



**THE CITY OF WINNIPEG**

# **TENDER**

**TENDER NO. 597-2023**

**PROVISION OF VEHICLE TOWING SERVICES DURING STREETS OPERATIONS**

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## **PART B - BIDDING PROCEDURES**

### **B1. CONTRACT TITLE**

B1.1 PROVISION OF VEHICLE TOWING SERVICES DURING STREETS OPERATIONS

### **B2. SUBMISSION DEADLINE**

B2.1 The Submission Deadline is 4:00 p.m. Winnipeg time, December 15, 2023.

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

### **B3. ENQUIRIES**

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

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

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

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

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

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

### **B4. CONFIDENTIALITY**

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

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

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

### **B5. ADDENDA**

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

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

## **B6. SUBSTITUTES**

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

- B6.7 If the Contract Administrator approves a substitute as an “approved equal”, any Bidder may use the approved equal in place of the specified item.
- B6.8 If the Contract Administrator approves a substitute as an “approved alternative”, any Bidder bidding that approved alternative may base their Total Bid Price upon the specified item but may also indicate an alternative price based upon the approved alternative. Such alternatives will be evaluated in accordance with B16.
- B6.9 No later claim by the Contractor for an addition to the Total Bid Price because of any other changes in the Work necessitated by the use of an approved equal or an approved alternative will be considered.

## **B7. BID SUBMISSION**

- B7.1 The Bid shall consist of the following components:
- (a) Form A: Bid/Proposal;
  - (b) Form B: Prices.
- B7.2 All components of the Bid shall be fully completed or provided, and submitted by the Bidder no later than the Submission Deadline, with all required entries made clearly and completely.
- B7.3 The Bid shall be submitted electronically through MERX at [www.merx.com](http://www.merx.com).
- B7.3.1 Bids will **only** be accepted electronically through MERX.
- B7.4 Bidders are advised that inclusion of terms and conditions inconsistent with the Tender document, including the General Conditions, will be evaluated in accordance with B16.1(a).

## **B8. BID**

- B8.1 The Bidder shall complete Form A: Bid/Proposal, making all required entries.
- B8.2 Paragraph 2 of Form A: Bid/Proposal shall be completed in accordance with the following requirements:
- (a) if the Bidder is a sole proprietor carrying on business in his own name, his name shall be inserted;
  - (b) if the Bidder is a partnership, the full name of the partnership shall be inserted;
  - (c) if the Bidder is a corporation, the full name of the corporation shall be inserted;
  - (d) if the Bidder is carrying on business under a name other than his own, the business name and the name of every partner or corporation who is the owner of such business name shall be inserted.
- B8.2.1 If a Bid is submitted jointly by two or more persons, each and all such persons shall identify themselves in accordance with B8.2.
- B8.3 In Paragraph 3 of Form A: Bid/Proposal, the Bidder shall identify a contact person who is authorized to represent the Bidder for purposes of the Bid.
- B8.4 Paragraph 13 of Form A: Bid/Proposal shall be signed in accordance with the following requirements:
- (a) if the Bidder is a sole proprietor carrying on business in his own name, it shall be signed by the Bidder;
  - (b) if the Bidder is a partnership, it shall be signed by the partner or partners who have authority to sign for the partnership;
  - (c) if the Bidder is a corporation, it shall be signed by its duly authorized officer or officers;

- (d) if the Bidder is carrying on business under a name other than his own, it shall be signed by the registered owner of the business name, or by the registered owner's authorized officials if the owner is a partnership or a corporation.

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

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

## **B9. PRICES**

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

B9.1.1 Notwithstanding C12.2.3, prices on Form B: Prices shall not include the Goods and Services Tax (GST) or Manitoba Retail Sales Tax (MRST, also known as PST), which shall be extra where applicable.

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

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

B9.4 Payments to Non-Resident Contractors are subject to Non-Resident Withholding Tax pursuant to the Income Tax Act (Canada).

B9.5 The Bidder shall enter the Total Bid Price from Form B: Prices into the Total Bid Price field in MERX.

B9.6 Bidders are advised that the calculation indicated in B16.4 will prevail over the Total Bid Price entered in MERX.

## **B10. DISCLOSURE**

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

B10.2 The Persons are:

- (a) N/A

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

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

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

- (a) other commitments;
- (b) relationships;
- (c) financial interests; or
- (d) involvement in ongoing litigation;

that could or would be seen to:

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

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

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

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

**B11.5** Without limiting B11.3, and in addition to all contractual or other rights or rights at law or in equity or legislation that may be available to the City, the City may, in their sole discretion:

- (a) disqualify a Bidder that fails to disclose a perceived, potential or actual Conflict of Interest of the Bidder or any of their employees proposed for the Work;
- (b) require the removal or replacement of any employees proposed for the Work that has a perceived, actual or potential Conflict of Interest that the City, in their sole discretion, determines cannot be avoided or mitigated;
- (c) disqualify a Bidder or employees proposed for the Work that fails to comply with any requirements prescribed by the City pursuant to B11.4 to avoid or mitigate a Conflict of Interest; and
- (d) disqualify a Bidder if the Bidder, or one of their employees proposed for the Work, has a perceived, potential or actual Conflict of Interest that, in the City's sole discretion, cannot be avoided or mitigated, or otherwise resolved.

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

## **B12. QUALIFICATION**

**B12.1** The Bidder shall:

- (a) undertake to be in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba, or if the Bidder

does not carry on business in Manitoba, in the jurisdiction where the Bidder does carry on business; and

- (b) be financially capable of carrying out the terms of the Contract; and
- (c) have all the necessary experience, capital, organization, and equipment to perform the Work in strict accordance with the terms and provisions of the Contract.

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

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

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

- (a) have successfully carried out work similar in nature, scope and value to the Work;
- (b) be fully capable of performing the Work required to be in strict accordance with the terms and provisions of the Contract;
- (c) have a written workplace safety and health program, if required, pursuant to The Workplace Safety and Health Act (Manitoba); and
- (d) have completed the Accessible Customer Service online training required by the Accessibility for Manitobans Act (AMA) (see B12.5 and D6).

B12.4 Further to B12.3(c), the Bidder shall, within five (5) Business Days of a request by the Contract Administrator, provide proof satisfactory to the Contract Administrator that the Bidder/Subcontractor has a workplace safety and health program meeting the requirements of The Workplace Safety and Health Act (Manitoba), by providing:

- (a) Written confirmation of a safety and health certification meeting SAFE Work Manitoba's SAFE Work Certified Standard (e.g., COR™ and SECOR™) in the form of:
  - (i) a copy of their valid Manitoba COR certificate and Letter of Good Standing (or Manitoba equivalency) as issued under the Certificate of Recognition (COR) Program administered by the Construction Safety Association of Manitoba or by the Manitoba Heavy Construction Association's WORKSAFELY™ COR™ Program; or
  - (ii) a copy of their valid Manitoba SECOR™ certificate and Letter of Good Standing (or Manitoba equivalency) as issued under the Small Employer Certificate of Recognition Program (SECOR™) administered by the Construction Safety Association of Manitoba or by the Manitoba Heavy Construction Association's WORKSAFELY™ COR™ Program; or
- (b) a report or letter to that effect from an independent reviewer acceptable to the City. (A list of acceptable reviewers and the review template are available on the Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Division website at <http://www.winnipeg.ca/matmgt/>).

