



THE CORPORATION OF THE CITY OF NIAGARA FALLS

## REQUEST FOR PROPOSAL - SERVICES

RFP9-2019

### PROVISION OF TAXI SERVICES FOR NIAGARA FALLS TRANSIT SERVICES TRANS-CAB AND SUPPLEMENTAL SPECIALIZED TRANSIT FOR CHAIR-A-VAN

**CLOSING DATE: Wed., April 23, 2019 at 2:00 p.m. local time**

The Corporation of the City of Niagara Falls is seeking proposals from experienced Taxi Service providers to enter into an agreement for two specific independent supplemental transit services Trans-Cab and Chair-A-Van (Supplemental Specialized Transit) within the City of Niagara Falls, ON. all in accordance with this Request for Proposal. This RFP is posted on the City of Niagara Falls web site at [www.niagarafalls.ca/bids](http://www.niagarafalls.ca/bids).

#### **Questions Regarding this RFP**

Questions regarding this RFP must be submitted in writing only to Dave Butyniec, Manager of Procurement, e-mail [dbutyniec@niagarafalls.ca](mailto:dbutyniec@niagarafalls.ca) no later than **Wed., April 16, 2019 at 2:00 p.m. local time**. Questions received later than this stated time and date may not be acknowledged or answered.

#### **Addenda**

All addenda to this RFP will be posted on the City's Bid Opportunities Web Page: [www.niagarafalls.ca/bids](http://www.niagarafalls.ca/bids). Addenda will not be posted until after the date for questions has closed. It is the Bidder's sole responsibility to check this Web Page to avail themselves of any posted addenda. Proposals submitted that do not include the first page, completed and signed, of all posted addenda may be rejected.

#### **Proposal Submission**

The Proposal submission, **including original and two copies**, must be sealed in an envelope using the attached mailing label and submitted to Dave Butyniec, Manager of Procurement, City of Niagara Falls, Municipal Service Centre, 3200 Stanley Ave., Niagara Falls, ON., L2E 6S4, by **Wed., April 23, 2019 at 2:00 p.m. local standard time** (hereinafter referred to as the "closing time"). **If required number of copies are not provided with the original document when submitted, the submission will not be accepted.** Proposals received later than the time specified will not be accepted, regardless of the postal seal date. Binder submissions will not be accepted. (Coil binding is acceptable).

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**INSTRUCTIONS TO BIDDERS**

**1. Definitions**

Throughout this Request for Proposal - Services, unless inconsistent with the subject matter or context:

- a) *Bidder* means a legal entity, being a person, partnership or firm that submits a Proposal in response to this RFP.
- b) *City* and *Owner* shall mean The Corporation of Niagara Falls *Council* means City of Niagara Falls Council.
- c) *Contract* means the agreement executed by the City and the Selected Bidder including all appended documents.
- d) *Council* means City of Niagara Falls Council.
- e) *Proposal* means the Proposal received from the Bidder by the City, in response to the RFP.
- g) *RFP* means this Request for Proposal in its entirety, inclusive of all appendices, attachments and any addenda that may be issued by the City of Niagara Falls
- h) *Services* mean all the services and deliverables to be provided by the Successful Bidder in this RFP.
- i) *Successful Bidder* means the Bidder whose proposal, as determined by the City through the evaluation analysis described in the RFP, provides the best overall value in meeting the requirements of this RFP, and to whom the City will consider executing an agreement.

**2. Named Parties**

For the purposes of this Request for Proposal (RFP) the following parties are identified:

**Owner:** The Corporation of the City of Niagara Falls, the “City”

**City’s Contract Administrator:** Carla Stout, Manager of Transit Operations

**Contact for Inquiries:** Dave Butyniec, Manager of Procurement, e-mail [dbutyniec@niagarafalls.ca](mailto:dbutyniec@niagarafalls.ca)

**3. Additional Insured**

The following party/parties are identified to be included as additional insured for this project:

The Corporation of the City of Niagara Falls.  
St. John Ambulance

**PROPOSAL SUBMISSION PROCEDURE**

The following policy regarding the submission of Proposals and the RFP opening procedures will be applicable for this project. Bidders are requested to adhere strictly to the instructions concerning submission.

