

Request for Proposals



Office of the City Attorney

Bond Counsel Services RFP

For

2017 - 2021

RFP 2016-126 Issue Date: September 26, 2016

Proposals Due by: Monday, October 31, 2016 at 4:00pm



Office of the City Attorney

Susan L. Segal
City Attorney

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September 26, 2016

To whom it may concern:

Attached is a Request for Proposals for Bond Counsel Services. The Minneapolis City Attorney's Office has an on-going requirement for Bond Counsel Services. The City desires to select one or more providers for these services that will be able to perform them reliably and at a reasonable cost to the City. Please review the RFP for details.

Proposals are due by 4:00 PM (Minneapolis time) on October 31, 2016.

Thank you for your consideration.

Sincerely,

Susan Segal
City Attorney's Office

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REQUEST FOR PROPOSALS FOR BOND COUNSEL SERVICES

I. INTRODUCTION:

The City of Minneapolis is a city of the first class, existing and organized by its Home Rule Charter. Under that Charter, legal services are provided to the City by its City Attorney's Office. The City of Minneapolis (the "City") is soliciting proposals from qualified law firms ("firm") to enter into one or more contracts to perform bond counsel services. The successful firm or law firms, if more than one firm is chosen, will provide bond counsel services for bonds issued by the City, the Board of Estimate and Taxation and the Minneapolis Community Development Agency (MCDA).

The City seeks bond counsel services pursuant to this Request for Proposals (RFP) for the following types of bonded indebtedness: (1) general obligation (G.O.) bonds; (2) conduit revenue bond sales; and (3) revenue bonds supported in part through the City's Common Bond Fund (CBF revenue bonds).

The City reserves the right to select one firm to provide the bond counsel services described in items (1) G.O. bonds and (3) CBF revenue bonds or the City may select different firms to provide G.O. bond counsel services and CBF revenue bond counsel services.

The City intends to establish a panel of firms to provide the conduit revenue bond counsel services described in item (2) conduit revenue bond sales.

The firm must clearly declare in its proposal which type of bond counsel services for which the firm wishes to be considered. Additionally, a firm should submit separate sets of proposals if it wants the City to consider awarding the firm a contract for the G.O. bond counsel services, a contract for CBF revenue bond counsel services and placement on the conduit, revenue bond sale panel.

The City does not promise to accept the lowest cost proposal and specifically reserves the right to reject any or all proposals, to waive any formal proposal requirements, to investigate the qualifications and experience of any firm, to reject any provisions in any proposal, to obtain new proposals, to negotiate the requested services and contract terms with any firm, or to proceed to do the work otherwise. Incomplete proposals and proposals not sufficiently detailed or not in acceptable form may be returned for completion or may be rejected by the City. The City reserves the right to accept more than one proposal and, in effect, to establish a "panel" of bond counsel for the conduit revenue bond work described herein.

II. SCOPE OF WORK:

A. General Description of Legal Services

All bond counsel services will be performed under the direction of the Minneapolis City Attorney and the Chief Finance Officer, the Secretary of the Board of Estimate and Taxation or the CPED Director, as applicable. The legal services that all respondents will be capable of providing and expected to provide to the City under this RFP will include:

- Review existing statutes and court decisions to determine that authority exists for proposed bond issues, and advise the City and MCDA of legal matters relating to proposed borrowings.
- Prepare necessary documentation for authorization of sale and issuance of bonds, including the proceedings providing for the advertisement and sale of the bonds, the bond resolutions and the closing papers.
- Review the completed record of each bond sale.
- Provide authoritative written opinions on the legal validity and binding legal obligations of bond issues.
- Provide authoritative written opinions on the tax exempt status of the interest of bond issues, as provided by federal, state and local tax laws.
- Oversee execution of the closing, preparing the closing memorandum and other documents.
- Provide advice and assist the City and MCDA in determining whether bonds should be issued by competitive or negotiated sale.
- Propose innovative financing techniques which may assist the City and MCDA in minimizing costs or simplifying debt financing.
- Assist the City and MCDA in evaluating the legal aspects of alternative financing proposals and developing the best overall plan for debt issuance.
- Assist the City and MCDA to develop and prepare guidelines for the sale and issuance of bonds and other debt instruments.
- Offer direction and advice on the appropriate procedures to be followed by the City and MCDA in connection with the authorization and sale of bonds or other debt instruments.
- Respond to questions, develop information, and provide advice for the City and MCDA on legal aspects of bond or other debt financing matters.
- Attend meetings of the City Council and MCDA Board as requested.
- Cooperate and confer with the City's Finance Officer, Secretary of the Board of Estimate and Taxation, and other City and MCDA officials as requested.
- Attend meetings and cooperate with other consultants, advisors, and other participants during the bond issuance process.
- Prepare and/or review all bond documents, including commenting on the Official Statement, where advisable, to ensure that there is adequate and appropriate disclosure, and advise the City and MCDA. Verify the accuracy of language and supervise bond printing, as appropriate.
- Work with the City's Finance Officer, Secretary of the Board of Estimate and Taxation, and financial staff to submit timely information to rating agencies in order to obtain the best possible

