the Proponent does not receive a waiver from the City in accordance with 5.1.5.
- (j) in the 12 months prior to the Intent to Bid Deadline, the City became aware that the Proponent failed to disclose an actual Conflict of Interest in any past or current procurement issued by the City, unless the Proponent has demonstrated to the satisfaction of the City that the Proponent has implemented measures to prevent future false or omitted disclosure of actual Conflicts of Interest;
- (k) there is evidence that the Proponent or any of its respective employees, agents, consultants, contractors, service providers or representatives directly or indirectly colluded with one or more other Proponents or any of their respective employees, agents, consultants, contractors, service providers or representatives in the preparation or submission of Proposals or otherwise contravened 4.8;
- (l) the Proponent has breached any agreement with the City (whether or not the City exercises any right to terminate such agreement) or has breached the City's policies listed in the Data Sheet;
- (m) the Proponent has been convicted of an offence in connection with any services rendered to the City;
- (n) the Proponent has breached an agreement for goods and/or services similar to the ones requested under the RFP Process with an entity other than the City;
- (o) the Proponent was convicted of a criminal offence within the three years immediately prior to the Intent to Bid Deadline;
- (p) a Proponent is, at the time of issuance of the RFP Documents or any time during the RFP Process, engaged in ongoing litigation against the City;
- (q) there are any convictions related to inappropriate bidding practices or unethical behaviour by a Proponent or any of their Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction; or
- (r) a Proponent engages in any activity which, at the sole discretion of the City, is contrary to the public interest or is harmful to the integrity or reputation of the City.

SECTION 9 - DEBRIEFING

9.1 Debriefing

- 9.1.1** Unsuccessful Proponents may request a debriefing after the posting of the Notice pursuant to 3.7.1 by contacting the Contact Person in writing. All Proponent requests should be in writing to the Contact Person no later than 60 calendar days following the posting of such notification. The City will determine the format, timing and contents of the debriefing session. Generally, debriefings shall include a discussion regarding the unsuccessful Proponent's Intent to Bid Form, interview and demonstration. The debriefing is not for the purpose of challenging the procurement process.

SECTION 10 - LEGAL MATTERS AND RIGHTS OF THE CITY

10.1 RFP Not a “Bidding Contract” or a Tender

10.1.1 Notwithstanding any other provision of the RFP Documents, the RFP Documents are not a tender and are not an offer to enter into either a bidding contract (often referred to as “**Contract A**”) or a contract to provide the Goods and/or Services (often referred to as “**Contract B**”). Except as provided in 4.10 and 10.2, neither the RFP Documents nor the submission of a Proposal by a Proponent will create any legal or contractual rights or obligations whatsoever on any of the Proponent or the City. Except as provided in 4.10 and 10.2, no legal relationship or obligation of any kind whatsoever will be created between the Proponent and the City until the successful negotiation and execution of a written Final Agreement.

10.1.2 Without limiting the generality of 9.1 the following principles apply to the RFP Process:

- (a) The City may, in its sole discretion, change or discontinue the RFP Process at any time whatsoever;
- (b) The City may, in its sole discretion, decline to evaluate any Proposal that, in its sole discretion, is incomplete, obscure or does not contain sufficient information to carry out a reasonable evaluation;
- (c) The City may, in its sole discretion, enter into negotiations with any Proponent, Person or Persons with respect to the Goods and/or Services that are the subject of the RFP Documents;
- (d) while a Proponent will likely be evaluated more favourably if its Pricing Proposal is in the format set out in Schedule D – Pricing Form and meets the requirements of this RFP, a Proponent is not obligated (but is strongly encouraged) to comply with Schedule D – Pricing Form in order to have its Pricing Proposal evaluated by the City. For clarity, this principle applies whether or not the expressions “must” or “will” are used to describe what is required of the Proponents;
- (e) there are no mandatory requirements for a Proponent or a Proposal in the RFP Process outside of the Conditions for Award;
- (f) in connection with negotiations contemplated in the RFP Documents, the City may, in its sole discretion, request any supplementary information whatsoever from a Proponent after the Pricing Proposal Submission Deadline, including information that the Proponent could or should have submitted prior to the Pricing Proposal Submission Deadline (provided however, that the City is not obliged in any way whatsoever to request supplementary information from a Proponent);
- (g) while the pricing information provided is subject to the non-binding nature of the RFP Process, such information will be assessed during the evaluation of Proposals and accordingly, misleading or incomplete information, including withdrawn or altered pricing during contract negotiations, could adversely impact any such evaluation or negotiations and result in the cessation of negotiations with that Proponent; and
- (h) the City may, in its sole discretion and at any time during the RFP Process,
 - (i) reject any or all of the Proposals;
 - (ii) accept any Proposal, including a Proposal that is not submitted in accordance with the requirements set out in 6.1.1;
 - (iii) if only one Proposal is received, either elect to accept or reject it or to enter into negotiations with the applicable Proponent;
 - (iv) elect not to proceed with the RFP Process;
 - (v) alter the Timetable;
 - (vi) change the RFP Process or any other aspect of the RFP Documents; and