1. Proposals should include all required pages and must be signed by the Bidder in ink where stated on *Appendix A: Form of Proposal* page(s) and on any other pages so stated and

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must be sealed in an envelope using the City label page provided in the Request For Proposal document and **original and two (2) copies** submitted to:

Procurement Department  
Municipal Service Centre  
3200 Stanley Ave.  
Niagara Falls, ON  
L2E 6S4

2. Proposals received later than the time specified will not be accepted, regardless of the postal seal date. Bidders who are mailing or delivering their Proposal are to use the attached mailing label, using their own envelope. The City assumes no responsibility for the Proposals delivered by mail or courier.
3. Proposals submitted shall include the following and must be in the following sequence:
  - 1) *Appendix A: Form of Proposal*
  - 2) Addenda issued (if any)
  - 3) *Standard Certificate of Insurance*
  - 4) *Appendix B: References Form*
  - 5) *Appendix C: Evaluation Form*
  - 6) *Appendix D: Vehicle List Form*
  - 7) WSIB Certificate
  - 8) Optional Supplementary bidder information.
4. The following Documents shall form this Contract as noted on *Appendix A: Form of Proposal*.
  - a) Request for Proposal – Services - Instructions to Bidders
  - b) Addenda, issued during the Proposal period.
  - c) Scope of Work
  - d) Sample Agreement
  - f) *Appendices A, B, C, D.*
  - g) Standard Certificate of Insurance
  - h) W.S.I.B.

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**BIDDER REQUIREMENTS**

**1. Company Overview**

Proposal shall provide an overview of the Bidder's office locations, hours of operation and company background.

**2. Experience in the Taxi Industry**

Proposal shall include a description that outlines previous experience in similar initiatives in the past five (5) years. This shall include the client contact information provided on *Appendix B: References*.

Bidders are to include any additional information regarding their firm and/or services, and case histories that could prove beneficial to the evaluation team in assessing their submission. This must be relevant information and not marketing/advertising brochures or materials promoting the Bidder's company.

**3. Staff & Equipment Resources**

Proposal shall include information with respect to present and future staffing (number of professional/technical, disciplines) and technical and fleet resources, drawn from each of the respective office locations for this opportunity. Bidder shall ensure the percentage of conventional and specialized (accessible) taxis are identified. *Appendix D: Vehicle List Form* must be filled out for Equipment Resources Section per area.

**4. Financial Proposal**

Bidder must state a guaranteed fee structure for the first (1) year of the contract and any additional option years as specified in *Appendix A: Form of Proposal*.

**5. Notification of Potential Bidders Not Guaranteed**

The City posts notification of all RFP and other opportunities on its Internet Web Page ([www.niagarafalls.ca/bids](http://www.niagarafalls.ca/bids)). Bidders are to review this Web Page to inform themselves of any requests for Proposals, etc. The City shall not guarantee that previous successful Bidder or any potential Bidder shall be notified by any means electronic or otherwise of any RFP or other opportunity. It is the responsibility of any potential Bidder to check this Web Page to avail themselves of any RFP or other opportunity.

**6. Questions Regarding Possible Discrepancies**

If a Bidder finds discrepancies, ambiguities or omissions in the Contract Documents, or should be in doubt as to their meaning, he shall notify the Owner at once, who will have prepared and posted on the website a written addendum to all Bidders. All addenda are to be incorporated in the Proposal and will become part of the Contract. The Owner will be responsible for any other explanations or interpretations of the proposed Contract Documents.

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**7. Proposal Submission and Correspondence in English**

Proposal must be prepared in English and Bidders must be able to converse and correspond fluently in English directly or through an interpreter supplied by and at the total cost to the Bidder.

**8. Form of Proposal Pages – Appendix A**

- a) Bidders must complete all required spaces and sign where indicated on the *Appendix A: Form of Proposal*.
- b) Bidders must attach all required documents to the *Appendix A: Form of Proposal pages*.
- c) The *Appendix A: Form of Proposal* pages must be signed by an Officer of the Bidder's Company who has authority to bind the Company.
- d) The City of Niagara Falls will make all necessary corrections to any Proposal which is in error through addition or extensions with the corrected value prevailing.
- e) All taxes to be extra to the unit prices stated on the *Appendix A: Form of Proposal*.
- f) By submitting a Proposal in response to this RFP, the Bidder thereby acknowledges that offers contained within its Proposal shall be irrevocable and remain open for acceptance by the City for a period of not less than ninety (90) days from the closing date and time specified in this RFP.

**9. Adherence to Requirements**

The Bidder is requested to adhere strictly to all requirements and complete all sections of this RFP including all appendices and addendums. Failure to do so may be sufficient cause for rejection of the Proposal.

**10. Liability for Errors**

While the City has used considerable efforts to ensure an accurate representation of information in this RFP, the information contained in this RFP is supplied solely as a guide for Bidders. The information is not guaranteed or warranted to be accurate by the City, nor is it necessarily comprehensive or exhaustive. Nothing in this RFP is intended to relieve Bidders from forming their own opinions and conclusions with respect to the matters addressed in this RFP.