ratings.

- Undertake such additional actions that will lead to the prompt and successful delivery of the proceeds, and the production and availability of bonds.
- Advise the City and the MCDA Board, as is necessary or appropriate, on the impact and legality of pending state and federal legislation. Draft legislation, as requested, which might be necessary or desirable to improve the City's and MCDA's financing capacity and to carry out the City's and MCDA's financing objectives and requirements. Respond to questions from the City Attorney, Finance Officer, Secretary of the Board of Estimate and Taxation and CPED Director on proposed federal or state tax laws that may impact the tax exemption status of the City's and MCDA's bonds, arbitrage earnings, or other critical factors.
- Advise the City's and MCDA's banking and payment institutions in exercising the duties of bond registrar, paying agent, and transfer agent.
- Provide the City and MCDA with advice, when requested, on calculations, certifications and other legal advice required to meet arbitrage requirements of federal tax laws and regulations.
- Provide such other legal advice and legal services to the City Council, the MCDA Board, the City's Finance Officer, the CPED Director, and the Board of Estimate and Taxation and its staff as is necessary or appropriate.

B. General Obligation Bond and/or Common Bond Fund Description of Legal Services.

In addition to legal services to be provided as outlined in Section II.A., above, respondents that wish to be considered to provide the G.O. bond and/or CBF revenue bond, legal services will also be capable of providing and will be expected to provide the following legal services under this RFP:

- Assist in the structuring and sizing of bond issues, including factors such as capitalized interest period, redemption provisions, bond covenants and preparation of legal documents.
- Provide legal services and advice relative to any program, project or district within the meanings of Minnesota Statutes, Chapter 462C, Minnesota Statutes, Section 469.001 et seq., or Minnesota Statutes, Section 469.174 et seq., respectively.
- For CBF revenue bonds, in addition to the legal services to be provided above, assist in determining whether to structure issues as serial versus term bonds, debt service coverage ratios and credit enhancement methods.
- For CBF revenue bonds, advise the City where necessary or appropriate.

C. Conduit Revenue Bond Description of Legal Services.

In addition to the legal services to be provided as outlined in Section II.A., above, respondents that wish to be considered for placement on the Conduit Revenue Bond Panel will also be capable of providing and will be expected to provide the following legal services under this RFP:

- Provide such other legal advice and legal services to the City and the MCDA Board as is necessary or appropriate.
- Provide legal services and advice relative to any conduit revenue bonds issued pursuant to

Minnesota Statutes 462C, Minnesota Statutes Section 469.174, et seq. or other authorizing statutes.

The successful firms will be expected to manage files efficiently and work closely with the City's senior management personnel and other designated City staff. As public and governmental entities, the City and MCDA require strict accountability in work descriptions, task performance and billing practices.

III. GENERAL INSTRUCTIONS-PROPOSAL CONTENT:

1. **LENGTH OF THE CONTRACT** - In general, the services to be performed are for the period January 1, 2017 – December 31, 2019 and may be extended for an additional two years at the discretion of the City.