- (vii) cancel the RFP Process and subsequently conduct another competitive process for the same goods and/or services that are the subject matter of the RFP Documents or subsequently enter into negotiations with any Person or Persons with respect to the goods and/or services that are the subject matter of the RFP Documents.

10.1.3 For clarity, 9.1 is not intended to limit the rights of the City or the Proponents to conduct themselves in accordance with the common law governing direct commercial negotiations in effect in accordance with Governing Law.

10.2 Limit on Liability

10.2.1 Notwithstanding that in accordance with 9.1.1 the RFP Documents are not a tender and are not intended to create Contract A, the Proponent and all other entities participating in the RFP Process agree that if the City is found to be liable, in any way whatsoever, for any act or omission of any of them in respect of the RFP Process, the total liability of the City to any Proponent or any other entity participating in the RFP Process, and the aggregate amount of damages recoverable against the City for any matter relating to or arising from any act or omission by any one or more of them, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the City will be no greater than the Proponent's cost of participating in the RFP Process, including the cost of preparing its Pricing Proposal, or the liability cap amount set out in the Data Sheet, whichever is less.

SECTION 11 - DEFINITIONS

11.1 General

11.1.1 In the RFP Documents, the singular is deemed to include the plural and the plural is deemed to include the singular, except where the context otherwise requires.

11.1.2 All references in the RFP Documents to "discretion" or "sole discretion" means in the sole and absolute discretion of the party exercising the discretion.

11.1.3 Proponents are advised to consult the "Solution Definitions" portion of Schedule B – High Level Business Goals (the "**Solution Definitions**") and the Definitions Appendix included in Schedule F – Standard Legal Terms, for additional definitions which may apply to the Work that are not included herein.

11.1.4 In the event of a conflict or inconsistency, the Solution Definitions shall govern with respect to the RFP Documents and RFP Process, Solution Definitions shall govern with respect to the Specifications, and the Definitions Appendix of Schedule F shall govern in all other instances.

11.2 RFP Definitions

11.2.1 Whenever used in the RFP Documents:

- (1) "**Addendum**" means a written addendum to the RFP Documents issued by the City as set out in 4.3;
- (2) "**Advisor**" means any Person retained to provide professional advice to the City or a Proponent, as applicable;

