



THE CORPORATION OF THE CITY OF NIAGARA FALLS

REQUEST FOR PRE-QUALIFICATION

RFPQ28-2020

Pre-Qualification of City-Wide Wastewater & Stormwater System Trenchless Rehabilitation Program

CLOSING DATE: Tues., Sept. 29, 2020 at 2:00 p.m. local time

INSTRUCTIONS TO BIDDERS

INVITATION TO BIDDERS

The City of Niagara Falls is seeking to pre-qualify **Trenchless Rehabilitation Contractors** for a three-year program aimed:

1. Reducing wet weather flows, inflow and infiltration, into the wastewater collection system with a specific emphasis on reducing peak flows in areas tributary to the proposed South Niagara Falls WWTP;
2. Ensuring that the wastewater and stormwater collection systems are kept in an acceptable state of good repair and reduce risks to the system through the remediation of structural and operational defects in a timely manner; and
3. Ensuring the long-term viability, sustainability and affordability of these systems through a cost effective annual 3-year remediation and repair program (with an option to extend an additional 2 years).

The purpose of this Request for Pre-Qualification (RFPQ) submission is to shortlist Contractors with appropriate experience and expertise in the following:

- Mechanical and Hydraulic Cleaning and Flushing
- CCTV
- Bypass Plans and Bypass Pumping
- Cured In Place Pipe Lining (CIPP)
- Cured in Place and Mechanical Spot Repairs
- Manhole Rehabilitation
- Lateral Rehabilitation

Contractors will be eligible to participate in the tender process as a General Contractor or Sub-Contractor. This RFPQ is posted on the City of Niagara Falls website at <http://www.niagarafalls.ca/bids>.

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QUESTIONS REGARDING THIS RFPQ

Questions regarding this RFPQ must be submitted in writing only to Dave Butyniec, Manager of Procurement, e-mail dbutyniec@niagarafalls.ca no later than **Tues., Sept. 22, 2020 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 RFPQ will be posted on the City's Bid Opportunities Web Page: 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. Submissions that do not include the first page, completed and signed, of all posted addenda may be rejected.

CLOSING

The Pre-Qualification submission, **including original and three 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 **Tues., Sept. 29, 2020 at 2:00 p.m. local time** (hereinafter referred to as the "closing time"). **If the required copies are not provided with the original document when submitted, the submission will not be accepted.** Binder submissions will not be accepted. (Coil binding is acceptable).

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1. DEFINITIONS

Throughout this Request for Pre-Qualification, unless inconsistent with the subject matter or context:

- a) *City* and *Owner* shall mean The Corporation of the City of Niagara Falls.
- b) *Bidder* means a legal entity, being a person, partnership or firm that submits a response to this RFPQ. Also means the legal entity that is responsible for all construction responsibilities in accordance with the Ministry of Labour and the Occupational Health and Safety Act, and is the main contact person for all matters relating to the construction of this Project.
- c) *RFPQ* means this Request for Pre-Qualification in its entirety, inclusive of all appendices, attachments and any addenda that may be issued by the City of Niagara Falls.
- d) The word *Submission* shall mean the response to this RFPQ as set out in this document.
- e) *Contract* means the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in this Request for Submission per the Contract issued by the City.

2. NAMED PARTIES

For the purposes of this Request for Pre-Qualification (RFPQ) the following parties are identified:

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

City Project Manager: Kurtis Bottrell, C.E.T., Project Manager – Municipal Works

Contact for Inquiries: Dave Butyniec, Manager of Procurement, e-mail dbutyniec@niagarafalls.ca

3. ELIGIBILITY FOR PRE-QUALIFICATION

To be eligible for pre-qualification, Bidders must clearly provide evidence of:

- Ability to provide the required financial security for the project;
- Ability to provide the required project insurance;
- Appropriate WSIB coverage and Health & Safety practices;
- History of successful delivery of similar programs;
- Proven ability to deliver a program of this size and complexity;
- Proven ability to deliver remediation services whilst communicating effectively with the:
 - City Program Team,
 - City’s Program Manager, GM BluePlan,
 - Region of Niagara
 - Regulatory Agencies
 - Residents and other Program Area Stakeholders.
- Ability to meet or exceed the mandatory requirements as outlined in this RFPQ.

