

CONDITIONS OF PROPOSAL

1.0 SUBMISSION OF PROPOSAL

- 1.1** The conditions herein constitute a part of the Request for Proposal. Proposals submitted that do not include a signed copy will not be accepted.
- 1.2** All communications regarding this Request for Proposal must be sent to individual(s) designated. The City will not assume responsibility for any communication other than from the designated contact person.
- 1.2.1** Should the Proponent find discrepancies in, or omissions from, the specifications, or should the Proponent be in doubt as to their meaning, the Proponent should notify Finance and Supply, and if agreed by Finance and Supply that clarification is needed, a written addendum will be issued.
- 1.2.2** Any request for an extension to RFP closing date will only be considered if received by Finance and Supply no less than three (3) business days prior to the closing date.
- 1.3** If space provided for submission of your Proposal is insufficient, extra sheets may be attached. All such sheets should be identified by the Proponent as being part of the Proposal submission.
- 1.4** This document, inclusive of any appendices and annexes, and documents incorporated by reference, contains all the requirements relating to this RFP. Other information or documentation provided to, or obtained by the Proponent from any source prior to the published date of this RFP, has no force or effect in relation to this RFP.
- 1.5** A Proposal is to be signed by a representative of the Proponent, authorized to sign on behalf of, and bind the Proponent to, statements made in the Proposal.
- 1.5.1** If the Proponent is a corporation or cooperative, the Proposal should be under its corporate seal. If the Proponent is an individual person, there should be an affidavit of execution. If the Proponent is an association of persons or a firm not incorporated, each member of the association or firm should affix his seal to the Proposal.
- 1.5.2** If a corporation or other legal entity does not have a corporate seal or if the corporate seal is unavailable, the corporation or entity should provide an Affidavit of Execution and an Affidavit of Corporate Signing Authority.
- 1.6** 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.

Each Proponent must make full disclosure of any relationship with any employee of The City who makes recommendations concerning the selection or award of Proposals or any employee who may allot work to or order supplies from the successful Proponent. In addition, each Proponent must reveal any details or ownership or partnership arrangements of any immediate relative employed by The City who alone or with other relatives hold more than a 25% interest.

Disclosure, if any, must be made in writing and accompany the Proposal.

Each Proponent must avoid any conflict of interest in preparing its Proposal. Any involvement in the preparation of a Proposal by any person who assisted The City in the preparation of this RFP, either as an employee of The City or as a consultant to The City, will be grounds for The City to reject such Proposal.

- 1.7** This RFP is to be governed, construed, interpreted and enforced in accordance with the laws in force in the Province of Alberta. Each Proponent hereby irrevocably and unconditionally submits itself to the exclusive jurisdiction of the courts in the Province of Alberta and all courts competent to hear appeals therefrom, in all matters relating to this RFP.
- 1.8** The parties expressly exclude from this Agreement any application of the United Nations Convention of Contracts for the International Sales of Goods ("The Convention"), and further exclude from this Agreement any application of the International Sale of Goods Contracts Convention Act (Canada). For further clarity, pursuant to Section 2(3) of the International Conventions Implementation Act (Alberta), the parties confirm that the domestic laws in force in Alberta apply to this Agreement and that The Convention does not apply to it. The City will not be bound by any disclaimer in a Proposal, and any expressed warranty or condition does not negate a warranty or conditions implied by The Sale of Goods Act (Alberta) unless inconsistent therewith.
- 1.9** All Proposals submitted become the property of The City of Calgary.
- 1.10** The successful Proponent must obtain and maintain all permits, licenses and certificates of approval required for the Work to be performed under any applicable federal, provincial or municipal legislation. The successful Proponent shall be responsible for any charges imposed by such legislation or regulations. Upon request, the successful Proponent shall provide a copy of any such permit, license, or certificate to work in Canada.
- 1.11** Prior to awarding the RFP, The City may require approval of the Proponent by The City's Finance Business unit. If approval by the Finance Business unit is required, then it will need to carry out credit checks. If The City advises that such approval by the Finance Business unit is required, upon The City providing to the Proponent a "Credit Application" form, the Proponent must then complete and promptly return to The City the completed form to enable the required checks to be made.

