



**THE CITY OF WINNIPEG**

# **TENDER**

**TENDER NO. 27-2022**

**SUPPLY, DELIVERY & PICK UP OF SOILS**

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## **PART B - BIDDING PROCEDURES**

### **B1. CONTRACT TITLE**

B1.1 SUPPLY, DELIVERY & PICK UP OF SOILS

### **B2. SUBMISSION DEADLINE**

B2.1 The Submission Deadline is 4:00 p.m. Winnipeg time, February 21, 2022.

B2.2 The Contract Administrator or the Manager of Materials may extend the Submission Deadline by issuing an addendum at any time prior to the time and date specified in B2.1.

### **B3. ENQUIRIES**

B3.1 All enquiries shall be directed to the Contract Administrator identified in D4.1.

B3.2 If the Bidder finds errors, discrepancies or omissions in the Tender, or is unsure of the meaning or intent of any provision therein, the Bidder shall promptly notify the Contract Administrator of the error, discrepancy or omission at least five (5) Business Days prior to the Submission Deadline.

B3.3 Responses to enquiries which, in the sole judgment of the Contract Administrator, require a correction to or a clarification of the Tender will be provided by the Contract Administrator to all Bidders by issuing an addendum.

B3.4 Responses to enquiries which, in the sole judgment of the Contract Administrator, do not require a correction to or a clarification of the Tender will be provided by the Contract Administrator only to the Bidder who made the enquiry.

B3.5 The Bidder shall not be entitled to rely on any response or interpretation received pursuant to B3 unless that response or interpretation is provided by the Contract Administrator in writing.

B3.6 Any enquiries concerning submitting through MERX should be addressed to:  
MERX Customer Support  
Phone: 1-800-964-6379  
Email: merx@merx.com

### **B4. CONFIDENTIALITY**

B4.1 Information provided to a Bidder by the City or acquired by a Bidder by way of further enquiries or through investigation is confidential. Such information shall not be used or disclosed in any way without the prior written authorization of the Contract Administrator. The use and disclosure of the confidential information shall not apply to information which:

- (a) was known to the Bidder before receipt hereof; or
- (b) becomes publicly known other than through the Bidder; or
- (c) is disclosed pursuant to the requirements of a governmental authority or judicial order.

B4.2 The Bidder shall not make any statement of fact or opinion regarding any aspect of the Tender to the media or any member of the public without the prior written authorization of the Contract Administrator.

### **B5. ADDENDA**

B5.1 The Contract Administrator may, at any time prior to the Submission deadline, issue addenda correcting errors, discrepancies or omissions in the Tender, or clarifying the meaning or intent of any provision therein.

- B5.2 The Contract Administrator will issue each addendum at least two (2) Business Days prior to the Submission Deadline, or provide at least two (2) Business Days by extending the Submission Deadline.
- B5.3 Addenda will be available on the MERX website at [www.merx.com](http://www.merx.com).
- B5.4 The Bidder is responsible for ensuring that he/she has received all addenda and is advised to check the MERX website for addenda regularly and shortly before the Submission Deadline, as may be amended by addendum.
- B5.5 The Bidder shall acknowledge receipt of each addendum in Paragraph 10 of Form A: Bid/Proposal. Failure to acknowledge receipt of an addendum may render a Bid non-responsive.
- B5.6 Notwithstanding B3, enquiries related to an Addendum may be directed to the Contract Administrator indicated in D4.

**B6. SUBSTITUTES**

- B6.1 The Work is based on the materials, equipment, methods and products specified in the Tender.
- B6.2 Substitutions shall not be allowed unless application has been made to and prior approval has been granted by the Contract Administrator in writing.
- B6.3 Requests for approval of a substitute will not be considered unless received in writing by the Contract Administrator at least five (5) Business Days prior to the Submission Deadline.
- B6.4 The Bidder shall ensure that any and all requests for approval of a substitute:
- (a) provide sufficient information and details to enable the Contract Administrator to determine the acceptability of the material, equipment, method or product as either an approved equal or alternative;
  - (b) identify any and all changes required in the applicable Work, and all changes to any other Work, which would become necessary to accommodate the substitute;
  - (c) identify any anticipated cost or time savings that may be associated with the substitute;
  - (d) certify that, in the case of a request for approval as an approved equal, the substitute will fully perform the functions called for by the general design, be of equal or superior substance to that specified, is suited to the same use and capable of performing the same function as that specified and can be incorporated into the Work, strictly in accordance with the Contract;
  - (e) certify that, in the case of a request for approval as an approved alternative, the substitute will adequately perform the functions called for by the general design, be similar in substance to that specified, is suited to the same use and capable of performing the same function as that specified and can be incorporated into the Work, strictly in accordance with the Contract.
- B6.5 The Contract Administrator, after assessing the request for approval of a substitute, may in his/her sole discretion grant approval for the use of a substitute as an “approved equal” or as an “approved alternative”, or may refuse to grant approval of the substitute.
- B6.6 The Contract Administrator will provide a response in writing, at least two (2) Business Days prior to the Submission Deadline, to the Bidder who requested approval of the substitute.
- B6.6.1 The Contract Administrator will issue an Addendum, disclosing the approved materials, equipment, methods and products to all potential Bidders. The Bidder requesting and obtaining the approval of a substitute shall be responsible for disseminating information regarding the approval to any person or persons he/she wishes to inform.
- B6.7 If the Contract Administrator approves a substitute as an “approved equal”, any Bidder may use the approved equal in place of the specified item.

B6.8 If the Contract Administrator approves a substitute as an “approved alternative”, any Bidder bidding that approved alternative may base his/her Total Bid Price upon the specified item but may also indicate an alternative price based upon the approved alternative. Such alternatives will be evaluated in accordance with B16.

B6.9 No later claim by the Contractor for an addition to the price(s) because of any other changes in the Work necessitated by the use of an approved equal or an approved alternative will be considered.