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4. PURPOSE OF THE RFPQ - SCOPE OF WORK

In 2018, the City of Niagara Falls embarked on a system wide PACP CCTV assessment of their wastewater collection system, approximately 450km, and an MACP assessment of all wastewater manholes, approximately 6,300. The primary driver for this program is the reduction of extraneous flow to the wastewater system and secondarily to address operational and structural issues that impact collection system performance.

This program will span 3 years (with an option to extend an additional 2 years) and phases corresponding with the inspection phase areas for the CCTV and MACP effort. These phases are understood to be as follows:

- Phase I – South Niagara Falls, generally defined by the areas South of Lundys Lane, North of Weinbrenner Road, West of Niagara River and East of Garner Road.
- Phase II- North of Lundys Lane, West of the Hydro Electric Power Canal, East of Garner Road and South of Mountain Road.
- Phase III – North of Lundys Lane, South of Townline Road, West of the Niagara River and East of the Hydro Electric Power Canal.

The City has completed approximately 70% of the noted condition assessments and will complete the remainder in late 2020, early 2021. The City's Program Manager GM BluePlan Engineering, GMBP, is providing analysis of the condition data to derive both a trenchless and open cut remediation plan for the entire wastewater network. As with all assessments of this type, the needs of the system outweigh the available budget and as such the GMBP has prioritized remediation in alignment with the City's chosen objectives of removing extraneous flows and providing a cost tolerable level of state of good repair for the system.

In addition to the preceding, the City may have needs with respect to the trenchless repair of culverts, storm sewer and manholes.

In general the work for this program will involve:

- Mechanical and Hydraulic Cleaning and Flushing
- Pre and Post CCTV
- Bypass Plans and Bypass Pumping
- Cured In Place Pipe Lining (CIPP)
- Cured in Place and Mechanical Spot Repairs
- Manhole Rehabilitation
- Lateral Rehabilitation

The City intends to budget \$1.5M (plus a \$200,000 contingency allowance) per year for a 3-year period (with an option to extend an additional 2 years) to complete high priority repairs within the system on a phase by phase basis. Increased emphasis will be placed on works

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within the Phase I area due to the need to reduce peak wet weather flows prior to the construction of the new South Niagara Falls Wastewater Treatment Plan

In September 2020, the City of Niagara Falls intends to call for tenders for the provision of Trenchless Rehabilitation services related to the following:

- Three-year program for trenchless rehabilitation
- Approximately \$1.5m per year, years 2 and 3 subject to Niagara Falls City Council approval.
- Additional provisional items including but not limited to additional program phases.

The City invites the submission of a Statement of Qualifications from interested Trenchless Contractors for the City-Wide Wastewater and Stormwater System Trenchless Rehabilitation Program. Shortlisted Trenchless Contractors will be eligible to participate in the tender process as a Prime Contractor. Should a consortium be used, both Prime and any Sub contractors must be pre qualified. This Request for Pre-Qualifications along with the Proponent's submission will form part of the main program contract documents.

5. RFPQ, Evaluation & Notification Timeline

RFPQ

- Open: Tuesday, September 15, 2020 @ 10:00 a.m.
- Question Period Close: Tuesday, September 22, 2020 @ 2:00 p.m.
- Close: Tuesday, September 29, 2020 @ 2:00 p.m.

Evaluation and Notifications

- RFPQ Evaluations – September 30, 2020 to October 7, 2020
- Notification of Pass/Failure – October 9, 2020

Dispute Resolution Period

- October 9, 2020 to October 23, 2020

Tender Availability

- Approximately November 2020

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SUBMISSION PROCEDURE AND REQUIREMENTS