2.0 OWNER'S RIGHT TO AMEND CLOSING

2.1 The City reserves the right to postpone Proposal closing. In such event all Proponents will be formally advised of the new Proposal Closing Time.

3.0 PROPOSAL PRICES

3.1 Prices quoted must be in Canadian Currency.

3.2 Each Proponent shall quote prices on the Price Detail Sheet(s).

3.3 The Proponent warrants pricing to be firm and open for acceptance within 90 days of Proposal closing.

3.4 Unless otherwise stipulated, only firm prices will be considered. If a Proposal is accepted, the successful Proponent may not vary any stated price except for changes due to any increase or decrease of eligible governmental taxes or duties, or governmental transportation tariffs.

4.0 GOODS AND SERVICES TAX AND CUSTOMS DUTY

4.1 The successful Proponent agrees that all Canadian G.S.T. and Customs, Duty entitlements provided by the Excise Tax Act Canada and Customs/Tariff Acts and Tax or Custom Duty rate decreases and exemptions resulting from amendments, re-classifications, remissions, or clarifications thereof on tax and duty included goods and materials, whether recognized or not at the time of award, must be passed on to The City, excluding any taxes based upon or determined by reference to the Proponent's income which are the responsibility of the Proponent.

4.2 If the successful Proponent manufactures or purchases any goods with respect to this Request for Proposal from outside of Canada, the successful Proponent must ensure that its agent or representative is the importer of record, unless otherwise expressly stipulated by The City or agreed to by the parties and confirmed in writing.

4.3 The City shall not be liable for and the successful Proponent shall indemnify The City with respect to any special or dumping duties which may be levied by the Canada Border Services Agency (CBSA), Anti-Dumping and Countervailing Directorate, under the provisions of the Special Import Measures Act (Canada) upon any imported goods required in the supply of materials in any order or in the performance of the contract awarded as a result of this Request for Proposal.

5.0 ALTERNATES

5.1 Each Proponent may submit prices for alternate materials or services. The City may, in its sole discretion, accept a Proposal for alternate materials or services. The City reserves the right to accept an alternate Proposal notwithstanding that other Proponents were not given an opportunity to submit a Proposal on such alternate materials or services, and The City may ultimately enter into a contract for the supply of materials or services which are substantially or completely different from those that were described in the Request for Proposal.

5.2 If a Proponent proposes more than one alternate, The City may accept any alternate or combination of alternates. Any Proponent proposing alternative materials or supplies must

provide full particulars of such alternates with its Proposal. If such particulars are not included, The City may refuse to consider the Proposal.

6.0 DELIVERY

6.1 Delivery time is critical on all deliveries of material by the successful Proponent and no extension of time given on any occasion will be deemed to be a general waiver of this condition.

5.2 Each Proponent must state delivery dates. Orders placed as a result of this Request for Proposal may be subject to cancellation if a stated delivery is not adhered to. Notice of cancellation will be by the Manager, Supply of The City of Calgary or its authorized agent only.

6.3 The City's standard International Commercial Term (INCOTERM) is Delivery Duty Paid.

7.0 ACCEPTANCE OR REJECTION

7.1 The City reserves the right to reject any or all Proposals. The lowest, or any, bid may not necessarily be accepted. Without limiting the generality of the foregoing, any Proposal which:

- (a)** is incomplete, obscure, irregular or unrealistic
- (b)** has one or more errors
- (c)** omits a price on any one or more items in any schedule
- (d)** fails to complete the information required in any schedule or tabulation
- (e)** is accompanied by a Proposal Deposit in an unsatisfactory form or insufficiently executed or of insufficient amount
- (f)** is unable to financially meet the scope of the award
- (g)** has not complied with applicable Federal, Provincial or municipal licensing regulations, or bylaws or requirements

may at The City's sole discretion be rejected. Further, a Proposal may be rejected on the basis of the Proponent's past performance, completion schedule and compliance with Federal, Provincial and Municipal Legislation.

7.2 As it is the purpose of The City to obtain a Proposal most suitable to the interests of The City and what it wishes to accomplish, The City has the right to waive any minor or inconsequential irregularity or insufficiency or non-compliance in any Proposal submitted and to accept the Proposal which is deemed most favorable to the interest of The City.

