



Hamilton

CITY OF HAMILTON

REQUEST FOR PROPOSALS DOCUMENT

**Consultant Services Required for the Citizen
Engagement of Values Based Infrastructure
Management**

Contract Number: C11-12-12

**Closes: 3:00:59 pm, Hamilton time
Thursday, February 16, 2012**

**Procurement Section
Corporate Services Department**

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COMMUNICATIONS NOTICE

All requests for information, instructions or clarifications must be set out in writing and directed to:

Donna Drozd, CPP, CPPB, CSCMP
Senior Procurement Specialist
Procurement Section
Corporate Services Department
City of Hamilton
120 King Street West, 9th Floor
Hamilton, ON L8P 4V2

Telephone: (905) 546-2424, extension 4831
Fax: (905) 546-2327
Email: Donna.Drozd@hamilton.ca

All questions related to this Request for Proposals (RFP) or any clarification with respect to this RFP must be made no later than **three Business Days prior** to the Closing Time of this RFP in order that City staff may have sufficient time to respond. The City reserves the right to extend the deadline for questions if required regarding this RFP.

Written answers or clarifications to issues of substance shall be shared with all Proponents and issued as part of the RFP in the form of an Addendum. **All Proponents are advised that any Addenda issued will only be posted on the following website:**

biddingo.com/hamilton

Proponents will only receive an email notification that an Addendum has been issued. It is the sole responsibility of each Proponent to check the website for any and all Addenda that have been issued for this Request for Proposals.

CHECKLIST OF REQUIRED SUBMITTALS WITH THIS REQUEST FOR PROPOSALS DOCUMENT

Contract Number: C11-12-12

Consultant Services Required for the Citizen Engagement of Values Based Infrastructure Management

The following checklist is not a complete list of Proposal requirements. It is the Proponent's responsibility to satisfy all requirements set out in this Request for Proposals.

*Proponents **must** ensure that the mandatory requirements described below in this checklist and otherwise contained in this Request for Proposals, have been satisfied in their Proposal submission. **Failure to comply with these requirements may result in rejection of your Proposal.***

In a separate sealed package or envelope

Step 1 - Technical Proposal

- One originally signed and **FIVE** identical photocopies of completed Form of Proposal - (Step 1) (yellow pages) and Technical Proposal.
- Person/hours matrix without any reference to rates or costing submitted with Technical Proposal.
- Other required information as stated in the TABLE 1: Criteria for the Evaluation of Proposals

Step 2 - Cost Proposal

- One original and ONE identical photocopies of completed Form of Proposal - Cost Proposal – (Step 2) (purple pages) and Cost Proposal submitted in a separate package or envelope.



City of Hamilton
Corporate Services Department
Procurement Section
Phone: 905 546 2773
Fax: 905 546 2327
Email: procurement@hamilton.ca

Donna Drozd
Senior Procurement Specialist
Telephone: (905) 546-2424, extension 4831
Email: Donna.Drozd@hamilton.ca

REQUEST FOR PROPOSALS NOTICE

Contract Number: C11-12-12

Consultant Services Required for the Citizen Engagement of Values Based Infrastructure Management

**Closing 3:00:59 pm, Hamilton time
Thursday, February 16, 2012**

Sealed Proposals for the above noted Request for Proposals, addressed to the Procurement Manager, City of Hamilton, Procurement Section, Standard Life Building, 120 King Street West, 9th Floor, Suite 900, Hamilton, ON, L8P 4V2 will be received at **only** the Procurement Section on or before the date and time stated above.

SCOPE OF WORK

The City of Hamilton invites consultants to submit Proposals for the development and delivery of a citizen engagement plan of values based infrastructure management to engage its citizens in a conversation about their values and priorities of City provided services in order to adjust current levels of services and optimize the direction of infrastructure investments.

TO OBTAIN DOCUMENTS

Online: biddingo.com/hamilton

Fee: \$30.66, non-refundable, tax included + applicable Biddingo fees

Hardcopy (in person):

Fee: \$45.99 non-refundable, tax included

Method: cash, debit, credit card, money order, bank draft or company cheque made payable to the City of Hamilton. Personal cheques must be certified.

Location: City of Hamilton, Procurement Section, Standard Life Building, 120 King Street West, 9th Floor, Suite 900, Hamilton, ON, L8P 4V2

Time: 8:30 am to 4:30 pm

If using a courier service to pick up and pay for documents on your behalf, ensure you provide them with the applicable fee payment and return courier waybill.

To help with the processing of couriered documents, email the following information to:

Email: procurement@hamilton.ca • Company name, address and fax number
Subject: Contract number • Contact name and telephone number
 • Courier's name
 • Courier account number

Documents will not be released by collect courier shipment, and the City will not be responsible for any lost fee.

A complete copy of the Request for Proposals will be available for viewing at the Procurement Section at the location stated above.

Procurement Manager
City of Hamilton

INSTRUCTIONS TO PROPONENTS

Request for Proposals

Document Source: Request for Proposals - Consulting Services

Revised: January 1, 2012

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These Instructions define your obligations and limit your rights.
Failure to follow the instructions may result in the disqualification of your Proposal. Read carefully.

1. Interpretation

- (1) In this RFP, the Contract and the Contract Documents, unless expressly provided otherwise, the following definitions shall apply:
- (a) “Addendum” and “Addenda” means a written addendum or addenda issued with respect to this RFP;
 - (b) “Benchmark” means the minimum required score of a Proponent’s Proposal in order to proceed from Step 1 to Step 2 of the evaluation process. For this RFP, the Benchmark shall be 80 marks out of 100 marks;
 - (c) “Business Day” means any day other than a Saturday, Sunday, public holiday or other day on which banks in Ontario are authorized or required by Law to be closed or any other day on which the administrative offices of the City are closed;
 - (d) “City” means the City of Hamilton and includes any of its designated employees, officials or agents who are engaged to represent the City in its capacity as Owner of the Project and also includes an employee designated to exercise a discretion on behalf of the City;
 - (e) “City’s Representatives” includes the City’s elected officials, officers and employees, and those agents, representatives, Independent Consultant and other persons expressly authorized by the City to act on its behalf, excluding the Successful Proponent and its Sub-Contractors;
 - (f) “Closing Time” means the deadline by which to submit Proposals for this RFP set out in the RFP Notice, as may be amended by Addendum or other written notice of the City;
 - (g) “Contract” means the contract arising upon the acceptance of a Proposal and award of the Contract by the City in accordance with the RFP, irrespective of when notice of acceptance of a Proposal is received by a Successful Proponent;
 - (h) “Contract Documents” means those documents as set out in section 1 (3) of these Instructions to Proponents;
 - (i) “Default” means any act or event of default as contemplated in section 52 of these Instructions to Proponents;
 - (j) “Disbursements” means those costs, expenses and disbursements necessary for, as well as incidental to, the provision of Services pursuant to, or required by, the Contract which include, but are not limited to, software rights and licences and other intellectual property rights, plans, sketches, drawings, graphic representations, licences, fees, levies, permits and approvals, mileage, accommodations,

telephone and other communication device charges (including long distance charges), transportation and fuel charges, postage and courier charges, all printing, binding, photocopying, paper document reproduction and other related expenses and all other things and incidentals necessary for completing the Project in accordance with the Contract, provincial certificate of approval fees for air and noise, municipal building and related permit fees payable to the City and site plan approval application fees. All anticipated and foreseeable Disbursements are to be accounted for in the lump sum Total Contract Price. No additional Disbursements will be paid by the City, except as otherwise specified in the Contract or as otherwise expressly agreed to in advance and in writing by the City.

- (k) "Evaluation Team" means a team consisting of members of City staff and, where considered appropriate by the City in the exercise of an absolute discretion, Independent Consultants, who will perform the evaluation of each of the Proposals and make such reports and recommendations to the award of this RFP as they consider appropriate;
- (l) "Form of Proposal" means the Form of Proposal set out in Form of Proposal section to this RFP comprising of two steps, namely, the "Form of Proposal - (Step 1)" and the "Form of Proposal – Cost Proposal (Step 2)";
- (m) "Form of Proposal – Cost Proposal (Step 2)" may include the "Schedule of Quantities and Prices";
- (n) "Goods" means any item of tangible personal property or computer software and, without limiting the generality of the foregoing, includes deeds and instruments relating to or evidencing the title or right to such personal property, or a right to recover or receive such property;
- (o) "Independent Consultant" means any consultant, other than the Successful Proponent, retained by the City to advise and/or perform services on the behalf of the City with respect to the Project;
- (p) "Interlineation" means, for the purposes of Article 3(1)(h), the act of writing between the lines of the document, to add something to the pre-printed text of the Form of Proposal.
- (q) "Law" means all statutes, Laws, by-laws, regulations, requirements, ordinances, notices, rulings, orders, directives, policies and controls of the municipal, provincial, and federal governments and any other Lawful authority and all court orders, judgments and declarations of a court of competent jurisdiction;
- (r) "Price per Point" means the evaluation of the RFP will utilize a two step evaluation process. The City evaluates the technical Proposals received against the evaluation criteria and weightings set out in the RFP. For those technical Proposals that successfully meet the benchmark score stipulated in RFP, the City will then proceed to Step 2 - Cost Proposal and open the price Proposal received. The City will then calculate the Price per Point for each Proposal meeting the technical benchmark score and the award will be made to the Proponent with the lowest Price per Point;

- (s) “Project” means the supply and delivery of Goods, the delivery and performance of any Services and the completion of the Work in whole or in part as contemplated in the Proposal;
- (t) “Project Manager” means the person designated by the City to manage the delivery or performance of the Services to which the RFP relates, or to oversee the Project and/or the City’s obligations under the Contract and when there is no such designate appointed by the City, the City shall be the Project Manager;
- (u) “Proponent” means any person submitting a Proposal in response to this RFP;
- (v) “Proposal” means a proposal made by a Proponent in response to this RFP;
- (w) “Proposal Submission Information” means the submission requirements and evaluation and selection process information for Proposals contained in this RFP;
- (x) “Procurement Manager” means the City’s Procurement Manager or the City’s Director of Financial Services;
- (y) “RFP” means this Request for Proposals including the Communications Notice, RFP Notice, the Instructions to Proponents, the Proposal Submission Information, the Special Provisions, the Form of Proposal (Step 1), the Form of Proposal – Cost Proposal (Step 2) and Schedules, the Terms of Reference, and any other Appendices and all Addenda to the RFP together with all other documents expressly forming part of the RFP for this Project (also collectively referred to as “RFP Documents”);
- (z) “Services” means a service of any description whether commercial, industrial, trade, or otherwise and includes, without limitation:
 - (i) all professional, technical and artistic services, and the transporting, acquiring, supplying, storing and otherwise dealing in works and Goods, as contemplated by this RFP;
 - (ii) all consulting services identified in the Contract and those not identified in the Contract but necessary and prudent, in accordance with industry standards for such Projects, to properly and fully complete the Project and perform the undertakings contemplated in the Contract;
 - (iii) all incidentals necessary for proper, diligent and satisfactory execution of the Services and the fulfillment of all other contractual obligations and undertakings of the Successful Proponent under the Contract;
- (aa) “Sub-Contractor” is a person or entity having a direct contract with the Successful Proponent to perform a part or parts of the Services or to supply Goods and/or Services with respect to the Project, upon the prior approval of the City;