## **B7. BID SUBMISSION**

B7.1 The Bid shall consist of the following components:

- (a) Form A: Bid;
- (b) Form B: Prices.

B7.2 All components of the Bid shall be fully completed or provided, and submitted by the Bidder no later than the Submission Deadline, with all required entries made clearly and completely.

B7.3 The Bid shall be submitted electronically through MERX at [www.merx.com](http://www.merx.com).

B7.3.1 Bids will **only** be accepted electronically through MERX.

B7.4 Bidders are advised that inclusion of terms and conditions inconsistent with the Tender document, including the General Conditions, will be evaluated in accordance with B16.1(a).

## **B8. BID**

B8.1 The Bidder shall complete Form A: Bid/Proposal, making all required entries.

B8.2 Paragraph 2 of Form A: Bid/Proposal shall be completed in accordance with the following requirements:

- (a) if the Bidder is a sole proprietor carrying on business in his/her own name, his/her name shall be inserted;
- (b) if the Bidder is a partnership, the full name of the partnership shall be inserted;
- (c) if the Bidder is a corporation, the full name of the corporation shall be inserted;
- (d) if the Bidder is carrying on business under a name other than his/her own, the business name and the name of every partner or corporation who is the owner of such business name shall be inserted.

B8.2.1 If a Bid is submitted jointly by two or more persons, each and all such persons shall identify themselves in accordance with B8.2.

B8.3 In Paragraph 3 of Form A: Bid/Proposal, the Bidder shall identify a contact person who is authorized to represent the Bidder for purposes of the Bid.

B8.4 Paragraph 13 of Form A: Bid/Proposal shall be signed in accordance with the following requirements:

- (a) if the Bidder is a sole proprietor carrying on business in his/her own name, it shall be signed by the Bidder;
- (b) if the Bidder is a partnership, it shall be signed by the partner or partners who have authority to sign for the partnership;
- (c) if the Bidder is a corporation, it shall be signed by its duly authorized officer or officers;
- (d) if the Bidder is carrying on business under a name other than his/her own, it shall be signed by the registered owner of the business name, or by the registered owner's authorized officials if the owner is a partnership or a corporation.

B8.4.1 The name and official capacity of all individuals signing Form A: Bid/Proposal should be entered below such signatures.

B8.5 If a Bid is submitted jointly by two or more persons, the word "Bidder" shall mean each and all such persons, and the undertakings, covenants and obligations of such joint Bidders in the Bid and the Contract, when awarded, shall be both joint and several.

## **B9. PRICES**

B9.1 The Bidder shall state a price in Canadian funds for each item of the Work identified on Form B: Prices.

B9.1.1 Prices on Form B: Prices shall include:

- (a) duty;
- (b) freight and cartage;
- (c) Provincial and Federal taxes [except the Goods and Services Tax (GST) and Manitoba Retail Sales Tax (MRST, also known as PST), which shall be extra where applicable] and all charges governmental or otherwise paid;
- (d) profit and all compensation which shall be due to the Contractor for the Work and all risks and contingencies connected therewith.

B9.1.2 Prices on Form B: Prices shall not include Environmental Handling Charges (EHC) or fees, which shall be extra where applicable.

B9.2 The quantities listed on Form B: Prices are to be considered approximate only. The City will use said quantities for the purpose of comparing Bids.

B9.3 The quantities for which payment will be made to the Contractor are to be determined by the Work actually performed and completed by the Contractor, to be measured as specified in the applicable Specifications.

B9.4 The Bidder shall enter the Total Bid Price from Form B: Prices into the Total Bid Price field in MERX.

B9.4.1 Bidders are advised that the calculation indicated in B16.4 will prevail over the Total Bid Price entered in MERX.

## **B10. DISCLOSURE**

B10.1 Various Persons provided information or services with respect to this Work. In the City's opinion, this relationship or association does not create a conflict of interest because of this full disclosure. Where applicable, additional material available as a result of contact with these Persons is listed below.

B10.2 The Persons are:

- (a) N/A.

## **B11. CONFLICT OF INTEREST AND GOOD FAITH**

B11.1 Further to C3.2, Bidders, by responding to this Tender, declare that no Conflict of Interest currently exists, or is reasonably expected to exist in the future.

B11.2 Conflict of Interest means any situation or circumstance where a Bidder or employee of the Bidder proposed for the Work has:

- (a) other commitments;
- (b) relationships;
- (c) financial interests; or

- (d) involvement in ongoing litigation;  
that could or would be seen to:
  - (i) exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment of the City with respect to the evaluation of Bids or award of the Contract; or
  - (ii) compromise, impair or be incompatible with the effective performance of a Bidder's obligations under the Contract;
- (e) has contractual or other obligations to the City that could or would be seen to have been compromised or impaired as a result of its participation in the Tender process or the Work; or
- (f) has knowledge of confidential information (other than confidential information disclosed by the City in the normal course of the Tender process) of strategic and/or material relevance to the Tender process or to the Work that is not available to other bidders and that could or would be seen to give that Bidder an unfair competitive advantage.

**B11.3** In connection with its Bid, each entity identified in B11.2 shall:

- (a) avoid any perceived, potential or actual Conflict of Interest in relation to the procurement process and the Work;
- (b) upon discovering any perceived, potential or actual Conflict of Interest at any time during the Tender process, promptly disclose a detailed description of the Conflict of Interest to the City in a written statement to the Contract Administrator; and
- (c) provide the City with the proposed means to avoid or mitigate, to the greatest extent practicable, any perceived, potential or actual Conflict of Interest and shall submit any additional information to the City that the City considers necessary to properly assess the perceived, potential or actual Conflict of Interest.

**B11.4** Without limiting B11.3, the City may, in its sole discretion, waive any and all perceived, potential or actual Conflicts of Interest. The City's waiver may be based upon such terms and conditions as the City, in its sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately avoided or mitigated, including requiring the Bidder 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 avoid or mitigate the impact of such Conflict of Interest.

