

INSTRUCTIONS TO BIDDERS

A) THE BIDDING PROCESS

1.1 RFQ Closing Time and Location

Quotations will be received at the location of and prior to the time and date stated in the covering letter for this Request for Quotation.

1.2 Bidding Procedure:

- a) Quotations must be submitted per the instructions stated in the covering letter. Bidders are to attach to their Quotations all warranty details and any other requirements as stated in the covering letter.
- b) Collusion between Bidders will be sufficient cause for rejection of all quotations so affected.
- c) The price(s) as submitted shall include all work and services described herein to complete the requirements of this RFQ to the satisfaction of the City of Niagara Falls.
- d) The City of Niagara Falls will make all necessary corrections to any quotation which is in error through addition or extensions with the corrected value prevailing.
- e) Strict compliance with all requirements as stated in this RFQ is required.
- f) Quotations received later than the time and date stated in the covering letter of this RFQ may not be received nor accepted.

1.3 Questions During Bidding (deadline for questions)

- a) Questions regarding this RFQ must be submitted in writing only to the City Representative named in the covering letter for this RFQ.
- b) No City staff, whether an official, agent or employee, other than the City Representative named in the covering letter is authorized to speak for the City with respect to this RFQ, and any Bidder who uses any information, clarification or interpretation from any other representative does so entirely at the Bidder's own risk.
- c) The City will not be bound by any representation made by an unauthorized person, but any attempt by a Bidder to bypass the RFQ process may be grounds for rejection of its Quotation.
- d) The City of Niagara Falls will not be responsible for any verbal comment or suggestion by any City staff, appointed or elected official of the City or by any Consultant retained by the City in respect to this RFQ.
- e) Bidder's Questions if deemed necessary of a response and any City directed changes or alterations to this RFQ will be issued in the form of an follow-up letter or E-mail from the City Representative.

1.4 Definitions

Throughout this Request for Quotation, unless inconsistent with the subject matter or context:

- a) "City" means The Corporation of the City of Niagara Falls.
- b) "Contract" means the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in this Request for Quotation per the Purchase Order issued by the City which shall include this RFQ, the Bidder's Quotation submission, and all Addenda and represents the entire agreement between the parties.
- c) "Contractor" is the person or entity identified as such in the Purchase Order as issued by the City. The term Contractor means the Contractor or the Contractor's authorized representative as designated to the Owner in writing.
- d) "Council" means City of Niagara Falls Council.
- e) "Bidder" means a legal entity, being a person, partnership or firm that submits a Quotation in response to this RFQ.
- f) "Quotation" means a Quotation submission by a Bidder in response to this RFQ, which includes all of the documentation necessary to satisfy the submission requirements of this RFQ.
- g) "RFQ" means this Request for Quotation including the covering letter issued by the City Representative inclusive of all appendices, attachments and any addenda or change notice that may be issued by the City of Niagara Falls.
- h) "Selected Bidder" means the Bidder whose Quotation, as determined by the City, provides the best overall value in meeting the requirements of this RFQ, and with whom the City will consider issuing a Purchase Order.
- I) "Services" means all services and deliverables to be provided by the Contractor as described in this RFQ.
- j) "Work" means the total requirement for all services and deliverables as described in this RFQ.

1.5 Rights of the City - By Submitting a Quotation in response to this RFQ, the Bidder agrees:

- a) The City reserves the right, in its absolute discretion to accept Quotations which are deemed to be most advantageous to itself and the right to reject any or all Quotations in each case without giving any notice. All Quotations received will not necessarily be accepted. In no event will the City be responsible for the costs of the preparation or the submission of a Quotation from any Bidder.
- b) Quotations which contain conditions or otherwise fail to conform to the terms and conditions of this RFQ may be disqualified or rejected. The City may, however, in its sole discretion, reject or retain for its consideration Quotations, which are non-conforming because they do not contain the content or form required by the Instructions to Bidders or for failure to comply with the process for submission set out in the Instructions to Bidders.
- c) Except as expressly and specifically permitted as set in the terms and conditions of this RFQ, no Bidder shall have any claim for any compensation of any kind whatsoever, as a result of participating in this RFQ, and by submitting a Quotation each Bidder shall be deemed to have agreed that it has no claim.
- d) The City reserves the right to decline to contract with any Bidder regardless of any other factor, including without limiting the generality of the foregoing, on the basis that the Bidder has an unsatisfactory record of compliancy with the regulations of *The Occupational Health and Safety Act R.S.O. 1990, c. O.1* as amended.
- e) The City reserves the right to exercise complete and unfettered discretion in all aspects of the conduct of this RFQ and any subsequent procurement process, the assessment and evaluation of Quotation submissions, including the choice of the Selected Bidder, without incurring any liability whatsoever to any Bidder, including any liability for costs, expenses, losses or damages, and without giving any reason therefore.