2. **PROPOSAL SUBMITTAL**- Each proposal should not exceed 15 pages and should be printed on 8½ x 11-inch paper. Pages should be consecutively numbered. The proposal must include the following elements:

- **Background.** The proposal must give a general overview or description of the history and background of the firm.
- **Personnel and Staffing.** The proposal must provide a detailed description of the firm's staff size and composition, including the number of partners, associates, law clerks and legal assistants. The proposal also should identify whether the firm's clerical services are provided by in-house staff, through contract or through other arrangements. The proposal must identify specific attorneys and other staff likely to be assigned to perform the requested bond counsel services on behalf of the City. The firm should provide up-to-date detailed professional resumes for these individuals. The firm also should identify the individual who will be designated as the primary contact person with the City for assignments, billings and general contract administration. The firm must list senior staff changes over the last three years. For departures, indicate the reason for the change.
- **Relevant Bond Counsel Experience.** The proposal must clearly outline the firm's experience and background in providing bond counsel services, including:
 - Provide the following information for municipalities and other tax-exempt issues for which the firm has served as bond counsel over the last five years:
 1. Name of issuer;
 2. Date and size of issue;
 3. Managing underwriter and financial advisor;
 4. Nature of the project;
 5. Description of financing method;
 6. Type of opinions offered; and
 7. Name of principal individual in the firm assigned to the project.

- Describe the firm's experience with tax-exempt bonds (including general obligation, governmental revenue and private activity bonds), master leases, variable rate bonds, advance refundings, crossover refundings, special structuring arrangements including interest rate swaps, SEC disclosure, lease/purchase agreements, tax increment and other alternative financing mechanisms.
 - Describe the firm's familiarity with arbitrage regulations and calculations required to meet arbitrage rebate requirements of federal tax laws and regulations.
 - Describe the firm's familiarity with the Laws of Minnesota as they relate to the City's or the MCDA's issuance of debt, as well as proposed revisions to applicable state and federal statutes and relevant case law.
 - Describe the firm's familiarity with financial advisors, underwriters, bond rating agencies and other critical financing participants.
 - Describe the firm's capability to provide authoritative written opinions in bonding matters acceptable to underwriters, brokers, bond rating agencies and investors in the national market.
 - Describe the firm's experience with competitive bidding and negotiated sales.
 - Describe the firm's experience in representing state and local governments in tax dispute matters relating to tax exempt bond issues with the US Internal Revenue Service (IRS); describe the number and complexity of said dispute engagements with the IRS and list the firm's attorneys who work in this area and to what degree their practice is devoted to tax dispute matters with the IRS.
 - Indicate whether within the last five years, your organization, or officer or principal of your organization, has been involved in any business litigation or other legal proceedings relating to your bond counsel activities. If so, provide an explanation and indicate the current status or disposition.
- **Responsiveness to Client Needs.** The proposal must provide a statement indicating the firm's ability to respond to the City's needs on short notice and to comply with tight timelines and assignments. The statement should include a general description of the resources available to the firm to help the firm respond in a timely manner to requests for legal services.
 - **Billings.** The proposal must indicate the firm's capability to provide detailed billing statements which clearly identify the file or matter and the attorneys and other staff assigned to that matter; provide a detailed list of hours expended each day by a specific attorney or other assigned staff; clearly identify the nature of the specific work performed; identify City staff or others with whom the attorney or other assigned staff worked, called, or consulted; and clearly identify and detail all expenses incurred on the matter and an expense-to-date summary by file or project. The firm should submit with its proposal an example of the actual billing format used by the firm.

- **Written Cost Estimates.** The proposal must indicate the firm's willingness to provide written, cost estimates for specific assignments.
- **Fees.** The proposal must outline the firm's billing structure and proposed rates or fees for bond counsel services. The proposal should indicate the firm's willingness to negotiate a final fee schedule and rates as part of the overall contract.
- **Reimbursable Costs and Expenses.** The proposal should indicate the firm's expense reimbursement needs. The City will reimburse only actual out-of-pocket expenses and will not reimburse expenses on a cost-plus or similar basis.
- **Actual or Potential Conflicts of Interest.** The proposal must indicate whether the firm or individual attorneys within the firm represent any clients or interests in lawsuits or other legal actions between them and the City or any of the City's boards and commissions. The proposal also must indicate whether any activities of the firm or individual attorneys within the firm potentially pose a conflict of interest in the firm's representation of or association with the City (or the boards and commissions). For purposes of this RFP, the City's boards and commissions include Minneapolis Community Development Agency, Minneapolis Park Board, Minneapolis Civil Service Commission, Minneapolis Commission on Civil Rights. The firm must immediately advise the City in writing of any real or possible conflicts that arise after the submission of the proposal.
- **Firm's Offer.** The proposal (or the firm's transmittal letter) must include the following statement by an authorized representative of the firm:

This proposal constitutes an offer by the undersigned to enter into a contract or be placed on a panel to perform the described legal services for the compensations specified in this proposal and containing the terms and conditions in the standard City contract for legal services or required by applicable state or federal law or regulation.
- **References.** The proposal must provide appropriate references, including firm or agency names, contact persons and telephone numbers the City Attorney may contact regarding representation by the firm. References from governmental agencies should be included.
- **Compliance with General Requirements** - Acknowledge the General Conditions in Attachment A, which is part of this RFP. The City generally expects that service providers with the City will meet these requirements if they are applicable to the services provided to the City. Note in the proposal any exceptions to the requirements.
- **Liability Coverage** - Provide a response documenting compliance with insurance coverage required in Attachment A.