**B11.5** Without limiting B11.3, and 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 Bidder that fails to disclose a perceived, potential or actual Conflict of Interest of the Bidder or any of its employees proposed for the Work;
- (b) require the removal or replacement of any employees proposed for the Work that has a perceived, actual or potential Conflict of Interest that the City, in its sole discretion, determines cannot be avoided or mitigated;
- (c) disqualify a Bidder or employees proposed for the Work that fails to comply with any requirements prescribed by the City pursuant to B11.4 to avoid or mitigate a Conflict of Interest; and
- (d) disqualify a Bidder if the Bidder, or one of its employees proposed for the Work, has a perceived, potential or actual Conflict of Interest that, in the City's sole discretion, cannot be avoided or mitigated, or otherwise resolved.

**B11.6** The final determination of whether a perceived, potential or actual Conflict of Interest exists shall be made by the City, in its sole discretion.

## **B12. QUALIFICATION**

**B12.1** The Bidder shall:



- (a) undertake to be in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba, or if the Bidder does not carry on business in Manitoba, in the jurisdiction where the Bidder does carry on business; and
- (b) be financially capable of carrying out the terms of the Contract; and
- (c) have all the necessary experience, capital, organization, and equipment to perform the Work in strict accordance with the terms and provisions of the Contract.

B12.2 The Bidder and any proposed Subcontractor (for the portion of the Work proposed to be subcontracted to them) shall:

- (a) be responsible and not be suspended, debarred or in default of any obligations to the City. A list of suspended or debarred individuals and companies is available on the Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Division website at <https://www.winnipeg.ca/matmgt/Templates/files/debar.pdf>

B12.3 The Bidder and/or any proposed Subcontractor (for the portion of the Work proposed to be subcontracted to them) shall:

- (a) have successfully carried out work similar in nature, scope and value to the Work; and
- (b) be fully capable of performing the Work required to be in strict accordance with the terms and provisions of the Contract; and
- (c) have a written workplace safety and health program, if required, pursuant to The Workplace Safety and Health Act (Manitoba).

B12.4 The Bidder shall submit, within three (3) Business Days of a request by the Contract Administrator, proof satisfactory to the Contract Administrator of the qualifications of the Bidder and of any proposed Subcontractor.

B12.5 The Bidder shall provide, on the request of the Contract Administrator, full access to any of the Bidder's equipment and facilities to confirm, to the Contract Administrator's satisfaction, that the Bidder's equipment and facilities are adequate to perform the Work.

### **B13. OPENING OF BIDS AND RELEASE OF INFORMATION**

B13.1 Bids will not be opened publicly.

B13.2 Following the Submission Deadline, the names of the Bidders and their Total Bid Prices (unevaluated and pending review and verification of conformance with requirements) will be available on the MERX website at [www.merx.com](http://www.merx.com).

B13.3 After award of Contract, the name(s) of the successful Bidder(s) and their Contract amount(s) will be available on the MERX website at [www.merx.com](http://www.merx.com).

B13.4 The Bidder is advised that any information contained in any Bid may be released if required by The Freedom of Information and Protection of Privacy Act (Manitoba), by other authorities having jurisdiction, or by law or by City policy or procedures (which may include access by members of City Council).

B13.4.1 To the extent permitted, the City shall treat as confidential information, those aspects of a Bid Submission identified by the Bidder 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.

### **B14. IRREVOCABLE BID**

B14.1 The Bid(s) submitted by the Bidder shall be irrevocable for the time period specified in Paragraph 11 of Form A: Bid/Proposal.

B14.2 The acceptance by the City of any Bid shall not release the Bids of the next two lowest evaluated responsive Bidders and these Bidders shall be bound by their Bids on such Work until a Contract for the Work has been duly formed and the contract securities have been furnished as herein provided, but any Bid shall be deemed to have lapsed unless accepted within the time period specified in Paragraph 11 of Form A: Bid/Proposal.

#### **B15. WITHDRAWAL OF BIDS**

B15.1 A Bidder may withdraw his/her Bid without penalty at any time prior to the Submission Deadline.

#### **B16. EVALUATION OF BIDS**

B16.1 Award of the Contract shall be based on the following bid evaluation criteria:

- (a) compliance by the Bidder with the requirements of the Tender, or acceptable deviation therefrom (pass/fail);
- (b) qualifications of the Bidder and the Subcontractors, if any, pursuant to B12 (pass/fail);
- (c) Total Bid Price;
- (d) economic analysis of any approved alternative pursuant to B6.

B16.2 Further to B16.1(a), the Award Authority may reject a Bid as being non-responsive if the Bid Submission is incomplete, obscure or conditional, or contains additions, deletions, alterations or other irregularities. The Award Authority may reject all or any part of any Bid, or waive technical requirements or minor informalities or irregularities if the interests of the City so require.

B16.3 Further to B16.1(b), the Award Authority shall reject any Bid submitted by a Bidder who does not demonstrate, in his/her Bid or in other information required to be submitted, that he/she is qualified.

B16.4 Further to B16.1(c), the Total Bid Price shall be the sum of the quantities multiplied by the unit prices for each item shown on Form B: Prices.

B16.4.1 Further to B16.1(a), in the event that a unit price is not provided on Form B: Prices, the City may determine the unit price by dividing the Amount (extended price) by the approximate quantity, for the purposes of evaluation and payment.

B16.4.2 Bidders are advised that the calculation indicated in B16.4.2 will prevail over the Total Bid Price entered in MERX.

B16.5 This Contract intends to award:

- (a) A Contract in the amount of 80% of the approximate annual quantity to the lowest responsive Bidder: and
- (b) A Contract in the amount of 20% of the approximate annual quantity to the second lowest responsive Bidder, in an effort to guarantee consistent supply for the duration of the Contract.

