

1. GENERAL

- a. Proponent shall read and be governed by all aspects and terms of this RFP.
- b. Proponent shall supply all labour, materials and equipment required to supply goods or services as specified.
- c. Proponent shall identify the authorized representative for communication purposes.
- d. No verbal agreements or conversation with any officer, agent or employee of the City, either before or after the execution of the Proposal, shall effect or modify any of the terms or obligations herein contained.

2. NEGOTIATION

- a. This is a Request for Proposals ONLY and will not give rise to a Contract A "bid contract". The City is free to negotiate with any of the proponents and as a result of the negotiation process the City is not required to treat all proponents equally.
- b. The City recognizes that "**Best Value**" is the essential part of purchasing a product and/or service and therefore the City may prefer a RFP with a higher price, if it offers greater value and better serves the City's interests, as determined by the City, over a RFP with a low price. The City's decision shall be final.

3. QUALIFICATIONS & COMPETENCY OF PROPONENTS

The City reserves the right to reject Proposals from Proponents who are unable to provide evidence that they are capable of providing the necessary labour, materials, equipment and adequate financial arrangements for satisfactory performance and provision of services as herein specified. Evidence of such competency and experience must be provided, and the proposal shall be evaluated taking such evidence into account.

4. FINANCIAL STABILITY

Before the award of any contract, the Proponent may be required to furnish evidence satisfactory to The City, in its sole and absolute judgement, of the necessary facilities, ability and financial resources to fulfil the conditions of the contract.

5. LIABILITY

The Proponent shall ensure that the City, its officers, agents and employees, are saved harmless from any liability whatsoever arising out of Contractor's performance or non-performance of the term of this Proposal.

6. RIGHT TO CANCEL RFP & ACCEPT PROPOSALS

- a. The City reserves the right to cancel this RFP at any time without liability for any loss, damage, cost or expense incurred or suffered by any Proponent as a result of the cancellation.
- b. The City shall not be obligated either to accept or reject any non-compliance with the requirements of this request.
- c. In considering any delivered response to this RFP, the City reserves the absolute and unfettered right to:
 - Accept or reject any proposal that fails to comply with the requirements set out in this RFP for the content of proposals. Waive any technical or formal defect in a proposal and accept that proposal;
 - Assess proposals as it sees fit, without in any way being obliged to select any proposal or Proponents;
 - Assess and select proposals as it sees fit without being obliged in any way to select the proposal that offers the lowest price or cost;
 - The right to require clarification after the dates and times set out above from any one or more of the Proponents in respect of proposals submitted;
 - The right to communicate with, meet with, request presentation, or negotiate with any one or more of the Proponents respecting their proposals or any aspects of the RFP request;
 - Reject any or all proposals with or without cause, whether according to the selection criteria set out above or otherwise.
- d. By submitting its proposal to the City, each Proponent represents and warrants to the City that the information in its proposal is accurate and complete.
- e. This RFP does not impose on the City any duty of fairness or natural justice to any or all respondents with respect to this RFP or the process it creates. Unless the City is expressly permitted or required by this RFP to "act reasonably", the City is entitled to act in its sole, absolute and unfettered discretion.

7. OWNERSHIP OF PROPOSALS

- a. All responses to this RFP become the property of The City and may be included as part of any future contractual arrangement.

- b. All reports / documents prepared by or on behalf of a Proponent will be, upon creation and receipt become and remain the property of the City, may be used by the City for any purpose, and may not be used by a Proponent other than for the purpose of performing the work and the terms of any contract arising from the Proponent's proposal.

8. PROPONENT'S EXPENSES

Each Proponent is solely responsible for the risk and cost of preparing and submitting its proposal and subsequent negotiations with the City. Neither the City nor its officials, employees, agents are liable for the cost of doing so or obliged to remunerate or reimburse any Proponent for that cost.

9. DAMAGES

The City will not be responsible for damages arising out of this RFP. If a court of competent jurisdiction determines that The City has any liability, it is a term of this RFP that the maximum damages claimable by anyone affected are the actual net cost of preparing the proposal concerned.

10. CONFIDENTIALITY OF PROPOSALS

- a. The City is subject to the ***Freedom of Information and Protection of Privacy Act***. That Act creates a right of access to records in the custody or under the control of the City, subject to the specific exceptions in that right set out in the Act. The City will receive all proposals submitted in response to this RFP in confidence, including for the purposes of s.21 of that Act. Because of the right of access to information created by that Act, the City does not guarantee that information contained in any proposal will remain confidential if a request for access in respect of any proposal is made under the Act.
- b. Proponent must keep proposals confidential and must not disclose their proposals, or information contained in them, to anyone else without prior written consent from the City.

11. NO COLLUSION

Proponents must not communicate, directly or indirectly, with any other Proponents (including through any employees, agents or contractors) regarding the preparation, content or submission of this proposal. Each proposal must be submitted without any collusion, or knowledge, in the preparation of or about any other proposal. Submission of a proposal to the City is deemed to be a representation and warranty by the Proponent submitting that proposal that it has complied with the requirements of this paragraph. If the City determines

that a Proponent has violated this paragraph, the City is entitled to disqualify that Proponent and to reject its proposal as being invalid.