- (bb) “Successful Proponent” means the Proponent whose Proposal is selected and is awarded the Contract for this RFP by the City;
- (cc) “Supply” means the supply of a Good or Service, and
 - (i) in relation to a Good, includes the sale, rental, lease or other disposition or provision of the Good or an interest therein or a right thereto, or an offer so to dispose of the Good or interest therein or a right thereto, and
 - (ii) In relation to a Service, includes the sale, rental or other disposition or provision of the Service or an offer so to provide a service;
- (dd) “Total Contract Price” means the fully inclusive, all-in total contract price, constituting the sum of all costs quoted by a Proponent in its Proposal with respect to the Project, Work or Supply,
 - 1. including the purchase price for all materials, labour costs, service costs, costs for temporary structures and facilities, utility costs, warranty costs, life cycle costs, operating and disposal costs; but
 - 2. excluding any options or alternatives requested in the Contract Documents that the City elects not to purchase; and
 - 3. excluding Goods and Services Tax, Provincial Sales Tax, Harmonized Tax or other applicable sales or value added taxes, imposed under the Laws of Ontario and the Laws of Canada applicable therein.
- (ee) “Unit Price” means any unit price or other component of the Total Contract Price;
- (ff) “Value Added Taxes” means such sum as shall be levied upon the Total Contract Price by the Federal or Provincial or Territorial Government and is computed as a percentage of the Total Contract Price and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the Proponent by the tax legislation.
- (gg) “Work” means the total performance and related services required to complete the Project and include all incidentals necessary for proper and satisfactory execution of the Work and the fulfillment of all contractual obligations and undertakings. Where for any reason the City elects to terminate work on the Project (or otherwise discontinue such work for an indefinite period) before final completion, the Work and Project shall be deemed to be limited to that portion of the same as has been completed up to and including the time of termination.
- (hh) "WEEE Program" means the Province of Ontario's Waste Electrical and Electronic Equipment Program.

- (2) Where in this RFP a reference is made to the express written agreement of the City, it shall be understood that the City shall not be deemed or construed to have agreed to any stipulation, specification, exclusion, limitation or other term or condition set out in a Proposal that deviates from a provision set out in any of the RFP Documents, unless that deviation is expressly confirmed in a written and express amendment to that agreement.
- (3) In the event of a conflict or inconsistency between, or an omission or ambiguity with respect to, any term(s), condition(s) or provision(s) contained in any of the following Contract Documents, the term(s), condition(s) or provision(s) contained in the following documents shall apply and prevail in the following successive order of priority to the extent of such conflict, inconsistency, omission or ambiguity or incongruity:
 - (a) any Addenda to this RFP;
 - (b) any supplementary conditions (if any)
 - (c) Proposal Submission Information;
 - (d) terms of reference;
 - (e) any contract drawings
 - (f) Supplementary Instructions (if any)
 - (g) Special Provisions (if any);
 - (h) Instructions to Proponents;
 - (i) Form of Proposal (Step 1);
 - (j) Form of Proposal - Cost Proposal (Step 2);
 - (k) the sample Contract (if any);
 - (l) any other documents that form a part of the Request for Proposals;
 - (m) Successful Proponent's Proposal, as accepted by the City.
- (4) Notwithstanding subsection 1(3) of these Instructions to Proponents, in the event of conflict between any of the provisions of the Contract Documents, the provision most favourable to the City, in the City's determination, shall prevail and apply.
- (5) The City shall not be bound by any oral representation or communication whatsoever, including but not limited to any instruction, amendment or clarification of these Instructions to Proponents or any of the Contract Documents, or any information, advice, inference or suggestion, from any person (including but not limited to an elected official, employee, agent, Independent Consultant or representative of the City) concerning a Proponent's submissions, the RFP, the Contract Documents, the proposed Contract or any other matter concerning the RFP or Project. In addition, the City shall not be bound by any written representation whatsoever concerning a Proponent's submissions, the RFP, the Contract Documents, the proposed Contract or any other matter concerning the RFP or Project unless executed by the person designated and authorized in accordance with the Contract Documents or in accordance with a direction or authorization of City Council.

- (6) In these Instructions to Proponents and in all of the Contract Documents, unless the context otherwise necessitates,
- (a) a word importing the masculine, feminine or neuter gender only includes members of the other genders; and a word defined in or importing the singular number has the same meaning when used in the plural number, and vice versa;
 - (b) a reference to any Law or to a provision thereof shall be deemed to include a reference to any Law enacted in substitution thereof or amendment thereof;
 - (c) the headings to each section are inserted for convenience of reference only and do not form part of the Contract;
 - (d) all accounting terms have the meaning recognized by or ascribed to those terms by the Canadian Institute of Chartered Accountants;
 - (e) all amounts are expressed in Canadian dollars and to be secured and payable in Canadian dollars;
 - (f) all references to time shall be deemed to be references to current time in the City;
 - (g) any reference to an officer of the City shall be construed to mean the person holding that office from time to time, and the designate or deputy of that person, and shall be deemed to include a reference to any person holding a successor office or the designate or deputy of that person;
 - (h) Any words and abbreviations, which have well-known professional, technical or trade meanings, are used in the Contract Documents in accordance with such recognized meanings.

2. Nature of the RFP

- (1) The RFP constitutes an invitation to Proponents describing the intent, purpose, requirements and concerns of the City and prescribes how Proponents are to respond to this RFP.
- (2) This RFP may contain a general description of the City's requirements, including location constraints, information on space requirements, performance requirements and other technical specifications, warranty and maintenance requirements and other factors that the City intends to take into account in the award of the Contract.
- (3) These Instructions to Proponents, the Proposal Submission Information and other RFP Documents explain how Proponents are to submit Proposals and address certain legal requirements and implications relating to the Proposal process and Contract and summarize how the Contract will be concluded.
- (4) Without limiting any other right or privilege of the City contained in the RFP, the following rules shall govern the evaluation of Proposals:

- (a) The City may consider the full range of options, amenities and enhancement features offered by a Proponent when awarding the Contract. The City shall be the sole judge as to whether the added value offered in respect thereof justifies any additional expenditure. This RFP may be subject to possible cost constraints, which the City shall not be obliged to disclose to any Proponent, which may rule out the selection of a Proposal. While the City shall not be obligated to consider optional features, no optional features will be considered by the City unless the Proponent's submission fully complies with the RFP in all respects.
- (b) The City reserves the right to award the Contract based solely upon considerations of Total Contract Price, or Total Contract Price with Options, or upon performance, technical, warranty, maintenance, compatibility and other considerations contained in section 22 (Reserved Privileges of the City) and section 24 (Record and Reputation), or any combination thereof, as the City considers it in its best interests to do so.
- (c) Where compliance with any specified criteria is stated to be a condition precedent to the award of the Contract, that condition shall be deemed to be for the exclusive benefit of the City, which may elect to waive that condition in its absolute discretion, and the City shall not be liable to any person by reason of so doing.
- (d) Based upon the evaluation criteria set by the City, all compliant Proposals shall be evaluated, and a recommendation may be made to Council (or the designated person with authority delegated by Council to approve the recommendation for award) to award the Contract to the Proponent whose Proposal best satisfies the criteria that have been established by the City, but where the City for any reason in its sole discretion decides that all Proposals received were unsatisfactory, or that the terms and conditions set out in the RFP or an Addendum cannot be realized with that Proponent whose Proposal best satisfies the criteria that have been established by the City, then the City reserves the absolute right, as it sees fit,
 - (i) to revise and reissue the RFP;
 - (ii) to cancel the RFP,

And in no such case shall any person have any legal claim or recourse against the City and the City's representatives on any ground whatsoever. The exercise of a right by the City shall not preclude the exercise by the City of any other right.

- (e) The Proposals will be evaluated based on the criteria listed in this RFP and/or any Addendum or Addenda thereto. Unless a specific weighting is indicated in this RFP or any Addendum or Addenda thereto,
 - (i) The City may give such weighting to each of the identified criteria as the City considers appropriate; and
 - (ii) It is within the exclusive discretion of the City to determine which

of the features specified by a Proponent and any other features specified in the RFP or any Addendum or Addenda thereto offers the City the best value for money.

Subject to the foregoing, the criteria for the evaluation of Proposals shall be as specified by the City from time to time, and the City shall be the sole authority to determine how those criteria are to be interpreted and applied, and the weighting to be given to each criterion, if any.

- (f) The Evaluation Team may include such members of the City's staff and outside Independent Consultants as the City considers is necessary or advisable to provide proper technical (including legal and financial) evaluation and analysis of the Proposals that have been made. Depending upon the background and expertise required, evaluators may not individually score every component. The Evaluation Team will meet as required to create a team score for each Proponent's Proposal. The Evaluation Team may modify the Evaluation Team's score to reflect additional information obtained during the clarification of Proposals or at any meetings or interviews scheduled with Proponents.
 - (g) The City shall not be obliged to disclose the evaluation scores of any individual member of the Evaluation Team, nor to justify any score awarded by that team or any member thereof. In the absence of evidence of manifest bad faith, any evaluation carried out by the Evaluation Team shall be considered to be fair and accurate for all purposes and shall not be subject to review by any court or other tribunal.
- (5) The City wishes to fully understand each Proponent's Proposal. Therefore, each Proponent is encouraged to submit any additional material that it believes will facilitate the evaluation process, subject to any page quantity submission restrictions contained in this RFP. Furthermore the Proponent must make available to the City additional evaluation information as requested by the City.
- (6) At its election, the City may use the RFP process to identify a short-list of Proponents. Following an initial evaluation, the City may invite such number of the top-ranked Proponent(s) as it considers advisable, to present their concept to the Evaluation Team in a formal interview session. Performance in this interview may be taken into account in the evaluation process.

