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SECTION 1 DEFINITIONS AND INTERPRETATION

90.1.1 Definitions

This document shall be interpreted using the definitions in the General Conditions 100. All definitions employed in this document will be capitalized to indicate a reference to the corresponding definition.

90.1.2 Interpretation

This document shall be governed by and interpreted in accordance with the laws of the Province of Manitoba and the laws of Canada.

Where the Contractor consists of more than one person, the obligations of the Contractor shall be joint and several.

If any provision of this Contract is void, illegal, invalid or unenforceable; it shall be severable from the Contract and shall not invalidate or impair the remaining provisions of the Contract.

The Contractor is acknowledged to be an independent contractor and neither the Contractor, nor any officer, servant nor agent of the Contractor is deemed to be an employee of the Owner.

The Contract constitutes the entire agreement between the Owner and the Contractor. There are no other agreements of any kind other than those contained within the Contract.

SECTION 2 GENERAL TENDER INFORMATION

90.2.1 Examination of Tender and Site

It is a Bidder's responsibility, at the Bidder's sole cost and expense, to carefully examine the Site, all local conditions that might affect the Work or the Bid, and all of the various documents contained and referenced in the Tender before submitting a Bid. By submitting a Bid, a Bidder represents to the Owner that the Bidder has made such examination and is satisfied as to the conditions that will be encountered in performing the Work and as to the requirements described in the Tender.

A Bidder assumes all risks for conditions that exist or that may arise in the course of the Work which could have been determined through such examination and for all costs the Bidder may incur or sustain because the Bidder failed to conduct such examination before submitting a Bid.

Any information pertaining to subsurface soil, rock or groundwater conditions provided in the Tender documents has been obtained for design purposes and is valid only at the specific locations at which the information was collected. Bidders may wish to supplement this information by performing their own investigations but must first request permission to access the Site and perform the investigation from the Contract Administrator.

90.2.2 Contents of Tender Documents

The Tender sets out the Bid security submission requirements (if any), the Submission Deadline, the acceptable submission methods and the Submission Location.

The Tender also describes, in detail, the Work to be done, the Site, the time within which or by when the Work must be completed and the amount of Liquidated Damages (if any) payable for failing to meet such requirements.

The following documents form part of the Tender, whether or not they are attached to the Tender:

- a) Bid Forms
- b) Standard Construction Specifications

- c) Bidding Procedures
- d) General Conditions
- e) Special Provisions
- f) Detailed Design Drawings
- g) Other documents applicable to the Work, as listed in the Tender.

The above documents which are not attached to the Tender are incorporated by reference and the most current versions available and in effect at the time of Bid Submission, may be obtained at:

<http://www.gov.mb.ca/mit/contracts/manual.html>

90.2.3 Notice of Tender

Notices of Tender will be posted by the Owner. Such notices will indicate where Tenders may be obtained.

Where Manitoba is the Owner, notices will be posted on Manitoba's online procurement service provider website www.MERX.com.

At the time a Bidder obtains a Tender, it will be required to provide contact information to the Owner for the purposes of receiving Tender Amendments.

90.2.4 Tender Document Order of Priority

If there is a conflict between the various documents referred to in the Tender, document having the highest priority will govern. The order of priority, from highest to lowest, is set out in the General Conditions.

90.2.5 Estimated Quantities

The quantities set forth in a Tender are estimated only unless the Tender specifically states otherwise. Payment is made on the basis of Work actually performed and completed by the Contractor and quantities are measured according to the relevant Specification or Special Provision.

By submitting a Bid, a Bidder acknowledges that the actual quantities used in the Work may be different than the estimated quantities shown on the Price Form. The Owner will use the estimated quantities in evaluating Bids.

90.2.6 Enquiries

A Bidder is solely responsible for obtaining all information that may be necessary in order to understand the requirements of the Tender and to submit a Bid in accordance with the terms and conditions of the Tender.

If a Bidder finds errors, discrepancies or omissions in the Tender, the Bidder should notify the Contract Administrator of the error, discrepancy or omission as soon as possible. If a Bidder is unsure of the meaning or intent of any provision in the Tender, the Bidder should request clarification from the Contract Administrator.

All enquiries related to the Tender must be directed, in writing, to the Contract Administrator identified in the Tender.

Responses to enquiries which, in the sole judgment of the Contract Administrator, require a correction or modification to the Tender will be provided by an Amendment.