**11. Collusion**

By submitting a Proposal, a Bidder certifies that the Proposal has been prepared independently and without collusion with any other Bidder.

**12. Conflicts of Interest**

- a) In its Proposal, the Bidder must disclose to the City any potential conflict of interest that might compromise the performance of the service. If such a conflict of interest does exist, the City may, at its discretion, refuse to consider the said Proposal.
- b) The Bidder must also disclose whether it is aware of any City employee, City Council member or member of a City agency, or commission thereof, having a financial interest in the Bidder and the nature of that interest. If such an interest exists or arises during the evaluation process or the negotiation of the Contract, the City may, as its

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discretion, refuse to consider the Bidder's Proposal or withhold the awarding of any Contract to the Bidder until the matter is resolved to the City's sole satisfaction.

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**13. Anti-Lobbying Restrictions and Required Disclosure**

- a) Bidders, their company staff members, or anyone involved in preparing their Proposal, must not engage in any form of political or other lobbying whatsoever with respect to this project or seek to influence the outcome of the RFP and subsequent procurement process. This anti-lobbying restriction extends to all City Staff and elected Council members of the City.
- b) In the event of any such lobbying, the City shall reject any Proposal by that Bidder without further consideration and terminate that Bidders right to continue in the RFP and any subsequent procurement process. All correspondence or contact by interested parties with the City must be directly and only with the Contact for Inquires identified in this RFP. It should be duly noted by all Bidders that this anti-lobbying restriction extends from the release date of this RFP through to the date and time when the City formally awards the Contract. Any lobbying undertaken during this timeframe by any Bidder or the Bidders company staff members, or anyone involved with their Proposal may result in immediate disqualification from the process. This anti-lobbying restriction is not meant to affect the day-to-day operations of the City, its Staff and the elected Council of the City that may include contact with the potential Bidder to this RFP regarding other business.
- c) This section shall not be intended to disallow any meetings, interviews or clarifications requested or authorized by the City, its authorized Staff, the City's representative for this work or their authorized designates.

**14. Bidder Expenses**

Bidders are solely responsible for their own expenses in preparing and submitting a Proposal and for subsequent meeting or negotiations with the City, if any. If the City elects to reject all Proposals received, the City will not be liable to any Bidder for any claims, whether for costs or damages incurred by the Bidder in preparing the Proposal, loss of anticipated profit in connection with any final Contract, or any other matter whatsoever.

**15. Examination of Contract Documents**

- a) Bidders shall carefully examine all Contract Documents and inspect the Platform Location in order to satisfy themselves by personal examination as to all conditions and requirements affecting the Contract. Bidders must not rely upon any verbal confirmation or any estimate or representations, made by an officer, servant or employee of the City.
- b) If a Bidder finds discrepancies, ambiguities or omissions in the Contract Documents, or should be in doubt as to their meaning, he shall notify the Owner at once, who will have prepared and posted on the website a written addendum to all Bidders. All addenda are to be incorporated in the Proposal and will become part of the Contract. Neither the Owner nor the Named Party will be responsible for any other explanations or interpretations of the proposed Contract Documents.



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**16. Erasures and Alterations**

Any erasures, alterations or cross-outs must be initialed in ink by the Bidder. Failure to do so shall result in the rejection of Bidder's Proposal by the City.

**17. Public Comment or Promotion of Proposal**

Except for Bidders interviews, meetings or presentations specifically authorized or arranged by the City contact person or authorized designate, either Bidders or their representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to publicly promote or advertise their Proposal, or their interest or participation in the Proposal and subsequent procurement processes (if any) without the City's prior written consent, which consent may be arbitrarily withheld or delayed.

**18. Adjustments to Proposals after Closing Date**

No adjustments by any Bidders to their Proposals will be permitted after the stated closing date for this RFP, except as otherwise provided herein.

**19. Conditional Proposals**

Proposals which are incomplete, conditional, obscure, contain additions not called for, or contain agreements, contracts or obligations from the Bidder's company or parent company, erasures, or contain alterations irregularities of any kind, shall be rejected.

**20. Unbalanced Proposals**

Pricing indicated on *Appendix A: Form of Proposal* shall be a reasonable as is the custom of the trade. Proposals that contain prices which appear to be so unbalanced or out of line with the custom of the trade as likely to affect adversely the interests of the City, may be rejected.

**21. Duration of Contract**

The contract shall become effective January 1, 2016 and remain in effect for an initial period of five (5) years, until December 31, 2020. The City reserves the option to extend the contract upon mutual agreement between the City and the Successful Bidder pending successful negotiation of contract terms.