(a) Where practicable to do so, The City may, as a condition of Proposal acceptance, request a Proponent to correct a minor and inconsequential irregularity with no change in Proposal price.

(b) The determination of what is or is not a minor and inconsequential irregularity, the determination of whether to accept, waive, or require correction of an irregularity and the final determination of the validity, will be at the sole discretion of the Manager, Supply.

8.0 CANCELLATION

8.1 Prior to award, The City reserves the right to cancel this complete RFP via written notice. In all cases, notice of cancellation will be issued by The City of Calgary, Finance and Supply Business Unit only.

8.2 After award, the City reserves the right to cancel the contract in accordance with Condition 12.0.

9.0 FISCAL FUNDING OUT

9.1 The successful Proponent acknowledges that The City cannot make financial commitments beyond The City's current fiscal year. In this regard, it is understood by The City and the successful Proponent that The City shall annually make bona fide requests of its approving authority for appropriations of sufficient funds to make payments covered by this Agreement.

9.2 Should the approving authority not appropriate such funds, The City will notify the successful Proponent, as set forth below, of its intention to terminate the goods or services so affected. This notice will also state that unless further funds are appropriated prior to the expiry of the period of the notice, the services are to be terminated and that The City shall not replace the service with substitute or comparable service by another party. If further funds are appropriated within twelve (12) months from the date of termination, The City will either renew the award to the successful Proponent or if The City and successful Proponent are unable to reach agreement on the terms of a renewed award The City will issue a new RFP. If further funds are appropriated more than twelve months from the date of termination The City will issue a new RFP.

9.3 Such termination will take effect thirty (30) calendar days from the date of notification and will not constitute an event of default.

10.0 COMMITMENT

10.1 Proponents are advised that no commitment exists under this Request for Proposal, until such time as the successful Proponent receives official written confirmation from the Manager, Supply.

11.0 ASSIGNMENT OF CONTRACT

11.1 Any resulting contract from this Proposal may not be assigned or transferred in any manner whatsoever without the prior written permission of the Manager, Supply.

12.0 THE CITY'S RIGHT TO TERMINATE THE CONTRACT

12.1 Any of the following occurrences or acts will constitute an event of default by the successful Proponent under the contract:

- (a)** Non-performance or non-observance of any of its other covenants, agreements, or obligations hereunder, express or implied, continuing for fifteen (15) days after The City has given the successful Proponent notice in writing. If the failure cannot be remedied within fifteen (15) days, then The City at its discretion may extend the time period or terminate the contract.
- (b)** An assignment for the benefit of creditors or becoming bankrupt or insolvent, or taking the benefit of any legislation for the protection of bankrupt or insolvent parties.
- (c)** The appointment of a Receiver for the successful Proponent.

In the event either (b) or (c) occurs, The City will have the right to terminate the contract immediately.

12.2 Notwithstanding anything contained herein, The City may, at any time during the term of the contract, upon giving thirty (30) days notice to the successful Proponent, terminate the contract if The City is of the opinion that the services supplied by the successful Proponent, are not of a standard satisfactory to The City or that the successful Proponent no longer has the financial capability to perform its obligations under the contract. Further, The City in its sole discretion may terminate the agreement immediately upon written notice to the successful Proponent for reasons including but not limited to unethical or criminal activities by the Proponent, its officers, employees, representatives, agents, contractors or sub-contractors.

13.0 SATISFACTORY GOODS/ SERVICES PERFORMANCE

13.1 The City reserves the right to reject any Proposal based on products that have not demonstrated proven satisfactory performance through field trials or actual use by The City or a comparable organization. Whether a product meets this requirement will be the sole discretion of The City.

13.2 In the event any material or service supplied to The City is found to be defective or does not conform to the specifications, The City reserves the right to cancel the order, or part thereof, upon written notice to the successful Proponent and return the products, or part thereof, to the successful Proponent, at the successful Proponent's expense.

14.0 SATISFACTORY VENDOR PERFORMANCE

14.1 The successful Proponent may be evaluated periodically throughout the course of work or at the end of the project as the case may be. Any evaluations will be shared with the successful Proponent, with the goal of immediate and permanent resolution where problems and concerns occur.