#### **B17. AWARD OF CONTRACT**

B17.1 The City will give notice of the award of the Contract or will give notice that no award will be made.

B17.2 The City will have no obligation to award a Contract to a Bidder, even though one or all of the Bidders are determined to be qualified, and the Bids are determined to be responsive.

B17.2.1 Without limiting the generality of B17.2, the City will have no obligation to award a Contract where:

- (a) the prices exceed the available City funds for the Work;
- (b) the prices are materially in excess of the prices received for similar work in the past;

- (c) the prices are materially in excess of the City's cost to perform the Work, or a significant portion thereof, with its own forces;
- (d) only one Bid is received; or
- (e) in the judgment of the Award Authority, the interests of the City would best be served by not awarding a Contract.

- B17.3 Where an award of Contract is made by the City, the award shall be made to the qualified Bidder submitting the lowest evaluated responsive Bid, in accordance with B16.
- B17.4 Further to Paragraph 7 of Form A: Bid/Proposal and C4, the City may issue a purchase order to the successful Bidder in lieu of the execution of a Contract.
- B17.4.1 The Contract Documents, as defined in C1.1(p), in their entirety shall be deemed to be incorporated in and to form a part of the purchase order notwithstanding that they are not necessarily attached to or accompany said purchase order.
- B17.5 Following the award of contract, a Bidder will be provided with information related to the evaluation of his/her Bid upon written request to the Contract Administrator.

## **PART C - GENERAL CONDITIONS**

### **C0. GENERAL CONDITIONS**

- C0.1 The *General Conditions for the Supply of Goods* (Revision 2020-01-31) are applicable to the Work of the Contract.
- C0.1.1 The *General Conditions for the Supply of Goods* are available on the Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Division website at [http://www.winnipeg.ca/matmgt/gen\\_cond.stm](http://www.winnipeg.ca/matmgt/gen_cond.stm)
- C0.2 A reference in the Tender to a section, clause or subclause with the prefix “C” designates a section, clause or subclause in the *General Conditions for Supply of Goods*.

## **PART D - SUPPLEMENTAL CONDITIONS**

### **GENERAL**

#### **D1. GENERAL CONDITIONS**

- D1.1 In addition to the *General Conditions for the Supply of Goods*, these Supplemental Conditions are applicable to the Work of the Contract.

#### **D2. SCOPE OF WORK**

- D2.1 The Work to be done under the Contract shall consist of supply, delivery, and pickup of soils for the period from May 1, 2022 until April 30, 2023, with the option of four (4) mutually agreed upon one (1) year extensions.
- D2.1.1 The City may negotiate the extension option with the Contractor within ninety (90) Calendar Days prior to the expiry date of the Contract. The City shall incur no liability to the Contractor as a result of such negotiations.
- D2.1.2 Changes resulting from such negotiations shall become effective on May 1 of the respective year. Changes to the Contract shall not be implemented by the Contractor without written approval by the Contract Administrator.
- D2.1.3 Bidders are advised that, in future, the City may be participating in collaborative procurement initiatives with other levels of government. Accordingly, extensions to this Contract may not be exercised.
- D2.2 The Work shall be done on an "as required" basis during the term of the Contract.
- D2.2.1 The type and quantity of Work to be performed under this Contract shall be as authorized from time to time by the Contract Administrator and/or Users.
- D2.2.2 Subject to C7, the City shall have no obligation under the Contract to purchase any quantity of any item in excess of its actual operational requirements.
- D2.3 Notwithstanding D2.1, in the event that operational changes result in substantial changes to the requirements for Work, the City reserves the right to alter the type or quantity of work performed under this Contract, or to terminate the Contract, upon thirty (30) Calendar Days written notice by the Contract Administrator. In such an event, no claim may be made for damages on the ground of loss of anticipated profit on Work.

#### **D3. COOPERATIVE PURCHASE**

- D3.1 The Contractor is advised that this is a cooperative purchase.
- D3.2 The Contract Administrator may, from time to time during the term of the Contract, approve other public sector organizations and utilities, including but not limited to municipalities, universities, schools and hospitals, to be participants in the cooperative purchase.
- D3.3 The Contract Administrator will notify the Contractor of a potential participant and provide a list of the delivery locations and estimated quantities.
- D3.4 If any location of the potential participant is more than ten (10) kilometers beyond the boundaries of the City of Winnipeg, the Contractor shall, within fifteen (15) Calendar Days of the written notice, notify the Contract Administrator of the amount of any additional delivery charge for the location.
- D3.5 If any additional delivery charges are identified by the Contractor, the potential participant may accept or decline to participate in the cooperative purchase.

- D3.6 The Contractor shall enter into a contract with each participant under the same terms and conditions as this Contract except:
- (a) supply under the contract shall not commence until the expiry or lawful termination of any other contract(s) binding the participant for the same goods;
  - (b) a participant may specify a duration of contract shorter than the duration of this Contract;
  - (c) a participant may specify that only some items under this Contract and/or less than its total requirement for an item are to be supplied under its contract; and
  - (d) any additional delivery charge identified and accepted in accordance with clause D3.4 and D3.5 will apply.
- D3.7 Each participant will be responsible for the administration of its contract and the fulfilment of its obligations under its contract. The City shall not incur any liability arising from any such contract.
- D3.8 No participant shall have the right or authority to effect a change in the Contract, or of any other participant in this Contract.

#### **D4. CONTRACT ADMINISTRATOR**

- D4.1 The Contract Administrator is:
- Marc Laurin  
Acting Superintendent of Centralized Park Services  
Telephone No.: 204- 986-7230  
Email Address: Mlaurin@winnipeg.ca

#### **D5. NOTICES**

- D5.1 Except as provided for in C20.4, all notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications to the Contractor shall be sent to the address or facsimile number identified by the Contractor in Paragraph 2 of Form A: Bid/Proposal.
- D5.2 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications to the City, except as expressly otherwise required in, D5.3 or elsewhere in the Contract, shall be sent to the attention of the Contract Administrator identified in D4.
- D5.3 All notices, requests, nominations, proposals, consents, approvals, statements, authorizations, documents or other communications required to be submitted or returned to the City Solicitor shall be sent to the following facsimile number:
- The City of Winnipeg  
Legal Services Department  
Attn: Director of Legal Services  
Facsimile No.: 204 947-9155.