IV. SCHEDULE AND PROPOSAL MILESTONES:

The following is a listing of key proposal and project milestones:

RFP Release	September 26, 2016
Questions on RFP due by	October 7, 2016
Responses to Questions posted by	October 12, 2016
Proposals due by	4:00 PM on October 31, 2016
Estimated selection	November 14, 2016
Estimated services start date	January 1, 2017
Estimated services end date	December 31, 2021

Please refer to Section VI for City contact information applicable to this Schedule.

V. PROPOSAL SUBMISSION AND DUE DATE:

The responders shall submit their proposals to the City of Minneapolis Procurement Office via email (RFP.Responses@minneapolismn.gov), with the subject line labeled:

Request for Proposals for Bond Counsel Services

The submittal shall be made at or before **4:00 P.M. (Minneapolis Time), October 31, 2016.**

NOTE: Late Proposals will not be accepted.

VI. DEPARTMENT CONTACT/REQUESTS FOR CLARIFICATION:

Prospective responders may direct questions in email only to:

Erik Nilsson
Deputy City Attorney – Civil Division
Room 210 City Hall
350 South Fifth Street
Minneapolis, MN 55415
Email: Erik.Nilsson@minneapolismn.gov

All questions are due no later than October 7, 2016. Questions will be answered in writing by being posted electronically by October 12, 2016 and will be provided to all proposers who were originally provided this RFP or who have requested a copy of the answers. The department contact person is the only individual who can be contacted about the RFP by proposers before proposals are submitted. The department contact cannot vary the terms of the RFP.

VII. METHOD OF SELECTION:

Proposals which demonstrate compliance with Minneapolis Ordinance 139.50(d) and which indicate the absence of any conflicts of interest prohibited under state and local laws, City policies and the Minnesota Rules of Professional Conduct will be reviewed by a panel consisting of the City Attorney or designee, the City's Finance Officer or designee, the CPED Director or designee, and the Secretary of the Board of Estimate and Taxation or designee. The panel will review proposals using the following criteria to determine which, if any, proposal is the most advantageous to the City's needs:

- The proposed cost of the legal services. The proposed cost of the legal services is important

but is not necessarily the controlling factor in determining contract award.

- The firm's integrity, expertise and record of past performance in bond issuance and related legal work, including the experience and background of specific persons who may be assigned by the firm to perform legal services on behalf of the City.
- The ability of the firm to perform successfully the requested legal services and comply with public policy.
- The financial and technical resources available to the firm and the firm's ability to handle simultaneously numerous public finance matters for the City.
- The ability of the firm to respond flexibly and in a timely manner to requests for legal services from the City Attorney, the Finance Officer, the CPED Director, or the Secretary of the Board of Estimate and Taxation, as applicable.
- The extent to which the firm will include women, minority persons and persons with disabilities in the performance of the requested legal services.
- The extent to which the proposal is complete and responsive to the RFP specifications.
- To the extent to which the proposal demonstrates the firm has represented, or can represent, a governmental entity like the City.
- Other relevant criteria as may be developed by the City Attorney, the Finance Officer or the review panel.

Based on an application of these criteria and its review of the proposals, the review panel may select some firms for interviews and conduct interviews. The review panel will recommend bond counsel(s) to the City Council.

VIII. REJECTION OF PROPOSALS: The City reserves the right to reject all proposals. The City also reserves the right to reject any firm or individual based upon its proposal.

IX. ADDENDUM TO THE RFP: If any addendum is issued for this RFP, it will be posted on the City of Minneapolis web site at: <http://www.minneapolismn.gov/finance/procurement/rfp>
The City reserves the right to cancel or amend the RFP at any time.