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

A Bidder is not entitled to rely on any response or interpretation received pursuant to an enquiry unless that response or interpretation is provided in writing by the Contract Administrator or by an Amendment to the Tender.

If a Bidder has sent an enquiry and has not received any acknowledgement of its enquiry, the Bidder should follow up with the Contract Administrator.

Enquiries received within 48 hours of the Submission Deadline may not receive a response from the Contract Administrator.

90.2.7 Amendments

Before the Submission Deadline, the Owner may issue Amendments to the Tender.

The Owner will endeavour to ensure that no Tender Amendments are issued less than 48 hours before the Submission Deadline.

Bidders are responsible for ensuring they have received all Tender Amendments and are advised to check with the Contract Administrator and (where applicable) the Owner's online procurement service provider website for Tender Amendments before submitting their Bids.

Bidders should acknowledge the amendment by completing the amendment acknowledgement form provided with the tender or their bid may be rejected.

90.2.8 Manitoba Government Wide Contract Policy - Legislative and Safety Requirements

This section applies where the Owner is Manitoba.

A Bidder must complete and submit the Contractor's Certification Form contained in the Tender and may do so at the time of bid submission. The contract will not be awarded to the successful Bidder without submission of the Contractor's Certification Form.

Failure to submit the Contractor's Certification Form within 3 business days upon written request, failing to comply with a commitment made or making an untrue statement in the Certification, or failing to provide additional information satisfactory to Manitoba regarding anything in this Certification, may (among other things) result in forfeiture of the bid bond (if applicable) and/or Manitoba declaring that the Bidder/Contractor is ineligible to bid on future tenders.

The fully executed Contractor's Certification Form will form part of the Contract.

For details regarding the Contractor's Certification Form and the Government Wide Contract Policy see the General Conditions 100 or General Conditions 110.

90.2.9 Policy Requirements for Manitoba's Apprenticeship Employment Opportunities Act (Public Works Contracts)

This section applies where the Owner is Manitoba.

All Contractors and subcontractors must contact Apprenticeship Manitoba to obtain an Apprenticeship Employment Opportunities Act Policy Letter ("Letter"). Apprenticeship Manitoba will assess the scope of Work and operations for all Contractors and subcontractors to determine eligibility to engage in a Contract. Apprenticeship Manitoba will issue the necessary Letters accordingly.

Prior to being awarded the contract, the successful Bidder must submit an Apprenticeship Employment Opportunities Act Policy Letter ("Letter") from Apprenticeship Manitoba declaring that the Bidder is eligible to be awarded a contract. The Contract will not be awarded to the successful Bidder without submission of the Letter.

Failure to submit the Letter within 3 business days upon written request may result in forfeiture of the bid bond (if applicable) and/or the Province declaring that the Bidder is ineligible to bid on future tenders.

For details regarding the Apprenticeship Employment Opportunities Act (Public Works Contracts) see the General Conditions 100 or General Conditions 110.

SECTION 3 BID PROCEDURES

90.3.1 ONLINE BID SUBMISSION PROCEDURES

Where the Bidder is required to submit a Bid through the Owner's online procurement service provider, the Bidder will be required to register a user profile with the Owner's online procurement service provider, and the submission procedures set out on the online procurement service provider website shall apply, including those with respect to Amendment Acknowledgements and bid bond submission. It is solely the Bidder's responsibility to ensure that its Bid is received by the online procurement service provider before the Submission Deadline. Bids received after the Submission Deadline will not be accepted.

Where the Owner is Manitoba, the online procurement service provider is www.MERX.com.

90.3.2 PAPER COPY BID SUBMISSION PROCEDURES

Where the Bidder is submitting a traditional paper copy Bid, the submission procedures set out in this subsection 90.3.2 shall apply. For greater clarity, the submission procedures set out in this subsection do not apply to Bids submitted using the Owner's online procurement service provider.

90.3.2.1 Completing the Bidder Information Form

A Bidder must complete and submit the Bidder Information Form contained in the Tender as part of its Bid.

A Bidder must submit a Bid in the Bidder's full legal name and disclose its usual business name, if that is different than its full legal name. It must also identify the form in which it carries on business (for example, sole proprietor, partnership, corporation or joint venture).

A Bidder must provide the civic address from which it carries on business, and a mailing address if that is different than its civic address.

A Bidder must identify an individual who is authorized to represent the Bidder for purposes of the Bid, and provide all such information about where and how the individual may be contacted as is requested in the Bidder Information Form.