#### **SUBMISSIONS**

#### **D6. AUTHORITY TO CARRY ON BUSINESS**

- D6.1 The Contractor shall be in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba, or if the Contractor does not carry on business in Manitoba, in the jurisdiction where the Contractor does carry on business, throughout the term of the Contract, and shall provide the Contract Administrator with evidence thereof upon request.

## **D7. INSURANCE**

- D7.1 The Contractor shall provide and maintain the following insurance coverage:
- (a) commercial general liability insurance, in the amount of at least two million dollars (\$2,000,000.00) inclusive, with The City of Winnipeg added as an additional insured; such liability policy to also contain a cross-liability clause, contractual liability, non-owned automobile liability and products and completed operations cover, to remain in place at all times during the performance of the Work;
  - (b) Automobile Liability Insurance covering all motor vehicles, owned and operated and used or to be used by the Contractor directly or indirectly in the performance of the Work. The Limit of Liability shall not be less than \$2,000,000 inclusive for loss or damage including personal injuries and death resulting from any one accident or occurrence.
- D7.2 Deductibles shall be borne by the Contractor.
- D7.3 The Contractor shall provide the Contract Administrator with a certificate(s) of insurance, in a form satisfactory to the City Solicitor, at least two (2) Business Days prior to the commencement of any Work but in no event later than the date specified in C4 for the return of the executed Contract Documents, as applicable.
- D7.4 The Contractor shall not cancel, materially alter, or cause the policy to lapse without providing at least thirty (30) Calendar Days prior written notice to the Contract Administrator.
- D7.5 The City shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance of this agreement
- D7.6 All policies shall be taken out with insurers licensed to carry on business in the Province of Manitoba.

## **SCHEDULE OF WORK**

### **D8. COMMENCEMENT**

- D8.1 The Contractor shall not commence any Work until he/she is in receipt of a notice of award from the City authorizing the commencement of the Work.
- D8.2 The Contractor shall not commence any Work until:
- (a) the Contract Administrator has confirmed receipt and approval of:
    - (i) evidence of authority to carry on business specified in D6;
    - (ii) evidence of the workers compensation coverage specified in C6.17;
    - (iii) evidence of the insurance specified in D7;
    - (iv) the direct deposit application form specified in D15.
  - (b) the Contractor has attended a meeting with the Contract Administrator, or the Contract Administrator has waived the requirement for a meeting.

### **D9. DELIVERY/ PICK-UP**

- D9.1 Goods shall be delivered on an "as required" basis during the term of the Contract, f.o.b. destination, freight prepaid, to various locations within the City.
- D9.1.1 Goods shall be delivered within one(1) Business Day of the placing of an order, unless otherwise allowed by the user at the time of ordering.
- D9.1.2 The City will order soil in lots of not less than eleven (11) cubic meters or fifteen (15) cubic yards per order to be delivered.
- D9.2 Goods shall be delivered between 7:30 a.m. and 3:00 p.m. on Business Days.

D9.3 The Contractor shall off-load goods as directed at the delivery location.



D9.4 The City reserves the right to add or delete locations, within the boundaries of the City, or alter the type or quantity of goods to be supplied to any locations as required by changes in its operations during the term of the Contract.

D9.5 The City shall pick-up on an "as required" basis during the term of the Contract, from the Contractor's locations.

D9.5.1 The Contractor shall be ready within one (1) hour of placing an order (notification) for pick up, except where otherwise agreed at the time of ordering.

#### **D10. LIQUIDATED DAMAGES**

D10.1 If the Contractor fails to achieve delivery of the goods within the time specified in D9.1.1 Delivery the Contractor shall pay the City one thousand dollars (\$1,000.00) per Calendar Day for each and every Calendar Day until the goods have been delivered.

D10.2 The amount specified for liquidated damages in D10.1 is based on a genuine pre-estimate of the City's damages in the event that the Contractor does not achieve Delivery by the day fixed herein for same.

D10.3 The City may reduce any payment to the Contractor by the amount of any liquidated damages assessed.

#### **D11. COVID-19 SCHEDULE DELAYS**

D11.1 The City acknowledges that the schedule for this Contract may be impacted by the COVID-19 pandemic. Commencement and progress of the Work shall be performed by the Contractor with due consideration to the health and safety of workers and the public, directives from health authorities and various levels of government and in close consultation with the Contract Administrator.

D11.2 If the Contractor is delayed in the performance of the Work by reason of the COVID-19 pandemic, the Work schedule may be adjusted by a period of time equal to the time lost due to such delay and costs related to such delay will be determined as identified herein.

D11.3 A minimum of seven (7) Calendar Days prior to the commencement of Work, the Contractor shall declare whether COVID-19 will affect the start date. The Contractor shall provide sufficient evidence that the delay is directly related to COVID-19, including but not limited to evidence related to availability of staff, availability of Material or work by others.

D11.4 For any delay related to COVID-19 and identified after Work has commenced, the Contractor shall within seven (7) Calendar Days of becoming aware of the anticipated delay declare the additional delay and shall provide sufficient evidence as indicated in D11.3. Failure to provide this notice will result in no additional time delays being considered by the City.

D11.5 The Work schedule, including the durations identified in D9 where applicable, will be adjusted to reflect delays accepted by the Contract Administrator.

D11.6 Any time or cost implications as a result of COVID-19 and in accordance with the above, as confirmed by the Contract Administrator, shall be documented in accordance with C7.