3. Proposal Submissions and Form of Proposal

- (1) Every Proposal **shall**
 - (a) be submitted on the City's prescribed Form of Proposal in its entirety;
 - (b) be legible;
 - (c) be completed in ink (printed or typed);
 - (d) be completed in English;

- (e) bear the original signature of the Proponent (or, in the case of a Proposal submitted by a corporation, an authorized signing officer of the corporation), inscribed in the space provided;
 - (f) be submitted in a sealed, opaque package (the Proponent is asked to use the City provided submission labels if possible and where the Proposal Submission Information require a two package or envelope process, in two sealed packages) and is clearly marked with the title and contract number of the Request for Proposals (RFP);
 - (g) be delivered only to the Procurement Section Office;
 - (h) be completed without Interlineation, alteration, change, overwriting, whiteout, cross out, strike out or erasure of or with respect to,
 - (i) any of the pre-printed text provided by the City or amended by addenda; or
 - (ii) information included on the Form of Proposal by the Proponent, unless the effect thereof is legible, clear and unambiguous as is the consent of the Proponent in the form of initials to that Interlineation, alteration, change, overwrite, whiteout, cross out, strike out or erasure. This means all Interlineations, alterations, changes, overwrites, whiteouts, cross outs, strike outs or erasures are to be initialled.
 - (i) have all of the required blank spaces provided on the Form of Proposal completed by the Proponent;
 - (j) include all material, Goods, Services, equipment and labour, required to complete the Work; and
 - (k) state all prices in Canadian funds, unless otherwise stipulated.
- (2) A Proposal submitted by fax, e-mail or other electronic means will not be accepted.
 - (3) A Proposal that is not submitted in a sealed package will not be accepted. The City shall not be under any obligation to return an unsealed Proposal to the Proponent, nor to notify the Proponent that the package was not sealed.
 - (4) Time is of the essence with respect to the submission of a Proposal. It is the **sole** responsibility of each Proponent to ensure that its Proposal is delivered to the correct address no later than the closing date and time of the Request for Proposals.
 - (5) A Proposal shall be deemed to have been submitted only when actually stamped as received at the Procurement Section Office on or before 3:00:59 p.m. Hamilton time on the closing date specified in the Request for Proposal Notice or as subsequently amended by Addendum. The Procurement Section Office's reception time clock shall be deemed to be the official indicator of Hamilton time.
 - (6) It is the exclusive responsibility of each Proponent to submit a complete Proposal in accordance with the Request for Proposals.

- (7) All documents prepared and work carried out by a Proponent in preparing a Proposal, and all oral presentations to the City in connection with a Proposal, shall be without cost to the City, and neither the City's publication of a Request for Proposals nor the submission of a Proposal shall be construed to oblige the City to award a Contract.
- (8) A Proposal should, where printed or typed, be set out in print no smaller than 10-point Times New Roman and except where otherwise directed, all printed material should be produced on double sided, post consumer content (recycled) standard letter (8 1/2 inch by 11 inch) or legal (8 1/2 inch by 14 inch) sized paper.
- (9) All words and phrases forming part of a Proposal should be written out in full, and abbreviations should not be used.
- (10) The City of Hamilton will only accept a Proposal which contains original documents with original signatures as part of its Proposal, unless expressly stated otherwise in this Request for Proposals.
- (11) No amendment may be made to a Proposal after it has been submitted, except in the circumstances set out in Article 20.4 of these Instructions to Proponents.

4. Confidentiality

- (1) In accordance with the Municipal Freedom of Information and Protection of Privacy Act ("MFIPPA") and Personal Health Information Protection Act ("PHIPA"), this will notify the Proponents that any personal information Proponents provide is being collected under authority of the *Municipal Act, 2001*, SO. 2001, c. 25, as amended, and will be used in the evaluation process and, with respect to the Successful Proponent, for the purposes of the subsequent Contract. All correspondence, documentation and information provided to the City and/or the City's Representatives by any Proponent in connection with, or arising out of this RFP, and any Proposal submitted to the City will become the property of the City and a record of the City. The foregoing records and the Contract Documents are subject to the provisions of the MFIPPA and PHIPA and the City's obligations hereunder and may be released pursuant to such Acts. The Proponent's name at a minimum will be made public on request. In addition, certain contractual information must be disclosed to Council and accordingly may become part of the public record. All correspondence, documentation and information provided to the Evaluation Team may be reproduced for the purposes of evaluating the Proponent's submission to this RFP.
- (2) For the purposes of MFIPPA, Proponents may mark as confidential any scientific, technical, commercial, proprietary or similar confidential information contained in their submission, the disclosure of which could cause them injury, except the Total Contract Price and their name. Complete Proposals are not to be identified as confidential. A watermark or rubber stamp imprint is suitable for this purpose. Subject to subsection (1), the City will use its best efforts not to disclose any information so marked but shall not be liable in any manner to a Proponent or any other person where information is disclosed by virtue of an order of the Privacy Commissioner, a court of competent jurisdiction or otherwise as required by Law. The City further makes no representations or warranties that the identification of a document as confidential will prevent its

release under the provisions of MFIPPA, PHIPA or otherwise under Law. Any information in the Proponents' submissions that is not specifically identified as confidential may be treated as public information.

- (3) Information regarding the application of MFIPPA and PHIPA is available from the Access to Information and Privacy Section of the City Clerk's office at City Hall.
- (4) Confidentiality of records and information of the City relating to this Project must be maintained at all times. All correspondence, documentation and information provided by City and/or the City's Representatives to any Proponent in connection with, or arising out of this RFP or the acceptance of any Proposal remains the property of the City; must be treated as confidential; and must not be used for any purpose other than for replying to this RFP and for fulfillment of any related subsequent Contract. Where any proprietary or confidential information belonging to or in the care of the City is disclosed to any Proponent in connection with the RFP, the Proponent shall
 - (a) safeguard all information provided by the City and the City's Representatives, or any other person at the request of the City;
 - (b) maintain in strict confidence and not reproduce or disclose any such information to any person except as required by Law or as expressly permitted in advance by the City in writing;
 - (c) return forthwith and without demand all such information as may be in documentary form or recorded electronically by the Closing Time; and
 - (d) Not use any such information for any purpose other than the purpose for which it was provided by the City or by any other person at the request of the City.

5. Prices

- (1) The City shall not be required to cause prices to be read out publicly on the opening of Proposals or at any other time.
- (2) Only the Proponents' name and receipt of documents shall be publicly acknowledged at the Procurement Section Office at approximately 3:01 p.m. local Hamilton time (meeting room to be determined) on the closing date of the Request for Proposals.
- (3) Unit Prices and other monetary components of the Total Contract Price will not be disclosed.
- (4) Unless otherwise stipulated in the Special Provisions, all prices bid, including any Unit Prices, must be in stated in Canadian funds.
- (5) The award of the Contract may be based on considerations other than price and may employ the utilization of a scoring method using evaluation criteria, as provided in this RFP.
- (6) Once the Contract has been awarded, only the Total Contract Price and total score of the Successful Proponent will be disclosed. Official notification will

only be given to the Successful Proponent; however, persons who submitted a Proposal may obtain the Total Contract Prices for all Proponents upon request to the (Senior) Procurement Specialist designated as the contact person for purposes of the RFP.

- (7) Award information will be posted on the following website:

biddingo.com/hamilton

6. Variation in Proposal Prices

- (1) No variation in the method of calculating any price or rate (including but not limited to the Total Contract Price, any Unit Prices, any other lump sum prices) shall be permitted after the closing date and time except,
- (a) in the instance of variation due solely to an increase or decrease in the rate of applicable Provincial Sales Tax ("PST" or federal Goods and Services Tax ("GST") beyond the control of the Proponent, occurring after the time and date of submission of its Proposal, in which case the variation shall alter the price of the Proposal only to the extent of the such Tax increase or decrease;
 - (b) For greater certainty, this excludes any increases in WEEE Program fees;
 - (c) Where the City exercises its discretion, which it shall not be obliged to do so, to correct a patent computational or other mathematical error evident on the face of the Proposal.
- (2) In the event that the PST or GST increase or decrease occurs after the submission of its Proposal, the Proponent must prove to the satisfaction of the City of Hamilton that the Proponent will not benefit in any way by reason of the increase.

7. Price and Payments

- (1) The payment of the Total Contract Price (including but not limited to Unit Prices) with respect to Services performed by the Successful Proponent shall be made in accordance with the City's Purchasing Policy, as amended. Payment of additional services shall be made in the same manner.
- (2) Progress payments for the Services performed by the Successful Proponent shall be made only where expressly agreed in writing by the City.
- (3) A claim for a progress payment made by the Successful Proponent shall not include any aspect of the Services not yet fully and properly performed.
- (4) If any work or item under the Contract is included by the Successful Proponent in its progress claims as partially or fully completed, but it is not completed in accordance with the Contract Documents, or is not completed to the City's satisfaction, the City may withhold from payment such part or the total cost of those items until they are completed or corrected to its full satisfaction, and the City shall notify the Successful Proponent in writing of its action and the reason for same.

- (5) The City reserves up to ten (10) Business Days from the date of the receipt of the Successful Proponent's invoice for reviewing, inspecting and confirming the receipt and performance of the Services in accordance with the Contract.
- (6) Where a contingency allowance is expressly provided for in the Contract, the Successful Proponent shall not be entitled to payment of the whole or any part of that amount, except to the extent that it can be shown that extra or additional Services have been carried out by the Successful Proponent beyond that contemplated within the Contract, and those extra Services have been approved, in advance, by the City's Project Manager or contract representative as set out in the Contract, or in default of such a provision, the City's Procurement Manager.

8. Conflict of Interest (Proponents)

- (1) No employee of the City shall personally sell Goods or Services to the City, nor have a direct or indirect interest in a company that sells Goods or Services to the City.
- (2) The City may reject any Proposal submitted, or cancel any contract awarded, in contravention of this section.
- (3) Each Proponent respectively shall be deemed to have warranted that it has not employed or retained any person, other than a bona fide employee, agent or broker working for the Proponent, to solicit or secure the proposed contract, and that it has not paid or agreed to pay any person, other than a bona fide employee, agent or broker working solely for the Proponent, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of that proposed contract, or as an inducement to be awarded that contract. Without prejudice to any of its other rights, the City reserves the right to annul any contract or other arrangement entered into with a Proponent where there is a breach of this warranty.
- (4) Prior to the award of the Contract, no Proponent shall contact any elected official of the City or member of City staff or Independent Consultant retained by the City with respect to its Proposal, the RFP or the proposed Contract, except the (Senior) Procurement Specialist or other person designated for that purpose in the RFP documents.
- (5) Except with the prior express written consent of the City,
 - (a) No Proponent shall act on behalf of the City with respect to any matter, issue or in connection with any property in which the Proponent or any director, officer, employee or Sub-Consultant of the Proponent has a direct or indirect pecuniary interest, including any contingent interest;
 - (b) Before submitting any Proposal to act on behalf of the City, the Proponent shall exercise reasonable due diligence to confirm that there is no conflict of interest within the contemplation of subsection (5) (a) or subsection (6);
- (6) Each Proponent shall not act in any case where there may be any conflict of interest between it (or any of its directors, officers, employees or Sub-Consultants) and the City, and each Proponent shall notify the City, in writing,

immediately of any potential conflict of interest that may arise prior to the award of the Contract and fully disclose any details thereof.