- (3) **"Affiliate"** means an "affiliate" as that term is used in *The Corporations Act* (Manitoba) and any successor legislation thereto;
- (4) **"Affordability Threshold"** is defined in 3.2.1(c);
- (5) **"Background Information"** is defined in 2.1.3;
- (6) **"Business Day"** means any day other than Saturday, Sunday, a statutory holiday in the Province of Manitoba or any day on which banks are not open for business in the City of Winnipeg, Manitoba;
- (7) **"City"** is defined in 1.1.1;
- (8) **"Commercially Confidential RFIs"** is defined in 4.1.1(d)(ii);
- (9) **"Confidential Information"** is defined in 4.10.1;
- (10) **"Conflict of Interest"** is defined in 5.1.6;
- (11) **"Contact Person"** means the contact person listed in the Data Sheet in respect of 1.2.1 and 4.1.1;
- (12) **"Contract A"** is defined in 10.1.1;
- (13) **"Contract B"** is defined in 10.1.1;
- (14) **"Control"** means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as the City or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint 50 percent or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests or by contract, trust or otherwise;
- (15) **"Evaluation Team"** is defined in 3.2.3;
- (16) **"Final Agreement"** is defined in 1.1.2;
- (17) **"Final Proponents"** is defined in 3.4.7;
- (18) **"First Negotiations Proponent"** is defined in 3.6.1(b);
- (19) **"General RFIs"** is defined in 4.1.1(d)(i);
- (20) **"Goods and/or Services"** is defined in 1.1.1;
- (21) **"Governing Law"** means the laws of Manitoba and the applicable laws of Canada;
- (22) **"Procurement Objectives"** is defined in 3.2;
- (23) **"includes"** and **"including"** means "includes without limitation" and "including without limitation" respectively;
- (24) **"Ineligible Person's Affiliate"** is defined in 4.6.1;
- (25) **"Ineligible Persons"** is defined in 4.6.1;
- (26) **"Initial Proponents"** is defined in 3.3.1;
- (27) **"Joint Venture Participant"** is defined in 4.15.1(b);
- (28) **"Joint Venture Proponent"** is defined in 4.15.1(b);
- (29) **"MERX"** means the web based electronic tendering system located at www.merx.com;
- (30) **"Negotiations Proponent(s)"** is defined in 1.1.2;
- (31) **"Notice"** means a written notice issued by the City as set out in 4.2;
- (32) **"Overall Score"** is defined in 3.5.4;
- (33) **"Person"** means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company, corporation or body corporate with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency authority or entity however designated or constituted;
- (34) **"Pricing Proposal"** is defined in 3.5.1;
- (35) **"Pricing Proposal Submission Deadline"** is defined in 3.5.1;
- (36) **"Proponent Representative"** is defined in 1.3.1;
- (37) **"Proponents"** is defined in 1.1.3;
- (38) **"Proponents Meeting"** is defined in 4.4.1;

- (39) **“Proposal”** is defined in 1.1.2 and for clarity refers to an Intent to Bid Form, a Pricing Proposal or both;
- (40) **“Proposal Information”** is defined in 4.12.4;
- (41) **“Proposal Information Licence”** is defined in 4.12.3
- (42) **“Proposed Solution”** means the entire Hosted Services platform, which is made up of several components and includes any relevant Professional Services, and which will be provided by the Successful Proponent (or by the Solution Vendor) pursuant to the Final Agreement. For the avoidance of doubt, the term Work, as used in this RFP and the Final Agreement, includes the provision of the Proposed Solution, but is not limited to the provision of the Proposed Solution;
- (43) **“RFIs”** is defined in 4.1.1;
- (44) **“RFP”** is defined in 2.1.1(a);
- (45) **“Data Sheet”** means Schedule A to this RFP;
- (46) **“RFP Documents”** is defined in 2.1.1;
- (47) **“RFP Number”** is defined in 1.1.1;
- (48) **“RFP Process”** is defined in 1.1.4;
- (49) **“Second Negotiations Proponent”** is defined in 3.6.1(b);
- (50) **“Shortlisted Proponents”** is defined in 3.3.7;
- (51) **“Stage 2 Score”** is defined in 3.3.5;
- (52) **“Stage 3 Score”** is defined in 3.4.5;
- (53) **“Stage 4 Score”** is defined in 3.5.4;
- (54) **“Standard Legal Terms”** is defined in 2.1.1(g);
- (55) **“Successful Proponent”** is defined in 1.1.2;
- (56) **“The Freedom of Information and Protection of Privacy Act (Manitoba)”** means *The Freedom of Information and Protection of Privacy Act*, CCSM c F175, as amended from time to time; and
- (57) **“Timetable”** is defined in 1.4;
- (58) **“Total Price”** means the price for all items required for the complete functioning of the Solution, including but not limited to the cost of all applications and software (including third party products), add-ons, patches, peripherals/ accessories, perpetual licence purchase if applicable, and/or Professional Services.