B12.5 Further to B12.3(d), the Bidder acknowledges they and all Subcontractors have obtained training required by the Accessibility for Manitobans Act (AMA) available at <http://www.accessibilitymb.ca/training.html> for anyone that may have any interaction with the public on behalf of the City of Winnipeg.

B12.6 The Bidder shall submit, within three (3) Business Days of a request by the Contract Administrator, proof satisfactory to the Contract Administrator of the qualifications of the Bidder and of any proposed Subcontractor.

B12.7 The Bidder shall provide, on the request of the Contract Administrator, full access to any of the Bidder's equipment and facilities to confirm, to the Contract Administrator's satisfaction, that the Bidder's equipment and facilities are adequate to perform the Work.

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

B13.1 Bids will not be opened publicly.

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

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

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

B13.4.1 To the extent permitted, the City shall treat as confidential information, those aspects of a Bid Submission identified by the Bidder as such in accordance with and by reference to Part 2, Section 17 or Section 18 or Section 26 of The Freedom of Information and Protection of Privacy Act (Manitoba), as amended.

### **B14. IRREVOCABLE BID**

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

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

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

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

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

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

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

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

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

- B16.4 Further to B16.1(c), the Total Bid Price shall be the sum of the quantities multiplied by the unit prices for each item shown on Form B: Prices.
- B16.4.1 Further to B16.1(a), in the event that a unit price is not provided on Form B: Prices, the City will determine the unit price by dividing the Amount (extended price) by the approximate quantity, for the purposes of evaluation and payment.
- B16.4.2 Bidders are advised that the calculation indicated in B16.4 will prevail over the Total Bid Price entered in MERX.
- B16.5 This Contract may be awarded separately by item.
- B16.5.1 Notwithstanding B11.1, the Bidder may, but is not required to bid on all items.
- B16.5.2 Notwithstanding B19.3, the City shall not be obligated to award any item to the responsible Bidder submitting the lowest evaluated responsive Bid for the item and shall have the right to choose the alternative which is in their best interests. If the Bidder has not bid on all items, they shall have no claim against the City if their partial Bid is rejected in favour of an award of the Contract as a whole.
- B16.5.3 For bidding purposes, it is estimated that when a Snow Clearing operation occurs:
- (a) One (1) tow truck will perform approximately 150 tows over five (5) consecutive twelve (12) hour shifts;
  - (b) Approximately two (2) Snow Clearing operations will occur during October 15<sup>th</sup> and April 15<sup>th</sup> of a contract year.
  - (c) Approximately thirty (30) or more tow trucks will be callout for one (1) Snow Clearing operation.
- B16.5.4 For bidding purposes, it is estimated that when a Street Clearing operation occurs:
- (a) One (1) tow truck will perform approximately 210 tows over five (5) weeks consisting of eight (8) hour day shifts on weekdays;
  - (b) One (1) Street Cleaning operation will occur approximately between April 15<sup>th</sup> and May 31<sup>st</sup>;
  - (c) Approximately twenty (20) tow trucks will be callout for a Street Clearing operation.
- B16.5.5 The City will award the Contract to multiple bidders and orders for towing services will be first based on lowest unit rate followed by availability of tow truck equipment at time of order.

## **B17. AWARD OF CONTRACT**

- B17.1 The City will give notice of the award of the Contract, or will give notice that no award will be made.
- B17.2 The City will have no obligation to award a Contract to a Bidder, even though one or all of the Bidders are determined to be qualified, and the Bids are determined to be responsive.
- B17.2.1 Without limiting the generality of B17.2, the City will have no obligation to award a Contract where:
- (a) the prices exceed the available City funds for the Work;
  - (b) the prices are materially in excess of the prices received for similar work in the past;
  - (c) the prices are materially in excess of the City's cost to perform the Work, or a significant portion thereof, with their own forces;
  - (d) only one Bid is received; or
  - (e) in the judgment of the Award Authority, the interests of the City would best be served by not awarding a Contract.

- B17.3 Where an award of Contract is made by the City, the award shall be made to multiple qualified Bidders submitting an evaluated responsive Bid in accordance with B16.
- B17.3.1 Callout for services will be based on lowest evaluated bid price first followed by availability of tow truck(s) at time of order.
- B17.4 Further to Paragraph 7 of Form A: Bid/Proposal and C4, the City may issue a purchase order to the successful Bidder in lieu of the execution of a Contract.
- B17.4.1 The Contract Documents, as defined in C1.1(p), in their entirety shall be deemed to be incorporated in and to form a part of the purchase order notwithstanding that they are not necessarily attached to or accompany said purchase order.
- B17.5 Following the award of contract, a Bidder will be provided with information related to the evaluation of their Bid upon written request to the Contract Administrator.

## PART C - GENERAL CONDITIONS

### C0. GENERAL CONDITIONS

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

## **PART D - SUPPLEMENTAL CONDITIONS**

### **GENERAL**

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

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

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

D2.1 The Work to be done under the Contract shall consist of towing vehicles during Snow Clearing and Street Cleaning operations for the period from date of award until July 31, 2024, with the option of two (2) mutually agreed upon one (1) year extensions.

(a) The City may negotiate the extension option with the Contractor within ninety (90) Calendar Days prior to the expiry date of the Contract. The City shall incur no liability to the Contractor as a result of such negotiations.

D2.1.1 Changes resulting from such negotiations shall become effective on August 1<sup>st</sup>. of the respective year. Changes to the Contract shall not be implemented by the Contractor without written approval by the Contract Administrator.

D2.1.2 Bidders are advised that, in future, the City may be participating in collaborative procurement initiatives with other levels of government. Accordingly, extensions to this Contract may not be exercised.

D2.2 The major components of the Work are as follows:

(a) Towing of vehicles to adjacent streets during Snow Clearing operations; and

(b) Towing of vehicles to adjacent streets during Street Cleaning operations.

D2.3 The Work shall be done on an "as required" basis during the term of the Contract.

D2.3.1 The type and quantity of Work to be performed under this Contract shall be as authorized from time to time by the Contract Administrator and/or Users.

D2.3.2 Subject to C7, the City shall have no obligation under the Contract to purchase any quantity of any item in excess of its actual operational requirements.

D2.4 When towing is required, the City shall telephone and/or email the low responsive Contractor for towing services, as required. Should the Contractor not be available when requested, the City shall proceed to the next lowest responsive Contractor, etc. until the towing services required is obtained. The order will be confirmed by the issuance of a purchase order.

D2.5 Notwithstanding D2.1, in the event that operational changes result in substantial changes to the requirements for Work, the City reserves the right to alter the type or quantity of work performed under this Contract, or to terminate the Contract, upon thirty (30) Calendar Days written notice by the Contract Administrator. In such an event, no claim may be made for damages on the ground of loss of anticipated profit on Work.