If the Owner requests more information about a Bidder's legal name or status, address or contact information, the Bidder must provide the Owner with such information within three (3) calendar days of the request. Failure to provide The Owner with the requested information within such time period may result in that Bidder's Bid being rejected.

90.3.2.2 Completing the Work Schedule Form

A Bidder must complete and submit the Work Schedule Form contained in the Tender as part of its Bid.

The Work Schedule Form details the Liquidated Damages that are applicable to the Contract should the Bidder become the Contractor and fail to complete the Work within the required time. The Bidder is encouraged to refer to the Specification for Liquidated Damages (No. 130) for further information.

90.3.2.3 Completing the Price Form

A Bidder must complete and submit the Price Form contained in the Tender as part of its Bid. The Price Form requires Bidders to provide some or all of the following:

- a) a Unit Price and an Item Price for each Work Item for which a quantity is given;
- b) an Item Price for each Work Item for which a lump sum price is required;
- c) the Item Price Total for each section;
- d) a Charged Day Bid also called the Initial Span for each section (if applicable);
- e) a Site Occupancy Price for each section (if applicable);
- f) the Total Price.

Where a Bidder intends to provide a Work Item free of charge, the Bidder should state "nil" as the Unit Price (if applicable) and as the Item Price for such Work Item. If a Bidder states "0" or "0.00" as the Unit Price (if applicable) and as the Item Price for a Work Item, the Owner will interpret such Unit Price (if applicable) and such Item Price as "nil".

Unless otherwise stated in the Special Provisions, all Prices on the Price Form must be expressed to the nearest cent. When evaluating a Bid, the Owner will round the price to the first two decimal places of any price that includes fractional cents (i.e. more than two (2) decimal places), in the following order: Unit Price, Item Price, Item Price Total and Total Price.

90.3.2.4 Completing the Signature Form

A Bidder must complete and submit the Signature Form contained in the Tender as part of its Bid.

A Bidder is responsible for ensuring that it has received all Amendments and for considering the effect of such Amendments in formulating its Bid. Bidders should acknowledge having received each Amendment, and the date of each such Amendment, in the space provided for this purpose on the Signature Form. A Bid that fails to acknowledge all of the Amendments may be rejected. If a Bid is submitted before an Amendment is issued, the Owner will accept an Amendment Acknowledgement by letter or re-submission of the Signature Form, in accordance with the Changes to Submitted Bids section.

The Signature Form must be signed by the individual(s) or officer(s) who have the legal authority to bind the Bidder. By submitting a Bid, the Bidder acknowledges that the Owner is entitled to presume the signatures are legally binding.

The name and office of each individual signing the Bid should be printed below the individual's signature, and the date on which the individual signed should be inserted.

"Bidder" includes all individuals and entities that submit a Bid, if a Bid is submitted by more than one individual or entity. The obligations of the Bid and Contract, if awarded to such a Bidder, are both joint and several.

Bids should be witnessed on the Signature Form. Where a corporate seal is applied to the Bid, a witness signature is not required.

A Bid that is not signed on the Signature Form by the Bidder is invalid and will be rejected.

90.3.2.5 Changes to Forms in a Tender Prohibited

Bidders must submit their Bids using the forms contained in the Tender. Bids that are submitted on one or more forms that are different from the forms contained in the Tender may be rejected by the Owner.

90.3.2.6 Submission of Bids

Bids must be submitted before the Submission Deadline to the Submission Location, using one of the submission methods specified in the Tender for this purpose. Bids received by the Owner after the Submission Deadline, or at an incorrect Submission Location, or by an unacceptable submission method, will be rejected.

The Tender indicates which methods of delivery are acceptable for the Bid (e.g. mail, personal or courier delivery, facsimile, e-mail), and the Bidder shall submit the Bid only in accordance with the methods permitted.

Bids that are submitted by mail, personal delivery or courier must be enclosed in a sealed envelope clearly marked with the Tender number. The envelope should also indicate the Bidder's name and the Bidder's return address.

The Owner may extend the Submission Deadline by issuing an Amendment to the Tender at any time before the Submission Deadline.

90.3.2.7 Changes to Submitted Bids

Where a Bidder has submitted a Bid, the Bidder may make changes to the Bid using one of the submission methods specified in the Tender for this purpose. Any changes to a Bid must be received before the Submission Deadline.