9. Withdrawal of Proposals by Proponent

- (1) Withdrawal of a sealed Proposal after its submission to the Procurement Section is permitted only prior to the Closing Time of the RFP.
- (2) A Proponent may withdraw a Proposal at any time prior to the Closing Time for the RFP, by delivering a written request to that effect to the address specified for the deposit of Proposals, but no such request to withdraw received after the Closing Time shall be effective.
- (3) A Proponent who withdraws a Proposal prior to the Closing Time for the submission of Proposals may submit a revised written, signed and sealed Proposal at any time prior to the Closing Time, but otherwise no amendment may be made to a Proposal after it has been submitted, and in particular no amendment may be made to a Proposal orally, or by fax, telex, telegram, e-mail, or otherwise than by a sealed document. Proponents are advised that revisions to a Proposal, after its submission, as a result of the issuance of an Addendum or other notice of change of the RFP by the City, may only be done by the withdrawal of the original Proposal and submission of a revised Proposal prior to the Closing Time.
- (4) A withdrawal request shall be effective only where made in writing on company letterhead, signed by the Proponent or authorized representative of the Proponent, and actually received by the Procurement Section prior to the Closing Time. A faxed withdrawal may be accepted where its authenticity appears genuine, in the absolute discretion of the Procurement Manager. Fax documents are considered to be received only when receipt is confirmed in writing (including by fax or e-mail) by the (Senior) Procurement Specialist designated in the RFP. It shall be the sole responsibility of the Proponent to ensure that a withdrawal is properly delivered to and received by the City.

10. Expertise and Experience

Proponents submitting Proposals and all the Sub-Consultants they propose to use on or in connection with the Services to be supplied under the Contract shall be actively engaged and thoroughly experienced in the lines of work required by the Contract and shall be able to refer to previous work of a similar nature satisfactorily performed by them. The Successful Proponent must be licensed to practice in the area in which the primary services under the Contract are to be provided, by the applicable professional body. In the case of architects, pursuant to the *Architects Act, R.S.O. 1990, c. A.26*, the Successful Proponent must be licensed by the Ontario Association of Architects or any successor body. In the case of engineers, pursuant to the *Professional Engineers Act, R.S.O. 1990, c. P.28*, the Successful Proponent must be licensed by the Association of Professional Engineers Ontario or any successor body.

11. Proposals Open for Acceptance, Irrevocable, etc.

- (1) Proposals shall not be opened until after the Closing Time of the RFP, and so far as practicable, all Proposals shall be opened at one time.

- (2) Unless otherwise provided in a Special Provision or Addendum to this RFP, a Proposal shall be irrevocable (i.e. open for acceptance by the City of Hamilton) for a period of 90 calendar days following the closing date for the RFP.
- (3) The Contract shall be deemed to arise upon the acceptance of the Successful Proponent's Proposal by the City. The Contract Documents shall form the Contract between the Successful Proponent and the City. The Successful Proponent shall be responsible to the City for any costs, expenses, losses, damages and liabilities that the City may incur as a result of the Successful Proponent's failure or refusal to execute the Contract as required.

12. Proponent's Responsibility

- (1) Unless otherwise expressly agreed to by the City in writing, where technical information or details is provided by the City and forms part of the RFP or any Addenda thereto (including any quantity estimates, soil condition reports, ground water or drainage reports or geophysical data, archaeological and heritage information and documentation, samples, or other documents of a similar kind or nature as may be provided together with the RFP Documents or incorporated by reference therein),
 - (a) the City shall exercise reasonable care in the preparation of those estimates, documents and information but shall not be taken to warrant their accuracy and shall not be liable for any inaccuracy therein unless that inaccuracy is the result of the deliberate misrepresentation of the City or a member of its staff;
 - (b) estimates, reports, data, or details shall be deemed to have been provided only as a guide for potential Proponents;
 - (c) Proponents are required to examine carefully that information and the responsibility for verification of the information so provided shall rest with each Proponent;
 - (d) The City shall not be responsible for the accuracy of information provided by the City from third party sources for use by a Proponent including the Successful Proponent. All such information shall be verified by the Proponent or the Successful Proponent before relying on same; and
 - (e) The Proponents shall be deemed to have released and waived any rights and claims against the City and the City's Representatives for any negligent misrepresentation, error or omission.
- (2) Where the Project is to be carried out on City occupied or owned property, Proponents shall be responsible for visiting the job site and no allowance shall be made by the City for failure by the Proponent to examine carefully all conditions relating to the site or Work.
- (3) All persons submitting Proposals and all their Sub-Consultants shall be held to have thoroughly examined all RFP Documents and to have visited and inspected the site on which the Services, Project and Work is to be carried out, or the Supply is to be made, and to have thoroughly familiarized themselves with all pertinent conditions before delivery of their respective Proposals, and

no allowance shall be subsequently given by the City for or by reason of any error or omission on the part of any Proponent or Sub-Consultant with respect thereto. The City shall not be liable for any costs associated with any site inspection.

- (4) Where clarification of any information, document or matter is required by a Proponent, it shall be the responsibility of the Proponent to seek clarification in a timely manner from the City, in sufficient time to permit the City to respond, and satisfy itself with respect to same before submitting a Proposal. Notwithstanding the foregoing, the City shall have no obligation to respond.
- (5) It is the Proponent's responsibility to become familiar with and comply with all City Purchasing policies.
- (6) A Proponent shall be deemed to have included in the Total Contract Price quoted in its Proposal, the entire cost of,
 - (a) All items that the Successful Proponent is responsible for under any of the Contract Documents, except where expressly provided otherwise;
 - (b) Preparing and submitting such reports, drawings or documents as may be required by the City.
- (7) Without limiting the generality of any other provision of these Instructions to Proponents, unless otherwise provided in the RFP Documents, the Successful Proponent shall be required to provide and pay for (where applicable):
 - (a) all material, labour and service costs, charges for use of software, intellectual property, tools and equipment whether owned, licensed or rented, and where any work is to be carried out or Services are to be rendered on property owned or occupied by the City, all protective and safety provisions, site signs and site conveniences, together with all Services and associated equipment and materials or other incidentals whether shown or specified or required by best practices (as applicable);
 - (b) insurance, licences, permits and inspections; all applicable Taxes, worker's compensation and all other applicable labour-compensation charges necessary to carry out its duties with respect to the Project, in accordance with the RFP Documents;
 - (c) All Services and materials required to carry out the Proponent's responsibilities and duties with respect to the Project in accordance with the RFP Documents and all instructions given by the City under the Contract, in accordance with governing regulations and codes and in compliance with best industrial and commercial practices for first class workmanship.

13. Proposal Security

Not Applicable

14. Performance and Other Security, Contract to Bond

Not Applicable

15. Performance Review

- (1) Where the City's Procurement Manager so directs, the City and the Successful Proponent shall carry out a periodic performance review in accordance with this section concerning the provision of Services by the Successful Proponent.
- (2) Performance under the Contract shall be assessed by reference to the following criteria:
 - (a) general responsiveness of the work relationship;
 - (b) conformity of the provision of Services with the Contract Documents;
 - (c) general conformity with the reasonable expectations of the City under the terms of the Contract in their entirety;
 - (d) general dependability of the Goods or Services supplied;
 - (e) turn-around time on the placement of orders (to the extent applicable);
 - (f) accuracy of carrying out instructions.
- (3) The respective representatives of the City and Successful Proponent shall meet at mutually agreeable times within 10 Business Days of the end of each consecutive six month period of the provision of services under this Contract.
- (4) Where a performance review is conducted under subsection (3), each of the agreed aspects of the Successful Proponent's performance shall be ranked by the City at one of the following standards:
 - (a) Satisfactory (performance in accordance of general standard of City suppliers);
 - (b) Unacceptable (performance well below the general standard of City suppliers).
- (5) At any performance review under this section, the Successful Proponent shall be entitled to identify any aspect of the City's operations that is undermining the Successful Proponent's ability to deliver at least a satisfactory level of performance with respect to some criteria of assessment, and where the City concludes that this is in fact the case, the ranking given to the Successful Proponent with respect to that criteria of assessment will be adjusted accordingly.
- (6) Where at a performance review, one or more criteria of assessment are ranked as unacceptable,

- (a) The parties shall agree at the time of the conduct of the review or within 10 Business Days thereafter, on the measures to be taken by the Successful Proponent during the ensuing contract review period to improve its performance to at least a good standard;
 - (b) Within 10 Business Days of agreeing on those measures, the Successful Proponent shall confirm in writing that the measures in question have been implemented.
- (7) Where the Successful Proponent fails or refuses to implement measures as provided in subsection (6), it shall be deemed to be in default under the Contract, and the City may take such remedies as provided for in the Contract Documents or are otherwise available at Law or in equity.
- (8) In addition to the regular performance review provided for under subsections (2) through (7), where in the opinion of the Procurement Manager the performance of the Successful Proponent is not satisfactory, then in addition to such other rights and remedies to which the City may be entitled to by Law or under the terms of any of the Contract Documents, the City may,
- (a) Issue an oral warning to the Successful Proponent, identifying the non-compliance with the Specifications or other grounds of unsatisfactory performance, and requiring the Successful Proponent to correct the same;
 - (b) Issue a written notice, setting a time period for the Successful Proponent to correct the unsatisfactory performance, and warning that the Contract shall be liable to be terminated without further warning if the unsatisfactory performance is not corrected within the time allowed;

And until the City is satisfied that the unsatisfactory performance has been corrected, the City may holdback from any payment an amount sufficient to rectify the unsatisfactory performance until its requirements have been met.