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

D3.1 The Contractor is advised that this is a cooperative purchase.

D3.2 The Contract Administrator may, from time to time during the term of the Contract, approve other public sector organizations and utilities, including but not limited to municipalities, universities, schools and hospitals, to be participants in the cooperative purchase.

D3.3 The Contract Administrator will notify the Contractor of a potential participant and provide a list of the delivery locations and estimated quantities.

- D3.4 If any location of the potential participant is more than ten (10) kilometres beyond the boundaries of the City of Winnipeg, the Contractor shall, within fifteen (15) Calendar Days of the written notice, notify the Contract Administrator of the amount of any additional delivery charge for the location.
- D3.5 If any additional delivery charges are identified by the Contractor, the potential participant may accept or decline to participate in the cooperative purchase.
- D3.6 The Contractor shall enter into a contract with each participant under the same terms and conditions as this Contract except:
- (a) supply under the contract shall not commence until the expiry or lawful termination of any other contract(s) binding the participant for the same goods;
  - (b) a participant may specify a duration of contract shorter than the duration of this Contract;
  - (c) a participant may specify that only some items under this Contract and/or less than their total requirement for an item are to be supplied under its contract; and
  - (d) any additional delivery charge identified and accepted in accordance with D3.4 and D3.5 will apply.
- D3.7 Each participant will be responsible for the administration of their contract and the fulfilment of their obligations under their contract. The City shall not incur any liability arising from any such contract.
- D3.8 No participant shall have the right or authority to effect a change in the Contract, or of any other participant in this Contract.

#### **D4. DEFINITIONS**

- D4.1 When used in this Tender:
- (a) **“Callout”** means City request to Contractor for services requiring courtesy tow services.
  - (b) **“Snow Clearing”** means removal of snow and ice from roadways, backlanes, pathways and sidewalks;
  - (c) **“Street Cleaning”** means cleanup work of paved roadways, backlanes, pathways and sidewalks to remove debris;
  - (d) **“Supply Chain Disruption”** means an inability by the Contractor to obtain goods or services from third parties necessary to perform the Work of the Contract within the schedule specified therein, despite the Contractor making all reasonable commercial efforts to procure same. Contractors are advised that increased costs do not, in and of themselves, amount to a Supply Chain Disruption; and
  - (e) **“User”** means a person, department, or other administrative unit of the City authorized by the Contract Administrator to order Work under this Contract;
- D4.2 For greater clarity, in this Contract the terms “operator” and “tow truck operator” shall be used interchangeably, Further, any tow truck operator who performs Work under this Contract shall be deemed to be a Subcontractor (as that term is defined in the General Conditions for Services), unless said tow truck driver is directly employed by the Contractor.

#### **D5. CONTRACT ADMINISTRATOR**

- D5.1 The Contract Administrator is:
- Jean-Luc Lambert, P.Eng.  
Support Services Engineer.
- Telephone No. 204 986-7087  
Email Address: [jeanlambert@winnipeg.ca](mailto:jeanlambert@winnipeg.ca)

D5.2 Before commencement of Work, the Contract Administrator will identify additional personnel representing the Contract Administrator and their respective roles and responsibilities for the Work.

## **D6. CONTRACTOR'S SUPERVISOR**

D6.1 Further to C6.22, the Contractor shall employ and keep on the Work, at all times during the performance of the Work, a competent supervisor and assistants, if necessary, acceptable to the Contract Administrator. The supervisor shall represent the Contractor on the Site. The supervisor shall not be replaced without the prior consent of the Contract Administrator unless the supervisor proves to be unsatisfactory to the Contractor and ceases to be in their employ.

D6.2 Before commencement of Work, the Contractor shall identify their designated supervisor and any additional personnel representing the Contractor and their respective roles and responsibilities for the Work.

D6.2.1 Further to C5.5 Contract Administrator may give instructions or orders to the Contractor's supervisor and such instructions or orders shall be deemed to have been given to the Contractor.

## **D7. ACCESSIBLE CUSTOMER SERVICE REQUIREMENTS**

D7.1 The Accessibility for Manitobans Act (AMA) imposes obligations on The City of Winnipeg to provide accessible customer service to all persons in accordance with the Customer Service Standard Regulation ("CSSR") to ensure inclusive access and participation for all people who live, work or visit Winnipeg regardless of their abilities.

D7.1.1 The Contractor agrees to comply with the accessible customer service obligations under the CSSR and further agrees that when providing the Goods or Services or otherwise acting on the City of Winnipeg's behalf, shall comply with all obligations under the AMA applicable to public sector bodies.

D7.1.2 The accessible customer service obligations include, but are not limited to:

- (a) providing barrier-free access to goods and services;
- (b) providing reasonable accommodations;
- (c) reasonably accommodating assistive devices, support persons, and support animals;
- (d) providing accessibility features e.g. ramps, wide aisles, accessible washrooms, power doors and elevators;
- (e) inform the public when accessibility features are not available;
- (f) providing a mechanism or process for receiving and responding to public feedback on the accessibility of all goods and services; and
- (g) providing adequate training of staff and documentation of same.

## **D8. UNFAIR LABOUR PRACTICES**

D8.1 Further to C3.2, the Contractor declares that in bidding for the Work and in entering into this Contract, the Contractor and any proposed Subcontractor(s) conduct their respective business in accordance with established international codes embodied in United Nations Universal Declaration of Human Rights (UDHR) <https://www.un.org/en/about-us/universal-declaration-of-human-rights> International Labour Organization (ILO) [https://www.ilo.org/global/lang--en/index.htm](https://www.ilo.org/global/lang-en/index.htm) conventions as ratified by Canada.

D8.2 The City of Winnipeg is committed and requires its Contractors and their Subcontractors, to be committed to upholding and promoting international human and labour rights, including fundamental principles and rights at work covered by ILO eight (8) fundamental conventions and the United Nations Universal Declaration of Human Rights which includes child and forced labour.

- D8.3 Upon request from the Contract Administrator, the Contractor shall provide disclosure of the sources (by company and country) of the raw materials used in the Work and a description of the manufacturing environment or processes (labour unions, minimum wages, safety, etc.).
- D8.4 Failure to provide the evidence required under D8.3, may be determined to be an event of default in accordance with C18.
- D8.5 In the event that the City, in its sole discretion, determines the Contractor to have violated the requirements of this section, it will be considered a fundamental breach of the Contract and the Contractor shall pay to the City a sum specified by the Contract Administrator in writing ("Unfair Labour Practice Penalty"). Such a violation shall also be considered an Event of Default, and shall entitle the City to pursue all other remedies it is entitled to in connection with same pursuant to the Contract.
- D8.5.1 The Unfair Labour Practice Penalty shall be such a sum as determined appropriate by the City, having due regard to the gravity of the Contractor's violation of the above requirements, any cost of obtaining replacement goods/ services or rectification of the breach, and the impact upon the City's reputation in the eyes of the public as a result of same.
- D8.5.2 The Contractor shall pay the Unfair Labour Practice Penalty to the City within thirty (30) Calendar Days of receiving a demand for same in accordance with D7.5. The City may also hold back the amount of the Unfair Labour Practice Penalty from payment for any amount it owes the Contractor.
- D8.5.3 The obligations and rights conveyed by this clause survive the expiry or termination of this Contract, and may be exercised by the City following the performance of the Work, should the City determine, that a violation by the Contractor of the above clauses has occurred following same. In no instance shall the Unfair Labour Practice Penalty exceed the total of twice the Contract value.