A Bid change may be made by letter or by re-submission of a form. All Bid changes must be in writing and signed by a representative of the Bidder with the authority to bind the Bidder. Bid changes must clearly state the name of the Bidder and the number of the Tender to which the change relates, and should state the address of the Bidder. The Bidder must indicate those portions of the Bid that have changed from the Bidder's original Bid submission.

Where a change affects one or more Prices on the Price Form, the Bidder shall clearly indicate the change to all affected Prices, or resubmit the Price Form.

If, in the Owner's opinion, there is any ambiguity about the nature or effect of any change, the Owner may reject such a change and evaluate the Bidder's Bid without regard to the change.

90.3.2.8 Withdrawal of Bids

A Bidder may withdraw a Bid without penalty at any time before the Submission Deadline by giving written notice to the Owner for this purpose. A Bid withdrawal must be received at the Submission Location before the Submission Deadline.

A notice of Bid withdrawal must be signed by a representative of the Bidder with the authority to bind the Bidder, must clearly state the name of the Bidder and the number of the Tender to which the Bid was responding, and should state the address of the Bidder.

If the Owner receives notice of a Bid withdrawal before the Submission Deadline, the Owner will not consider the Bid during the bid evaluation and will return the Bid to the Bidder only at the request and expense of the Bidder.

90.3.2.9 Confirmation of Bid Receipt

It is solely the Bidder's responsibility to ensure that its Bid and any Bid change (including any Amendment Acknowledgement submitted subsequent to Bid submission) or Bid withdrawal is received at the Submission Location specified in the Tender prior to the Submission Deadline.

Notwithstanding that a Bidder may be entitled to use facsimile transmission or e-mail to submit, change or withdraw a Bid, the Owner cannot assure Bidders that information or documents sent by facsimile transmission or e-mail will reach the intended recipient before the Submission Deadline. By using facsimile transmission or e-mail, Bidders acknowledge that all risks associated with failed or late delivery are borne by the Bidder. Bidders are responsible for ensuring that the intended recipient received such information or documents by the Submission Deadline.

The Owner will assume responsibility for applying any Bid change to a Bidder's Bid provided it was received prior to the Submission Deadline.

SECTION 4 CONDITIONS OF BID

90.4.1 Submission of Bid Bond

If a Tender indicates that a bid bond is required, the Bidder must submit a bid bond using the Owner's standard bid bond form (if available), or in a form satisfactory to the Owner.

Where the Owner is Manitoba, the Bidder must submit an electronic, digitally verifiable, bid bond through the Owner's online procurement service provider along with the Bid or the Bid will be rejected. Manitoba's bid bond form is provided with the Tender.

The bid bond must clearly state the Tender number and description of the Work.

The amount of the bid bond shall be ten percent (10%) of the Total Price of the Bid excluding Contingency, expressed as a percentage.

The bid bond shall remain in full force, virtue and effect until the earlier of:

- a) the date a Contract for the Work of the Tender is executed, or;
- b) the date 6 months elapses from the Bid Submission Deadline.

The bid bond must be issued by a surety that is licensed in Manitoba or elsewhere in Canada to carry on the surety insurance business.

If a bidder, on having his tender accepted, fails to execute the Contract the Surety shall not be (a) liable for a greater sum than the specified penalty of his bond nor (b) liable for a greater sum than the difference between the amount of the Principal's tender and the amount of the second lowest acceptable bid to the Obligee nor (c) subject to any suit or action unless such suit or action is instituted and process therefore served upon the Surety at its Head Office in Canada, within twelve months from the date of his bond.

90.4.2 Currency and Tax Conditions

All prices must be quoted in Canadian dollars.

Applicable taxes shall be included in all Prices and shall not be shown separately. Taxes shown separately will be disregarded from all price calculations.

Where Manitoba is the Owner, Manitoba certifies that the amounts payable to the successful Bidder for the Work will be paid by the Government of Manitoba with Crown funds and are therefore not subject to the Goods and Services Tax (GST). The Bidder represents and warrants that the GST has not been

included or quoted in any fees, rates or estimates and covenants that it will not include GST in any invoice provided, or request for payment made, under the Contract.

90.4.3 Ownership and Release of Information

Bids that are not withdrawn in accordance with these Bidding Procedures become the property of the Owner after the Submission Deadline.

The Bidder understands that the Owner will publicize information, including detailed price information, contained within the Bid.