**22. Irrevocability and Firm Prices**

Proposals received from Bidders are to be irrevocable and open for acceptance for a period of not less than ninety (90) days after the closing date stated in this RFP. The prices stated on *Appendix A: Form of Proposal* shall remain firm for the duration of the Contract period.

**23. Escalation Clauses**

Proposals containing an escalation clause of any kind shall be rejected.

**24. Harmonized Sales Tax**

Taxes shall not be included in the amounts stated on *Appendix A: Form of Proposal*.

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**25. Workplace Safety & Insurance Board Requirements**

- a) The Successful Bidder must be in good standing with all the provisions of the Workplace Safety and Insurance Board (WSIB) and shall submit to the City's Contract Administrator a "**letter in good standing**" from the WSIB prior to the start of any work. Following substantial completion of the work as determined by the City, the Successful Bidder must furnish the City with a "**Certificate of Clearance**" from the WSIB. For work of long duration the Successful Bidder must supply the City with a "**Certificate of Clearance**" every 90 days. Progress payments will not be paid by the City unless a valid "**Certificate of Clearance**" is supplied to the City. Final payment to the Successful Bidder will not be made unless this certificate is received from them.
- b) A Successful Bidder who operates under an "Independent Operator Status" must supply the City with a document from the WSIB that clearly states that the WSIB has deemed that the successful Successful Bidder is classified as an independent operator as defined under the provisions as issued by the Workplace Safety & Insurance Board. Such document shall be required for each subsequent work under this Contract and updated if the work covered under the Contract resulting from this RFP is of an intermittent nature involving the same or different types of work over a determined period of time. The successful Successful Bidder will not be permitted to start any work under the Contract until such Contract is received by the City.

**26. Insurance Documentation**

***Commercial General Liability Insurance***

The Successful Bidder shall, at their expense obtain and keep in force during the term of the Agreement, Commercial General Liability Insurance satisfactory to the City and underwritten by an insurer licensed to conduct business in the Province of Ontario. The policy shall provide coverage for Bodily Injury, Property Damage and Personal Injury and shall include but not be limited to:

- a) A limit of liability of not less than \$5,000,000/occurrence.
- b) Add the Municipality as an additional insured with respect to the operations of the Named Insured
- c) The policy shall contain a provision for cross liability in respect of the Named Insured
- d) Non-owned automobile coverage with a limit not less than \$2,000,000 and shall include contractual non-owned coverage
- e) Products and completed operations coverage
- f) Broad Form Property Damage
- g) Contractual Liability
- h) The Policy shall not contain any exclusions of liability for damage to property, building or land, arising from the removal or weakening of support of any property, building or land whether such support is natural or otherwise.
- i) The Policy shall be written on an "occurrence basis". 'Claims Made' insurance policies will not be permitted.

***Automobile Liability Insurance***

The **Successful Bidder** shall maintain automobile liability insurance **covering third party property damage and bodily injury liability (including accident benefits) as may be**

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**required by Applicable Laws** on all Owned and Leased Automobiles to a limit of **Two million (\$2,000,000)** throughout the term of this **Agreement/Purchase Order**. **Five million (\$5,000,000)** is required if **Heavy Equipment is to be used as to completed the work or project**.

***Provisions***

Prior to issuance of an **Agreement** and prior to the commencement of any work, the Successful Bidder shall forward **certified Certificates of Insurance forms attached (no substitutes or omissions will be accepted)** evidencing **the above noted** insurance with the executed Agreement. These Certificates shall state that coverage will not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail to the City.

**All policies listed above to remain in force until final acceptance of the work described herein by the City**

It is also understood and agreed that in the event of a claim any deductible or self-insured retention under this policy of insurance shall be the sole responsibility of the Successful Bidder and that this coverage shall be primary insurance as respects the City. Any insurance or self-insurance maintained by the City shall be considered excess of the Successful Bidder's insurance.

**27. Sub-Contractors**

Sub-Contractors are not permitted.

**28. Third Party Software**

Where the City is in possession of software containing or constituting confidential proprietary information belonging to third parties, the Successful Bidder shall not, except in the usual incidental manner genuinely necessary for the intended use of such software on the equipment of the City;

- a) analyse, copy, decompile, disassemble, translate, convert, reverse engineer or duplicate any physical embodiment or part thereof, or permit any person to do so; or
- b) divulge to any unauthorized person, the ideas, concepts or techniques, or make any other improper use, of such software.
- c) The Successful Bidder shall fully defend, save harmless and indemnify the City from and against any loss or damages suffered by the City as a result of any failure by the Successful Bidder, its officers, directors, partners, contract personnel, agents and employees or any of them to comply with the provisions hereof.
- d) Should the Successful Bidder include third party components within the documents, expertise, design and any other aspect of the Proposal submitted to the City, the Successful Bidder must secure the rights to use and repackage third party components and pass on those rights to the City without additional charges.