#### **D12. ORDERS**

D12.1 The Contractor shall provide a local Winnipeg telephone number or a toll-free telephone number or email address at which orders for pick up and delivery may be placed.

#### **D13. RECORDS**

D13.1 The Contractor shall keep detailed records of the goods supplied under the Contract.

D13.2 The Contractor shall record, as a minimum, for each item listed on Form B: Prices:

- (a) user name(s) and addresses;
- (b) order date(s);
- (c) delivery date(s); and
- (d) description and quantity of goods supplied.

D13.3 The Contractor shall provide the Contract Administrator with a copy of the records for each quarter year within fifteen (15) Calendar Days of a request of the Contract Administrator.

## **MEASUREMENT AND PAYMENT**

### **D14. INVOICES**

D14.1 Further to C10, the Contractor shall submit an invoice for each order to:

The City of Winnipeg  
Corporate Finance - Accounts Payable  
4th Floor, Administration Building, 510 Main Street  
Winnipeg MB R3B 1B9

Facsimile No.: 204-949-0864

Send Invoices to [CityWpgAP-INVOICES@winnipeg.ca](mailto:CityWpgAP-INVOICES@winnipeg.ca)

Send Invoice Inquiries to [CityWpgAP-INQUIRIES@winnipeg.ca](mailto:CityWpgAP-INQUIRIES@winnipeg.ca)

D14.2 Invoices must clearly indicate, as a minimum:

- (a) the City's purchase order number;
- (b) date of delivery;
- (c) delivery address;
- (d) type and quantity of goods delivered;
- (e) the amount payable with GST, MRST, and any applicable environmental handling charges/fees identified and shown as separate amounts; and
- (f) the Contractor's GST registration number.

D14.3 The City will bear no responsibility for delays in approval of invoices which are improperly submitted.

### **D15. PAYMENT**

D15.1 Further to C10, the City shall make payments to the Contractor by direct deposit to the Contractor's banking institution, and by no other means. Payments will not be made until the Contractor has made satisfactory direct deposit arrangements with the City. Direct deposit application forms are at [https://winnipeg.ca/finance/files/Direct\\_Deposit\\_Form.pdf](https://winnipeg.ca/finance/files/Direct_Deposit_Form.pdf).

### **D16. PURCHASING CARD**

D16.1 Notwithstanding D15, the Contractor shall allow Users to charge items to their purchasing cards at no extra cost.

D16.2 The Contractor's credit card website/gateway shall have appropriate current Payment Card Industry Data Security standards (PCI DSS) certification, (<https://www.pcisecuritystandards.org/index.shtml> ). The credit card gateway shall meet the credit card data security requirements outlined by the Payment Card Industry Security Standards Council (PCI SSC) for service providers and/or software vendors.

### **D17. PAYMENT SCHEDULE**

D17.1 Further to C10, payment shall be in Canadian funds net thirty (30) Calendar Days after receipt and approval of the Contractor's invoice.

## WARRANTY

### D18. WARRANTY

D18.1 Warranty is as stated in C11.

## THIRD PARTY AGREEMENTS

### D19. FUNDING AND/OR CONTRIBUTION AGREEMENT OBLIGATIONS

D19.1 Funding for the Work of the Contract is being provided to the City of Winnipeg by the Government of Manitoba and/or the Government of Canada and accordingly, as required by the applicable funding agreements, the following terms and conditions shall apply.

D19.2 For the purposes of D19:

- (a) **“Government of Canada”** includes the authorized officials, auditors, and representatives of the Government of Canada; and
- (b) **“Government of Manitoba”** includes the authorized officials, auditors, and representatives of the Government of Manitoba.

D19.3 Indemnification By Contractor

D19.3.1 In addition to the indemnity obligations outlined in C15 of the General Conditions for Goods, the Contractor agrees to indemnify and save harmless the Government of Canada and the Government of Manitoba and each of their respective Ministers, officers, servants, employees, and agents from and against all claims and demands, losses, costs, damages, actions, suit or other proceedings brought or pursued in any manner in respect of any matter caused by the Contractor or arising from this Contract or the Work, or from the goods or services provided or required to be provided by the Contractor, except those resulting from the negligence of any of the Government of Canada’s or the Government of Manitoba’s Ministers, officers, servants, employees, or agents, as the case may be.

D19.4 Records Retention and Audits

D19.4.1 The Contractor shall maintain and preserve accurate and complete records in respect of this Contract and the Work, including all accounting records, financial documents, copies of contracts with other parties and other records relating to this Contract and the Work during the term of the Contract and for at least six (6) years after Total Performance. Those records bearing original signatures or professional seals or stamps must be preserved in paper form; other records may be retained in electronic form.

D19.4.2 In addition to the record keeping and inspection obligations outlined in C6 of the General Conditions for Goods, the Contractor shall keep available for inspection and audit at all reasonable times while this Contract is in effect and until at least six (6) years after Total Performance, all records, documents, and contracts referred to in D19.4.1 for inspection, copying and audit by the City of Winnipeg, the Government of Manitoba and/or the Government of Canada and their respective representatives and auditors, and to produce them on demand; to provide reasonable facilities for such inspections, copying and audits, to provide copies of and extracts from such records, documents, or contracts upon request by the City of Winnipeg, the Government of Manitoba, and/or the Government of Canada and their respective representatives and auditors, and to promptly provide such other information and explanations as may be reasonably requested by the City of Winnipeg, the Government of Manitoba, and/or the Government of Canada from time-to-time.

D19.5 Other Obligations

D19.5.1 The Contractor consents to the City providing a copy of the Contract Documents to the Government of Manitoba and/or the Government of Canada upon request from either entity.