- (9) Where the unsatisfactory performance of a supplier is not corrected within the time allowed under subsection (8),
- (a) the City may apply any holdback retained under that subsection towards the correction of the unsatisfactory performance and may thereupon cancel the Contract with the Successful Proponent without further warning; and
 - (b) That fact may be taken into account by the City with regard to the award of any future contract.
- (10) Nothing in subsections (8) or (9) shall restrict the right of the City to terminate the Contract at any time under any other provision of the Contract Documents or under any rule of Law, but any such right may be exercised by the City in its absolute discretion.

16. Permits, Licences and Approvals

Unless otherwise expressly agreed by the City in writing, the Successful Proponent shall be responsible for applying for, obtaining and maintaining, at its own cost (other

than the Building Permit fees, municipal Site Plan Approval or Committee of Adjustment application fees) all necessary permits, licences, consents and approvals relating to the provision of Services in accordance with the Contract and shall not do or suffer to be done anything in violation of any such permits, licences, consents and approvals. If the attention of the Successful Proponent is called to any such violation on the part of the Successful Proponent, or of any person employed or engaged by the Successful Proponent, the Successful Proponent shall immediately desist from and correct such violation.

17. Taxes

- (1) All prices shall be quoted exclusive of GST and the City may adjust any price quoted contrary to this requirement; unless otherwise specified in the Form of Proposal – Cost Proposal (Step 2) or any Special Provisions.
- (2) Proponents shall expressly disclose any other applicable sales, customs or excise tax or duty, including a levy or duty imposed as a Special Import Measure, and other Taxes to which any work or supply of Services or materials may be subject, other than GST.
- (3) For greater certainty, WEEE Program fees shall not form a part of the Total Contract Price nor a part of any Taxes.
- (4) Effective July 1, 2010 the 5% GST and 8% Ontario Retail Sales Tax, ("ORST" or "PST") will become harmonized into one tax of 13%, i.e. the Ontario Harmonized Sales Tax, ("OHST" or "HST"). Proponents are advised to reflect this change in their pricing calculations. Unit pricing and lump sum pricing will be interpreted as reflecting the Input Tax Credit ("ITC") advantage, i.e. lower costs, available to all Proponents effective July 1, 2010. It will be presumed to be incorporated in your pricing submission.

Bid calls by the City between now and July 1, 2010 will be awarded on the basis of a Total Contract Price. 5% GST or 13% HST will later be added to the prices of the Successful Proponent according to the delivery or completion date of the respective Goods and Services, i.e. 5% GST before July 1, 2010 and 13% HST after July 1, 2010. PST is to be included for those Goods and Services delivered prior to July 1, 2010. After July 1, 2010 it will be presumed that the deletion of the PST has been incorporated in your Proposal.

18. Electronic Funds Transfer

In this section, the term "EFT" refers to electronic funds transfer and may also include the payment information transfer. All payments made by EFT shall only be made as a direct deposit to a Canadian chartered bank.

(1) Method of Payment

All payments by the City under this Proposal shall be made by electronic funds transfer (EFT) save and except where:

- a) the funds payable under the terms of the Contract are only payable in a single lump sum and not payable by installments or progress payments or otherwise than a single lump sum payment; or

- b) the City is unable to release one or more payments by EFT, in which case the Proponent agrees to either:
 - (i) accept payment by cheque or some other mutually agreeable method of payment; or
 - (ii) request the City to extend payment due dates until such time as the City makes payment by EFT,
 - (iii) subject to subsection (3) Suspension of Payment.

(2) **Mandatory Submission of Proponent's EFT Information**

- a) The Proponent is required to provide the City with the information required for the City to make payment by EFT. A Purchase Order will not be issued to the Successful Proponent without this requisite information.
- b) In the event that the EFT information changes, the Proponent shall be responsible for providing forthwith the updated information to the City.

(3) **Suspension of Payment**

- a) The City is not required to make any payment under this Proposal until its designated officer has received the correct EFT payment information from the Successful Proponent. Until receipt of the correct EFT information, any invoice or contract payment request shall be deemed not to be a proper invoice or valid request for the purpose of payment under this Contract. No interest or any other manner of claim whatsoever for delayed or non-payment shall be permitted as a result of incorrect EFT information or improper delivery of EFT payment information.
- b) If the EFT information changes after submission of correct EFT information, the City shall have thirty (30) days within which to update the changed EFT information after its receipt by the designated officer to the extent payment is made by EFT. However, the Proponent may request that no further payments be made until the updated EFT information is implemented by the City's payment office. If such suspension would result in a late payment under any payment terms of this Contract, the Proponent's request for suspension shall extend the due date for payment by the number of days of the suspension.

(4) **Liability for Uncompleted or Erroneous Transfers**

- a) If an uncompleted or erroneous transfer occurs because the City used the Proponent's EFT information incorrectly, the City remains responsible for making a correct payment.
- b) If an uncompleted or erroneous transfer occurs because the Proponent's EFT information was incorrect, or was revised within thirty (30) days of City's release of the EFT payment transaction instruction, and
 - (i) funds are no longer under the control of the City's payment

office, the City is deemed to have made payment and the Proponent is responsible for recovery of any erroneously directed funds; or

- (ii) If the funds remain under the control of the City's payment office, the City shall not make payment and the provisions of subsection (3) Suspension of Payment shall apply.

(5) **EFT and Timely Payment**

A payment shall be deemed to have been made in a timely manner in accordance with the payment terms of the Contract if, in the City's EFT payment transaction instruction released to its Bank, the date specified for settlement of the payment is on or before the last date for due payment under the terms of the Contract, provided the specified payment date is a valid date when the City's Bank is open for business.

19. Nomination of Sub-Consultants

- (1) Unless otherwise stipulated in this RFP or any Addendum thereto, the Proponent shall indicate the names and addresses of all nominated Sub-Consultants that it proposes to use in the provision of Services and/or work contemplated by this RFP.
- (2) The City reserves the right to reject any Sub-Consultant so nominated, without penalty or liability to the City of any kind whatsoever.
- (3) No change shall be made to the list of nominated Sub-Consultants after the Closing Time of the RFP, without the prior written approval of the City and only on such terms and conditions as the City in the exercise of an absolute discretion may require.
- (4) Any Proponent requesting the City's consideration of a change of Sub-Consultant shall be responsible for all costs of the City to review, investigate and approve, if acceptable, such change including but not limited to all of the City's internal staff costs and all legal, financial and consultant costs. No approval of the City shall be effective until the Proponent has first paid to the City its costs with respect to same.

20. Addenda and Clarification of the Request for Proposals

- (1) The City reserves the right at any time prior to the award of the Contract,
 - (a) to withdraw or cancel the RFP;
 - (b) to extend the time for the submission of Proposals; or
 - (c) to modify the RFP,

by the publication of an Addendum, which shall become part of the RFP, and the City shall not be liable for any expense, cost, loss or damage incurred or suffered by any Proponent (or any other person) as a result of its so doing.

- (2) Without limiting the City's right, Article 20 (1) may apply to situations where no Proposal is compliant or an insufficient number of Proposals have been received.
- (3) Any Addendum shall be posted on the following website and is sufficiently served upon any prospective Proponent if so posted at:

bidningo.com/hamilton

- (a) In addition to the above method of posting, the City may also notify prospective Proponents of any Addendum by any other method it deems appropriate, including email, telephone, fax, courier, hand-delivery or by personal delivery. The need for additional notification and the method(s) to be used shall be in the absolute discretion of the City and notification shall be to the co-ordinates provided by the Proponent to the City at the time it obtained the RFP from the City.
 - (b) It is the sole responsibility of each Proponent to check the website and ensure that it has received any and all Addenda issued by the City. Proponents shall confirm in the Form of Proposal that they have received, examined and provided for all Addenda issued under the RFP. Proponents may in writing, seek confirmation of the number of Addenda issued under the RFP from the (Senior) Procurement Specialist named in the Communications page.
- (4) Where a Proposal has been received by the City prior to the publication of an Addendum, the City shall allow that Proponent to submit a revised Proposal prior to the closing date and time of the RFP. Any replacement sheets or other obligations otherwise required by the Addenda in order for a Proposal to be compliant shall be submitted by a Proponent with its Proposal by the closing date and time of the RFP. Where a Proposal is not revised following the publication of an Addendum, the Proponent will be deemed to have acknowledged all Addendum issued.
 - (5) All communication between a Proponent and the City (including requests for information or clarification) **shall** be set down in writing and directed to the (Senior) Procurement Specialist named in the Communications page.
 - (6) Any request directed to the City with respect to Article 20 (5) prior to the closing date of the RFP must allow sufficient time for a written response or clarification to be issued by the City prior to the closing date, should the City consider it necessary to issue such response or clarification.
 - (7) A written response or clarification of substance shall be shared with each Proponent and issued in the form of an Addendum.
 - (8) The City shall not be bound by any oral:
 - (a) instruction;
 - (b) amendment or clarification of the RFP;
 - (c) information; or

- (d) advice or suggestion,

provided by any member of the City's staff or consultant to the City concerning the RFP or the manner in which the Work is to be carried out and the Proponent bears any and all risk in relying on such representation.

- (9) If the City requires clarification of a Proponent's Proposal, that Proponent shall provide a written response to the City's request for clarification, in a timely manner, which shall bind the Proponent.
- (10) Each Proponent shall identify one senior individual by name, address and telephone number who will act as the Proponent's primary contact with the City with regard to this RFP and any subsequent Contract and has the authority to bind the Proponent.