f) The City also reserves the right to: modify specific details and deadlines, cancel this RFQ at any time prior to or following the stated RFQ closing time, and to consider Bidders who have not responded to this RFQ, and to request additional information if deemed necessary by the City and to take any steps whatsoever the City deems necessary to choose a Selected Bidder.

g) The City reserves the right to negotiate price, terms, conditions or any matter whatsoever with the Selected Bidder. Should negotiations with the said Bidder not be successful, the City reserves the right to enter into negotiations with the next lowest priced **or any other** Bidder regardless of ranking or to cancel the RFQ completely or to cancel and re-issue the RFQ.

h) The Bidder agrees by submitting a Quotation in response to this RFQ that the City has no obligation to reveal the results of or reasons for its decision in selecting a Contractor

I) The Bidder agrees that by submitting a Quotation in response to this RFQ that the City will not provide any debriefing or provide any information regarding any Quotation submitted to any Bidder or discuss reasons why any Quotation submission was unsuccessful with any Bidder.

j) The City reserves the right to waive informalities and minor inconsistencies at its sole discretion.

1.6 Completion of all Information Required

All Bidders are required to complete all information requested in this Request for Quotation. Failure to do so may result in the disqualification of Quotation. Typographical errors in entering quotations on the Bidder's Quotation Submission may result in the disqualification of Quotation.

1.7 Non-Acceptance Due to Existing Obligations to the City

No Quotation shall be accepted from, or no Contract will be awarded to, any person, firm or corporation that is in arrears to the City of Niagara Falls, upon debt or contract or that is a defaulter, as surety or otherwise, upon any obligation to the City, or that may be deemed irresponsible or unreliable by the City Council. Bidders may be required to submit satisfactory evidence that they have a practical knowledge of the requirements stated in this RFQ and that they have the necessary financial resources to perform and complete the services outlined in this RFQ.

1.8 Ethical Standards

a) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding of application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a Contract or subcontract, or to any solicitation or Request for Quotation therefore.

b) It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a Contract to the prime Bidder or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

c) In the event that any gratuities or kickbacks are offered or tendered to any City of Niagara Falls staff, officers or appointed or elected officials, the Bidder's Quotation shall be disqualified and shall not be reinstated.

1.9 Single Point of Contact

Other than as expressly permitted or required in, this RFQ, and without limiting any other restriction. Any attempt on the part of a Bidder or any of its employees, servants, agents, subcontractors, or representatives to contact anyone connected with this Quotation other than the City Representative identified in this RFQ, either directly or indirectly will lead to such Bidder's disqualification.

1.10 Publicity Regarding this RFQ and the Bidders Quotation

Other than as expressly permitted or required in this RFQ, Bidders and their representatives shall not, with respect to this RFQ or a Bidder's Quotation, make any public comment, publicly promote or advertise their qualifications, their Quotation, or their interest in this competitive procurement process.

1.11 Potential for Conflict of Interest

a) The Quotation shall include a list of all major projects that the Bidder is currently involved within the City of Niagara Falls. For these projects outline the nature of the Project, the names of the clients, and the major stakeholders.

b) Respondents must declare in their Quotation all conflicts of interest or any situation that may be reasonably perceived as a conflict of interest that exists now or may exist in the future. The City reserves the right to disqualify a Bidder in the event of a conflict, real or perceived.

1.12 Non-Collusive Quotation Certification

a) By the submission of a Quotation in response to this RFQ, the Bidder certifies that: The Quotation has been arrived at (completed) by the Bidder independently and has been submitted without collusion with any other Bidder. The contents of the Quotation have not been communicated by the Bidder, nor, to its best knowledge and belief, by any of its employees or agents, to any person not an employee or agent of the Bidder or its surety on any bond furnished herewith, and will not be communicated to any such person prior to the official opening of the Quotation.

b) No Bidder shall submit more than one Quotation in response to this RFQ. It shall be the responsibility of each Bidder to obtain the prior written permission from the City before receipt of Quotation in every situation in which the Bidder, due to corporate association or other affiliation, may be found to be impermissibly associated with another Bidder. Failure to observe this requirement could result in all such affiliated Quotation submissions being rejected.

1.13 Legal Claims and Damages

a) The City of Niagara Falls reserves the right not to accept a Quotation from any person or corporation which includes any non-arms length corporation and all related corporations thereto who, or which, has a claim or instituted a legal proceeding against the City of Niagara Falls or against whom the City has a claim or instituted a legal proceeding with respect to any previous contacts, bid submissions or business transactions who is listed as either the Bidder or subcontractor or any vendor within the submitted Quotations.

b) Also, a Bidder, by submitting a Quotation, agrees that it will not claim damages, by any means, in respect to any matter relating to the RFQ, the bidding and evaluation process or any subsequent procurement process, if any, resulting from this RFQ.