12. WAIVER AND ALLOCATION OF RISK

The City accepts no responsibility or liability for the accuracy or completeness of this RFP (including any schedules or appendices to it) or of any recorded or oral information communicated or made available for inspection by the City (including through the City's representative or any other individual) and no representation or warranty, either express or implied, is made or given by the City with respect to the accuracy or completeness of any of those things. The sole risk, responsibility and liability connected with reliance by any Proponent or any other person on this RFP or any such information as is described in this paragraph is solely that of each Proponent. Each Proponent acknowledges and agrees that it is solely responsible for obtaining its own independent financial, legal, accounting, and other advice with respect to the contents of this RFP or any such information as is described in this paragraph. Each Proponent who submits a proposal to the City is deemed to have released the City from, and waived, any action, cause of action, claim, liability, demand, loss, damage, cost or expense, of every kind, in any way connected with or arising out of the contents of this RFP or any such information as is described in this paragraph. Each Proponent who submits a proposal is deemed to have agreed that it is solely responsible and liable to ensure that it has obtained and considered all information necessary to enable it to understand the requirements of this RFP, and of the project, and to prepare and submit its proposal.

13. SPECIAL PROVISION

Proponents who, either directly or indirectly through another corporation or entity, have been or are in litigation, or who have served notice with intent to proceed with court action against the City in connection with any contract for works or service, are ineligible proponents. Receipt of proposals from such proponents will be disqualified from the evaluation process.

14. GOVERNING LAW

This RFP and any contract entered into between the Proponent and the City will be governed by and be in accordance with the laws of the Province of British Columbia.

15. PERMITS, NOTICES, LAWS & RULES

The Proponent shall have the ability to apply and pay for all necessary permits or licences required for the

execution of the work. The Proponent shall give all necessary notices and pay for all fees required by law and comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of the public health. The Proponent shall be responsible for safety of all workmen and equipment in accordance with all applicable safety legislation passed by Federal, Provincial and Local Authorities governing safety.

16. WORKSAFEBC REGULATIONS

- a. The Proponent shall ensure compliance on his part with the Workers Compensation Act (Work Safe BC) and any regulations there under, especially provisions of said Act or of regulations under said Act having to do with the prevention of accidents, the prevention of diseases and the provision of safe working conditions, including proper sanitation and ventilation.
- b. In any case where pursuant to the provisions of the Workers Compensation Act, the WCB orders the Contractor in respect of his operations under this Agreement to cease operations because of failure to install or adopt safety devices or appliances directed by the order of the said Board, or required under said Act or regulations there under or because said Board is of the opinion the conditions of immediate danger exist that would be likely to result in injury to any person, or because of lack of payment of an account due to the Board, the City on 24 hours written notice to the Contractor may terminate the Contract.

17. PROTECTION OF WORK, PROPERTY & PUBLIC

The Proponent shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

18. SUBCONTRACTING

Use of any subcontractor must be clearly identified. Any party who may be participating in the RFP must be clearly identified. However, in the case of joint submissions, one party must be prepared to take overall responsibility for successful completion of the work defined in the proposal.

19. DEFINITION OF CONTRACT

The City may, at its option, notify a Proponent in writing that its proposal has been accepted and such acceptance shall, at The City's option, constitute the making of a formal contract for the services as set out in the proposal. Alternatively, the subsequent full

execution of a written contract shall constitute the making of a contract for service, and no Proponent shall acquire any legal or equitable rights or privileges whatever relative to the services until The City has delivered either a signed notice in writing to the Proponent or a fully executed written agreement to the Proponent.

20. ACCEPTANCE OF TERMS

All the terms and conditions of this RFP are deemed to be accepted by the Proponent and incorporated in its proposal, except those conditions and provisions which are expressly excluded by the proposal.

21. CONTRACTOR'S INSURANCE

The following insurance is to be purchased and maintained by the successful proponent:

a. **Public Liability & Property Damage Insurance containing the following representations:**

The Consultant shall save and hold harmless the City, its officers, agents, servants and employees, from and against any and all suits or claims alleging damage or injury (including death) to any person or property that may occur or that may be alleged to have occurred, in the course of the performance of this Contract, whether such claim shall be made by an employee of the Consultant, or by a third person and whether or not it shall be claimed that the alleged damage or injury (including death) was caused through a wilful or negligent act or omission of the Consultant, its officers, servants, agents or employees, and at its own expense, the Consultant shall defend any and all such actions and pay all legal charges, costs and other expense arising there from.

i) With a limit of not less than **Two Million Dollars (\$2,000,000.00), inclusive**, per occurrence for bodily injury, death or damage to property, including loss of use of property in question.

ii) The City shall be an additional insured on the policy. In addition, such insurance policy shall include the following "Cross Liability" clause:

"The insurance afforded by this policy shall apply in the same manner, as though separate policies were issued, to any action brought against any of the insured by or on behalf of any other insured."

iii) Extensions of coverage:

- a) premises and operations liability
- b) products or completed operations liability
- c) blanket contractual liability
- d) cross liability
- e) occurrence property damage
- f) hoist liability

- g) contingent employers' liability
 - h) personal injury liability arising on a false arrest, detention or imprisonment, or malicious prosecution, libel, slander or defamation of character; invasion of privacy, wrongful eviction or wrongful entry, discrimination
 - i) liability with extension to non-owned licensed vehicles
- iv) Any other insurance specifically required by the owner.
- v) The Consultant shall at the time the Proposal is approved, submit to the City one copy of the insurance policies required under this Article and shall also provide to the City from time to time, as may be required satisfactory proof that such policies are still in full force and effect.

b. **Equipment Insurance containing the following representations:**

Notwithstanding anything contained elsewhere herein, it is understood and agreed that the City shall not be liable for any loss or damage to Consultant's equipment including loss of use thereof. Each and every policy insuring the Contractor's equipment to be used on the work shall contain the following clauses:

"It is agreed that the right to subrogation against the City or any of its officers, employees, or agents of their parent, subsidiary, affiliated, or associated companies or corporations is hereby waived."

- c. **Automotive Insurance** with a minimum of two million dollars (**\$2,000,000.00**) of **public liability** and property damage on all automotive equipment.

d. **General Insurance Provisions**

Before starting the work, the Consultant shall file with the City, certificates of all insurance policies acceptable to the City. These certificates shall state that the insurance complies with the requirements of the Contract Documents and that the territory of the policy includes the country in which the work is to be constructed.

Each insurance policy required under this Contract shall contain an endorsement to provide all named insureds with prior notice of changes and cancellations. Such endorsement shall be in the following form:

"It is understood and agreed that the coverage provided by this policy will not be changed or amended in any way or cancelled until thirty (30)

days after written notice of such change or cancellation shall have been given or sent by registered mail to all named insureds."

Should the Consultant fail to make payment of premiums or other assessments required by the Consultant's insurers to maintain such policies in force and effect, the City may in his discretion make payment of such premiums or assessments and deduct the amount thereof from such monies as may be then or later payable to the Consultant pursuant to the Contract documents or recover the same from the Consultant as the City in its discretion may determine.

Whenever the word "Owner" is to appear in the insurance policies, the legal name shall be inserted. The Consultant will obtain, and ensure that all professional Subconsultants have obtained, where available, **professional liability (errors & omissions) insurance in an amount not less than \$500,000.00 (five hundred thousand Canadian dollars)** per claim with limit in the aggregate for all claims.

22. DOCUMENTATION

The following documents are required for the performance of work detailed in this RFP. insurance certificates, WCB Coverage and business license. All required documents must be on file with the City prior to the commencement of any work.

23. CONSULTING AGREEMENT

Unless otherwise stated, if a Contract were to be awarded, The City of Vernon Professional Services Contract will be used, refer to Professional Services General Conditions at http://www.vernon.ca/services/purchasing/docs/Prof_Services_General_Conditions.pdf

24. CONFLICT OF INTEREST

The City will not contract with any firm or individual whose current or past corporate or other interests may, in the City of Vernon's opinion, give rise to a conflict of interest in connection with the services described in this Request for Proposal. This includes, but is not limited to, any firm or individual involved in the preparation of this Request for Proposal. If a Proponent is in doubt as to whether it or a proposed sub-contractor may give rise to a conflict of interest, the Proponent should, prior to submitting a proposal, consult with the identified City contact.

The Proponent agrees it will not provide any services to any person in circumstances that, in the City's

reasonable opinion, could give rise to a conflict of interest between the Proponent's duties to that person and the Proponent's duties to the City under an Agreement

with the city. Prices will be firm for the entire contract period, unless otherwise agreed to by both parties.

25. NO OBLIGATION TO PROCEED

- a) Though the City fully intends at this time to proceed through the RFP process in order to select the goods or services, the City is under no obligation to proceed to the purchase, or any other stage. The receipt by the City of any information (including submissions, ideas, plans, drawings, models or other materials communicated or exhibited by any intended Proponent, or on its behalf) shall not impose any obligations on the City. There is no guarantee by the City, its officers, employees or agents, that the process initiated by the issuance of this RFP will continue, or that this RFP process or any RFP process will result in a contract with the City for the purchase of the product, service or project.
- b) The City reserves the right to reject all or part of the proposal, however the City is not precluded from negotiating with the successful Proponent to modify its proposal to best suit the needs of the City.
- c) The City reserves the right to reject, at the City's sole discretion, any or all proposals if the proposal is either incomplete, obscure, irregular or unrealistic.
- d) A proposal may be rejected on the basis of the Proponents past performance, financial capabilities, completion schedule or non-compliance with Federal, Provincial and Municipal legislation.
- e) The City reserves the right to accept or reject a proposal where only one proposal is received.

26. IRREVOCABILITY OF PROPOSALS

By submission of a written request, the Proponent may amend or withdraw its proposal prior to the closing date and time. Upon closing time, all proposals become irrevocable and are valid for a minimum of **60 days**. By submission of a proposal the Proponent agrees should the proposal be successful, the Proponent will enter into a contract