



## 895-2023 ADDENDUM 4

### PROFESSIONAL CONSULTING SERVICES FOR DEVELOPMENT OF ORGANIC WASTE PROCESSING SERVICES CONTRACT

#### **URGENT**

**PLEASE FORWARD THIS DOCUMENT TO  
WHOEVER IS IN POSSESSION OF THE  
BID/PROPOSAL**

ISSUED: January 30, 2024  
BY: Ash Raichura, P.Eng.  
TELEPHONE NO. 204 391 5311

**THIS ADDENDUM SHALL BE INCORPORATED  
INTO THE BID/PROPOSAL AND SHALL FORM  
A PART OF THE CONTRACT DOCUMENTS**

Template Version: Add 2021-03-05

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**Please note the following and attached changes, corrections, additions, deletions, information and/or instructions in connection with the Bid/Proposal, and be governed accordingly. Failure to acknowledge receipt of this Addendum in Paragraph 10 of Form A: Bid/Proposal may render your Bid/Proposal non-responsive.**

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#### **PART D – SUPPLEMENTAL CONDITIONS**

- Add: D1.2 Notwithstanding C1.1(gg), “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to applicable law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced Person engaged in a similar type of undertaking under the same or similar circumstances **at the same time and locality as the Project;**
- Add: D1.3 Notwithstanding C2.13, all rights and obligations under this Contract that necessarily extend beyond termination of this Contract shall survive termination or expiry of this Contract, including without limiting the generality of the foregoing, all indemnification provisions, intellectual property provisions, confidentiality provisions and all Consultant default and City remedy provisions.
- Add: D1.4 Notwithstanding C3.1, the Consultant declares that it:
- (a) has investigated the nature of Services to be done and all conditions; or
  - (b) has not investigated the nature of Services to be done or conditions; that might affect its performance of the Services
- and, in either event, assumes all risk for conditions now existing or arising in the course of the Services which have been or could have been determined through such investigation, and that they did not and does not rely upon information furnished by the City or any of their servants or agents other than information furnished in writing which specifically states it may be relied on for or in connection with the Contract by the Consulting Contract Administrator. **In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total cost and/or execution. These conditions and costs/delays associated with such variations are not the responsibility of Consultant unless same should have been identified in the performance of the Service pursuant to Good Industry Practice.**
- Add: D1.5 Notwithstanding C7.2, the Consultant shall perform, to the **reasonable** satisfaction of the Consulting Contract Administrator, all Services of every kind, either expressly or impliedly

required for the Project, including those identified in the Scope of Services, as well as any Change in Services **consistent with Good Industry Practice**.

- Add: D1.6 Notwithstanding C7.5.1, however, nothing done by the Consultant to remedy design errors or other deficiencies attributable to shortcomings of the Consultant **that do not meet Consultant's foregoing standard of professional care and Good Industry Practice**, including persons consulted, employed or supervised by it, shall entitle them to additional fees.
- Add: D1.7 Notwithstanding C7.14, the Consultant shall have the duty to coordinate the Services to be performed by the Consultant, Subconsultants, contractors, and the City's own forces throughout the Project **only to the extent necessary to achieve the delivery of the Services in compliance with the Contract**.
- Add: D1.8 Notwithstanding C7.18, the Consultant shall ensure that the Services comply with all laws, by-laws, ordinances, regulations, codes and orders of authorities having jurisdiction, which are or come into force during the performance of the Services and which relate to the Services. Where there are two or more laws, by-laws, ordinances, regulations or codes applicable to the Services the most restrictive shall apply. In the event a law, by-law, ordinance, regulation or code comes into force during the performance of the Services, and determined to be applicable to the Contract by the Consulting Contract Administrator, which could not have reasonably been anticipated by the Consultant, the Consultant shall be entitled to an adjustment in Contract Price (**or, if reasonably necessary, Schedule**) pursuant to C8.4.
- Add: D1.9 Notwithstanding C13.6, in the event that the claim is unsuccessfully defended, either in whole or in part, then the City may charge the Consultant with the amount to be paid to satisfy the judgment or order **up to Consultant's proportionate level of fault on the claim defended**.
- Add: D1.10 Notwithstanding C13.7, the Consultant shall pay to the City the value of all reasonable legal fees and disbursements required to settle any such claim or to defend the City against any such action, proceeding, claim or demand, **up to Consultant's proportionate level of fault on the claim being defended**, 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.
- Add: D1.11 Notwithstanding C14.1(a), discontinues providing the Services **other than for reasons of suspension or termination of the Services by the City or Consultant's exercise of its termination rights under applicable law**; or
- Add: D1.12 Notwithstanding C14.1(c), is not performing or has not been performing the Services, or any part thereof in a professional manner and in all respects in conformity with the Contract; or
- Add: D1.13 Notwithstanding C14.2(a), withhold or retain the whole or part of any payment **up to the disputed amount**;
- Add: D1.14 Notwithstanding C14.2(c), demand payment for any amount owed to the City, including **direct and reasonable** amounts paid or costs incurred by the City in connection with the event of default;
- Add: D1.15 Notwithstanding C14.5, in addition, the City shall have the right to terminate this Contract due to a suspension or interruption of the Project **for more than 90 days** as a consequence of a Force Majeure.
- Add: D1.16 Notwithstanding C14.10, it is expressly understood and agreed that the City shall reserve a right of set-off, **to be reasonably exercised**, for any default by the Consultant arising from the termination of this Contract, in addition to any other remedies that it may have at law.

Add: D1.17

Notwithstanding C15.2, the **Parties** shall not assign this Contract or any payments thereunder without the prior consent of the **other Party**, **unless the City's role in organic waste collection as currently envisioned by the RFP is assigned or appropriated by another government agency.**