1.14 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, papers and records of the Bidder involving transactions related to this Contract.

1.15 Ownership of Work Product

All documents submitted to the City by the Bidder become and are the property of the City, and the City may, without restriction, make use of such documents and underlying concepts as it sees fit. The Bidder shall not be liable for any damage that may result from any use of said documents for purposes other than those described in this RFQ.

1.16 Irrevocable Offer

By submitting a Quotation in response to this RFQ, the Bidder thereby acknowledges that offers contained within its Quotation 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 RFQ.

1.17 Withdrawal of Quotation

a) Bidders shall be permitted to withdraw their Quotation after the Quotation has been delivered to the City at any time up to the official closing time by submitting a written request from the Bidder to the City Representative prior to the date and time specified for the RFQ closing. Bidders will not be allowed to withdraw their Quotation following the RFQ stated closing date and time.

b) The City reserves the right to withdraw, at its discretion, this Request for Quotation 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.

1.18 No Post Submission Adjustments

No adjustments by any Bidders to their Quotation submission will be permitted after the stated closing date and time for this RFQ.

1.19 Verification and Clarification

a) Notwithstanding any clause, term or condition of this RFQ, the City at its sole discretion, reserves the right to verify or clarify any information or data contained in a Bidder's Quotation submission. Such requests by the City shall not constitute any opportunity by the Bidder to adjust, improve or in any manner add to their Quotation submission.

b) If in the sole opinion and determination of the City, the Bidder has misinterpreted the services required in the RFQ or underestimated the hours or value of the services to be performed or has submitted unbalanced prices or fees, not accurately reflecting the services requested, the City may reject the Bidder's Quotation submission.

1.20 Conflicts of Interest

a) In its Quotation, 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 Quotation.

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 Quotation or withhold the awarding of any Contract to the Bidder until the matter is resolved to the City's sole satisfaction.

c) If, during the evaluation process for Quotations submitted in response to this RFQ or the negotiation of the Contract, another municipality, or public agency, etc. giving rise to a potential conflict of interest retains the Bidder, then the Bidder will so inform the City. If the City requests, then the Bidder will refuse the new assignment or will take such steps as are necessary to remove the conflict of interest concerned. Bidders must declare in their Quotation all conflicts of interest or any situation that may be reasonably perceived as a conflict of interest that exists now or may exist in the future. The City reserves the right to disqualify a Bidder in the event of a conflict, real or perceived.

1.21 Non-Exclusivity

The awarding of a Contract to a Selected Bidder shall not be a guarantee of exclusivity.

1.22 Restrictions Contained in a Quotation

The Bidder's Quotation must not contain any restrictions, erasures, or non-contract statements made to any article, or term or condition of this RFQ and also must not contain any added agreement, contract or terms and conditions of the Bidder's company or parent or related company. The City reserves the right to reject any Quotation in which the said restrictions or additions nor called for are included.

1.23 Ownership of Documents Submitted to the City

All documents and reports and any other information or data as prepared by the Contractor in response to this RFQ, whether in draft or final format, prepared on behalf of the City for the Work and services described in this RFQ, shall become the sole and unfettered property of the City.

1.24 Confidentiality of Information

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

b) All information provided to the City from a member of a Bidder's company, and/or team in connection with, or arising out of, the RFQ process, shall become the sole property of the City.

c) Bidders must treat all information in a highly confidential manner and not use this information for any purpose other than for replying to this RFQ and fulfilling any related Contract requirements arising from the award of any work resulting from this RFQ. Without limiting the generality of the foregoing, Bidders who are deemed qualified to submit a Quotation in response to a future RFQ and/or invited to participate in interviews or any aspect of the RFQ process subsequent to submissions, shall keep highly confidential all such developments and participation. All information pertaining to recommendations and information collected and processed for the City is for the sole use of the City in its sole and unfettered discretion.

d) Information communicated by the City to the Bidder or by the Bidder to the City in the course of responding to this RFQ shall not be either divulged or issued by the Bidder on any other project or RFQ issued by the City unless prior approval, in writing, is obtained from the City.

e) Any information that is not common knowledge, and may therefore be considered confidential by the City, that is acquired in the course of responding to this RFQ, shall not be used or divulged by the Bidder unless prior approval, in writing, is obtained from the City.

f) Notwithstanding the foregoing, the obligation of confidentiality shall not pertain to information which, 1) Was at the time of disclosure, or thereafter became, part of the public domain; and 2) Must be disclosed under law or court order, where, in such cases, all reasonable attempts will be made by the Bidder to notify the City in advance of doing so.

g) All Quotations received including all attachments shall remain the sole property of the City and shall not be returned to the Bidder under any circumstance following the stated closing time and date stated herein.

h) All correspondence, documentation and information provided to the City by every Bidder in connection with, or arising out of this RFQ, and all Quotations submitted to the City shall become the property of the City and as a result, such the said Quotations are subject to requests for disclosure under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 as amended. Accordingly, Bidders are requested to identify any information in their Quotation submission that, if disclosed, could cause them injury. The City will make all reasonable efforts to maintain the confidentiality of such information, but the Bidders must be aware that the information may become public through requests for information and at all times as the result of the need for transparency and accountability in decisions made by the City. The City shall not be liable if any such confidential information becomes public or is otherwise disclosed. Bidders shall not identify their entire Quotation as "Confidential". The City may treat such a notation on or within a Quotation as grounds for disqualification.