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- e) The City will own all intellectual property rights, including (without limitation) copyright, in and to all deliverables provided by the Successful Bidder and its sub-consultants.

**29. Patents, Intellectual Property Rights, Copyright, Trademarks, Technology Rights**

By submitting a Proposal, the Bidder warrants that the information contained in its Proposal does not infringe any Patents, intellectual property rights, Copyright, Trademarks, Technology Rights of any third party and agrees to defend The Corporation of the City of Niagara Falls at the Bidders own expense, in all suits, actions or proceedings in which the City of Niagara Falls is made a defendant for actual or alleged infringement of any Canadian or foreign letters patent, intellectual property rights, copyright trademarks, technology rights or any other related rights to the above resulting from the City of Niagara Fall's contractual relationship with the Bidder and the Bidders use of any or all technologies, methodologies, strategies in providing the services required herein. The Bidder further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding against the City of Niagara Falls. The Bidder agrees to indemnify and hold harmless the City of Niagara Falls from any and all license, royalty and proprietary fees or costs, including legal costs, which may arise out of the City of Niagara Fall's contractual relationship with the Bidder and the Bidders use of any or all technologies, methodologies, strategies in providing the services required herein. It is expressly agreed by the Bidder that these covenants are irrevocable and perpetual.

**30. Freedom of Information**

Any information including all work as described in this RFP, service or product details, prices, statements, and any other information provided by the Bidder shall be kept strictly confidential and release of same, except for any details regarding this bid document stated in a Report to the Council of the City, shall only be granted in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 as amended.

**31. Omission & Mis-statements**

- a) All pages of this RFP and the Contract, shall be taken together to explain each other, and to make the whole consistent; and if it be found that anything has been omitted or misstated, which is necessary for the proper performance and completion of any part of the work contemplated, the Successful Bidder shall, at the Successful Bidder's own expense, and without making any extra claim, therefore, execute the same as if it has been properly described, and the correction of any such omission or mis-statement shall not be deemed to be an addition to, or deviation from the works hereby contracted for; nor shall such decision or correction entitle the Successful Bidder to any extension of time for the completion of the Contract.
- b) It is to be understood that the complete RFP containing all documents and drawings as posted on the City's Bid Opportunities Web Page ([www.niagarafalls.ca/bids](http://www.niagarafalls.ca/bids)) shall constitute the RFP. Any Proposals received that have clauses or any wording or figures, statistics, numbers, quantities or any other items that have been changed or altered in any way shall be rejected and not accepted by The Corporation of the City of Niagara Falls.

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**32. Withdrawal of Proposal**

Bidders shall be permitted to withdraw their unopened Proposal after the Proposal has been delivered to the Manager of Procurement at any time up to the official closing time by submitting a written request from the Bidder to the Manager of Procurement, at its discretion, this RFP at any time and shall not be liable for any expense, cost, loss or damage incurred or suffered by any Bidder as a result of such withdrawal.

**33. Agreement with Terms**

By submitting a Proposal, the Bidder agrees to all the terms and conditions of this RFP. Bidders who have obtained this RFP and any addenda electronically must not alter any portion of this RFP. To do so will invalidate the Proposal and the Bidder's delivered Proposal will be rejected.

**34. Waiver of Rights in Proposal and Indemnity**

- a) Each Bidder acknowledges and agrees that the City is likely to receive, and be required to deal with, multiple Proposals, all of which may contain or disclose information considered by their Bidders to be of special, unique, secret or proprietary nature, and that such information and the manner in which the City may use it may be entitled or subject to protection under any of Canada's intellectual property laws, the Competition Act, Municipal Freedom of Information and Privacy Protection Act or the common law relating to unfair competition.
- b) The City will not accept any Proposal that is subject to a reservation by the Bidder of any such rights, and each Bidder, by virtue of submitting a Proposal pursuant to this RFP, expressly waives any and all protection to which the Bidder might otherwise be entitled in respect of that Proposal under all of the foregoing laws, and expressly releases the City and its staff, as well as the qualified Bidders from any claims, actions, suits and proceedings whatsoever for the infringement of any intellectual property right or for the use of any secret or proprietary information disclosed to the City in that Proposal.
- c) Each Bidder shall indemnify and save harmless The Corporation of the City of Niagara Falls and its staff, against all claims, actions, suits and proceedings brought by any person in respect of the infringement or alleged infringement of any patent, copyright, trademark or industrial design or the use or misuse in connection with their Proposal, including any and all costs incurred by the City.