14.2 The City and the successful Proponent acknowledge that delays in performance may arise due to events beyond their reasonable control. Such delays will be excusable and the relevant obligations suspended, but only for such period of time as the cause for the delay remain beyond the reasonable control of the obligated party.

15.0 INSURANCE REQUIREMENTS

15.1 The successful Proponent shall during the term of this Agreement and at its own expense maintain with Insurers allowed by the laws of the Province of Alberta to issue insurance policies in Alberta and in forms satisfactory to the City Solicitor the following insurance policies:

- (a)** A Commercial General Liability insurance policy for bodily injury (including death) and property damage in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) inclusive limit for any one occurrence and such policy shall include:
 - i)** The City as an Additional Insured;
 - ii)** a Cross Liability clause;
 - iii)** contractual liability coverage;
 - iv)** non-owned Automobile liability clause;

- 15.2** A Professional Liability insurance policy for damages arising out of errors, omissions, or negligent acts by or on behalf of the successful Proponent in providing professional services under this Agreement, such insurance policy to be in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) for any one claim, and in the annual aggregate, or such other amount as agreed to by The City and the successful Proponent and confirmed in writing, and such insurance shall remain in operation for at least twelve (12) months after end of the contract
- 15.3** The said insurance policies shall include provision for the City to be given thirty (30) days written notice prior to cancellation, and thirty (30) days prior notice of any material change requested by the successful Proponent of said insurance policies.
- 15.4** The successful Proponent shall furnish documentary evidence satisfactory to the City Solicitor of evidence of such policies and of the renewal or continuance of such insurances within ten (10) business days of any expiry date(s) thereof.
- 15.5** The successful Proponent and not The City shall be responsible for any deductible that may apply in any of the said insurance policies.
- 15.6** The successful Proponent covenants and agrees that the City's insurance requirements mentioned above will not be construed to and shall in no manner limit or restricts the liability of the Proponent.
- 16.0 INDEMNIFICATION**
- 16.1** The successful Proponent by its acceptance of the purchase order, agrees to defend, indemnify and hold harmless The City, its officials, officers, employees and agents, from and against all loss or expense by reason of the liability incurred by The City, its officials, officers, employees and agents, for damages because of breach of any term or condition of this Request for Proposal and any resulting contract (if applicable), negligence, bodily injury, including death, at any time resulting therefrom, sustained by any person or persons, or on account of damage to property, including loss of use thereof, arising out of or in consequence of the performance of this contract.
- 16.2** In the event of an award the successful Proponent may not under any circumstances:
- be entitled to consequential damages or special damages
 - be permitted to limit their liability to an amount less than two million (\$2,000,000.00) dollars.
- 17.0 LIMITATION OF LIABILITY & COST OF PREPARATION**
- 17.1** Any liability of The City as a result of or in connection with the acceptance of the Proposal of any Proponent or the rejection of the Proposal of any Proponent, or the rejection of all Proposals, is limited to the lesser of the reasonable costs of the preparation of the Proposals of the Proponent or the reasonable costs of the Proposals of all Proponents 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 Proposal and all Proposals in connection with this Request for Proposal, whether compliant, non-compliant, regular or irregular.
- 17.2** Any cost incurred by the Proponent in the preparation of a Proposal must be borne solely by the Proponent.

18.0 EXECUTION OF FORMAL AGREEMENT

- 18.1** If the Proponent's Proposal is accepted, the Proponent may, at the discretion of The City, be required to enter into a formal agreement depending on the value and complexity of the matter. If a formal agreement will be required a sample, similar in form to the agreement that will be required, will be available from the contact for Proposal information or can be found at www.calgary.ca/vendor.
- 18.2** Any formal agreement required will be prepared by The City and provided to the Proponent for review. The Proponent will endeavor in good faith and in a timely manner to clarify, or negotiate if circumstances require, and to finalize the formal agreement without delay. Failure to finalize an agreement in a timely manner will constitute grounds for termination.
- 18.3** In the event The City does not require a formal agreement to be entered into between the Proponent and The City, The City and the successful Proponent agree that the terms and conditions of the award will be as set out in this RFP, including the Conditions of Proposal and any Supplementary Conditions of Proposal, the Proposal, and the award letter. In the event of any inconsistency between any of these documents, the inconsistency or conflict is to be resolved by the order of precedence to be accorded to each of the documents as follows, with the letter of award to be given the highest ranking:
- (a) the letter of award,
 - (b) an addendum, and if there is more than one addenda, the most recent addendum,
 - (c) Supplementary Conditions of Proposal,
 - (d) Conditions of Proposal, and
 - (e) Proposal.