1.25 Waiver of Rights

a) Each Bidder acknowledges and agrees that the City is likely to receive, and be required to deal with, multiple Quotation submissions, 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 Quotation submission that is subject to a reservation by the Bidder of any such rights, and each RFQ Bidder, by virtue of submitting a Quotation pursuant to this RFQ, expressly waives any and all protection to which the Bidder might otherwise be entitled in respect of the said Quotation 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 the said Quotation.

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 Quotation submission, including any and all costs incurred by the City.

1.26 Anti-Lobbying Restrictions and Required Disclosure

a) Bidders, their employees, or anyone involved in preparing their Quotation submission must not engage in any form of political or other lobbying whatsoever with respect to this RFQ or seek to influence the outcome of the RFQ and subsequent procurement process. This anti-lobbying restriction extends to all City staff, its elected and appointed officers and officials and agents of the City.

b) In the event of any such lobbying, the City may reject any Quotation submission by that Bidder without further consideration and terminate that Bidder's right to continue in the RFQ and any subsequent procurement process. All correspondence or contact by interested parties with the City must be directly and only with the City contact person identified in this Quotation document. It should be duly noted by all Bidders that this anti-lobbying restriction extends from the release date of this RFQ through to the date and time when the City awards the Contract by Purchase Order, after the Quotation submission evaluations and award. Any lobbying undertaken during this time frame by any Bidder or the Bidder's team members, or anyone involved with their Quotation submission may result in the 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 its elected and appointed officers and officials and agents of the City that may necessarily include contact with potential Bidders to this RFQ 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 or their authorized designates.

1.27 Announcement by City

Any announcement concerning any information about any Quotations received or the awarding of a Contract pursuant to this Quotation shall be in accordance with the Municipal Freedom of Information and Protection of Privacy Act R.S.O.1990, c. M.56 as amended.

1.28 Notification to Bidders

Any notice that the City may be required or desired to give to the Bidder shall for all purposes be deemed to have been sufficiently and properly given if issued by E-mail, regular mail (Canada Post) or courier and on the day of such issuance.

1.29 Materially False, Incorrect or Misleading Information

The City, without liability, cost or penalty, may, at any time, during the RFQ process reject any Quotation submission or disqualify any Bidder if, in the sole and unfettered discretion of the City, such Quotation contains materially false, incorrect or misleading information.

1.30 Public Comment or Promotion of Quotation Submission

Except for Bidder interviews, meetings or presentations specifically authorized or arranged by the City contact person or authorized designate, neither Bidders nor 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 Quotation, or their interest or participation in the RFQ and subsequent procurement processes (if any) without the City's prior written consent, which consent may be arbitrarily withheld or delayed.

1.31 Failure to Comply

Failure to comply with any material requirements of this RFQ may result in disqualification of a Bidder and/or the rejection of the Bidder's Quotation submission.

1.32 Quotation Submission and Correspondence in English

Quotation submissions 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.

1.33 Rights to Quotation Submission Document

Upon receipt of the Bidder's Quotation submission, the City shall retain the right to determine the use of the Quotation submission for its own purposes. Bidder's shall not use their Quotation submission for any other purposes whatsoever, including revealing any content of their Quotation submission 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 receiving 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 Quotation submission for any other purposes than as stated herein.

1.34 Suspension of Activity

a) All Bidders are advised and put on notice that notwithstanding anything else contained in this RFQ that all Bidders are forewarned and advised that if the City chooses not to proceed with this RFQ process or any subsequent procurement process or any stage including, without limitation, the completion of the RFQ process, the commencement, implementation or completion of the RFQ process or other procurement process and/or the award, negotiation or the finalization of any 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 RFQ process 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 RFQ and any subsequent procurement process, the assessment and evaluation of Quotation submissions, including the determination of the choice, if any, of a Selected 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 RFQ, or to change the scope of the project, or to cancel the RFQ 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 Quotation submissions and the City reserves the right to proceed as, in its sole and unfettered discretion, following receipt of the Quotation submissions, including, without limitation, issuing a second or more, or a modified Quotation for the project or entering into contract negotiations with any Bidder.
- d) The lowest priced Quotation submission received will not necessarily be accepted.
- e) The issuance of this RFQ and the receipt of any Quotation submission by any Bidder does not commit the City to award a Purchase Order or to pay any costs incurred in the preparation of any Quotation by any Bidder, or in any Bidder's attendance at any meetings with The City.