## **SUBMISSIONS**

### **D9. AUTHORITY TO CARRY ON BUSINESS**

- D9.1 The Contractor shall be in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba, or if the Contractor does not carry on business in Manitoba, in the jurisdiction where the Contractor does carry on business, throughout the term of the Contract, and shall provide the Contract Administrator with evidence thereof upon request.

### **D10. SAFE WORK PLAN**

- D10.1 The Contractor shall provide the Contract Administrator with a Safe Work Plan at least five (5) Business Days prior to the commencement of any Work on the Site but in no event later than the date specified in C4.1 for the return of the executed Contract Documents, if applicable.
- D10.2 The Safe Work Plan should be prepared and submitted in the format shown in the City's template which is available on the Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Division website at <http://www.winnipeg.ca/matmgt/Safety/default.stm>
- D10.3 Notwithstanding B12.4 at any time during the term of the Contract, the City may, at their sole discretion and acting reasonably, require an updated COR Certificate or Annual Letter of good Standing. A Contractor, who fails to provide a satisfactory COR Certificate or Annual Letter of good Standing, will not be permitted to continue to perform any Work.

## **D11. INSURANCE**

D11.1 The Contractor shall provide and maintain the following insurance coverage:

- (a) commercial general liability insurance, in the amount of at least two million dollars (\$2,000,000.00) inclusive, with The City of Winnipeg added as an additional insured; such liability policy to also contain a cross-liability clause, towing/riggers liability, contractual liability, non-owned automobile liability and products and completed operations cover, to remain in place at all times during the performance of the Work;
- (b) if applicable, Automobile Liability Insurance covering all motor vehicles, owned and operated and used or to be used by the Contractor directly or indirectly in the performance of the Work. The Limit of Liability shall not be less than \$2,000,000 inclusive for loss or damage including personal injuries and death resulting from any one accident or occurrence;
- (c) standard garage automobile liability policy in the amount of at least two million dollars (\$2,000,000.00) including;
  - (i) collision or upset coverage for customer automobiles in the care, custody, or control of the Contractor in the amount of at least seventy-five thousand dollars (\$75,000.00) any one automobile with a minimum deductible of five hundred dollars (\$500.00) any one loss;
  - (ii) specified perils, customer automobiles in the amount of at least five hundred thousand dollars (\$500,000.00) limit any one occurrence; and
  - (iii) open lot pilferage for customer automobiles.

D11.2 Deductibles shall be borne by the Contractor.

D11.3 The Contractor shall provide the Contract Administrator with a certificate(s) of insurance, in a form satisfactory to the City Solicitor, at least two (2) Business Days prior to the commencement of any Work on the Site but in no event later than the date specified in C4.1 for the return of the executed Contract Documents, as applicable.

D11.4 All policies shall be taken out with insurers licensed to carry on business in the Province of Manitoba.

D11.5 The Contractor shall not cancel, materially alter, or cause the policy to lapse without providing at least thirty (30) Calendar Days prior written notice to the Contract Administrator.

D11.6 The City shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance of this agreement.

## **D12. SUBCONTRACTOR LIST**

D12.1 The Contractor shall provide the Contract Administrator with a complete list of the Subcontractors whom the Contractor proposes to engage (Form J: Subcontractor List) at least two (2) Business Days prior to the commencement of any Work on the Site but in no event later than the date specified in C4.1 for the return of the executed Contract Documents, if applicable.

## **D13. EQUIPMENT LIST**

D13.1 The Contractor shall provide the Contract Administrator with a complete list of the equipment which the Contractor proposes to utilize (Form K: Equipment List) at least two (2) Business Days prior to the commencement of any Work on the Site but in no event later than the date specified in C4.1 for the return of the executed Contract Documents, if applicable.

## **SCHEDULE OF WORK**

### **D14. COMMENCEMENT**

- D14.1 The Contractor shall not commence any Work until they are in receipt of a notice of award from the City authorizing the commencement of the Work.
- D14.2 The Contractor shall not commence any Work on the Site until:
- (a) the Contract Administrator has confirmed receipt and approval of:
    - (i) evidence of authority to carry on business specified in D9;
    - (ii) evidence of the workers compensation coverage specified in C6.14;
    - (iii) evidence of the insurance specified in D11;
    - (iv) the Subcontractor list specified in D12;
    - (v) the equipment list specified in D13; and
    - (vi) the direct deposit application form specified in D27;
  - (b) the Contractor has attended a meeting with the Contract Administrator, or the Contract Administrator has waived the requirement for a meeting.
- D14.3 The Contractor shall commence the Work on the Site within one (1) Working Day of receipt of the notice of award.

### **D15. LIQUIDATED DAMAGES**

- D15.1 If the Contractor fails to achieve the Work of the Contract within the time specified in E9 the City may immediately, upon notifying the Contractor, take whatever steps necessary to obtain the services. Further to C18, additional costs associated with obtaining the services will be charged to the Contractor and may be deducted from any amounts owing.
- D15.2 The amount specified for liquidated damages is based on a genuine pre-estimate of the City's damages in the event that the Contractor does not achieve the Work of the Contract.
- D15.3 The City may reduce any payment to the Contractor by the amount of any liquidated damages assessed.

### **D16. SUPPLY CHAIN DISRUPTION SCHEDULE DELAYS**

- D16.1 The City acknowledges that the schedule for this Contract may be impacted by the Supply Chain Disruption. Commencement and progress of the Work shall be performed by the Contractor with due consideration to the delivery requirements and schedule identified in the Contract in close consultation with the Contract Administrator.
- D16.2 If the Contractor is delayed in the performance of the Work by reason of the Supply Chain Disruption, the Work schedule may be adjusted by a period of time equal to the time lost due to such delay and costs related to such delay will be determined as identified herein.
- D16.3 A minimum of seven (7) Calendar Days prior to the commencement of Work, the Contractor shall declare whether a Supply Chain Disruption will affect the start date. The Contractor shall provide sufficient evidence that the delay is directly related to a Supply Chain Disruption, including but not limited to evidence related to ordering of Material or Goods, production and/or manufacturing schedules or availability of staff as appropriate.
- D16.4 For any delay related to Supply Chain Disruption and identified after Work has commenced, the Contractor shall within seven (7) Calendar Days of becoming aware of the anticipated delay declare the additional delay and shall provide sufficient evidence as indicated in D16.3. Failure to provide this notice will result in no additional time delays being considered by the City.

- D16.5 Any time or cost implications as a result of Supply Chain Disruption and in accordance with the above, as confirmed by the Contract Administrator, shall be documented in accordance with C7.
- D16.6 The Work Schedule will be adjusted to reflect delays accepted by the Contract Administrator.