21. Alternate Proposals and Optional Features etc.

Not Applicable

22. Reserved Privileges of the City

Without limiting or restricting any other right or privilege of the City, the City shall have the following reserved rights and privileges, which may be exercised or waived in its absolute discretion:

- (1) the City may reject any Proposal, the lowest priced Proposal or all Proposals, or may cancel the RFP and require the submission of new Proposals for any reason within its absolute discretion;
- (2) the City is not bound to accept the lowest priced compliant Proposal submitted and may accept another compliant Proposal which, in the City's opinion, is more beneficial to the City's interests notwithstanding that it may not be the lowest priced compliant Proposal;
- (3) when evaluating Proposals and assessing Proposal prices in the evaluation of Proposals and the awarding the Contract, the City will consider its best interests and may exercise reasonable commercial judgment which may, but is not obliged to, include consideration of the following factors (without limitation):
 - (a) Proposal prices;
 - (b) the full lifetime cost implications to the City with respect to each Proposal, including life-expectancy, the inclusion or exclusion of alternate or optional equipment or configurations and the price implications thereof, training or re-training costs, length and scope of warranty coverage, and long-term maintenance requirements;
 - (c) the need to achieve economies of scale in supply;
 - (d) the need to diversify sources of supply;
 - (e) compatibility with existing equipment, such compatibility to be determined by tests conducted either by the City or by an independent

testing agency satisfactory to the City;

- (f) compatibility with existing computer software and hardware, and capability to generate reports suitable to the City's existing reporting requirements; such compatibility and capability to be determined by tests conducted either by the City or by an independent testing agency satisfactory to the City;
- (g) potential cost savings to the City with existing City Contracts and other synergy benefits;
- (h) any extraordinary or unjustified disparity between the lowest priced Proposal and the other Proposals received by the City;
- (i) any prices contained in a Proposal that are, in the opinion of the Procurement Manager, below the Proponent's cost which do not appear to be offset by any other disclosed factors in the Proposal;
- (j) any prices contained in a Proponent's Schedule of Maximum Hourly Rates for Additional Services that are, in the opinion of the Procurement Manager, unreasonable or excessive compared to industry standards for the quality or type of personnel proposed for such Services;
- (k) the need to secure timely and reliable sources of supply;
- (l) the need to discontinue reliance on obsolete technology and methods;
- (m) the need to provide state of the art service to the residents of the City, or to integrate any aspect of City operations with those of its neighbours;
- (n) the need to avoid the use of unproven technology and methodologies;
- (o) the need to spread and minimize risk to the City;
- (p) the proximity of any service centre of a Proponent to the City;
- (q) the benefit in employing suppliers who have a proven track record of successful delivery and good reputation within the business community for integrity and competence;
- (r) the prior record of the Proponent as a vendor to the City;
- (s) whether in the opinion of the City or its professional advisors, the Proponent possesses the experience, or financial, technical, personnel or other resources that may reasonably be expected to be necessary in order to carry out the obligations that the Proponent proposes to assume under the terms of its Proposal;
- (t) alternate Proposals;
- (u) such other considerations as would influence the decision of a reasonable and prudent purchaser in the particular circumstances of the City at the time when the Contract is awarded.

- (4) in awarding the Contract the City may take into account the adherence or non-adherence of a particular Proponent to the social, economic or labour relations policies of the City;
- (5) the City may waive compliance with any minor requirement governing the submission of Proposals;
- (6) where expressly so provided in any Special Provisions or Addendum, the City may:
 - (a) divide the final Contract and award on an individual component, phase or factor basis; or
 - (b) divide the final Contract and award by groups of components, phases or factors, and
 - (c) award the Contract to one or more Proponents, where each submits a substantially similar Proposal (or to require the submission of a final and best offer, in lieu thereof),

as the City may in its discretion consider to be in its best interest;
- (7) where in the view of the City, an insufficient number of Proposals have been received in response to a RFP, the City may publish a further such RFP (on the same or revised terms from the original request);
- (8) the City may, in accepting any Proposal, impose conditions on such acceptance;
- (9) where the lowest priced compliant Proposal exceeds the City's budgeted or estimated costs, the City in its sole and absolute discretion may, but is not obligated to :
 - (a) cancel the RFP;
 - (b) re-issue the RFP and accept new proposals based on revised specifications, terms and/or conditions;
 - (c) provide all Proponents, who submitted compliant Proposals to the RFP by the Closing Time, the opportunity to re-submit Proposals;
 - (d) enter into negotiations with the Proponent with the lowest priced compliant Proposal provided that the changes required to achieve a Proposal acceptable to the City will not materially change the general nature of the specifications, terms and conditions in the RFP;
 - (e) where only one Proposal has been received or only one Proposal is compliant with the RFP but the price is in excess of budgeted funds, proceed to negotiate conditions with such Proponent which will reduce costs to a level acceptable to the City.
- (10) where the Contract is awarded to the Proponent with the lowest priced compliant Proposal, the City may, at its sole discretion, negotiate amendments to the Contract or to Services or materials to be supplied under the Contract and no other Proponent shall have any right to object that its Proposal would

have been lower had the negotiated amendments been included in the original RFP or RFP Notice.

23. Obligation of Suppliers to Deal in Good Faith

- (1) Each Proponent is required to deal with the City in utmost good faith both with respect to the submission of its Proposal and with respect to the performance of any Contract awarded by the City upon the acceptance of that Proposal.
- (2) A Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent or their agent or representative about the preparation of the Proposals. Each Proponent attests that its participation in the RFP process is conducted without any collusion or fraud. If the City discovers there has been a breach of this requirement at any time, the City reserves the right to disqualify the Proposal(s) or terminate any ensuing Contract. Any and all Proponents participating in such discussions or communications, in breach of its obligations herein, shall be responsible for all costs and losses whatsoever that the City may incur as a result and the City may ban such Proponent(s) from competing for City contracts for a period of up to 10 years where, in the reasonable opinion of the Procurement Manager, such breach has resulted in an impairment of the commercial relationship between the City and such Proponent(s).
- (3) Where the Contract is awarded to a Proponent who has made an unauthorized amendment to the City's Form of Proposal, then within a reasonable time of the City discovering that unauthorized amendment, the City may,
 - (a) cancel or terminate the Contract without any compensation whatsoever to the Proponent by giving written notice to that effect to the Proponent; and
 - (b) recover from such Proponent any amounts the City paid to the Proponent and all costs, expenses, damages and losses incurred or accrued by the City as a result of the unauthorized amendment; and
 - (c) ban such Proponent from competing for City contracts for a period of up to 10 years where, in the reasonable opinion of the Procurement Manager, the change was made by the Proponent as part of a deliberate attempt to deceive and such deception has resulted in an impairment of the commercial relationship between the City and such Proponent.
- (4) Where in the reasonable opinion of the Procurement Manager it is determined that,
 - (a) on any one or more occasions a Proponent has at any time:
 - (i) unlawfully or unreasonably threatened, intimidated, harassed, or otherwise interfered with an attempt by any other prospective supplier or Proponent to bid for a City contract or to perform any Contract awarded by the City to that supplier or Proponent;
 - (ii) unlawfully or unreasonably threatened, intimidated, harassed, or

otherwise interfered with an official, employee, representative, agent or Independent Consultant or contractor of the City in the performance of his or her duties or in any way attempted to influence such persons;

- (iii) assaulted or committed battery against any official, employee (including any constable, officer or other employee of Hamilton Police Services), representative, agent or Independent Consultant or contractor of the City in the performance of his or her duty;
 - (iv) deliberately retained a known over-payment, or has knowingly failed to notify the City of an over-payment or duplicate payment, or was wilfully blind to same;
- (b) a Proponent has on one or more occasions, in the performance of a contract with the City (including the former Regional Municipality of Hamilton-Wentworth, or any local municipality which formed part of the Regional Municipality of Hamilton-Wentworth) deliberately, with wilful blindness or negligently, save and except an inadvertent error corrected to the satisfaction of the City within a reasonable time, as determined by the City,
- (i) over-billed or double-billed;
 - (ii) charged for items not supplied;
 - (iii) charged for items of one grade, while supplying items of an inferior grade;
 - (iv) made a misrepresentation as to the quality or origin of Goods, their functionality or suitability for a purpose, or their performance characteristics;
 - (v) acted in a conflict with the interests of the City;
 - (vi) misappropriated any property or right of the City, in any form; or
 - (vii) committed any other form of sharp or deceptive practice,

the City may ban the Proponent and any person with whom the Proponent is not at arm's length within the meaning of the *Income Tax Act* (Canada) (without limiting the foregoing, it shall also include a shareholder, partner, officer, director or managerial or supervisory level employee of the Proponent or any other person directly involved in such act or omission), from competing for City contracts for a period of up to 10 years where such act or omission has resulted in an impairment of the commercial relationship between the City and such Proponent in the opinion of the Procurement Manager.

24. Record and Reputation

See the City of Hamilton Purchasing Policy for specific requirements and obligations at:

hamilton.ca/Procurement/PurchasingPolicyBylaw

25. Review of Proposals

- (1) All Proposals submitted by the Closing Time of the RFP will be examined by a representative of the City's Purchasing Section to confirm that they are compliant and otherwise complete, subject to the City's exercise of any right or privilege contained in this RFP. Proposals which are complete and compliant will be evaluated in accordance with the provisions of the RFP, subject to the City's exercise of any right or privilege contained in this RFP. The City reserves the right to examine the compliance and completeness of Proposals in phases.
- (2) At its sole discretion, the City may clarify any aspect of any Proposal received at any time and, without limiting or restricting the foregoing general right in any way, the purpose of such clarification may be to enable the City to determine whether the Proposal complies with the RFP and to resolve any ambiguity in the language used, or any other vague or uncertain aspect of the Proposal. No such clarification shall alter the Proposal or constitute negotiation or re-negotiation of the price or any aspect thereof, or the nature or quality of the Goods or Services to be supplied or performed as set out in the Proposal at the close of the RFP, and all correspondence with a Proponent for the purposes of such clarification shall be conducted through the Procurement Section.
- (3) Where the lowest compliant Proposal contains an otherwise legible, clear and unambiguous change such as an erasure, strike out, white out, cross out or overwrite which has not been initialled, the Proponent will be required to initial such change within one Business Day of the City's request. Failure to comply with the City's request within the time line provided, will result in the rejection of the Proposal and the Proponent shall be a banned from entering into or bidding on any contracts with the City for a period of one year in accordance with the City's Purchasing Policy.
- (4) Without limiting subsection (2), the City's right to clarify shall include the right to request additional information relating to the terms of the Proposal submitted.
- (5) The right of clarification provided under this section is within the sole, complete and unfettered discretion of the City and is for its exclusive benefit, and may or may not be exercised by the City at any time and in respect to any or all Proposals.
- (6) Notwithstanding the City's right to request clarification, the City shall have no obligation whatsoever to do so. Where in the opinion of the City a Proposal or any part thereof is ambiguous, incomplete, non-compliant, deficient, or otherwise not acceptable in any aspect, the City may reject such Proposal whether clarification has been sought, obtained or neither.

- (7) The City's review of a Proponent's submission with a Proponent or its seeking of clarification under this section shall not, in any way, be deemed to be an acceptance of any term or provision so clarified or be deemed to be an acknowledgement of the compliance of the Proposal with the terms of the RFP; shall not constitute an acceptance of that Proposal or any other Proposal; and shall not oblige the City to enter into an Contract with that Proponent or any other Proponent.
- (8) All clarifications provided by a Proponent pursuant to a request by the City under this section shall be in writing, in a clear and unambiguous form satisfactory to bind the Proponent, and satisfactory to the City.
- (9) Any Proponent may be required to meet with officials of the City within 30 days of being so requested to explain details of the submission, at a place in Hamilton specified by the City, and the Proponent shall bear all costs of its attendance and the attendance of any of its representatives at such meeting including but not limited to transportation to and from the meeting.