1.35 Agreement with Terms

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

1.36 Modification of Terms and Addendums

The City reserves the right to modify the terms of the RFQ. Any modifications or changes to the RFQ will be issued in the form of an addendum or change notice.

1.37 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:

- Purchase Order as issued by the City including all attachments thereto
- Addenda (if any) as issued
- This RFQ including all appendices and attachments
- The Bidder's Quotation submission

1.38 Liability for Errors

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

1.39 Litigation with The City

No Quotation submission will be accepted from any Bidder or who has a claim or has instituted a legal proceeding against the City or against whom the City has a claim or has instituted a legal proceeding, without the prior approval of City Council. This applies whether the legal proceeding is related or unrelated to the subject matter of this RFQ.. This applies also to any company who has a business relationship with the Bidder.

1.40 Bidder's Expenses

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

1.41 Erasures and Alterations

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

1.42 Limitation

The Bidder, by submitting a Quotation, agrees that it will not claim damages, for whatever reason, relating to the contract or in respect of the competitive process. The Bidder, by submitting a Quotation, also waives any claim for loss of profits if no Purchase Order is issued by the City to any Bidder.

1.43 Omission & Mis-statements

a) The several parts of the RFQ 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 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 Contractor to any extension of time for the completion of the work.

b) It is to be understood that the complete RFQ including all attachments and the said RFQ shall constitute the RFQ. Any Quotation submission received that contain additional clauses or any wording or figures, statistics, numbers, quantities, agreements or contracts from the Bidder or the Bidder's parent or related company 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.

SECTION 1 INSTRUCTIONS TO BIDDERS**B. THE AWARD AND CONTRACT PROCESS****1.44 Contract Award**

In the event that the City accepts a particular Quotation, the selected Bidder must accept a Purchase Order as issued by the City. The said Purchase Order and all attachments thereto, including this RFQ in its entirety and all Addenda and change notices thereto and the Quotation submitted by the selected Bidder shall constitute the Contract.

1.45 Conforming with all Laws

The Bidder agrees to abide by all applicable laws, regulations and administrative rulings of Canada, Ontario, and the City of Niagara Falls, securing all necessary licenses and permits in connection with the Quotation.

1.46 Warranties and Covenants

The Contractor will represent, warrant and covenant to the City, and acknowledge that any service resulting from or to be supplied or developed as a result of this RFQ with the City will be in strict accordance with the functional and technical requirements set out in this RFQ.

1.47 Patents, Inventions, Intellectual Property Rights, Copyright, Trademarks, Technology rights

The Bidder agrees to defend the City of Niagara Falls at Bidder's 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, inventions, intellectual property rights, copyright trademarks, technology rights or any other related rights to the above including payment of all legal and court costs, resulting from the City of Niagara Falls' contractual relationship with the Bidder and the Bidder's 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 and court costs, which may arise out of the City of Niagara Falls' contractual relationship with the Bidder and the Bidder's use of any or all technologies, methodologies, strategies in providing the services required herein. It is expressly agreed by Bidder that these covenants are irrevocable and perpetual.

1.48 Indemnification

- a) The Contractor shall indemnify and save harmless the City from and against all claims, actions, losses, expenses, costs, demands, suits and other proceedings or damages of every nature and kind whatsoever which the City, its employees, officers or agents may suffer as a result of the negligence of the Contractor, its employees, officers or agents in performance of this Contract;
- b) The Contractor shall indemnify and save harmless the City from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the City, its employees, officers or agents may suffer as a result of misuse, misappropriation or alleged misuse or misappropriation by the Contractor, its employees, officers or agents of intellectual property in the performance of this Contract; and
- c) The City agrees to indemnify and save harmless the Contractor from and against any and all claims, losses, damages, liability and costs arising out of or in any way connected with the presence, discharge, release or escape of contaminants of any kind, excluding only such liability as may arise out of the negligence of the Contractor in the performance of all work and services to the City within this Project.

1.49 Insurance

The Contractor shall be required to purchase and maintain in force, at its own expense (including the payment of all deductibles) and for the duration of this Contract, the following policies of insurance, which policies shall be in a form and with an insurer acceptable to the City. A certificate of these policies originally signed by the insurer or an authorized agent of the insurer must be delivered to the City prior to the commencement of the Contractor's Services:

- a) Comprehensive General Liability, provided that the policy:
- .1 is in the amount of not less than Five Million Dollars (\$5,000,000), per occurrence;
 - .2 add the City as additional insured;
 - .3 has provisions for cross-liability as between the Contractor and the City, broad form contractual liability, owner's/contractor's protective liability, contingent employer's liability, employers liability, non owned automobile liability and personal injury liability;
 - .4 provides non-owned automobile coverage; and
 - .5 provides for thirty (30) days' prior written notice of cancellation or material change;
- b) The Contractor shall also furnish the City with a certified copy of a Standard Automobile Liability Insurance Policy on all owned and leased vehicles with inclusive limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence for bodily injury and property damage with a deductible not greater than Five Thousand Dollars (\$5,000.00);