## **CONTROL OF WORK**

### **D17. THE WORKPLACE SAFETY AND HEALTH ACT (MANITOBA) - QUALIFICATIONS**

- D17.1 Further to B12.3, the Contractor/Subcontractor must, throughout the term of the Contract, have a Workplace Safety and Health Program meeting the requirements of The Workplace Safety and Health Act (Manitoba). At any time during the term of the Contract, the City may, at their sole discretion and acting reasonably, require updated proof of compliance, as set out in B12.3.

### **D18. SAFETY**

- D18.1 The Contractor shall be solely responsible for safety at the Site and for compliance with all laws, rules, regulations and practices required by the applicable safety legislation.
- D18.2 The Contractor shall be solely responsible for securing the Site, and any existing facility thereon, and for the proper care and protection of the Work already performed.
- D18.3 The Contractor shall do whatever is necessary to ensure that:
- (a) no person, property, right, easement or privilege is injured, damaged or infringed by reason of the Contractor's activities in performing the Work;
  - (b) the health and safety of all persons employed in the performance of the Work or otherwise is not endangered by the method or means of their performance;
  - (c) adequate medical services are available to all persons employed on the Work and at all times during the performance of the Work;
  - (d) adequate sanitation measures are taken and facilities provided with respect to the Work;
  - (e) pedestrian and other traffic on any public or private road or waterway is not unduly impeded, interrupted or endangered by the performance or existence of the Work or Plant;
  - (f) fire hazards in or about the Work are eliminated.

### **D19. ACCOUNTABILITY AND DEFICIENCIES**

- D19.1 The Contractor shall maintain a system of accountability which includes a written accountability and integrity plan (the "Accountability Plan"); the active supervision and scrutiny of Work performed by Contractor Representatives; and the participation and sign-off of senior management of the Contractor in the process of performance review.
- D19.1.1 Further to D21.1, the Accountability Plan shall contain standards to prevent fraudulent, dishonest, or negligent acts by the Contractor or Contractor Representatives such as, at minimum, those records and tracking requirements outlined in Part E.
- D19.2 Further to C11.7, the Contract Administrator may order the Contractor to alter or improve their methods, to employ additional or more qualified labour, or to make other such changes as may be directed by the Contract Administrator if, at any time, the Contract Administrator determines that:
- (a) the Work is not being, or will likely not be, performed satisfactorily; or
  - (b) progress is not being, or will likely not be, maintained in accordance with the work schedule.

## **D20. CONTRACTOR REPRESENTATIVE BEHAVIOUR AND SUPERVISION**

- D20.1 The Contractor shall provide adequate supervision and scrutiny of its employees, Subcontractors (including, but not limited to, tow truck operators), agents, and representatives (“Contractor Representatives”), and shall ensure that all such Contractor Representatives conduct themselves in an honest, respectful, and appropriate manner, and shall without limitation ensure that the Contractor Representatives:
- (a) behave in a courteous and polite manner (no profanity, disrespectful behaviour, or excess noise) to City staff and other personnel or residents;
  - (b) use their own radio(s) or telephones or cellular telephones necessary for on-site communication and TowMobile interaction (per Part E);
  - (c) do not engage in fraudulent, dishonest, or negligent conduct, or in any act of material misconduct; and
  - (d) perform all aspects of the Work with honesty, professionalism, and integrity.
- D20.2 The Contractor and Contractor Representatives shall at all times conduct themselves in a courteous, respectful, and professional manner and keep themselves in a clean and tidy condition.
- D20.3 The Contractor and Contractor Representatives in contact with the public shall wear suitable uniforms in a clean and tidy state.
- D20.4 The Contractor(s) shall at all times have sufficient personnel, with the appropriate drivers’ license classification, to operate the tow trucks or equipment being contracted.

## **D21. DISPATCH OFFICE AND ORDERS**

- D21.1 The Contractor(s) shall maintain and operate a dispatch office twenty-four (24) hours a day, seven (7) days a week, where instructions from the City will be received by radio, telephone, fax, or email.
- D21.2 The Contractor shall provide a local Winnipeg telephone number or a toll-free telephone number at which orders for service may be placed.

## **D22. RECORDS**

- D22.1 When performing towing service as per E2.1, the Contractor is required to record each tow by utilizing the City of Winnipeg’s TowMobile application. The Contractor must have the proper mobile device and data plan to be able to operate the TowMobile application. The cost of mobile device and data plan are incidental to the unit prices bid in Form B: Prices.
- D22.2 The Contractor shall record each individual tow through the City’s TowMobile app by reporting the following information:
- (a) Recording the start and end of towing a vehicle as follows:
    - (i) The start and end of the tow must correctly record the location where the tow truck picks up and drops off a vehicle; and
    - (ii) Take a legible picture of the licence plate of the vehicle being towed. A picture shall be taken at the start and end of the tow.
  - (b) Validate the licence plate of the vehicle at the start and end of each tow;
  - (c) Release of a vehicle to the owner/driver as per E10;
  - (d) The fronting address at which the vehicle towed was dropped;
  - (e) Any additional information requested by the Contract Administrator; and
  - (f) Enable tracking capabilities on the mobile device to record longitudinal and latitude information of the start and end of a tow.

- D22.3 The Contractor shall track and keep records of tow truck GPS locations during towing operations.
- (a) The Contractor must have their tow trucks integrated into a real-time GPS/AVL tracking system approved by the Contract Administrator.
    - (i) The Contractor shall provide a live feed connection to tow truck location in order for the City to track tow truck movements and location.
  - (b) The Contractor shall provide within twenty-four (24) hours' notice by the Contract Administrator records in GIS format.

## **D23. WINNIPEG CLIMATE ACTION PLAN AND ANNUAL FUEL REPORTING**

- D23.1 The Contractor shall submit to the Contract Administrator for approval no later than March 31<sup>st</sup> of each year of the Contract and following the end of a Contract, a detailed report (for the reporting period January 1st to December 31st of each calendar year) that includes accurate quantities of each type of fuel consumed for motor vehicles and equipment used in performing the Work, including the following details:
- D23.2 Total fuel use (in litres) for each fuel type consumed, sorted by vehicle/equipment type (light duty passenger, light duty pick-up, heavy duty, off-road) and year (where applicable)
- D23.3 If fuel use (in litres) is not available – total vehicle kilometers travelled, sorted by vehicle/equipment type (light duty passenger, light duty pick-up, heavy duty, off-road) and year (where applicable).
- D23.4 If fuel use (in litres) and vehicle kilometers travelled are not available – total vehicle usage (in hours), sorted by vehicle/equipment type (light duty passenger, light duty pick-up, heavy duty, off-road) and year (where applicable).
- D23.5 Any other information requested by the Contract Administrator.
- D23.6 The City will use the reports to track and report on total greenhouse gas production from vehicle use in both City operations and City contracted services. This initiative aims to reduce air pollution and the production of greenhouse gas emissions while demonstrating the City's commitment to environmental sustainability in implementing the Winnipeg Climate Action Plan.

