

## CONDITIONS OF PRE-QUALIFICATION

### 1.0 SUBMISSION OF INFORMATION

- 1.1** The conditions herein constitute a part of the Request for Pre-Qualification.
- 1.2** This document contains all the requirements relating to this Request for Pre-Qualification. Any other information or documentation provided to, or obtained by the Respondent from any source prior to the published date of this Request for Pre-Qualification, has no force or effect in relation to this Request for Pre-Qualification.
- 1.3** In accordance with approved policy of City Council, each supplier and contractor shall, as a condition of supplying goods and services to The City, make full disclosure of any of the following existing business relationships with any member of Council, the City Manager, City General Managers, or any employee of The City who makes recommendations for award;
- If a private company - Details of ownership of shares by any of the above.
  - If a public company - Details of any ownership of shares, in excess of 1% of total shares issued by any of the above.
  - If a partnership - Details of any partnership arrangement of any of the above.
  - Details of any directorship of any of the above, unless the directorship is only by reason of the individual being a member of Council, and who has Council's authorization to vote.
  - Details of any direct or indirect pecuniary interest of any of the above in the supply of such goods and services.
  - Disclosure, if any, must be made in writing at time of submission,
  - Details of ownership or partnership arrangements of any immediate relative employed by The City who alone or with other relatives hold more than a 25% interest.
- 1.4** All submissions become the property of The City of Calgary.

### 2.0 INTELLECTUAL PROPERTY

- 2.1** Unless otherwise agreed and confirmed in writing:
- (a)** “Intellectual Property” means all property, works, reports, data, compilations of information, computer programs, written presentations, speeches, memoranda, research, drawings, sketches, layouts, commercial material, working papers, documents, copy, transcripts, ideas, photographs and negatives, films, videotapes, video, audio and audio-visual productions and other materials in all forms and however fixed, stored, expressed or embodied, created, developed, generated, authored or produced by either party in performance of the Pre-Qualification.
- (b)** “Intellectual Property Rights” means all intellectual and industrial property rights including but not limited to all copyright, all copyright applications, trademarks, patents, inventions, patent applications, industrial designs, trade secrets and rights in Intellectual Property.

**2.2** Unless otherwise agreed and confirmed in writing:

- (a)** All material, including but not limited to programs, reports, notes, maps, drawings, photographs, data, forms and other records prepared, created, written or recorded by: (a) the Respondent, or (b) The City, or (c) the Respondent and The City jointly, in connection with the deliverables under this RFPQ (“Deliverables”) will be the property of The City, accordingly, the Respondent hereby assigns to The City all rights (including Intellectual Property Rights), title and interest it may have from time to time in the Deliverables and copyright therein will vest in The City.
- (b)** During the Term, the Respondent shall have a non-exclusive, non-transferable license to use such material for the sole purpose of providing and completing the Deliverables required under this Pre-Qualification. Upon the termination or completion of the Project, the Respondent will promptly return such material to The City whether complete or not. Notwithstanding the previous sentence, the Respondent may retain for archival purposes a single copy of each item of such material.
- (c)** Every invention, discovery or improvement developed by the Respondent in the course of, or in conjunction with the Deliverables within the Agreement where the invention, discovery or improvement has been initiated or directed or specifically requested by The City, will be the property of The City, accordingly, the Respondent hereby assigns any Intellectual Property Rights to any invention, discovery or improvement developed to The City.

**2.3** Unless otherwise agreed and confirmed in writing:

- (a)** The parties acknowledge and confirm that any Intellectual Property that was developed prior to this RFPQ, or that was developed by the Respondent independently from any Agreement with The City, or that was developed at the sole initiative of the Respondent without any prior initiation or direction or request from The City, will be outside the scope of section 2.2.
- (b)** In the event any Deliverables are subsequently reused or modified in any material respect without the prior written consent of the Respondent, The City agrees to indemnify the Respondent from any claims resulting from such unauthorized reuse or modification.

**2.4** The Respondent represents and warrants that it has the sole and unrestricted right, title and interest or good and sufficient power, authority and right to use any Intellectual Property required for any Deliverable, product, equipment, work or services required for the performance of the Pre-Qualification.

**2.5** The Respondent shall pay all fees associated with the use of the Intellectual Property including but not limited to license fees and royalties required for any Deliverable, product, equipment, work or services required for the performance of the Pre-Qualification.

**2.6** At its sole expense, the Respondent will defend and hold The City harmless from and against all claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Respondent’s performance of the Pre-Qualification or delivery of the deliverables, which are attributable to an infringement or an alleged infringement of any Intellectual Property Rights by the Respondent, or anyone for whose acts he may be liable.