- D19.5.2 If the Lobbyists Registration Act (Manitoba) applies to the Contractor, the Contractor represents and warrants that it has filed a return and is registered and in full compliance with the obligations of that Act, and covenants that it will continue to comply for the duration of this Contract.
- D19.5.3 The Contractor shall comply with all applicable legislation and standards, whether federal, provincial, or municipal, including (without limitation) labour, environmental, and human rights laws, in the course of providing the Work.
- D19.5.4 The Contractor shall properly account for the Work provided under this Contract and payment received in this respect, prepared in accordance with generally accepted accounting principles in effect in Canada, including those principles and standards approved or recommended from time-to-time by the Chartered Professional Accountants of Canada or the Public Sector Accounting Board, as applicable, applied on a consistent basis.
- D19.5.5 The Contractor represents and warrants that no current or former public servant or public office holder, to whom the Value and Ethics Code for the Public Sector, the Policy on Conflict of Interest and Post Employment, or the Conflict of Interest Act applies, shall derive direct benefit from this Contract, including any employment, payments, or gifts, unless the provision or receipt of such benefits is in compliance with such codes and the legislation.
- D19.5.6 The Contractor represents and warrants that no member of the House of Commons or of the Senate of Canada or of the Legislative Assembly of Manitoba is a shareholder, director or officer of the Contractor or of a Subcontractor, and that no such member is entitled to any benefits arising from this Contract or from a contract with the Contractor or a Subcontractor concerning the Work.
- D19.1 In the event that funding for the Work of the Contract is provided to the City of Winnipeg by the Government of Manitoba and/or the Government of Canada, the following terms and conditions shall apply, as required by the applicable funding agreements.
- D19.2 Further to D19.1, in the event that the obligations in D19 apply, actual costs legitimately incurred by the Contractor as a direct result of these obligations ("Funding Costs") shall be determined by the actual cost to the Contractor and not by the valuation method(s) outlined in C7.4. In all other respects Funding Costs will be processed in accordance with Changes in Work under C7.
- D19.3 For the purposes of D19:
- (a) "**Government of Canada**" includes the authorized officials, auditors, and representatives of the Government of Canada; and
  - (b) "**Government of Manitoba**" includes the authorized officials, auditors, and representatives of the Government of Manitoba.
- D19.4 Modified Insurance Requirements
- D19.4.1 Where applicable, the Contractor will be required to provide wrap-up liability insurance in an amount of no less than two million dollars (\$2,000,000) inclusive per occurrence. Such policy will be written in the joint names of the City, Contractor, Consultants and all sub-contractors and sub-consultants and include twelve (12) months completed operations. The Government of Manitoba and its Ministers, officers, employees, and agents shall be added as additional insureds.
- D19.4.2 If applicable the Contractor will be required to provide builders' risk insurance (including boiler and machinery insurance, as applicable) providing all risks coverage at full replacement cost, or such lower level of insurance that the City may identify on a case-by-case basis, such as an installation floater.
- D19.4.3 The Contractor shall obtain and maintain third party liability insurance with minimum coverage of two million dollars (\$2,000,000.00) per occurrence on all licensed vehicles operated at the Site. In the event that this requirement conflicts with another licensed

- D19.4.4 vehicle insurance requirement in this Contract, then the requirement that provides the higher level of insurance shall apply.
- D19.4.5 Insurers shall provide satisfactory Certificates of Insurance to the Government of Manitoba prior to commencement of Work as written evidence of the insurance required. The Certificates of Insurance must provide for a minimum of thirty (30) days' prior written notice to the Government of Manitoba in case of insurance cancellation.
- D19.4.6 All policies must be taken out with insurers licensed to carry on business in the Province of Manitoba.
- D19.5 Indemnification By Contractor
- D19.5.1 In addition to the indemnity obligations outlined in C15 of the General Conditions for Goods, the Contractor agrees to indemnify and save harmless the Government of Canada and the Government of Manitoba and each of their respective Ministers, officers, servants, employees, and agents from and against all claims and demands, losses, costs, damages, actions, suit or other proceedings brought or pursued in any manner in respect of any matter caused by the Contractor or arising from this Contract or the Work, or from the goods or services provided or required to be provided by the Contractor, except those resulting from the negligence of any of the Government of Canada's or the Government of Manitoba's Ministers, officers, servants, employees, or agents, as the case may be.
- D19.6 Records Retention and Audits
- D19.6.1 The Contractor shall maintain and preserve accurate and complete records in respect of this Contract and the Work, including all accounting records, financial documents, copies of contracts with other parties and other records relating to this Contract and the Work during the term of the Contract and for at least six (6) years after Total Performance. Those records bearing original signatures or professional seals or stamps must be preserved in paper form; other records may be retained in electronic form.
- D19.6.2 In addition to the record keeping and inspection obligations outlined in C6 of the General Conditions for Goods, the Contractor shall keep available for inspection and audit at all reasonable times while this Contract is in effect and until at least six (6) years after Total Performance, all records, documents, and contracts referred to in D19.6.1 for inspection, copying and audit by the City of Winnipeg, the Government of Manitoba and/or the Government of Canada and their respective representatives and auditors, and to produce them on demand; to provide reasonable facilities for such inspections, copying and audits, to provide copies of and extracts from such records, documents, or contracts upon request by the City of Winnipeg, the Government of Manitoba, and/or the Government of Canada and their respective representatives and auditors, and to promptly provide such other information and explanations as may be reasonably requested by the City of Winnipeg, the Government of Manitoba, and/or the Government of Canada from time-to-time.
- D19.7 Other Obligations
- D19.7.1 The Contractor consents to the City providing a copy of the Contract Documents to the Government of Manitoba and/or the Government of Canada upon request from either entity.
- D19.7.2 If the Lobbyists Registration Act (Manitoba) applies to the Contractor, the Contractor represents and warrants that it has filed a return and is registered and in full compliance with the obligations of that Act, and covenants that it will continue to comply for the duration of this Contract.
- D19.7.3 The Contractor shall comply with all applicable legislation and standards, whether federal, provincial, or municipal, including (without limitation) labour, environmental, and human rights laws, in the course of providing the Work.
- D19.7.4 The Contractor shall properly account for the Work provided under this Contract and payment received in this respect, prepared in accordance with generally accepted accounting principles in effect in Canada, including those principles and standards approved or recommended from time-to-time by the Chartered Professional Accountants of

D19.7.5 Canada or the Public Sector Accounting Board, as applicable, applied on a consistent basis.