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

1. Submissions should include all required pages and must be signed by the Bidder, in ink, where stated on *Appendix A: Form of Pre-Qualification* page(s) and on any other pages as stated.
2. Submissions received later than the time specified will not be accepted, regardless of the postal seal date. Submissions delivered by mail or courier must have the Pre-Qualification description and Pre-Qualification number clearly stated on the exterior of the envelope or package. Please use the attached mailing label. The City assumes no responsibility for Submissions delivered by mail or courier.
3. Pre-Qualifications submitted shall include the following Mandatory requirements and must be in the following sequence:
 - 3.1 *Appendix A: Form of Pre-Qualification*
 - 3.2 Addenda issued (if any)
 - 3.3 Submit a completed City of Niagara Falls – Supplemental Information Form
 - 3.4 Submit a completed, signed and sealed CCDC 11 – latest edition.
 - i. Complete CCDC 11 fully. Include resume of qualifications and experience for all individuals identified as Key Office Personnel and Key Site personnel. (Note: No substitutions of personnel will be permitted without prior written approval from the City of Niagara Falls).
 - ii. CCDC 11 Appendix A - Provide information on a minimum of three (3) references for former municipal clients for Trenchless Programs completed within the last five (5) years whose value exceeded \$1.5M per year for a minimum of three years.
 - iii. CCDC 11 Appendix B – Provide information on a minimum of three (3) reference projects to demonstrate experience with projects of similar type, size and complexity for projects having a minimum value of one million \$1.5M all completed in the last five (5) years.
 - iv. CCDC 11 Appendix C - Provide information on two (2) reference projects currently in progress.

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- v. In the 'Description' section of the CCDC-11 document for each project submitted in Appendix B and C include additional relevant information that includes information identified below:
- Trenchless remediation difficulties encountered and how they were resolved.
 - Customer issues and how they were resolved.
 - Warranty periods for both workmanship and materials used.
 - Approach to customer interaction during periods of service outages due to remedial works.
 - Emergency mitigation measures in the event prolonged service outages.
 - Working within the conditions of environmental approvals/controls including conformance with local noise by-laws.
- 3.5 Provide a letter or certificate of Insurance from the Contractor's Insurer confirming the availability to the contractor (as outlined in item 17 below Bidder Requirements) the required insurance including the capacity to add the City of Niagara Falls and its consultants as an additional insured. A copy of the City's standard form: Certificate of Insurance – Contractor has been included in this RFPQ document for reference purposes.
- 3.6 A Letter from the Contractor's bonding company stating the Contractor's total Bonding Limit, along with their current capacity available at the time of this submission, with respect to obtaining Performance Bond; and Labour & Material Bond. This shall be from a nationally recognized surety company stating the total bonding limit available to the applicant and a commitment to bond up to the project requirements of one million five hundred thousand (\$1,500,000.00) CAD.
- 3.7 Submit a copy of your company's Health and Safety Policy with written confirmation that all health and safety procedures will be followed for the duration of this project;
- 3.8 Provide a current CAD7 WSIB Rating Form and Current WSIB Clearance Certificate.
- 3.9 Confirm in writing, the company's ability to begin the work by the specified contract commencement date which is tentatively targeted for September 2020.

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BIDDER REQUIREMENTS

1. Notification of Potential Bidders Not Guaranteed

The City posts notification of all RFPQ and other opportunities on its Internet Web Page (www.niagarafalls.ca/bids). Bidders are to review this Web Page to inform themselves of any requests for Pre-Qualifications, 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 RFPQ or other opportunity. It is the responsibility of any potential Bidder to check this Web Page to avail themselves of any RFPQ or other opportunity.

2. 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 Pre-Qualification and will become part of the Contract. The Owner will be responsible for any other explanations or interpretations of the proposed Contract Documents.

3. Pre-Qualification Submission and Correspondence in English

Pre-Qualification 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.

4. Form of Pre-Qualification Pages – Appendix A

- a) Bidders must complete all required spaces and sign where indicated on the *Appendix A: Form of Pre-Qualification*.
- b) Bidders must attach all required documents to *the Appendix A: Form of Pre-Qualification pages*.
- c) The *Appendix A: Form of Pre-Qualification* pages must be signed by an Officer of the Bidder's Company who has authority to bind the Company.
- d) By submitting a Pre-Qualification in response to this RFPQ, the Bidder thereby acknowledges that offers contained within its Pre-Qualification 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 RFPQ.

5. Adherence to Requirements

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

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6. Liability for Errors

While the City has used considerable efforts to ensure an accurate representation of information in this RFPQ, the information contained in this RFPQ 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 RFPQ is intended to relieve Bidders from forming their own opinions and conclusions with respect to the matters addressed in this RFPQ.

7. Collusion

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

8. Conflicts of Interest

- a) In its Pre-Qualification, 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 Pre-Qualification.
- 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, at its discretion, refuse to consider the Bidder's Pre-Qualification or withhold the awarding of any Contract to the Bidder until the matter is resolved to the City's sole satisfaction.