ATTACHMENT A

General Conditions for Request For Proposals (RFP)

(Revised: Dec, 2015)

The General Conditions are terms and conditions that the City expects all of its Consultants to meet. The Consultant agrees to be bound by these requirements unless otherwise noted in the Proposal. The Consultant may suggest alternative language to any section at the time it submits its response to this RFP. Some negotiation is possible to accommodate the Consultant's suggestions.

1. City's Rights

The City reserves the right to reject any or all proposals or parts of proposals, to accept part or all of proposals on the basis of considerations other than lowest cost, and to create a project of lesser or greater expense and reimbursement than described in the Request for Proposal, or the respondent's reply based on the component prices submitted.

2. Equal Opportunity Statement

The Consultant agrees to comply with applicable provisions of applicable federal, state and city regulations, statutes and ordinances pertaining to the civil rights and non-discrimination in the application for and employment of applicants, employees, subcontractors and suppliers of the Consultant. Among the federal, state and city statutes and ordinances to which the Consultant shall be subject under the terms of this Contract include, without limitation, Minnesota Statutes, section 181.59 and Chapter 363A, Minneapolis Code of Ordinances Chapter 139, 42 U.S.C Section 2000e, et. seq. (Title VII of the Civil Rights Act of 1964), 29 U.S.C Sections 621-624 (the Age Discrimination in Employment Act), 42 U.S.C Sections 12101-12213 (the Americans with Disability Act or ADA), 29 U.S.C Section 206(d) (the Equal Pay Act), 8 U.S.C Section 1324 (the Immigration Reform and Control Act of 1986) and all regulations and policies promulgated to enforce these laws. The Consultant shall have submitted and had an "affirmative action plan" approved by the City prior to entering into a Contract.

3. Insurance

Insurance secured by the Consultant shall be issued by insurance companies acceptable to the City and admitted in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess. Such insurance shall be in force on the date of execution of the Contract and shall remain continuously in force for the duration of the Contract.

Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of the Consultant. Any policy deductibles or retention shall be the responsibility of the Consultant. The Consultant shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect the Consultant's interest or provide adequate coverage. Evidence of coverage is to be provided on a current ACORD Form. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed. The Consultant shall require any of its

subcontractors, if sub-contracting is allowable under this Contract, to comply with these provisions, or the Consultant will assume full liability of the subcontractors.

The Consultant and its subcontractors shall secure and maintain the following insurance:

- a) **Workers Compensation** insurance that meets the statutory obligations with Coverage B- Employers Liability limits of at least \$100,000 each accident, \$500,000 disease - policy limit and \$100,000 disease each employee.
- b) **Commercial General Liability** insurance with limits of at least \$2,000,000 general aggregate, \$2,000,000 products - completed operations \$2,000,000 personal and advertising injury, \$100,000 each occurrence fire damage and \$10,000 medical expense any one person. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured. The amount of coverage will be automatically increased if the project amount is expected to exceed \$2,000,000 or involves potentially high risk activity.
- c) **Commercial Automobile Liability** insurance covering all owned, non-owned and hired automobiles with limits of at least \$1,000,000 per accident.
- d) **Professional Liability** Insurance or Errors & Omissions Insurance providing coverage for 1) the claims that arise from the errors or omissions of the Consultant or its subcontractors and 2) the negligence or failure to render a professional service by the Consultant or its subcontractors. The insurance policy should provide coverage in the amount of \$2,000,000 each claim and \$2,000,000 annual aggregate. The insurance policy must provide the protection stated for two years after completion of the work.
- e) **Network Security and Privacy Liability** for the duration of this agreement providing coverage for, but not limited to, Technology and Internet Errors & Omissions, Security and Privacy Liability, and Media Liability. Insurance will provide coverage against claims that arise from the disclosure of private information from files including but not limited to: 1) Intentional, fraudulent or criminal acts of the Consultant, its agents or employees. 2) Breach of the City's private data, whether electronic or otherwise. The insurance policy should provide minimum coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If written on a Claims-Made basis, the policy must remain in continuous effect for at least 3 years after the service is provided or include a 3 year extended reporting period.

4. **Hold Harmless**

The Consultant will defend, indemnify and hold harmless the City and its officers and employees from all liabilities, claims, damages, costs, judgments, lawsuits and expenses, including court costs and reasonable attorney's fees regardless of the Consultant's insurance coverage, arising directly from any negligent act or omission of the Consultant, its employees, agents, by any sub-contractor or sub-consultant, and by any employees of the sub-contractors and sub-consultants of the Consultant, in the performance of work and delivery of services provided by or through this Contract or by reason of the failure of the Consultant to perform, in any respect, any of its obligations under this Contract.