## **MEASUREMENT AND PAYMENT**

### **D24. PAYMENT**

- D24.1 Further to C12, the City shall make payments to the Contractor by direct deposit to the Contractor's banking institution, and by no other means. Payments will not be made until the Contractor has made satisfactory direct deposit arrangements with the City. Direct deposit application forms are at [https://winnipeg.ca/finance/files/Direct\\_Deposit\\_Form.pdf](https://winnipeg.ca/finance/files/Direct_Deposit_Form.pdf).

### **D25. PAYMENT SCHEDULE**

- D25.1 Further to C12, payment shall be in Canadian funds net thirty (30) Calendar Days after the Contract Administrator issues a progress estimate to the Contractor.
- D25.2 Further to C12, payment shall be in accordance with the following payment schedule:
- (a) Once the Contract Administrator approves the tow records in D23 and issues a progress estimate to the Contractor; and
  - (b) Once the Contractor certifies that towing services reported in the progress estimate meets the Accountability Plan under D20.

**D26. WARRANTY**

D26.1 Notwithstanding C13, Warranty does not apply to this Contract.

**D27. INDEMNITY**

D27.1 In addition to the indemnity obligations outlined in C17 of the General Conditions for Services, the Contractor agrees to indemnify and save harmless the City and its officers, insurers, re-insurers, servants, employees, and agents from and against all losses, costs, or damages (including, without limitation, indirect or special damages and economic loss) caused by, or arising out of, breach of the Contract (including, without limitation, Part E) by the Contractor or the Contractor Representatives.

**D28. DISPUTE RESOLUTION**

D28.1 If the Contractor disagrees with any opinion, determination, or decision of the Contract Administrator, the Contractor shall act in accordance with the Contract Administrator's opinion, determination, or decision unless and until same is modified by the process followed by the parties pursuant to D29.

D28.2 The entire text of C21.4 is deleted, and amended to read: "Intentionally Deleted"

D28.3 The entire text of C21.5 is deleted, and amended to read:

- (a) If Legal Services has determined that the Disputed Matter may proceed in the Appeal Process, the Contractor must, within ten (10) Business Days of the date of the Legal Services Response Letter, submit their written Appeal Form, in the manner and format set out on the City's Materials Management Website, to the Chief Administrative Officer, and to the Contract Administrator. The Contractor may not raise any other disputes other than the Disputed Matter in their Appeal Form.

D28.4 Further to C21, prior to the Contract Administrator's issuance of a Final Determination, the following informal dispute resolution process shall be followed where the Contractor disagrees with any opinion, determination, or decision of the Contract Administrator ("Dispute"):

- (a) In the event of a Dispute, attempts shall be made by the Contract Administrator and the Contractor's equivalent representative to resolve Disputes within the normal course of project dealings between the Contract Administrator and the Contractor's equivalent representative.
- (b) Disputes which in the reasonable opinion of the Contract Administrator or the Contractor's equivalent representative cannot be resolved within the normal course of project dealings as described above shall be referred to a without prejudice escalating negotiation process consisting of, at a minimum, the position levels as shown below and the equivalent Contractor representative levels:
  - (i) The Contract Administrator;
  - (ii) Supervisory level between the Contract Administrator and applicable Department Head;
  - (iii) Department Head.

D28.4.1 Names and positions of Contractor representatives equivalent to the above City position levels shall be determined by the Contractor and communicated to the City at the pre-commencement or kick off meeting.

D28.4.2 As these negotiations are not an adjudicative hearing, neither party may have legal counsel present during the negotiations.

D28.4.3 Both the City and the Contractor agree to make all reasonable efforts to conduct the above escalating negotiation process within twenty (20) Business Days, unless both parties agree, in writing, to extend that period of time.

D28.4.4 If the Dispute is not resolved to the City and Contractor's mutual satisfaction after discussions have occurred at the final escalated level as described above, or the time period set out in D29.4.3, as extended if applicable, has elapsed, the Contract Administrator will issue a Final Determination as defined in C1.1(v), at which point the parties will be governed by the Dispute Resolution process set out in C21.

### THIRD PARTY AGREEMENTS

#### D29. FUNDING AND/OR CONTRIBUTION AGREEMENT OBLIGATIONS

D29.1 In the event that funding for the Work of the Contract is provided to the City of Winnipeg by the Government of Manitoba and/or the Government of Canada, the following terms and conditions shall apply, as required by the applicable funding agreements.

D29.2 Further to D30.1, in the event that the obligations in D30 apply, actual costs legitimately incurred by the Contractor as a direct result of these obligations ("Funding Costs") shall be determined by the actual cost to the Contractor and not by the valuation method(s) outlined in C7.4. In all other respects Funding Costs will be processed in accordance with Changes in Work under C7.

D29.3 For the purposes of D30:

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

D29.4 Modified Insurance Requirements

D29.4.1 Where applicable, the Contractor will be required to provide wrap-up liability insurance in an amount of no less than two million dollars (\$2,000,000) inclusive per occurrence. Such policy will be written in the joint names of the City, Contractor, Consultants and all Subcontractors and sub-consultants and include twelve (12) months completed operations. The Government of Manitoba and their Ministers, officers, employees, and agents shall be added as additional insureds.

D29.4.2 If applicable the Contractor will be required to provide builders' risk insurance (including boiler and machinery insurance, as applicable) providing all risks coverage at full replacement cost, or such lower level of insurance that the City may identify on a case-by-case basis, such as an installation floater.

D29.4.3 The Contractor shall obtain and maintain third party liability insurance with minimum coverage of two million dollars (\$2,000,000.00) per occurrence on all licensed vehicles operated at the Site. In the event that this requirement conflicts with another licensed vehicle insurance requirement in this Contract, then the requirement that provides the higher level of insurance shall apply.

D29.4.4 Insurers shall provide satisfactory Certificates of Insurance to the Government of Manitoba prior to commencement of Work as written evidence of the insurance required. The Certificates of Insurance must provide for a minimum of thirty (30) days' prior written notice to the Government of Manitoba in case of insurance cancellation.

D29.4.5 All policies must be taken out with insurers licensed to carry on business in the Province of Manitoba.

D29.5 Indemnification By Contractor

D29.5.1 In addition to the indemnity obligations outlined in C17 of the General Conditions for Services, the Contractor agrees to indemnify and save harmless the Government of Canada and the Government of Manitoba and each of their respective Ministers, officers, servants, employees, and agents from and against all claims and demands, losses, costs, damages, actions, suit or other proceedings brought or pursued in any manner in respect

of any matter caused by the Contractor or arising from this Contract or the Work, or from the goods or services provided or required to be provided by the Contractor, except those resulting from the negligence of any of the Government of Canada's or the Government of Manitoba's Ministers, officers, servants, employees, or agents, as the case may be.