19.0 COLLUSION AND CONFLICT OF INTEREST

- 19.1** 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 Proponent has or will have any interest or share in its Proposal or in any award or contract arising out of this Request for Proposal. There must be no collusion or arrangement between the Proponent and any other actual or prospective Proponents in connection with any Proposal submitted in response to this Request for Proposal and the Proponent confirms that it has no knowledge of the contents of other Proposals 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 Proposal.
- 19.2** During the term of each Agreement, the Proponent 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 Proponent to The City.
- 19.3** The Proponent 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.
- 19.4** 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 Proponent to The City or in violation with any legislation regarding fair competition, will be grounds for terminating any engagement of the Proponent. Any such failure may also be noted on the performance record maintained by The City for the Proponent.

20.0 GIFTS AND DONATIONS

20.1 Each Proponent shall ensure that there will be no gifts, gratuities, discounts, special services or personal benefits provided or offered to any employee or representative or consultant of The City from the successful Proponent or any of its employees or representatives in connection with this RFP. Proponents should report to Finance and Supply any attempt by any employee or representative or consultant of The City to obtain any such or similar favour or personal benefit. Any material failure on the part of a Proponent to comply with this provision will be grounds for disqualification or for termination if an award has already been made.

21.0 GOVERNMENTAL BODIES

21.1 While the requirements of this RFP do not take into consideration the requirements of regional entities, the successful Proponent will, if requested, be expected to supply at prices and discounts quoted by them on this Proposal, the needs of other municipal governmental bodies, civic partners and regional entities, such as the Public/Separate School Boards. Any additional delivery charges will be negotiated between the relevant body and the Proponent.

22.0 INTELLECTUAL PROPERTY

22.1 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 Proposal.
- (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.

22.2 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 Proponent, or (b) The City, or (c) the Proponent and The City jointly, in connection with the deliverables under this RFP (“Deliverables”) will be the property of The City, accordingly, the Proponent 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 Proponent 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 Proposal. Upon the termination or completion of the Project, the Proponent will promptly return such material to The City whether complete or not. Notwithstanding the previous sentence, the Proponent may retain for archival purposes a single copy of each item of such material.

- (c) Every invention, discovery or improvement developed by the Proponent 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 Proponent hereby assigns any Intellectual Property Rights to any invention, discovery or improvement developed to The City.

22.3 Unless otherwise agreed and confirmed in writing:

- (a) The parties acknowledge and confirm that any Intellectual Property that was developed prior to this RFP, or that was developed by the Proponent independently from any Agreement with The City, or that was developed at the sole initiative of the Proponent without any prior initiation or direction or request from The City, will be outside the scope of section 22.2.
- (b) In the event any Deliverables are subsequently reused or modified in any material respect without the prior written consent of the Proponent, The City agrees to indemnify the Proponent from any claims resulting from such unauthorized reuse or modification.

22.4 The Proponent 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 Proposal.

22.5 The Proponent 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 Proposal.

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

22.7 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 Proponent, the Proponent, 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.

22.8 If applicable and so provided in the Supplementary Conditions of Proposal, the Proponent will assign Intellectual Property Rights and waive any moral rights as required in respect of Deliverables, or as otherwise mutually agreed.

23.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (FOIP)

23.1 The City acknowledges that each Proposal may contain information in the nature of a Proponent's trade secrets or commercial, financial, labour relations, scientific or technical information of or about a Proponent. The City acknowledges and agrees that Proposals in response to this Request for Proposal are provided in confidence and protected from disclosure to the extent permitted under law. The City is bound by FOIP.

The Proponent should identify appropriate parts of any Proposal 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.

24.0 ENVIRONMENTAL CONSIDERATIONS

24.1 Proponents 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 or the environment or both when compared with competing products. Environmental considerations will be clearly set out in the Evaluation Matrix, if they are to be considered by The City.