The City will defend, indemnify and hold harmless the Consultant and its employees from all liabilities, claims, damages, costs, judgments, lawsuits and expenses including court costs and reasonable attorney's fees arising directly from the negligent acts and omissions of the City by reason of the failure of the City to perform its obligations under this Contract. The provisions of the Minnesota Statutes, Chapter 466 shall apply to any tort claims brought against the City as a result of this Contract.

Except as provided in the section titled Data Practices, neither party will be responsible for or be required to defend any consequential, indirect or punitive damage claims brought against the other party.

5. Subcontracting

The Consultant shall provide written notice to the City and obtain the City's authorization to subcontract any work or services to be provided to the City pursuant to this Contract. As required by Minnesota Statutes, Section 471.425, the Consultant shall pay all subcontractors for subcontractor's undisputed, completed work, within ten (10) days after the Consultant has received payment from the City.

6. Assignment or Transfer of Interest

The Consultant shall not assign any interest in the Contract, and shall not transfer any interest in the same either by assignment or novation without the prior written approval of the City. The Consultant shall not subcontract any services under this Contract without prior written approval of the City Department Contract Manager designated herein.

7. General Compliance

The Consultant agrees to comply with all applicable Federal, State and local laws and regulations governing funds provided under the Contract.

8. Performance Monitoring

The City will monitor the performance of the Consultant against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this Contract. If action to correct such substandard performance is not taken by the Consultant within a reasonable period of time to cure such substantial performance after being notified by the City, Contract termination procedures will be initiated. All work submitted by Consultant shall be subject to the approval and acceptance by the City Department Contract Manager designated herein. The City Department Contract Manager designated herein shall review each portion of the work when certified as complete and submitted by the Consultant and shall inform the Consultant of any apparent deficiencies, defects, or incomplete work, at any stage of the project.

9. Prior Uncured Defaults

Pursuant to Section 18.115 of the City's Code of Ordinances, the City may not contract with persons or entities that have defaulted under a previous contract or agreement with the City and have failed to cure the default.

10. Independent Consultant

Nothing contained in this Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Consultant shall at all times remain an independent Consultant with respect to the work and/or services to be performed under this Contract. Any and all employees of Consultant or other persons engaged in the performance of any work or services required by Consultant under this Contract shall be

considered employees or subcontractors of the Consultant only and not of the City; and any and all claims that might arise, including Worker's Compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services to be rendered or provided herein, shall be the sole obligation and responsibility of the Consultant.

11. Accounting Standards

The Consultant agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices (GAAP) to properly account for expenses incurred under this Contract.

12. Retention of Records

The Consultant shall retain all records pertinent to expenditures incurred under this Contract in a legible form for a period of six years commencing after the later of contract close-out or resolution of all audit findings. Records for non-expendable property acquired with funds under this Contract shall be retained for six years after final disposition of such property.

13. Data Practices

The Consultant agrees to comply with the Minnesota Government Data Practices Act (Minnesota Statutes, Chapter 13) and all other applicable state and federal laws relating to data privacy or confidentiality. The Consultant and any of the Consultant's sub-consultants or sub-contractors retained to provide services under this Contract shall comply with the Act and be subject to penalties for non-compliance as though they were a "governmental entity." The Consultant must immediately report to the City any requests from third parties for information relating to this Contract. The City agrees to promptly respond to inquiries from the Consultant concerning data requests. The Consultant agrees to hold the City, its officers, and employees harmless from any claims resulting from the Consultant's unlawful disclosure or use of data protected under state and federal laws.

All Proposals shall be treated as non-public information until the Proposals are opened for review by the City. At that time, the names of the responders become public data. All other data is private or non-public until the City has completed negotiating the Contract with the selected Consultant(s). At that time, the proposals and their contents become public data under the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 and as such are open for public review.