**35. Rights of the City**

- a) The City reserves the right, in its absolute discretion to accept a Proposal which it deems most advantageous to itself and the right to reject any Proposals, in each case without giving any notice. The lowest or any Proposal will not necessarily be accepted. In no event will the City be responsible for the costs of the preparation of the submission of a Proposal.
- b) Proposals which contain conditions or otherwise fail to conform to the Instructions to Bidders may be disqualified or rejected. The City may, however, in its sole discretion, reject or retain for its consideration Proposals, which are non-conforming because they

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do not contain the content or form required by the Instructions to Bidders or for the failure to comply with the process for submission set out in these instructions to the Bidders.

- c) Except as expressly and specifically permitted in the Instructions to Bidders, no Bidder shall have any claim for any compensation of any kind, as a result of participating in this RFP process and by submitting a Proposal each Bidder shall be deemed to have agreed that it has no claim.
- d) Proposals which are incomplete, conditional or obscure, or which contain additives not called for, Proposal's agreements or contracts, erasures, alterations or irregularities of any kind, may be rejected as informal. The City reserves the right to waive informalities at its sole discretion.

**36. Rights to Proposal Submission**

Upon receipt of the Bidder's Proposal, the City shall retain the right to determine the use of the said Proposal for its own purposes. Bidders shall not use their Proposal for any other purposes whatsoever, including revealing any content of their Proposal or making copies for other agencies, firms or companies not being a legal part or division of the Bidder's company, unless permission for any such use is received in writing by the Bidder from the Corporation of the City of Niagara Falls. Bidders must make a request in writing to the City for the intended use of their Proposal for any other purposes than as stated herein.

**37. Ownership and Disclosure of Proposal**

The documentation comprising any Proposal submitted in response to this RFP, along with all correspondence, documentation and information provided to the City by any Bidder in connection with, or arising out of this RFP, once received by the City:

- a) Shall become the sole and unfettered property of the City and may be appended to the Agreement with the Successful Bidder;
- b) Shall become subject to the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"), and may be released, pursuant to that Act.

Because of *MFIPPA*, prospective Bidders are advised to identify in their Proposal any scientific, technical, commercial, proprietary or similar confidential information, the disclosure of which could cause them injury.

**38. Limitation and Waiver of Damages**

The Bidder, by submitting a Proposal, agrees that it will not claim damages, for whatever reason, relating to the RFP or any resulting Contract or in respect of the competitive process. The Bidder, by submitting a Proposal, also waives any claim for loss of profits if no Agreement is made between the Bidder and the City.

**39. Protection of the City**

The Successful Bidder shall at all times well and truly save, defend, keep harmless and fully indemnify the City and its servants, employees and agents, from and against all actions,

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suits, claims, demands, loss, costs, charges, damages and expense, brought or made against or incurred by the City, its servants, employees or agents, in any way relating to goods, materials, articles or equipment, supplied, or the supplying thereof, or work or services, performed, or the performing thereof, pursuant to this RFP, or relating to inventions, copyrights, trademarks or patents, or rights thereto, used in supplying such goods, materials, articles, equipment, or in performing such work or services or arising out of the subsequent use or operation of such goods, materials, articles, equipment or work.

**40. Confidentiality of Information**

Except as noted, all communications between the Bidders and the City regarding this RFP shall be treated as confidential, commencing the date of issuance of the RFP to and after the receipt and opening of Proposals. The City, in its sole and unfettered discretion, may at any time reject any Proposal from a Bidder without further consideration and terminate that Bidder's right to continue in the RFP process in the event of any breach of confidentiality by the Bidder.

**EVALUATION AND AWARD**

RFP submissions will be assessed on the basis of information provided by the Respondent at the time of submission as well as any additional information provided during subsequent meetings with the Bidder, if required. The evaluation of RFP submissions will be conducted by an evaluation team comprised of City Staff.

**1. Order of Precedence**

In the event of any inconsistency or conflict in the contents of the following documents, such documents shall take precedence and govern in the following descending order:

- Sample Agreement
- Addenda to the RFP (if any)
- The RFP including all appendices and attachments as issue by the City.
- The Proposal Submission
- Appendices (latest revision)

**2. Reasons for Rejection of the Bidders Submission:**

- a) All *Appendix A: Form of Proposal* pages not completed and not signed by the Bidder in the stated place.
- b) All required pricing and information not stated on the Form of Proposal pages and any other pages of this RFP.
- c) Any erasures, alterations or cross-outs must be initialed in ink by the Bidder.
- d) All Addenda requirements not included.
- e) The first page of all Addenda, completed and signed by the Bidder, not included.
- f) All other reasons as stated in this Request For Proposal – Services.