9. Anti-Lobbying Restrictions and Required Disclosure

- a) Bidders, their company staff members, or anyone involved in preparing their Pre-Qualification, 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 RFPQ 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 Pre-Qualification by that Bidder without further consideration and terminate that Bidders right to continue in the RFPQ 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 RFPQ. It should be duly noted by all Bidders that this anti-lobbying restriction extends from the release date of this RFPQ 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 Pre-Qualification 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 RFPQ regarding other business.

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- 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.

10. Bidders Expenses

Bidders are solely responsible for their own expenses in preparing and submitting a Pre-Qualification and for subsequent meeting or negotiations with the City, if any. If the City elects to reject all Pre-Qualifications 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 Pre-Qualification, loss of anticipated profit in connection with any final Contract, or any other matter whatsoever.

11. 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 Pre-Qualification by the City.

12. Public Comment or Promotion of Pre-Qualification

Except for Bidders interviews, meetings or presentations specifically authorized or arranged by the City contact person or authorized designate, neither 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 Pre-Qualification, or their interest or participation in the Pre-Qualification and subsequent procurement processes (if any) without the City's prior written consent, which consent may be arbitrarily withheld or delayed.

13. Adjustments to Pre-Qualifications after Closing Date

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

14. Conditional Pre-Qualifications

Pre-Qualifications 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, may be rejected.

15. Workplace Safety & Insurance Board Requirements

- a) The Contractor 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 Contractor must furnish the City with a "**Certificate of Clearance**" from the WSIB. For work of long duration, the Contractor 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 Contractor will not be made unless this certificate is received from the Contractor.

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- b) A Contractor 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 Contractor 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 RFPQ is of an intermittent nature involving the same or different types of work over a determined period of time. The successful Contractor will not be permitted to start any work under the Contract until such Contract is received by the City.

16. Health & Safety

- a) All work performed under a Contract resulting from this RFPQ must be carried out in accordance with the terms and conditions of the **OCCUPATIONAL HEALTH & SAFETY ACT, R.S.O. 1990**, as amended. The City reserves the right to obtain the Health and Safety records from the appropriate Ontario Government Ministry of the selected Contractor and may determine its selection of the successful Contractor based upon these records.
- b) Pre-Start Health and Safety Review:
A Pre-Start Health and Safety Review means the production of a report as required by *O. reg. 528/00* amending Section 7 of the Regulations for Industrial Establishments of the *Occupational Health and Safety Act, R.S.O. 1990* as amended. When required by the City, the successful Contractor shall provide a Pre-Start Health and Safety Report.

17. Insurance Documentation

Commercial General Liability Insurance

The 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 \$5,000,000 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.;

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- i) The Policy shall be written on an “occurrence basis”. ‘Claims Made’ insurance policies will not be permitted.

Automobile Liability Insurance

The **Bidder** shall maintain automobile liability insurance **covering third party property damage and bodily injury liability (including accident benefits) as may be required by Applicable Laws** on all Owned and Leased Automobiles to a limit of **Five million (\$5,000,000)** throughout the term of the project or **Agreement**.

Provisions

Prior to issuance of an **Agreement** and prior to the commencement of any work, the Bidder shall forward **completed 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 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 Bidder’s insurance.

18. Compliance with Laws and Acts

The Contractor shall comply with all Federal, Provincial and Municipal Laws, statutes, regulations and bylaws, relevant to this RFPQ including but not limited to:

- *The Construction Act*, R.S.O. 1990, c. C.30
- *The Occupational Health and Safety Act*, R.S.O. 1990, c. 0.1, as amended.
- *Workplace Safety and Insurance Act*, effective January 1, 1998, as amended
- *The Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56, as amended.
- *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended
- *Employment Standards Act*, 2000, S.O. 2000, c. 41, as amended
- *Accessibility for Ontarians with Disabilities Act (AODA) 2005*. Third party contractors who deliver goods and services on behalf of the City are required to ensure they meet the legislative requirements of the AODA’s Integrated Accessibility Standard, as per Ontario Regulation 191/11, Section 7.

19. Freedom of Information

Any information including all work as described in this RFPQ, 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

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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.

20. Omission & Misstatements

- a) All pages of this RFPQ 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 Contractor shall, at the Contractor'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 misstatement 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 Contractor to any extension of time for the completion of the Contract.
- b) It is to be understood that the complete RFPQ containing all documents and drawings as posted on the City's Bid Opportunities Web Page (www.niagarafalls.ca/bids) shall constitute the RFPQ. Any Pre-Qualifications 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.