The Bidder is advised that any information contained in a Bid may be released by the Owner in original or other forms if authorized or required by the Owner's policies or procedures, including these Bidding Procedures, or by any law, including *The Auditor General Act* (Manitoba) and *The Freedom of Information and Protection of Privacy Act* (Manitoba).

90.4.4 Irrevocable Bid Period

The Owner will endeavour to award a Contract within fifteen (15) calendar days; however, Bids are irrevocable for thirty (30) calendar days after the Submission Deadline. A Bidder is bound to enter into the Contract if it is awarded the Contract during this period of irrevocability.

The Owner may request that Bidders agree to an extension of this period of irrevocability. The Bid of each Bidder that consents to such an extension remains irrevocable for the additional time requested by the Owner. The Bid of each Bidder that does not consent to such an extension remains irrevocable for the irrevocable bid period currently in force upon the Bid.

No Bidder has any obligation to enter into a Contract with the Owner upon the expiration of the irrevocable bid period. Where the irrevocable bid period in force upon a Bid has expired, further Bid information will not be released by the Owner provided the Bidder has so requested.

SECTION 5 BIDDER DECLARATIONS

90.5.1 Qualifications of Bidder

In submitting a Bid, the Bidder declares that the Bidder:

- a) is incorporated and in good standing under The Corporations Act (Manitoba), registered under The Business Names Registration Act (Manitoba) or otherwise authorized or permitted to legally carry on business in the Province of Manitoba;
- b) is financially capable of carrying out the terms of the Contract; and
- c) possesses all the necessary experience, capital, organization, and equipment to perform the Work in accordance with the terms and conditions of the Contract.

90.5.2 No Collusion

In submitting a Bid, the Bidder declares and represents that it has not knowingly participated in bid-rigging, collusion, or fraud in the preparation of its Bid. Further, the Bidder declares and represents that it has produced the Bid independently from, and without consultation, communication, agreement or arrangement with, any competitor, except where the competitor intends to become a Subcontractor for a portion of the Work or intends to form a joint venture arrangement with the Bidder.

The Bidder is advised that, under the *Competition Act* (Canada), the Bidder is responsible for notifying The Owner of any aforementioned agreements or arrangements with its competitors.

90.5.3 No Conflict of Interest

In submitting a Bid, the Bidder declares and represents that the Bidder does not knowingly have a conflict of interest related to the performance of the Work by the Bidder or by its Subcontractors. If the Bidder is in doubt as to whether individuals or circumstances give rise to a conflict of interest, the Bidder should consult with the Contract Administrator prior to submitting a Bid. The Owner may reject any Bid if, in its sole discretion, the Owner determines that an actual or potential conflict of interest exists.

90.5.4 Agreement of Bidder

By submitting a Bid, the Bidder agrees that:

- a) the Tender, in its entirety, is deemed to be incorporated into and form part of the Bid notwithstanding that all parts of the Tender may not be attached to or accompany the Bid;
- b) all Tender amendments have been received, considered and addressed in the Bid;
- c) any changes to the submitted Bid received by the Owner before the Submission Deadline form part of the Bid;
- d) any proposals, counter-offers, qualifications or changes to the terms, conditions or specifications in the Tender by the Bidder will not be accepted by the Owner but will be disregarded and will not be incorporated into the Contract;
- e) if they are the preferred Bidder, the Bidder will enter into a Contract with the Owner to complete the Work in accordance with the Bid and the terms, conditions and specifications contained in the Tender; and
- f) the Bid will form part of the Contract.

SECTION 6 EVALUATION OF BIDS

90.6.1 Opening of Bids

Bids received by the Submission Deadline will be opened publicly and read out at the Submission Location immediately after the Submission Deadline. Where e-mail is specified in the Tender as an acceptable Submission Method and one or more Bids are received by e-mail by the Submission Deadline, the Owner will print hard copies of such Bids for the purpose of the public opening.

Where a Tender requires the Bid to be submitted electronically, the Owner will not hold a public opening, but will post the bid results on the Owner's bid results web page immediately after the Submission Deadline.

Where a Tender requires the submission of a bid bond (whether electronic or hard copy) but the bid bond has not been received prior to the Submission Deadline, the corresponding Bid will be rejected.

All Bids which were read out at the public opening will be evaluated after the public opening.

Anyone may attend the public opening.

90.6.2 Evaluation Process

Bids that were read out at the public opening will be reviewed and evaluated by the Owner after the public opening.