25.0 SAFETY

25.1 The successful Proponent 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.

25.2 At the discretion of the City, Proponents may be requested to provide a Statement of Outstanding Orders from Workplace Health and Safety.

26.0 WORKERS' COMPENSATION BOARD

26.1 The successful Proponent shall ensure compliance with the requirements of the Workers' Compensation Act (Alberta) and amendments thereto and any regulations thereunder. Proponent must maintain an account in good standing with the Workers' Compensation Board. The successful Proponent's account must include coverage for all partners, proprietors or directors of the firm, company or corporation who are present or may have cause to be at the work site. The City requires the successful Proponent to provide verification from the Workers' Compensation Board that the successful Proponent has an account in good standing with the Workers' Compensation Board prior to proceeding with the Work, and The City may seek further verification any time during the performance of the Contract. The City notwithstanding any provision in the Contract Documents may refuse to make a final payment to the successful Proponent unless the successful Proponent furnishes a letter or other evidence from the Workers' Compensation Board that the successful Proponent's account with the Board is in good standing.

26.2 If at any time The City receives from the Workers' Compensation Board advice to the effect that the account of the successful Proponent has ceased to be in good standing with the said Board, or that there are amounts which the successful Proponent owes to the Board, by reason of any act or omission or failure to comply of the successful Proponent of any order made by the Workers' Compensation Board, or if The City receives from the Workers' Compensation Board a demand for payment by The City by reason of any act or omission of the successful Proponent under the provisions of the Workers' Compensation Board, The City may suspend payments due to the successful Proponent until either;

- (a) the successful Proponent has obtained a letter of clearance from the Board indicating that the successful Proponent no longer owes money to the Board, or has otherwise been brought into good standing; or
- (b) The City pays the Workers' Compensation Board the amount owing on behalf of the defaulting successful Proponent or the amount of the demand for payment in respect of the successful Proponent or any Sub-Contractor.

26.3 If The City is required to pay any amount to the Workers' Compensation Board of Alberta on behalf of the Successful Proponent by reason of any wrongful act or omission of the successful Proponent, The City may deduct the amount from any amount owing to the successful Proponent under the Contract or under any other contract, or may demand a reimbursement by the successful Proponent to The City for the amount so paid by The City. This right will be in addition to and not in substitution for any other right at law or in equity which The City has by reason of the failure of the successful Proponent to comply with the provisions of the Workers' Compensation Act (Alberta).

27.0 CLARIFICATION

27.1 The City reserves the right to seek clarification from any Proponent to assist in the evaluation of its Proposal.

28.0 NEGOTIATION

28.1 By submitting a Proposal, a Proponent accepts that a contract may be concluded upon notification by The City; however, The City reserves the right to negotiate with any Proponent. If the parties after having bargained in good faith are unable to conclude a formal agreement, The City and the Proponent will be released without penalty or further obligations other than any surviving obligations regarding confidentiality and The City may, at its discretion, contact other Proponents whose Proposals are considered suitable and attempt to conclude a formal agreement with them.

29.0 DISPUTE RESOLUTION

29.1 Any dispute between the parties as to the interpretation of, subject matter of, or in any way related to, any one or more of the Contract Documents, is to be resolved by the two parties attempting to reach a fair and equitable resolution by using, in good faith, one or more of the following means, in the order listed, until a resolution is arrived at. The means to be used are:

- (a) negotiation;
- (b) mediation;
- (c) arbitration; or
- (d) legal proceedings in a court of competent jurisdiction.

Except for the purposes of preserving a limitation period or obtaining an appropriate interim order or remedy where reasonably necessary, unless otherwise agreed to in writing by the two parties, it will be a condition precedent to the bringing of any legal proceedings that the means or procedures in this clause have been used and followed in good faith. With respect to mediation, unless otherwise agreed to in writing by both parties, mediation will be in accordance with the procedures of the ADR Institute of Canada, Inc. (hereinafter sometimes referred to as the "Institute"), using as mediator a third party neutral person either as mutually agreed to by the parties, or if the parties are unable to agree as selected by the Institute. With respect to arbitration, unless otherwise agreed to in writing by both parties, arbitration is to be by way of a single arbitrator pursuant to the Arbitration Act (Alberta), in accordance with the rules and procedures of the Institute.