- c) All policies listed above:
 - .1 Shall apply as primary insurance and not excess to any other insurance available to the City; and
 - .2 To remain in force until final acceptance of the Work described herein by the City; and
- d) The Contractor shall note that the following clause must be inserted in the Certificate of Insurance:
No exclusions for damage or loss from the removal or weakening of support of any property, building or land whether such support be natural or otherwise or from blasting or vibration from pile driving or caisson work.
- e) At the expiry date of the policies, the Contractor shall provide original signed Certificates or electronic equivalents thereof, evidencing renewals or replacements to the City prior to the expiration date of the original policies, without notice or request by the City.

1.50 Failure or Default of Bidder

If the Bidder, for any reason, fails or defaults in respect of any matter or thing which is an obligation of the Bidder under the terms of the RFQ, the City may disqualify the Bidder from the RFQ process and/or from competing for future Request for Tenders, Request for Proposals, Request For Quotations or other bidding opportunities as issued by the City for an undetermined period. In addition, the City may at its option either:

- a) Consider that the Bidder has withdrawn any offer made, or abandoned the Contract if the offer has been accepted, whereupon the acceptance, if any, of the City shall be null and void; or
- b) Require the Bidder to pay the City the difference between its Quotation and any other Quotation which the City accepts, if the latter is for a greater amount and, in addition, to pay the City any cost which the City may incur by reason of the Bidder's failure or default, and further the Bidder will indemnify and save harmless the City, its elected and appointed officers and officials, employees and agents from all loss, damage, liability, cost, charge and expense whatever which it, they or any of them may suffer, incur or be put to by reason of such default or failure of the Bidder.

1.51 No Assignment

The Contractor shall not assign any part of this work which may be awarded to it per the issuance of a Purchase Order by the City without prior written consent of the City. Such written consent however, shall not under any circumstances relieve the Contractor of its liabilities and obligations under this RFQ and the said Contract.

1.52 Sub-Contractors or Service Providers

The Contractor shall be solely responsible for the payment of every sub-contractor or service provider employed, engaged, or retained by it for the purpose of providing the services as describe herein. The Contractor shall coordinate the services of its sub-contractors and service providers in a manner acceptable to the City, and ensure that they comply with all the relevant requirements of the said services. The Contractor shall be liable to the City for all costs or damages arising from acts, omissions, negligence or wilful misconduct of its sub-contractors or service providers.

1.53 Personnel and Performance

The Contractor shall be responsible for its own staff resources and for the staff resources of any sub-contractors and third-party service providers. Personnel assigned by the Contractor to perform or produce the Services or any part of it may, in the sole discretion of the City, be required to sign non-disclosure agreement(s) satisfactory to the City before being permitted to perform such services.

1.54 Payment Schedule

a) Upon request (if any) from the City Representative the Contractor must submit a payment schedule satisfactory to the City shall form part of the contract governing the required service. No fees or reimbursable expenses shall become payable to the Contractor pursuant to the Contract other than as stated in this RFQ.

b) The Contractor shall submit invoices in such detail as may be required by the City, and the City reserves the right to require further proof or documentation from the Contractor in respect of services performed or expenses incurred by the Contractor and the Contractor shall provide, without delay, such further proof or documentation.

c) If the City does not approve of the Services which are the subject of the invoice, the City shall advise the Contractor in writing of the reasons for non-approval and the Contractor shall remedy the problem at no additional cost to the City before the City shall be obliged to pay the invoice or any part of it, as the case may be.

d) The Contractor shall be solely responsible for the payment of all personnel (including without limitation sub-respondents and their respective personnel) made available by it and used for performance of any of the Services. Payments shall be made net thirty (30) days from date of receipt of invoice and completion of the services required to the complete satisfaction of the City.

1.55 Termination

Nothing herein shall be construed as giving the 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 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 Bidder to serve under the Contract, the Bidder shall be paid only for that portion of the said services which shall have been satisfactorily completed at the time of termination.

1.56 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.

1.57 Work Completion Schedule

If requested by the City Representative, the Contractor may be required to submit a complete work completion schedule.