D19.7.6 The Contractor represents and warrants that no current or former public servant or public office holder, to whom the Value and Ethics Code for the Public Sector, the Policy on Conflict of Interest and Post Employment, or the Conflict of Interest Act applies, shall derive direct benefit from this Contract, including any employment, payments, or gifts, unless the provision or receipt of such benefits is in compliance with such codes and the legislation.

The Contractor represents and warrants that no member of the House of Commons or of the Senate of Canada or of the Legislative Assembly of Manitoba is a shareholder, director or officer of the Contractor or of a Subcontractor, and that no such member is entitled to any benefits arising from this Contract or from a contract with the Contractor or a Subcontractor concerning the Work.

## PART E - SPECIFICATIONS

### GENERAL

#### E1. APPLICABLE SPECIFICATIONS AND DRAWINGS

- E1.1 These Specifications shall apply to the Work.
- E1.2 Bidders are reminded that requests for approval of substitutes as an approved equal or an approved alternative shall be made in accordance with B6. In every instance where a brand name or design specification is used, the City will also consider approved equals and/or approved alternatives in accordance with B6.

#### E2. GOODS

- E2.1 The Contractor shall supply, deliver and pickup of soils in accordance with the requirements hereinafter specified.
- E2.1.1 All Soils shall be free of subsoil contamination, roots, clay lumps or stones over twenty-five (25) mm in diameter, baler twine and other extraneous matter. All soils shall not contain quack grass rhizomes, Canada Thistle roots or other noxious weeds. Soils shall not contain blown in dirt from wind erosion sites and shall not be taken from fields abandoned commercial production where such soils may contain soil incorporated herbicides, such as eradican and atrazine with lasting residual effects.
- E2.2 **Item No. 1 – Topsoil Screened - Delivered** - This product is 75% topsoil and 25% Organic Matter. The topsoil required shall consist of screened clay-loam textured dark topsoil, a fertile, friable material neither of heavy clay nor of very light sandy nature containing by volume, a minimum of four percent (4%) for clay loams and two percent (2%) for sandy loams. Total organic matter in this blend including all organic ingredients is not to exceed twenty-five (25) percent (peat, well-rotted manure or composted material) and capable of sustaining vigorous plant growth. Salinity rating shall be 4.0 mm hos / cm or less on a saturated paste basis. The pH range shall be between 6.0 – 8.0.
- E2.3 **Item No. 2 - Topsoil Screened – Pickup** – This product is 75% topsoil and 25% Organic Matter. The topsoil required shall consist of screened clay-loam textured dark topsoil, a fertile, friable material neither of heavy clay nor of very light sandy nature containing by volume, a minimum of four percent (4%) for clay loams and two percent (2%) for sandy loams. Total organic matter in this blend including all organic ingredients is not to exceed twenty-five (25) percent (peat, well rotted manure or composted material) and capable of sustaining vigorous plant growth. Salinity rating shall be 4.0 mm hos / cm or less on a saturated paste basis. The pH range shall be between 6.0 - 8.0.
- E2.4 **Item No. 3 - Three Way Soil – Delivered** – for flower gardens and planters shall be a fertile, friable, well mixed and screened combination of: (a) 1/3 clay-loam textured dark topsoil; (b) 1/3 sand-loam-textured topsoil; and (c) 1/3 well-rotted manure/compost. The Three Way soil mixture salinity rating shall be 2.5mm hos / cm or less on a saturated paste basis. The pH range shall be between 6.0-8.0.
- E2.5 **Item No. 4 - Four Way Potting Soil - Delivered** – shall be a fertile, friable, well mixed and screened combination of: (a) 1/4 clay-loam-textured dark topsoil; (b) 1/4 sand as per the City sand spec (0.5 - 1.0 mm particle diameter) – no fill sand allowed; (c) 1/4 well-rotted manure/compost; and (d) 1/4 well-decomposed peat moss. The Four Way potting soil mixture salinity rating shall be 2.5 mm hos / cm or less on a saturated paste basis. The pH range shall be between 6.0 - 8.0.
- E2.6 **Item No. 5 - Athletic Field Top Dressing - Delivered** – This product is sixty (60) percent sand and forty (40) percent well-decomposed peat moss, as specified. Athletic Field top dressing mix shall contain sixty percent (60%) sand, meeting the requirements shown in the sand particle

E2.7 Size distribution chart below. Top dressing mix shall contain forty percent (40%) well decomposed peat moss containing no more than twenty-five percent (25%) burned ash as determined by loss on ignition (ASTM D 2974-87 Method D). Final Screening of Top dressing shall be to a particle size of three-point four (3.4) mm or less; as shown below. The Athletic Field Top Dressing salinity rating shall be 2.5 mmhos / cm or less on a saturated paste basis and the pH range shall be between 6.0 – 8.0.

Name	Particle Diameter	Distribution (by weight)
Fine Gravel	2.0 - 3.4 mm	Not more than 10% of total particles in this range, including a maximum of 3% fine gravel (preferably none)
Very coarse sand	1.0 - 2.0 mm	
Coarse sand	0.5 -1.0 mm	Minimum of 60% of the particles must fall in this range
Medium sand	0.25 – 0.50 mm	
Fine sand	0.15 – 0.25 mm	Not more than 20% of the particles may fall within this range
Very Fine sand	0.05 – 0.15 mm	Not more than 5%
Silt	0.002 – 0.005 mm	Not more than 5%
Clay	Less than 0.002 mm	Not more than 3%
Total Fines	Very fine sand + silt + clay	Less than or equal to 10%