The evaluation of the Bids is a three-step process as follows:

- a) Determining Bid Compliance pass / fail
- b) Comparing Total Prices
- c) Confirming Bidder Qualifications pass / fail

90.6.3 Determining Bid Compliance (Pass/Fail)

The Owner will evaluate all Bids that were read out at the public opening to determine whether they comply with the requirements of the Tender, including these Bidding Procedures.

Those Bids which the Owner determines, in its sole discretion, comply with the requirements of the Tender will progress to the second step of the evaluation process. The Owner may reject a Bid as being non-compliant if the Bid submission is incomplete, obscure, unbalanced or conditional, or contains additions, deletions, alterations or other irregularities. Those Bids which the Owner determines do not comply with the requirements of the Tender will not progress to the second step of the evaluation but will be rejected and not considered further.

The Owner may also waive irregularities or reject all or any Bids if, in the sole discretion of the Owner, it is considered to be in the best interests of the Owner to do so.

90.6.4 Unit Price and Item Price Omissions

The omission of a Unit Price for a Work Item will not invalidate a Bid provided the Bid identifies an Item Price for such Work Item and provided such Item Price does not represent an amount greater than ten (10%) percent of the Total Price, excluding Contingency. The Owner will calculate a Unit Price from the Item Price divided by the Estimated Quantity and will enter such amount in the Bid. This calculated Unit Price will be used for making payments in the Contract. If the calculated Unit Price creates mathematical errors, the Bid will be corrected as set out in the section titled Bids with Mathematical Errors.

The omission of an Item Price for a Work Item will not invalidate a Bid provided the Bid identifies a Unit Price for such Work Item. The Owner will calculate the Item Price from the Estimated Quantity multiplied by the Unit Price and will enter such amount in the Bid. If the calculated Item Price creates mathematical errors, the Bid will be corrected as set out in the section titled Bids with Mathematical Errors.

Where a Bidder fails to provide both the Unit Price and the Item Price for a unit price Work Item, the Bid will be rejected.

Where a Bidder fails to provide an Item Price for a lump sum Work Item, the Bid will be rejected.

90.6.5 Bids with Mathematical Errors

Where a Bid contains a mathematical error, the Owner will correct the error. All of the Prices affected by the error will be adjusted, and the Bid will be evaluated on the basis of the corrected Total Price.

Where an Item Price does not equal the product of the Estimated Quantity and the Unit Price, the Owner will consider the Unit Price to be correct and will adjust the Item Price and all other Prices affected by the error.

Where the Item Price Total for a section does not equal the sum of all Item Prices for that section (as indicated by the Bidder or as corrected by the Owner), the Owner will correct the Item Price Total and all other Prices affected by the error.

Where the Site Occupancy Price for a section (if applicable) does not equal the product of the Bid Charged Days and the Charged Day Rate for that section, the Owner will consider the Bid Charged Days to be correct and will adjust the Site Occupancy Price and all other Prices affected by the error.

Where the Total Price does not equal the sum of the Item Price Totals and all Site Occupancy Prices (as indicated by the Bidder or as corrected by the Owner), the Owner will correct the Total Price.

90.6.6 Comparing Total Prices

The Owner will compare the Total Prices of all compliant Bids to determine the Bid ranking. All compliant Bids will be assigned their respective places in order of lowest Total Price to highest Total

Price. The preferred Bidder is the Bidder that submitted the compliant Bid with the lowest Total Price, excluding Contingency.

90.6.7 Confirming Qualifications of Preferred Bidder (Pass/Fail)

The qualifications of the preferred Bidder will be assessed, and a Bidder's record of past performance will be a factor in the Owner's determination of the Bidder's qualifications to perform the Work. For the purposes of assessing qualifications of the Bidder (or the Bidder's Subcontractors), the Bidder shall, on request of the Owner, provide:

- (a) a list of equipment in good working condition that the Bidder is prepared to use in order to undertake the Work;
- (b) full access to the Bidder's equipment or facilities to confirm that the equipment and facilities are adequate to perform the Work;
- (c) a plan stating the Bidder's proposed approach to the various phases of the Work;
- (d) a list of Subcontractors whom the Bidder proposed to engage to perform the Work;
- (e) examples of the Bidder's (and where necessary, Subcontractors') past performance on similar projects;
- (f) reference contact information from other agencies or clients for the Bidder (and, where necessary, Subcontractors);
- (g) proof, satisfactory to the Owner, of the Bidder's qualifications as set out in section 9.5.1; and,
- (h) such other information or documents as may be required by the Tender or the Owner.