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**3. Vendor Performance**

The Corporation may, in its sole discretion, reject a Bid if a bidder:

- a) has, at any time, threatened, commenced or engaged in legal claims or litigation against the Corporation;
- b) is involved in a claim or litigation initiated by the Corporation;
- c) previously provided goods or services to the Corporation in an unsatisfactory manner;
- d) has failed to satisfy an outstanding debt to the Corporation;
- e) has a history of illegitimate, frivolous, unreasonable or invalid claims;
- f) provides incomplete, unrepresentative or unsatisfactory references; or
- g) has engaged in conduct that leads the Corporation to determine that it would not be in the Corporation/s best interests to accept the Bid.

**4. Suspension of Activity**

- a) All Bidders are advised and put on notice that notwithstanding anything else contained in this RFP that all Bidders are forewarned and advised that if the City chooses not to proceed with the RFP process or any subsequent procurement process or any stage, including without limitation, the completion of the RFP process, the commencement, implementation or completion of any Proposal process or other procurement process and/or the award, negotiation or the finalization of any Agreement or Contract and that accordingly, all Bidders acknowledge and agree that if any such processes are suspended, terminated or cancelled at any time or times during any stage of the RFP or subsequent procurement process (if any) by the City, then the Bidders shall have no claim against the City for any costs, expenses, losses including loss of profits, liabilities or damages whatsoever.
- b) The City reserves the right to exercise complete and unfettered discretion in all aspects of the conduct of the RFP and any subsequent procurement process, the assessment and evaluation of Proposals, including the determination of criteria and the selection, if any, of a successful Bidder, without incurring any liability whatsoever to any Bidder, including any liability for costs, expenses, losses or damages, and without giving any reasons therefore.
- c) Without limiting the generality of the foregoing, the City, in its sole and unfettered discretion, reserves the right to change the dates, schedules and deadlines set out in this RFP, or to change the scope of the project, or to cancel the RFP or the project, without stating reasons therefore and accordingly the City also reserves the right to accept or to reject any or all of the Proposals and the City reserves the right to proceed as, in its sole and unfettered discretion, following receipt of the Proposals, including, without limitation, issuing a second or more, or a modified RFP for the project or entering into contract negotiations with any Bidder.
- d) The issuance of this RFP and the receipt of any Proposal submission by any Bidder do not commit the City to award a Contract or to pay any costs incurred in the preparation of any Proposal by any Bidder, or in any Bidder's attendance at any meetings with the City.



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5. **Successful Bidder**  
The City Representative will deal only with the Successful Bidder, whose name is shown in the Agreement, or their appointed Representative.
6. **Inducements**  
Any Bidder who offers any kind of a reward to any person having influence over the administration of this Proposal during the administration of the Proposal shall have their Proposal disqualified.
7. **Proposal Opening Procedure and Bid Results**  
Proposal will be opened by City staff following the closing date and time as stated in this RFP. The lowest priced Proposal received will not necessarily be accepted.
8. **Decision by City**  
The Bidder agrees by submitting a Proposal in response to this RFP that the City has no obligation to reveal its decision in selecting a successful Bidder.
9. **Contract Award**  
Upon acceptance of the Bidder's Proposal, or any part thereof, by the Corporation, the Bidder shall execute and enter into a formal contract that is satisfactory to the Solicitor for the City, to properly secure the contract resulting therefrom and to embody indemnity and City related provisions that in the opinion of such Solicitor are required to protect the City. See attached *Sample Agreement*.
10. **Execution of Contract**  
The successful Bidder shall be notified in writing of the acceptance of their Proposal and shall be bound to execute the Agreement with the Corporation within two weeks of Contract award. Date of Contract award shall be taken as the date on which the successful Bidder is notified in writing of the acceptance of the Proposal by the City.

The successful Bidder must submit the following to the City's Contract Administrator within two weeks of the Contract award:

- a) A certified copy of all required Insurance Policies which complies with the requirements of the Contract conditions for a minimum amount of Five Million Dollars (\$5,000,000.00), including all endorsements.
- b) A Certificate of Insurance.
- c) A letter from Workplace Safety and Insurance Board certifying that the Successful Bidder is in good standing with the Board. A "letter of good standing" must be re-submitted throughout the Contract every 90 days.