**2.7** If The City is enjoined or there is a reasonable likelihood that it may be enjoined as a result of an injunction or claim from using any Intellectual Property that is incorporated into or associated with any Deliverable, product, equipment or work or services performed by the Respondent, the Respondent, at its sole expense, shall:

- (a) procure the right for The City to continue using the Intellectual Property; or
- (b) replace or modify the Intellectual Property to make it non-infringing, so long as such replacement or modification does not adversely affect the performance or use of the product or equipment or work or services generally, all subject to the prior approval by the City.

**2.8** If applicable and so provided in the Supplementary Conditions of Pre-Qualification, the Respondent will assign Intellectual Property Rights and waive any moral rights as required in respect of Deliverables, or as otherwise mutually agreed.

### **3.0 COMMITMENT**

**3.1** No commitment exists under this Request for Pre-Qualification.

### **4.0 LIMITATION OF LIABILITY & COST OF PREPARATION**

**4.1** Any liability of The City as a result of or in connection with the acceptance of any Respondent or the rejection of any Respondent, or the rejection of all Respondents, is limited to the lesser of the reasonable costs of the preparation of the Response or the reasonable costs of the Response of all Respondents claiming damages collectively, as the case may be, or the sum of \$50,000.00. The foregoing limitation of liability applies in respect to each Respondent and all Responses in connection with this Request for Pre-Qualification, whether compliant, non-compliant, regular or irregular.

**4.2** The City will not be responsible for any costs incurred by the Respondent in the preparation of this Request for Pre-Qualification.

### **5.0 NO AWARD OF CONTRACT**

**5.1** The City will not award a contract from any Response to this Request for Pre-Qualification.

### **6.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FOIP)**

**6.1** The City acknowledges that each Request for Pre-Qualification may contain information in the nature of a Respondent's trade secrets or commercial, financial, labour relations, scientific or technical information of or about a Respondent. The City acknowledges and agrees that any Response to this Request for Pre-Qualification is provided in confidence and protected from disclosure to the extent permitted under law. The City is bound by FOIP.

**6.2** A Respondent should identify appropriate parts of any the response or submission as confidential since this will clearly establish its expectations toward the document, both to The City as a public body and to the Information and Privacy Commissioner in any review or refusal of access. The City, however, may not be able to meet these expectations in every instance.

### **7.0 GIFTS AND DONATIONS**

**7.1** Respondents shall ensure that no representative of the Respondent offers or extends entertainment, gifts, gratuities, discounts, or special services, regardless of value, to any employee of The City. The Respondent shall report to Finance and Supply any attempt by The City employees to obtain such favours.

## **8.0 ENVIRONMENTAL CONSIDERATIONS**

**8.1** Respondents are advised that The City may give consideration to products and services that are environmentally preferred, where it can be demonstrated that products or services have a lesser impact on human health and the environment when compared with competing products. Environmental considerations will be clearly set out in the Qualification Criteria, if they are to be considered by The City.

## **9.0 SAFETY**

**9.1** The successful Respondent will comply with all applicable statutes, regulations, by-laws, rules, orders and other requirements howsoever enacted or imposed by Federal, Provincial, Municipal, or other governmental bodies, agencies, tribunals or other authorities with respect to the obligations hereunder including without limitation Workers' Compensation Act, Occupational Health and Safety Act, Labour Relations Code.

**9.2** At the discretion of the City, any Respondent may be requested to provide a Statement of Outstanding Orders from Workplace Health and Safety

## **10.0 CONFLICT OF INTEREST**

**10.1** During the term of each Agreement, the Respondent must not engage in or provide, to any other person or company or entity, any service or act which would be reasonably perceived to be in conflict with the interest of The City in respect of the services being provided by the Respondent to The City.

**10.2** The Respondent must provide timely disclosure of any actual or potential conflict of interest for this project, including any arising from any common ownership or association with any party that has worked on or is working on any part of the project.

**10.3** Any failure to provide timely disclosure of any potential conflict of interest, or failure to avoid engaging in or providing to any other company or entity any service or act which could be reasonably perceived to be in conflict with the interest of The City in respect of the services being provided by the Respondent to The City or in violation with any legislation regarding fair competition, will be grounds for terminating any engagement of the Respondent. Any such failure may also be noted on the performance record maintained by The City for the Respondent.

## **11.0 NO COLLUSION**

**11.1** Except as otherwise specified or as arising by reason of a provision of the contract documents, no person either natural, or body corporate, other than the Respondent has or will have any interest or share in its Response or in any award or contract arising out of future potential competitive bids arising out of this Request for Pre-Qualification. There must be no collusion or arrangement between the Respondent and any other actual or prospective Respondents in connection with the submitted in response to this Request for Pre-Qualification and the

Respondent confirms that it has no knowledge of the contents of any other Responses and has made no comparison of figures or agreement or arrangement, express or implied with any other party in connection with the making of its Response.