14. Inspection of Records

Pursuant to Minnesota Statutes, Section 16C.05, all Consultant payroll and expense records with respect to any matters covered by this Contract shall be made available to the City and the State of Minnesota, Office of the State Auditor, or their designees upon notice, at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

15. Living Wage Ordinance

The Consultant may be required to comply with the “[Minneapolis Living Wage and Responsible Public Spending Ordinance](http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/convert_255695.pdf)” (http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/convert_255695.pdf), Chapter 38 of the City’s Code of Ordinances (the “Ordinance”). Unless otherwise exempt from the ordinance as provided in Section 38.40 (c), any City contract for services valued at \$100,000 or more or any City financial assistance or subsidy valued at \$100,000 or more will be subject to the Ordinance’s requirement that the Consultant and its subcontractors pay their employees a “living wage” as defined and provided for in the Ordinance.

16. Applicable Law

The laws of the State of Minnesota shall govern all interpretations of this Contract, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence or incorporation of the Consultant.

17. Conflict and Priority

In the event that a conflict is found between provisions in this Contract, the Consultant's Proposal or the City's Request for Proposals, the provisions in the following rank order shall take precedence: 1) Contract; 2) Proposal; and last 3) Request for Proposals (only for Contracts awarded using RFP).

18. Travel

If travel by the Consultant is allowable and approved for this Contract, then Consultant travel expenses shall be reimbursed in accordance with the City’s [Consultant Travel Reimbursement Conditions](http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/wcms1p-096175.pdf) (<http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/wcms1p-096175.pdf>).

19. Billboard Advertising

City Code of Ordinance 544.120, prohibits the use of City and City-derived funds to pay for billboard advertising as a part of a City project or undertaking.

20. Conflict of Interest/Code of Ethics

Pursuant to Section 15.250 of the City’s Code of Ordinances, both the City and the Consultant are required to comply with the City’s Code of Ethics. Chapter 15 of the Code of Ordinances requires City officials and the Consultant to avoid any situation that may give rise to a “conflict of interest.” A “conflict of interest” will arise if Consultant represents any other party or other client whose interests are adverse to the interests of the City.

As it applies to the Consultant, the City’s Code of Ethics will also apply to the Consultant in its role as an “interested person” since Consultant has a direct financial interest in this Agreement. The City’s Code of Ethics prevents “interested persons” from giving certain gifts to employees and elected officials.

21. Termination, Default and Remedies

The City may cancel this Contract for any reason without cause upon thirty (30) days' written notice. Both the City and the Consultant may terminate this Contract upon sixty (60) days' written notice if either party fails to fulfill its obligations under the Contract in a proper and timely manner, or otherwise violates the terms of this Contract. The non-defaulting party shall have the right to terminate this Contract, if the default has not been cured after ten (10) days' written notice or such other reasonable time period to cure the default has been provided. If termination shall be without cause, the City shall pay Consultant all compensation earned to the date of termination. If the termination shall be for breach of this Contract by Consultant, the City shall pay Consultant all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach. If the Contract is canceled or terminated, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Consultant under this Contract shall, at the option of the City, become the property of the City, and the Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Contract by the Consultant. The City may, in such event, withhold payments due to the Consultant for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein shall not limit the City, in case of any default by the Consultant, from asserting any other right or remedy allowed by law, equity, or by statute. The Consultant has not waived any rights or defenses in seeking any amounts withheld by the City or any damages due the Consultant.

22. Ownership of Materials

All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials resulting from this Contract shall become the property of the City upon the City's payment for and final approval of the final report or upon payment and request by the City at any time before then. The City at its own risk, may use, extend, or enlarge any document produced under this Contract without the consent, permission of, or further compensation to the Consultant.

23. Intellectual Property

All Work produced by the Consultant under this Contract is classified as "work for hire" and upon payment by the City to the Consultant will be the exclusive property of the City and will be surrendered to the City immediately upon completion, expiration, or cancellation of this Contract. "Work" covered includes all reports, notes, studies, photographs, designs, drawings, specifications, materials, tapes or other media and any databases established to store or retain the Work. The Consultant may retain a copy of the work for its files in order to engage in future consultation with the City and to satisfy professional records retention standards. The Consultant represents and warrants that the Work does not and will not infringe upon any intellectual property rights of other persons or entities.

Each party acknowledges and agrees that each party is the sole and exclusive owner of all right, title, and interest in and to its services, products, software, source and object code, specifications, designs, techniques, concepts, improvements, discoveries and inventions including all intellectual property rights thereto, including without limitations any modifications, improvements, or derivative works thereof, created prior to, or independently, during the terms of this Contract. This Contract does not affect the ownership of each party's pre-existing, intellectual property. Each party further

acknowledges that it acquires no rights under this Contract to the other party's pre-existing intellectual property, other than any limited right explicitly granted in this Contract.