The preferred Bidder shall, on request, meet with the Owner's representatives prior to the Contract being awarded for the purpose of confirming the preferred Bidder's qualifications.

The Owner has the right to contact not only any of the references provided by the Bidder, but also any other references identified by the Owner who have had dealings with the Bidder or the Bidder's Subcontractors without prior notice to the Bidder.

If the Owner determines that a Bidder's qualifications and record of past performance is unsatisfactory, the Owner may, in its sole discretion, disqualify the Bidder and reject its Bid.

If a preferred Bidder is rejected, the Bidder with the second-lowest Total Price becomes the preferred Bidder, and so on until either a Contract is awarded to a qualified Bidder having submitted a compliant Bid or the Tender is cancelled.

A Bidder will be notified, in writing, if its Bid is rejected.

90.6.8 Award and Signing of Contract

The Owner is under no obligation to award a Contract to a Bidder, even if one or more Bids are determined to be compliant and one or more Bidders are determined to be qualified. Without limiting the generality of the foregoing, the Owner will have no obligation to award a Contract where:

- (a) there is only one Bid received;
- (b) the prices exceed the funds available for the Work;
- (c) the prices materially exceed prices for similar work in the past;
- (d) the prices materially exceed the Owner's cost to perform the Work, or a significant portion thereof, with its own forces;
- (e) the prices are unbalanced;

- (f) in the sole opinion of the Owner, the interests of the Owner would be best served by not awarding a Contract.

If the Owner decides to award a Contract, it will award the Contract to the qualified Bidder that has submitted a compliant Bid with the lowest Total Price excluding Contingency.

The Owner may award a Contract for all or part of the Work. Without limiting the generality of the foregoing, where the Work consists of Sections, the Owner reserves the right to delete a Section from the Work if the preferred Bidder's Item Price Total exceeds the amount of funding allocated by the specific funding source for that Section. No penalties, fees, or reimbursements will be paid to the Bidder for deletion of a Section from the Work. The Bidder should quote Prices for each Work Item in each Section separately. Bids will still be evaluated on the basis of the lowest Total Price for all Sections of the Tender, excluding Contingency.

The successful Bidder will be notified in writing that the Bidder has been awarded the Contract, subject to the Bidder complying with the specific conditions precedent to the Contract as set out in the Tender or the notification of award.

The Bidder shall, within ten (10) calendar days after the date on which the notification of award was sent to the Bidder, provide evidence to the Owner that the Bidder has satisfied any conditions precedent to the Contract or in the notification of award. Upon receipt of this evidence, the Owner will approve the Contract and send a copy or copies to the Contractor for signature.

90.6.9 Failure to Respond to Award Notification

If, within ten (10) calendar days after the date on which the award notification was sent to the Bidder, the Owner has not received all of the following from the Bidder:

- (a) the Contract, duly signed by the Bidder (if applicable);
- (b) a performance bond (digitally verifiable or paper, required for Bonded Contract);
- (c) a labour and material payment bond (digitally verifiable or paper, required for Bonded Contract); and
- (d) evidence that the Bidder has satisfied any conditions precedent to the Contract;

then the Owner may do one or more of the following:

- (a) where a bid bond was required, claim against the bid bond;
- (b) declare the Bidder ineligible to bid on tenders issued by the Owner for a period of up to two (2) years;
- (c) proceed to award the Contract to, another Bidder;
- (d) cancel the Tender;
- (e) exercise whatever other remedies are available by law.

90.6.10 Commencement of Work

Unless otherwise authorized by the Owner, in writing, the Contractor shall not commence any Work until the Contractor has:

- (a) submitted an approved performance bond (required for Bonded Contract);
- (b) submitted an approved labour and material payment bond (required for Bonded Contract);
- (c) complied with the conditions precedent to the Contract;
- (d) confirmed that the Owner has executed the Contract that was signed and submitted by the Contractor and,
- (e) attended a pre-construction meeting (if required).

90.6.11 No Award of Contract

If no Contract is awarded, the Owner will give written notice to all Bidders, that no Contract award will be made and (where applicable) will post a notice on the Owner's online procurement service provider website that the Tender has been cancelled and no further Bid information will be released, provided the Bidder has so requested.

END OF DOCUMENT