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**11. Examination of Records**

The Bidder agrees that the City of Niagara Falls or any of their duly authorized representatives shall, until the expiration of three (3) years after the final payment under this Contract, have access to and the right to examine any directly pertinent books, documents and records of the Bidder involving transactions related to this Contract.

**12. Additional Requirements**

Corporation of the City of Niagara Falls reserves the right to add or delete items listed herein following award of any Contract resulting from this RFP. Unit prices stated by the Bidder shall apply.

**13. City not Employer**

The Bidder agrees that the Corporation of the City of Niagara Falls is not to be understood as the employer to any Successful Bidder nor to such Successful Bidder's personnel or staff for any work, services, or supply of any products or materials that may be awarded as a result of this RFP. Also, in accordance the *Occupational Health and Safety Act*, **the Successful Bidder herewith agrees to be the "constructor" as defined under this Act.**

**14. Agreement in Writing Only**

No verbal arrangement or agreement, relating to the goods, materials, articles, equipment, work or services, specified or called for under this RFP, will be considered binding, and every notice, advice or other communication pertaining thereto, must be in writing and signed by Contact for Enquiries.

**15. Payment Schedule**

- a) A payment schedule for the License fee by the Successful bidder to the City shall form part of the contract.
- b) The Successful Bidder shall be invoiced by the City for the payment of the License fee.
- c) Payment of License fees payable by the successful bidder are payable for the period commencing January 1, 2016 through and including December 31, 2020 and shall be paid to the City on January 15th of every year of this contract.
- d) The parties hereto agree that the fees set out are intended to represent fair market value of such rights.
- e) Revenue payment must be submitted to the Accounts Receivable Department, City Hall, 4310 Queen St., Niagara Falls, ON L2E 6X5.

**17. Failure to Execute Contract**

Failure by the successful Bidder to execute the Agreement with the City and to deposit with the City the said Bonds, certified copies of all required Insurance Policies and a Workplace Safety and Insurance Board letter within the specified times as provided herein shall be just cause for the annulment of the Contract award and the forfeiture of the Proposal deposit to the Corporation, not as a penalty, but as liquidated damages sustained.

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**18. Standards and Legislation: Failure to Comply**

The successful Bidder may be required to provide written documentation that all materials proposed meet Municipal, Provincial and Federal Government standards, legislation and laws. Also, the successful Bidder must comply with all laws, legislation, regulations, and provisions of the Federal, Provincial, Municipal Governments or any governmental agency as they pertain to the work described herein. Failure by the successful Bidder to comply with these laws, legislation, regulations and provisions shall be just cause for the City, at its discretion, to stop performance of the Contract resulting from this RFP, until such times as the Successful Bidder complies with these laws etc. Also, the City may, at its discretion, award the Contract to any other Successful Bidder or may re-issue the RFP. The City may assess against the Successful Bidder any damages whatsoever as a result of failure to comply.

**19. Failure to comply with all Proposal Terms**

Failure to comply with all terms, specifications, requirements, conditions and general provisions of this RFP, to the satisfaction of the City, shall be just cause for the cancellation of the Contract award. The City shall then have the right to award this contract to any other Successful Bidder or to re-issue the RFP. The City shall assess against the Successful Bidder any damages whatsoever as a result of failure to perform. In addition, the City may, at its discretion, stop the performance of this Contract until such time as the Successful Bidder complies with all the provisions of this Contract.

**20. Termination for Convenience of the City**

The City of Niagara Falls, upon giving thirty (30) days written notice (unless a longer period is given) may terminate the Contract, in whole or in part, when it is in the best interest of the City of Niagara Falls. To the extent that the Contract is for services and is so terminated, the City shall be liable only for payment in accordance with the payment provisions of the Contract for services rendered prior to the effective date of termination.

**21. Termination**

Nothing herein shall be construed as giving the Successful Bidder the right to perform the services contemplated under the Contract beyond the time when such services become unsatisfactory to the City of Niagara Falls; and in the event that the Successful Bidder shall be discharged before all the services contemplated hereunder have been completed, or the services are for any reason terminated, stopped or discontinued because of the inability of the Successful Bidder to serve under the Contract, the Successful Bidder shall be paid only for that portion of the said services which shall have been satisfactorily completed at the time of termination.

**22. Removal from Bidders List**

The City reserves the right to remove from its list of Bidders, for an indeterminate period, the name of any Bidder who fails to execute a Contract or for unsatisfactory performance on any previous or current contract held with the City or if the Bidder is currently involved in or responsible for litigation of any kind against the City.