1.58 Completion of Contract Terms and Conditions

a) The work shall be completed in all respects, except as may be otherwise specified herein, and the Contractor shall execute the whole of the work with every possible dispatch and in a substantial and adequate manner, comprehending what may be reasonably implied from the specifications though not particularly shown or called for therein and the whole of the work shall be supplied and completed to the entire satisfaction of the City and upon written confirmation from the City that the work is complete.

b) Unless otherwise stated, the goods, materials, articles, equipment, work or services, specified or called for in or under this RFQ shall be delivered or completely performed, as the case may be, by the Contractor as soon as possible and in any event within the period set out herein as the guaranteed period of delivery or completion.

c) The Bidder agrees to furnish to the City, in conformity with the conditions set out herein and with any specifications, plans, price schedules, samples, instructions, addenda or other details, provided in connection therewith or referred to therein, the goods, materials, articles, equipment, work or services so specified or called for in this RFQ at the prices stated in the Bidder's Quotation submission.

1.59 Goods and Materials Suitable for Use

The Bidder warrants that any goods, materials, articles or equipment to be supplied under or pursuant to any official order or contract based on this RFQ, that is or are to be made or used for a particular purpose, will be fit and suitable for that purpose.

1.60 New Goods and Materials Only

Unless otherwise stated all goods supplied as a result of this RFQ shall be new only, never used, of the latest manufacture and not re-manufactured.

1.61 Health & Safety

All work performed under this contract 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 Contractor and may determine its selection of the Contractor based upon these records.

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 Contractor shall provide a Pre-Start Health and Safety Report.

1.62 Contractor Safety Program

The Contractor must, if requested by the City Representative, complete the forms and requirements of the City's Contractor Safety Program. The instructions and forms of the City's Contractor Safety Program are posted on the City's Bid Opportunities Web Page: www.niagarafalls.ca/bids

1.63 Time is of the Essence

The City shall have the right to cancel at any time any contract or any part of any contract resulting from this RFQ in respect to the goods, materials, articles, equipment, work or services, covered thereby, not delivered or performed by the specified time in this RFQ, without incurring any liability whatsoever in respect hereto.

1.64 Contract Communications in Writing Only

No verbal arrangement or agreement, relating to the goods, materials, articles, equipment, work or services, specified or called for under this RFQ and the award resulting from this RFQ, will be considered binding, and every notice, advice or other communication pertaining thereto, must be in writing and signed by a duly authorized person.

1.65 Contract

The City shall issue a Purchase Order including all attachments thereto which shall constitute the contract to the Contractor. The date of Contract award shall be taken as the date on which the City has issued the said Purchase Order to the Contractor. The Contractor must submit the following to the Project Coordinator within ten (10) days of issuance of the said Purchase Order.

- a)
 - 1) Certified Insurance Policies which complies with the requirements of these Instructions to Bidders.
 - 2) A Certificate of Insurance.

- b) A current Workplace Safety and Insurance Board (WSIB) Certificate of Clearance from the WSIB certifying that the Contractor is in good standing with the Board. The said Certificate of Clearance must be re-submitted throughout the Contract every 60 days.

1.66 Failure to Accept the City's Purchase Order

Failure by the Selected Bidder to accept a Purchase Order as issued by the City and to deposit with the City Representative, the certified copies of all required Insurance Policies and all Workplace Safety and Insurance Board documents, within ten calendar days after receipt of the said Purchase Order, shall be just cause for the annulment of the Contract award and the City may take any steps it solely determines against the Contractor.

1.67 Standards and Legislation: Failure to Comply

The Contractor may be required to provide written documentation that all materials proposed meet Municipal, Provincial and Federal Government standards, legislation and laws. Also, the Contractor 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 Contractor to comply with these laws, legislation, regulations and provisions shall be just cause for the City, at its discretion, to stop performance of this contract, until such times as the Contractor complies with these laws etc. Also the City may, at its discretion, award the contract to any other Contractor or may re-issue the RFQ. The City may assess against the Contractor any damages whatsoever as a result of failure to comply.

1.68 Compliance With Laws and Acts

The Contractor shall comply with all Federal, Provincial and Municipal Laws, statutes, regulations and by-laws, relevant to this RFQ including but not limited to:

- *The Construction Lien Act, R.S.O., 1990, c. C.30, as amended*
- *The Occupational Health and Safety Act, R.S.O. 1990, c. O.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.*

1.69 City not Employer

The Contractor agrees that the Corporation of the City of Niagara Falls is not to be understood as the employer to the Contractor nor to such Contractor's personnel or staff for any work, services, or supply of any products or materials that may be awarded as a result of this RFQ.

1.70 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 furnish the City Representative with a "**Certificate of Clearance**" 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 60 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.

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 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 this contract is of an intermittent nature involving the same or different types of work over a determined period of time. The Contractor will not be permitted to start any work under the contract until such document is received by the City.

1.71 Local Labour

(Per Item G4, Page SPG 2, Special Provisions, *Niagara Peninsula Standard Contract Document*, Rev. 11, 2010-06)

“The Contractor shall employ only orderly, skillful and competent persons to do the work.