- D29.5.2 The Contractor agrees that in no event will Canada or Manitoba, their respective officers, servants, employees or agents be held liable for any damages in contract, tort (including negligence) or otherwise, for:
- (a) any injury to any person, including, but not limited to, death, economic loss or infringement of rights;
  - (b) any damage to or loss or destruction of property of any person; or
  - (c) any obligation of any person, including, but not limited to, any obligation arising from a loan, capital lease or other long term obligation;

in relation to this Contract or the Work.

#### D29.6 Records Retention and Audits

D29.6.1 The Contractor shall maintain and preserve accurate and complete records in respect of this Contract and the Work, including all accounting records, financial documents, copies of contracts with other parties and other records relating to this Contract and the Work during the term of the Contract and for at least six (6) years after Total Performance. Those records bearing original signatures or professional seals or stamps must be preserved in paper form; other records may be retained in electronic form.

D29.6.2 In addition to the record keeping and inspection obligations outlined in C6 of the General Conditions for Services, the Contractor shall keep available for inspection and audit at all reasonable times while this Contract is in effect and until at least six (6) years after Total Performance, all records, documents, and contracts referred to in D30.6.1 for inspection, copying and audit by the City of Winnipeg, the Government of Manitoba and/or the Government of Canada and their respective representatives and auditors, and to produce them on demand; to provide reasonable facilities for such inspections, copying and audits, to provide copies of and extracts from such records, documents, or contracts upon request by the City of Winnipeg, the Government of Manitoba, and/or the Government of Canada and their respective representatives and auditors, and to promptly provide such other information and explanations as may be reasonably requested by the City of Winnipeg, the Government of Manitoba, and/or the Government of Canada from time-to-time.

#### D29.7 Other Obligations

D29.7.1 The Contractor consents to the City providing a copy of the Contract Documents to the Government of Manitoba and/or the Government of Canada upon request from either entity.

D29.7.2 If the Lobbyists Registration Act (Manitoba) applies to the Contractor, the Contractor represents and warrants that it has filed a return and is registered and in full compliance with the obligations of that Act, and covenants that it will continue to comply for the duration of this Contract.

D29.7.3 The Contractor shall comply with all applicable legislation and standards, whether federal, provincial, or municipal, including (without limitation) labour, environmental, and human rights laws, in the course of providing the Work.

D29.7.4 The Contractor shall properly account for the Work provided under this Contract and payment received in this respect, prepared in accordance with generally accepted accounting principles in effect in Canada, including those principles and standards approved or recommended from time-to-time by the Chartered Professional Accountants of Canada or the Public Sector Accounting Board, as applicable, applied on a consistent basis.

D29.7.5 The Contractor represents and warrants that no current or former public servant or public office holder, to whom the Value and Ethics Code for the Public Sector, the Policy on Conflict of Interest and Post Employment, or the Conflict of Interest Act applies, shall derive direct benefit from this Contract, including any employment, payments, or gifts, unless the provision or receipt of such benefits is in compliance with such codes and the legislation.

D29.7.6 The Contractor represents and warrants that no member of the House of Commons or of the Senate of Canada or of the Legislative Assembly of Manitoba is a shareholder, director or officer of the Contractor or of a Subcontractor, and that no such member is entitled to any benefits arising from this Contract or from a contract with the Contractor or a Subcontractor concerning the Work.

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**FORM K: EQUIPMENT**  
(See D13)

**PROVISION OF VEHICLE TOWING SERVICES DURING STREETS OPERATIONS**

<b>1. Category/type:</b>	
Make/Model/Year: _____	Serial No.: _____
Registered owner: _____	
Make/Model/Year: _____	Serial No.: _____
Registered owner: _____	
Make/Model/Year: _____	Serial No.: _____
Registered owner: _____	
<b>2. Category/type:</b>	
Make/Model/Year: _____	Serial No.: _____
Registered owner: _____	
Make/Model/Year: _____	Serial No.: _____
Registered owner: _____	
Make/Model/Year: _____	Serial No.: _____
Registered owner: _____	
<b>3. Category/type:</b>	
Make/Model/Year: _____	Serial No.: _____
Registered owner: _____	
Make/Model/Year: _____	Serial No.: _____
Registered owner: _____	
Make/Model/Year: _____	Serial No.: _____
Registered owner: _____	

**FORM K: EQUIPMENT**  
(See D13)

**PROVISION OF VEHICLE TOWING SERVICES DURING STREETS OPERATIONS**

<p><b>4. Category/type:</b></p> <p>Make/Model/Year: _____ Serial No.: _____</p> <p>Registered owner: _____</p> <p>Make/Model/Year: _____ Serial No.: _____</p> <p>Registered owner: _____</p> <p>Make/Model/Year: _____ Serial No.: _____</p> <p>Registered owner: _____</p>
<p><b>5. Category/type:</b></p> <p>Make/Model/Year: _____ Serial No.: _____</p> <p>Registered owner: _____</p> <p>Make/Model/Year: _____ Serial No.: _____</p> <p>Registered owner: _____</p> <p>Make/Model/Year: _____ Serial No.: _____</p> <p>Registered owner: _____</p>
<p><b>6. Category/type:</b></p> <p>Make/Model/Year: _____ Serial No.: _____</p> <p>Registered owner: _____</p> <p>Make/Model/Year: _____ Serial No.: _____</p> <p>Registered owner: _____</p> <p>Make/Model/Year: _____ Serial No.: _____</p> <p>Registered owner: _____</p>

## PART E - SPECIFICATIONS

### GENERAL

#### E1. APPLICABLE SPECIFICATIONS

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

#### E2. SERVICES

- E2.1 Item No. 1 – Towing of vehicles during Snow Clearing Operations shall be undertaken to move parked vehicles to a street approved by the Contract Administrator.
- E2.2 Item No. 2 – Towing of vehicles during Street Cleaning Operations shall be undertaken to move parked vehicles to a street approved by the Contract Administrator.
- E2.3 The Contractor shall within thirty (30) Calendar Days of commencement of Work implement a functional system for the real time notification of tow requests and requirements.
- E2.4 **This Contract does not cover Work that may be covered by other Contracts for towing service such as City of Winnipeg contract for Provision of Towing City Owned Vehicles.**

#### E3. TOW TRUCKS

- E3.1 The Contractor shall at all times have available tow trucks:
- (a) equipped with dual wheels on the rear axle or axles thereof;
  - (b) having a minimum gross vehicle weight of five thousand (5,000) kilograms; and
  - (c) shall be a wrecker / wheel lift having all necessary equipment, including dollies.
- E3.2 When a Callout is made for towing services during a Snow Clearing or Street Clearing Operation the Contractor shall maintain the number of tow trucks agreed upon at the time of Callout throughout the duration of the operation.
- E3.3 The Contractor shall at all times have adequate numbers and types of equipment available to perform its responsibilities under this Contract.
- E3.4 Tow trucks shall be operated and maintained in accordance with the applicable regulations and legislation.
- E3.5 Tow trucks shall be clean and kept neat in appearance.
- E3.6 Tow trucks shall be clearly marked on both sides of the vehicle with the company name, address and vehicle identifying number. This shall be clearly legible at all times. The size of the lettering shall not be less than five (5) centimetres in height and width.
- E3.7 Tow trucks shall be equipped with a means of communication by mobile phone.
- E3.8 Tow truck operator shall have a mobile device capable of running the City of Winnipeg's TowMobile application and collect records as per D23.
- E3.9 Tow trucks shall also be equipped with a GPS/AVL tracking system that meets the requirement of D23.