24. Equal Benefits Ordinance

Minneapolis Code of Ordinances, Section 18.200, relating to equal benefits for domestic partners, applies to each Consultant and subcontractor with 21 or more employees that enters into a "contract", as defined by the ordinance that exceeds \$100,000. The categories to which the ordinance applies are personal services; the sale or purchase of supplies, materials, equipment or the rental thereof; and the construction, alteration, repair or maintenance of personal property. The categories to which the ordinance does not apply include real property and development contracts.

Please be aware that if a "contract", as defined by the ordinance, initially does not exceed \$100,000, but is later modified so the Contract does exceed \$100,000, the ordinance will then apply to the Contract. A complete text of the ordinance is available at:

http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/convert_261694.pdf

It is the Consultant's and subcontractor's responsibility to review and understand the requirements and applicability of this ordinance.

25. City Ownership and Use of Data

The City has adopted an Open Data Policy ("Policy"). The City owns all Data Sets as part of its compliance with this Policy. Data Sets means statistical or factual information: (a) contained in structural data sets; and (b) regularly created or maintained by or on behalf of the City or a City department which supports or contributes to the delivery of services, programs, and functions. The City shall not only retain ownership of all City Data Sets, but also all information or data created through the City's use of the software and /or software applications licensed by the Consultant (or any subcontractor of sub-consultant of the Consultant) to the City.

The City shall also retain the right to publish all data, information and Data Sets independently of this Contract with the Consultant and any of Consultant's subcontractors or sub-consultants involved in providing the Services, using whatever means the City deems appropriate.

The City shall have the right to access all data, regardless of which party created the content and for whatever purpose it was created. The Consultant shall provide bulk extracts that meet the public release criteria for use in and within an open data solution. The Consultant shall permit and allow free access to City information and Data Sets by using a method that is automatic and repeatable. The Data Sets shall permit classification at the field level in order to exclude certain data.

26. Cardholder Data and Security Standards

Should the Consultant collect revenue on behalf of the City through the acceptance of credit cards offered by cardholders to pay for services offered under the terms of this Contract, then Consultant represents and acknowledges that the Consultant will comply with Payment Card Industry (PCI) regulatory standards including the Data Security Standards (DSS). Consultant represents that it will protect cardholder data. Consultant will be annually certified as a PCI compliant service provider and agrees to provide evidence of said certification to the City upon request. Consultant agrees at reasonable times to provide to the City or to its assigns, the audit rights contained herein for all physical locations, systems or networks that process credit cards on behalf of the City. Consultant

also agrees to provide written notice to the City of any breach of a system owned, operated or maintained by the Consultant that contains cardholder data or information.

27. Audit Requirements for Cloud-Based Storage of City Data

If the Consultant's services include the storage of City data using a cloud based solution, then the Consultant agrees to secure the data as though it were "private data" as defined in Minnesota Statutes, Chapter 13. The Consultant shall provide the City with the annual copy of the Federal Standards for the Statement on Standards for Attestation Engagements (SSAE) No. 16 or the International Standard on Assurance Engagements (ISAE) No. 3402. The Consultant agrees to provide a .pdf copy to the City's Contract Manager, upon the Consultant's receipt of the audit results.

28. Small & Underutilized Business Program (SUBP) Requirements

The City of Minneapolis policy is to provide equal opportunities to all businesses, with an effort to redress discrimination in the City's marketplace and in public contracting against Minority-Owned Business Enterprises (MBEs) and Women-Owned Business Enterprises (WBEs). The SUBP requirements detailed in the Minneapolis Code of Ordinances Chapter 423.50, apply to any professional or technical service contract in excess of \$100,000. SUBP goals are set on contracts based on project scope, subcontracting opportunities, and availability of qualified MBEs/WBEs.

There are no specific SUBP goals on this RFP. However, if there are subcontracting opportunities later identified, Consultant shall inform the Contract Administrator to obtain authorization as stated under "Subcontracting" in the Terms and Conditions. Consultant shall take action to afford MBEs and WBEs full and fair opportunities to compete on this contract and resulting subcontracts. To locate certified MBEs and WBEs under the Minnesota Uniform Certification Program (MnUCP), please visit <http://mnucep.metc.state.mn.us/> or contact contractcompliance@minneapolismn.gov.