26. Rejection of Proposals By City

- (1) At its discretion, the City may (but shall not be obliged to) reject any Proposal that does not,
 - (a) comply with this RFP or any Addenda thereto; or
 - (b) contain in full all information required by this RFP, including all Appendices and all Addenda thereto.
- (2) The City may reject any Proposal submitted by a Proponent or cancel any contract awarded to that Proponent without any compensation whatsoever payable to the Proponent, where any information provided by the Proponent in its Proposal or as part of any pre-qualification procedure is determined by the City, in its sole opinion, to be false or otherwise misleading in any material respect.

27. Guidelines Regarding Proposal Irregularities

As a guide to the Proponent, but without qualifying any rights and privileges reserved to the City, the Proponents Guidelines set out below is indicative of the manner in which discretion reserved by the City is to be exercised with respect to non-compliant Proposals. However, the City shall not be liable to any Proponent or other person where it elects to exercise a discretion, reserved privilege or right in a manner different from that indicated below.

PROPONENTS GUIDELINES		
IRREGULARITY		RESPONSE
1.	Late Proposal	A late Proposal will not be accepted and will be returned unopened to the Proponent, at the Proponent's cost.
2.	Unsealed Proposal.	An unsealed Proposal will not be accepted.
3.	Form of Proposal not submitted in its entirety. Proposals not legible, in ink or in English.	Automatic rejection.

PROPOSERS GUIDELINES		
	IRREGULARITY	RESPONSE
4.	Part Proposal: (a) all required sections in Form of Proposal not completed. (b) Unit Price Proposal: (i) Unit Price missing. (ii) Lump Sum Price missing. (c) Total Contract Price Proposal (i) Total Contract Price missing (ii) Provisional Item price missing	Automatic rejection. Automatic rejection. Automatic rejection. Automatic rejection. Automatic rejection.
5.	Qualified or conditional Proposal (A Proposal restricted by a statement added to the Form of Proposal or a covering letter or alterations to the Form of Proposal).	Automatic rejection unless the Request for Proposals specifically permit such qualification or condition.
6.	Execution of Form of Proposal by Proponent: Original signature of Proponent missing.	Automatic rejection.
7.	Failure of Proponent to complete page totals or the summary page, or both, on the Form of Proposal.	The Proposal will not be rejected as these are for administrative purposes only.
8.	A Proposal received on documents other than those documents supplied by the City in the Request for Proposals package.	Automatic rejection unless a Proposal is received on a true reproduction of the documents supplied by the City in the Request for Proposals package.
9.	All erasures, changes, overwriting, whiteouts, cross outs or strikeouts which have not been initialled, but are otherwise legible, clear and unambiguous, regarding the following on the Form of Proposal: Unit Price or a Lump Sum Price in a Unit Price Proposal; and Total Contract Price or a Provisional Price in a Total Contract Price Proposal.	The lowest compliant Proponent will be required to provide the missing initials within one Business day of being requested to do so by the City. Failure to provide the missing initials will result in a rejection of the Proposal and a one year ban against the Proponent.
10.	Proposal Security: Amount of Proposal Security provided by Proponent is insufficient, does not name correct Municipality as obligee, or no Proposal Security is provided or is not otherwise in compliance with the Request for Proposals requirements.	Automatic rejection.
11.	Execution of Proposal bond: Corporate seal or original signature of Proponent, or both, are missing. Corporate seal or original signature of bonding company, or both, are missing.	Automatic rejection. Automatic rejection
12.	Other irregularities.	An irregularity that goes beyond the scope of the Proposers Guidelines set out below shall be considered by the Procurement Manager.

28. Brand Name

- (1) Any reference to the trade name, brand name or catalogue number of a particular Manufacturer shall be understood to have been made solely for the purpose of establishing and describing general performance and quality levels of the item to be supplied, unless specified otherwise.
- (2) No reference to the trade name, brand name or catalogue number of a particular Manufacturer shall be construed to restrict Proposers to that Manufacturer, but Proposals shall be deemed to be invited for generic no-

name equals and comparable equipment of any Manufacturer.

- (3) Despite subsection (2), if an item other than the one specified is proposed, it is the Proponent's responsibility to demonstrate that the product proposed meets the specifications identified in the Contract Documents, and the Proponent shall submit brochures and samples upon request and provide full specifications in detail on the item(s) proposed. The City shall be the sole judge (in its absolute discretion) as to whether an item bid meets its specifications.

29. Standard of Care

- (1) The standard of care for all professional engineering, consulting and related services performed or furnished by the Successful Proponent and its employees under this Agreement will be the care and skill ordinarily used by members of the Successful Proponent's profession.

30. Security Clearance

- (1) Where the RFP involves the performance of work in secure, sensitive or similarly restricted areas, or with respect to computer data or other information that relates to matters of public security, tax records or records relating to investigations carried out with a view to prosecution under any Federal or Provincial Act or Regulation or under any City By-law, each Proponent and its executive officers, and all employees (including supervisors) directly involved in the performance of that work must consent to a security clearance check and report thereon performed by the Hamilton Police Services or other appropriate Federal, Provincial or City security vetting agency.
- (2) Where subsection (1) applies any award of a contract to a Proponent will be subject to the receipt of a satisfactory security report, the sufficiency of which shall be at the sole discretion of the City.
- (3) Where a Consent to Disclosure of Personal Information Form is included with the package of documents provided by the City to Proponents, that Form must be completed and returned to the City by the time stated in order to,
 - (a) obtain admission to any mandatory or other site visit at any secure, sensitive or similarly restricted site;
 - (b) permit due consideration to be given to any Proposal submitted by the Proponent
- (4) In the event that a satisfactory security clearance is denied to an applicant employee or subcontractor of the Proponent, the City will entertain the submission of applications from alternate applicants, but subject to the same security clearance requirements.
- (5) Any significant change in the security clearance or classification of a Proponent over the life of the Contract may afford grounds for cancellation of the Contract, that decision to be at the sole discretion of the City.

31. Observance of Laws, Statutes and Regulations

The Successful Proponent shall comply with and conform to Laws applicable to the C11-12-12
Consultant Services Required for the Citizen Engagement of Values Based Infrastructure Management

Services to be provided by, and the responsibilities and obligations of, the Successful Proponent under the Contract.

32. General Contract Provisions

- (1) With respect to the RFP Documents,
 - (a) no modification, qualification, restriction or limitation whatsoever of any term, condition, covenant, warranty shall be permitted by any Proponent. The City reserves the right, in its absolute discretion, to modify any term, condition, covenant, warranty by express provision by the issuance of an Addendum or Addenda to that effect;
 - (b) all Proponents shall, by submitting a Proposal, be deemed to accept, without modification, qualification, restriction or limitation, all terms, conditions, covenants, warranties and any modifications to same by the City in any Addendum or Addenda; and
 - (c) upon award of the Contract, the Successful Proponent shall be bound to all of the terms, conditions, covenants, warranties and any modifications to same by the City in any Addendum or Addenda.
- (2) The Proponent whose Proposal the City is recommending for the award of the Contract shall provide the insurance and security as required by the RFP Documents, within ten (10) Business Days of the City's notification of such, and, in any event, prior to the commencement of the Services.

33. Insurance Requirements

- (1) Throughout the term of the Contract (including any renewal thereof), the Successful Proponent shall obtain and maintain at its own expense, including the cost of any applicable deductible, the following policies of insurance.
 - (a) Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily injury and personal injury liability, property damage, products liability, completed operations liability, owners & contractors protective liability, blanket contractual liability, premises liability, broad form property damage, employer's liability and voluntary compensation and contingent employer's liability coverage, having an inclusive limit of not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Coverage shall be included for injury/loss/damage, due to pollution arising from "hostile fires".
 - (b) Standard Form Automobile Liability Insurance that complies with all requirements of the current legislation of the Province of Ontario, having an inclusive limit of not less than \$2,000,000 (if any of the situations outlined below under (i) through (iv) apply, then the limit is increased accordingly (\$5,000,000 or \$10,000,000)) per occurrence; for Third Party Liability, in respect of the use or operation of vehicles owned, operated or leased by the Successful Proponent for the provision of services;

- (c) Non-Owned Automobile Liability Insurance in standard form having an inclusive limit of not less than \$2,000,000 per occurrence in respect of vehicles not owned by the Successful Proponent, that are used or operated on its behalf for the provision of services under the Contract;
 - (d) Umbrella and/or Excess Liability Insurance policies may be applied to increase liability limits. Certificate(s) of insurance must specify the underlying policies to which the umbrella/excess coverages apply and indicate any applicable aggregates.
 - (e) Errors & Omissions Liability Insurance having a limit of not less than \$1,000,000 per claim; or alternatively, the successful proponent shall purchase and maintain in force for the duration of the project, single project Professional Errors & Omissions Liability Insurance with limits dedicated to the project and having an inclusive limit of not less than \$1,000,000 per claim. If the Project or Work involves construction, the coverage will include a two-year maintenance period following substantial performance.
- (2) The Successful Proponent shall maintain Property Insurance, as may be applicable, with respect to loss or damage (including fire, theft, burglary, etc.) of its own property and property in its care, custody and control, including but not limited to its equipment, tools, stock, used in connection with the Contract.
- (3) All policies of insurance within the scope of subsection (1) shall, subject to the terms of the indemnity provisions,
- (a) be recorded as being a primary policy and shall be in a form and issued by an insurance company satisfactory to the City, that is licensed to carry on business in Ontario;
 - (b) show all values in Canadian Funds;
 - (c) be maintained continuously during the course of carrying out the Project, Work or Supply; or for such period of time as may be required after completion of the Project, Work or Supply, as deemed necessary by the City.
 - (d) provide for a deductible amount of no greater than \$10,000; or such other amount as the City, at its sole discretion, may deem appropriate.
 - (e) (except in the case of automobile liability insurance, non-owned automobile liability insurance, professional errors & omissions liability insurance, and medical malpractice liability insurance) include the City named as an additional insured, to the extent of the Successful Proponent's obligations to the City under the Contract Documents;
 - (f) contain cross liability and severability of interest provisions, as may be applicable;
 - (g) preclude subrogation claims against the City and any other person insured under the policy; and
 - (h) provide that at least 30 days prior written notice (15 days, in the case of automobile liability insurance, and 10 days in the event of non-payment of premiums) shall be given to the City by the Insurer before the Insurer or Successful Proponent takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof.
- (4) The City reserves the right to require the Successful Proponent to purchase

such additional insurance coverage as the City's Risk Management Services Office may reasonably require. The City reserves the right to request such higher limits of insurance or otherwise alter the types of coverage requirements due to material or significant change arising from such matters as the nature of the work, contract value, industry standards, and availability of insurance) as the City may reasonably require from time to time.