- E3.10 Tow trucks shall be equipped with a set of portable light units with a minimum of fifteen (15) metres of connecting wire which shall be connected to the tail-light, brake lights and signal lights of the tow truck and securely placed on the rear of the towed vehicle, in all cases where the hazard lights of the towed vehicle cannot be activated.
- E3.11 Every boom and winch used on a tow truck shall display a capacity rating, certified by the manufacturer thereof or by a person or organization acceptable to the City.

#### **E4. TOW RECORD REQUIREMENTS**

- E4.1 Further to D23, when performing towing service as per E2.1, the Contractor is required to record each tow by utilizing the City of Winnipeg's TowMobile application. The Contractor must have the proper mobile device and data plan to be able to operate the TowMobile application. The cost of mobile devices and data plan are incidental to the prices bid in From B: Prices.
- E4.2 The Contractor shall record each individual tow through the City's TowMobile app by reporting the following information:
- (a) Recording the start and end of towing a vehicle as follows:
    - (i) The start and end of the tow must correctly record the location where the tow truck picks up and drops off a vehicle; and
    - (ii) Take a legible picture of the licence plate of the vehicle being towed. A picture shall be taken at the start and end of the tow.
  - (b) Validate the licence plate of the vehicle to be towed;
  - (c) Release of a vehicle to the owner/driver as per E10;
  - (d) The fronting address at which the vehicle towed was dropped;
  - (e) Any additional information requested by the Contract Administrator; and
  - (f) Enable tracking capabilities on the mobile device to record longitudinal and latitude information of the start and end of a tow.
- E4.3 The Contractor shall track and keep records of tow truck GPS locations during towing operations.
- (a) The Contractor must have their tow trucks integrated into a real-time GPS/AVL tracking system approved by the Contract Administrator.
    - (i) The Contractor shall provide a live feed connection to tow truck location in order for the City to track tow truck movements and location.
  - (b) The Contractor shall provide within twenty-four (24) hours' notice by the Contract Administrator records in GIS format.
- E4.4 Failure of the Contractor to properly meet the requirements herein will result in the City not issuing payment for any and all tows which have not been properly recorded in accordance with E4.

#### **E5. TOW TRUCK TRACKING**

- E5.1 In addition to the obligations outlined in E4.3, the Contractor shall track and keep records of tow truck GPS locations during towing operations.
- (a) The Contractor must have their tow trucks integrated into a real-time GPS/AVL tracking system approved by the Contract Administrator.
  - (b) The Contractor shall provide a live feed connection to tow truck location in order for the City to track tow truck movements and locations.
  - (c) The Contractor shall provide GPS tracking records in GIS file format within twenty-four (24) hours' notice by the Contract Administrator.

## **E6. FACILITIES**

E6.1 The Contractor shall maintain and operate a dispatch office twenty-four (24) hours a day, seven (7) days a week.

## **E7. VEHICLES TO BE TOWED**

E7.1 The Contractor(s) shall tow vehicles on an "as required" basis at any time upon request by the User. The tow truck operators shall tow the vehicle to an adjacent street as specified by the Contract Administrator and/or User.

## **E8. RULES OF TOWING**

E8.1 The tow truck operator shall thoroughly inspect the vehicle to be towed for occupancy by persons or animals. If the vehicle is occupied by a person or animal, the tow truck operator shall not tow the vehicle and immediately notify the User and await instructions.

E8.2 If the vehicle is unlocked, the tow truck operator shall, where possible, prepare the vehicle for towing by placing the transmission in neutral and disengaging the parking brake and then locking the vehicle. A vehicle will be deemed to be unlocked if a window is open to the extent that an individual may gain access to the interior of the vehicle. If the vehicle is locked or is equipped with an ignition/transmission/steering interlock or similar device, the tow truck operator shall prepare the vehicle for towing by disengaging the external transmission linkages, or by disconnecting the drive-shaft, or by using a dolly. Under no circumstances shall the tow truck operator attempt to gain entry to a locked vehicle. All vehicles shall be locked prior to towing.

E8.3 The tow truck operator shall remove the parking offence notice from the vehicle for safekeeping during the tow and shall replace the parking offence notice to its original position on the vehicle upon completion of the tow.

E8.4 A tow truck operator shall not tow a vehicle onto:

- (a) a Priority I or Priority II or onto a street with parking restrictions during Snow Clearing operations; and
- (b) a street with parking restrictions during Street Clearing operations.

## **E9. RESPONSE TIME**

E9.1 The City of Winnipeg shall notify the Contractor when towing services are required for towing services and towing shall be conducted within one (1) hour after a Callout has been made by the Contract Administrator.

E9.2 Response time shall be the total elapsed time from notification of a required tow to the commencement of Work on site by the tow truck operator.

E9.3 Where Work cannot be performed in accordance with a request, the Contract Administrator must be notified. If the Contractor fails to notify the Contract Administrator, or otherwise fails to perform the Work in accordance with the terms of the Contract, the City will consider the Contractor to be in default.

## **E10. INTERRUPTION OF TOWING**

E10.1 The tow truck operator shall not complete the towing of a vehicle if the owner/driver of the vehicle attends the scene and claims the vehicle during any preparation for towing or attachment of the hoist mechanism. In such a case the vehicle shall be released to the owner/driver.

E10.2 The City will compensate the Contractor twenty dollars (\$20) if a vehicle is released to the owner/driver of the vehicle after preparation for towing if:

- (a) A picture of the vehicle attached to the tow truck is reported in the TowMobile app when a cancellation is reported.

## **E11. SUSPENSION AND REMOVAL OF TOW TRUCKS**

E11.1 At the sole discretion of the Contract Administrator, the City may suspend any designated tow truck from the Work for specific instances of unacceptable performance such as, but not limited to:

- (a) equipment mechanical condition;
- (b) operator attitude, ability, or actions;
- (c) failure to report to assigned job;
- (d) failure to report at assigned time;
- (e) failure to properly complete work tickets;
- (f) failure to meet the requirements of E.4; and/or
- (g) low productivity.

E11.2 Permanent removal may result from repeated instances of unacceptable performance at the sole discretion of the Contract Administrator.

## **E12. REINSTATEMENT OF TOW TRUCKS**

E12.1 To enable suspended tow trucks to be reinstated, the Contractor shall be required to provide a justification for the circumstances that caused the suspension, to the City's reasonable satisfaction. The Contractor shall also be required to identify what corrective actions have been taken to address the cause of the suspension. The Contract Administrator reserves the right to require that the:

- (a) operator be tested by City staff (at the Contractor's expense);
- (b) tow truck is repaired and inspected after the repair;
- (c) tow truck and operator are monitored in the field; and/or
- (d) any other remedy deemed necessary by the Contract Administrator to improve performance.