The Contractor is requested to consider the hiring of local labour whenever possible and shall give preference to the hiring of local labour within the Regional Municipality of Niagara, provided the labour is available locally and is physically fit and properly qualified by training and experience to meet the Contractor's requirements. The foregoing shall not apply to supervisory staff, major equipment operators, nor shall it apply until ten days after the Contractor has actually commenced operation.

Whenever, the Contract Administrator shall inform the contractor in writing that any person or persons on the work are, in the opinion of the Contract Administrator, incompetent or disorderly, such person or persons shall be discharged from the work and shall not again be employed on the work without the consent in writing of the Contract Administrator.”

1.72 Removal and Disposal

All materials as specified herein to be removed and disposed, shall be removed by the Contractor and disposed of in a manner that is satisfactory to the City. The entire job site shall be left in an orderly and appropriate condition upon the completion of the work.

1.73 Tools, Materials and Equipment

Any equipment, tools, supplies, materials, parts or any other items delivered to the job site by the Contractor, prior to, during or after carrying out the work will be of the Contractor's own volition and the Contractor will be entirely responsible for same.

1.74 Payment Holdback for Unsatisfactory Performance

The City if requested by the City Representative will not pay the final invoice to the Contractor for the work, services, products or materials stated in this RFQ until the City is fully satisfied that all terms and conditions stated in this RFQ and all work, service performed, products or materials delivered shall be deemed to have been completed, installed or delivered to the complete satisfaction of the City.

1.75 Origin of Goods and Materials

Wherever possible, the goods, materials, articles or equipment, specified or called for in or under this RFQ shall be of Canadian origin and manufacture.

1.76 W.H.M.I.S. Requirements

As applicable the Contractor must supply a supplier label and appropriate Material Safety Data Sheet under the W.H.M.I.S. legislation and Hazardous Protection Act for all controlled products to be supplied per this RFQ. Any controlled good supplied without appropriate data sheet and proper labeling will not be accepted and will be returned at the sole cost to the Contractor .

1.77 Contractor's Liability

a) The Contractor shall ensure, that all Contractor's staff who shall be performing any work as described or identified in this RFQ on City property, shall perform such work in a safe and responsible manner. Any damage or destruction to the city's property, materials, equipment, environment and any other item that the city has responsibility for on the work site, that is determined by the city's representative to have been caused by the Contractor or by the Contractor's staff, shall be repaired, replaced by the Contractor or the Contractor shall make compensation for the full cost of the damage or destruction.

- b) The city's representative shall specify a reasonable time period in which the Contractor shall repair or replace said damage or destruction. In the event the Contractor has not repaired or replaced the damaged or destroyed item(s) in the time specified, the city's representative shall seek other remedies including section c), below.
- c) Monetary Compensation: If the said damage is not repaired or replaced by the Contractor in the specified reasonable time period - per section b) above, the total amount of such monetary compensation shall be deducted by the city from the invoice(s) received from the Contractor for the work. Where such monetary amounts may exceed the total value of the contract award, the city shall seek remedy through the Contractor's insurance provider or surety provider or by other means that the Corporation of the City of Niagara Falls deems to be in the best interest of the City.

1.78 Negotiations

- a) The City reserves the sole and unfettered right to enter into negotiations with any Bidder who has submitted a Quotation in response to this RFQ for any terms, conditions or any other matters the City deems necessary. The receipt of any Quotation in response to this RFQ shall not be understood as a process directly leading to the issuance of a Purchase Order by the City. Also, the City may reject all Quotations received and enter into negotiations with any company it deems suitable to complete this project to the entire satisfaction of the City.
- b) The City reserves the right to exercise complete and unfettered discretion in all aspects of the conduct of the RFQ and any subsequent procurement process, the assessment and evaluation of Quotation submissions, including the determination of 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 RFQ, or to change the scope of the project, or to cancel the RFQ 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 Quotation submissions and the City reserves the right to proceed as, in its sole and unfettered discretion, following receipt of the Quotation submissions, including, without limitation, issuing a second or more, or a modified Quotation for the project or entering into contract negotiations with any Bidder.
- d) The lowest priced Quotation submission received will not necessarily be accepted.
- e) The issuance of this RFQ and the receipt of any Quotation submission by any Bidder does not commit the City to award a Contract or to pay any costs incurred in the preparation of any Quotation by any Bidder, or in any Bidder's attendance at any meetings with The City.

1.79 RFQ Results

By submitting a Quotation in response to this RFQ, the Bidder thereby agrees that the City has the right not to reveal the reasons for its sole determination and selection of a Contractor and agrees that the City will not publish in any manner whatsoever, nor make any comments or statements of any kind regarding the results or summary of the Quotations submitted in response to this RFQ.

1.80 Budget Limitations

Award of any work resulting from this RFQ is subject to the limits of the City of Niagara Falls budget for this project. Bidders shall have no claim if the City cancels this RFQ process or any subsequent procurement process as a result of the lowest or any Quotation Submission that does not meet the limitations of the approved budget for this project.