21. Withdrawal of Pre-Qualification

Bidders shall be permitted to withdraw their unopened Pre-Qualification after the Pre-Qualification 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 RFPQ 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.

22. Agreement with Terms

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

23. Waiver of Rights in Pre-Qualification and Indemnity

- a) Each Bidder acknowledges and agrees that the City is likely to receive, and be required to deal with, multiple Pre-Qualifications, 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.

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- b) The City will not accept any Pre-Qualification that is subject to a reservation by the Bidder of any such rights, and each Bidder, by virtue of submitting a Pre-Qualification pursuant to this RFPQ, expressly waives any and all protection to which the Bidder might otherwise be entitled in respect of that Pre-Qualification 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 Pre-Qualification.
- 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 Pre-Qualification, including any and all costs incurred by the City.

24. Rights of the City

- a) The City reserves the right, in its absolute discretion to accept a Pre-Qualification which it deems most advantageous to itself and the right to reject any Pre-Qualifications, in each case without giving any notice. The lowest or any Pre-Qualification will not necessarily be accepted. In no event will the City be responsible for the costs of the preparation of the submission of a Pre-Qualification.
- b) Pre-Qualifications 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 Pre-Qualifications, which are non-conforming because they 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 RFPQ process and by submitting a Pre-Qualification each Bidder shall be deemed to have agreed that it has no claim.
- d) Pre-Qualifications which are incomplete, conditional or obscure, or which contain additives not called for, Pre-Qualification'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.

25. Rights to Pre-Qualification Submission

Upon receipt of the Bidder's Pre-Qualification, the City shall retain the right to determine the use of the said Pre-Qualification for its own purposes. Bidders shall not use their Pre-Qualification for any other purposes whatsoever, including revealing any content of their Pre-Qualification or making copies for other agencies, firms or companies not being a legal

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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 Pre-Qualification for any other purposes than as stated herein.

26. Ownership and Disclosure of Pre-Qualification

The documentation comprising any Pre-Qualification submitted in response to this RFPQ, along with all correspondence, documentation and information provided to the City by any Bidder in connection with, or arising out of this RFPQ, 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 Contractor;
- 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 Pre-Qualification any scientific, technical, commercial, proprietary or similar confidential information, the disclosure of which could cause them injury.

27. Limitation and Waiver of Damages

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

28. Confidentiality of Information

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

EVALUATION and NOTIFICATION

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:

- Addenda to the RFPQ (if any)
- The RFPQ including all appendices and attachments.
- The Pre-Qualification Submission

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2. Reasons for Rejection of the Bidders Submission:

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

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 RFPQ that if the City chooses not to proceed with the RFPQ process or any subsequent procurement process or any stage, including without limitation, the completion of the RFPQ process, the commencement, implementation or completion of any Pre-Qualification 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 RFPQ 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 RFPQ and any subsequent procurement process, the assessment and evaluation of Pre-Qualifications, 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

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this RFPQ, or to change the scope of the project, or to cancel the RFPQ 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 Pre-Qualifications and the City reserves the right to proceed as, in its sole and unfettered discretion, following receipt of the Pre-Qualifications, including, without limitation, issuing a second or more, or a modified RFPQ for the project or entering into contract negotiations with any Bidder.

- d) The issuance of this RFPQ and the receipt of any Pre-Qualification submission by any Bidder do not commit the City to award a Contract or to pay any costs incurred in the preparation of any Pre-Qualification by any Bidder, or in any Bidder's attendance at any meetings with the City.

5. Inducements

Any Bidder who offers any kind of a reward to any person having influence over the administration of this Pre-Qualification during the administration of the Pre-Qualification shall have their Pre-Qualification disqualified.

6. Pre-Qualification Opening Procedure and Bid Results

Pre-Qualification will be opened by City staff following the closing date and time as stated in this RFPQ.

7. Bidder Selection

The Committee evaluation of the Submission will be based solely on the information provided by the Bidder. The ranking will be completed based on the criteria listed on *Appendix B: Evaluation*.

8. Notification to Qualified Bidders

Only those Bidders that meet the pre-qualification criteria will be notified and invited to submit a bid on this contract.