- (5) Any insurance coverage acquired under the Contract shall in no manner discharge, restrict or limit the liabilities assumed by the Successful Proponent under the Contract. The dollar limit of insurance coverage shall not be limited by the dollar amount of the Contract.
- (6) The Successful Proponent shall pay all premiums on the policies as they become due provided that the City may pay premiums as they become due and deduct the amount thereof from moneys due from the City to the Successful Proponent should the Successful Proponent fail to do so.

34. Proof of Insurance and Claims Protocol

- (1) The Successful Proponent shall deposit with the City such evidence of its insurance as provided in or required under the provisions of these Instructions, an Addendum or the Special Provisions,
 - (a) at the time of execution of the Contract, or
 - (b) in any event prior to commencing the Project, Work or Supply; or
 - (c) upon notification by the City of the recommendation of the Proponents' Proposal for the award of the Contract, and thereafter during the term of the Contract, no later than 20 Business Days prior to the renewal date of each applicable policy, the Successful Proponent shall deposit with the City's Procurement Manager an original Certificate of Insurance originally signed by an authorized insurance representative, confirming thereon relevant coverage information including but not limited to name/description of City contract, name of insurer, name of broker, name of insured, name of additional insureds as may be applicable, commencement and expiry dates of coverage, dollar limits of coverage, deductible levels as may be applicable, cancellation/termination provisions; or (at the City's election) a certified copy of the insurance policy or policies required under section 23 certificate holder will be addressed as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address.
- (2) The Successful Proponent shall not do or omit to do anything that would impair or invalidate the insurance policies.
- (3) Delivery to and examination or approval by the City of any certificates of insurance or policies of insurance or other evidence of insurance shall not relieve the Successful Proponent of any of its indemnification or insurance obligations under the Contract. The City shall be under no duty either to ascertain the existence of or to examine such certificates of insurance or policies of insurance or to advise the Successful Proponent in the event such insurance coverage is not in compliance with the requirements set out in the

Contract.

- (4) Claims reported to the Successful Proponent by a third party or by the City shall be promptly investigated by the Successful Proponent. The Successful Proponent shall make contact with the claimant within 48 hours of receipt of notice of a claim. The Successful Proponent shall initiate an investigation of the claim immediately upon notice, and advise the claimant by letter of its position regarding resolution of the claim within 20 Business Days of the notice. The Successful Proponent shall include in its letter of resolution the reasons for its position. Failing acceptance of the resolution by the claimant of the proposed resolution, the Successful Proponent agrees to report the claim to its Insurer for further review and response to the claimant. Failure to follow this procedure shall permit the City to investigate and resolve any claims and offset the resultant costs against any monies due, from time to time, under the Contract.

35. WSIB

- (1) The Successful Proponent prior to commencing the Project, Work or Supply,
 - (a) shall submit to the City an original Clearance Certificate from the Ontario Workplace Safety and Insurance Board and shall provide additional certificates with respect to such coverage as often as the City deems necessary during the term of the Contract to ensure continued good standing with the Workplace Safety and Insurance Board; or
 - (b) furnish proof in a form satisfactory to the City from the Workplace Safety and Insurance Board that the Successful Proponent does not require Workplace Safety and Insurance Board insurance, but in such a case if the Successful Proponent changes its status during the term of the Contract so that such coverage is required, the Successful Proponent shall immediately provide the City with the certificate required under clause (a).
- (2) Where a substantial portion of the work to be done under the Contract is to be carried out by a Sub-Consultant, the City may require the Successful Proponent to furnish the same evidence as provided under subsection (1).

36. Non – Performance

The City reserves the right to determine of non-performance or poor quality of Services and/or Works and goods. The opinion of the City in this regard shall be final in all instances.

37. Indemnification

- (1) Subject to any indemnities provided in any executed agreement between the City and the Successful Proponent, the Successful Proponent shall indemnify, defend, and hold the City (including its officials, officers, directors, employees, agents, affiliates, and representatives) [collectively referred to as the “Indemnified Party”] harmless against any and all claims, demands, costs (including legal costs on a substantial indemnity basis), penalties, fines, fees, royalties, damages (including indirect, special, remote, and/or consequential damages) and causes of action, including, without limitation, proprietary or

personal injury (including death) that arise from, either directly or indirectly, or relate to, any act or omission of the Successful Proponent, its officials, directors, officers, employees, agents, affiliates, partners (general or limited), joint venturers, contractors, Sub-Contractors, and other representatives, in connection with the Successful Proponent's responsibilities pursuant to this RFP and all Contract Documents, including without limitation, the provision of any and all Goods and Services, as well as any patent, trademark, or copyright infringement or breach of any intellectual property right, except to the extent that same was caused by the negligence or wilful misconduct of the Indemnified Party.

- (2) City shall notify the Successful Proponent upon receipt of any such claim or demand that it receives. No settlement shall be made nor consent to judgment given without prior written approval of Successful Proponent and its insurers, which approval shall not be unreasonably withheld.
- (3) The rights to indemnity contained herein shall survive the early termination or expiry of any Contract arising pursuant to this RFP.
- (4) The City may enforce the rights of indemnity conferred on the elected officials, officers, employees, and affiliates of the City under subsection (1) on their behalf and to the same extent as if they were parties to the Contract.
- (5) The rights to indemnity provided for in this section shall be deemed to be in addition to any rights with respect to insurance in favour of the Indemnified Party provided in the Contract Documents.

38. Patents and Copyrights

- (1) The Successful Proponent shall defend, indemnify and save harmless the City from all and every claim for damages, royalties, or fees for the infringement of any patented invention or copyright occasioned by them in connection with work done or material furnished by them under the Contract.
- (2) No illegal commerce or gray market Goods shall be supplied to the City, and every person supplying Goods or Goods and Services to the City shall be deemed to have warranted that they are genuine and lawfully supplied.

39. Warranties of the Successful Proponent

Each Proponent shall be deemed to have expressly warranted upon the submission of its Proposal as follows:

- (1) The Proponent:
 - (a) if a corporation: is a duly incorporated, organized and subsisting corporation and has all requisite powers, capacities, authorities, permits, licences and permissions under its governing legislation and any other Laws applicable to it, and under its Articles of Incorporation and by-Laws under which it is organized, to carry on all businesses in which the Successful Proponent is engaged; and enter into, exercise its rights and perform and comply with its responsibilities and obligations under the Contract Documents; and that all actions, conditions and things have been done, taken or fulfilled with respect thereto, that are

required by Law, contract or otherwise; or

- (b) if other than a corporation: is duly registered as a business under all applicable legislation, and as such has all requisite powers, capacities, permits, licences and permissions under its governing legislation and the other Laws applicable to it, to carry on all businesses in which the Successful Proponent is engaged; enter into, exercise its rights and perform and comply with its obligations under the Contract Documents; and that all actions, conditions and things have been done, taken or fulfilled with respect thereto, that are required by Law, contract or otherwise.
- (2) The Proponent and its Sub-Consultants and the respective workforce of each are fully qualified to perform the Services and to perform the Contract and hold all requisite permits, licences, franchises and other authorizations required by this RFP, and by Law, contract and otherwise with respect thereto.
 - (3) The Proponent is not a party to any Contract under the terms of which the Proponent is prohibited or restricted from entering into any of the obligations assumed, liabilities imposed, or restrictions accepted by the Successful Proponent under the Contract Documents.
 - (4) To the best of the Proponent's information and belief and after making diligent inquiries,
 - (a) the information concerning the business, affairs and financial and other condition of the Proponent that are contained in all documents, memoranda, records, statements made, sent or given by the Proponent to the City prior to entering into the Contract, and in its current regulatory filings, are true and accurate in all material respects; and
 - (b) the Proponent is not aware of any material facts or circumstances having a bearing upon its ability to perform its obligations under the Contract which have not been disclosed to the City in writing.
 - (5) The Proponent shall forthwith advise the City in writing in the event it becomes aware of any material fact or circumstance which may arise, at any time, that may have a bearing upon its ability to perform or assume its obligations under the Contract.

40. Covenants of each Proponent

In addition to its other responsibilities and obligations under the Contract, the Successful Proponent expressly agrees and covenants as follows:

- (1) The Successful Proponent shall
 - (a) perform all of the Services identified in the Terms of Reference, as well as all other Services identified or otherwise contemplated in the Contract Documents and provide all things necessary to perform same;
 - (b) furnish all Services, labour, Goods, materials, equipment, facilities and all incidentals to undertake, perform and complete its undertakings, obligations and responsibilities;

- (c) pay all applicable Taxes (other than GST) and all other charges as specified, including payment of required fees under the WEEE Program; and
- (d) fully, properly, skilfully, diligently and in good faith undertake, perform and complete all of the Successful Proponent's duties, obligations and responsibilities under the Contract,

in full accordance with the Contract in a good professional manner, according to the best standards of practice of the industry, profession or trade in which the Successful Proponent carries on business (including any applicable standards of professional conduct) and with all due diligence.

- (2) The Successful Proponent shall employ properly qualified and experienced workers to carry out or Supply all Services or Work required under the Contract, and shall cause its Sub-Consultants to do the same.
- (3) The Successful Proponent shall have an adequate work force with proper equipment in good working condition, and shall have ready access to all materials, equipment and accessories required to perform its obligations under the Contract in a diligent and timely manner, and shall cause its Sub-Consultants to do the same.

41. Time for Completion

- (1) Subject to any Addendum, the occurrence of any Force Majeure or any executed agreement between the City and the Successful Proponent to the contrary, the Successful Proponent shall
 - (a) commence the provision of Services by the start date specified, or within the time provided in the Contract, and
 - (b) complete fully the provision of Services with due expediency and due diligence by the date specified in the Contract or otherwise as stipulated by the City.
- (2) Where a Force Majeure occurs, the City shall determine in its reasonable discretion the number of days (if any) to be allowed by reason thereof in accordance with the force majeure provisions of the RFP Documents. The Successful Proponent may propose a number of days to be allowed for this purpose which the City will consider but shall not be bound to. Where the City rejects the Proposal made by the Successful Proponent, it shall provide a written explanation for so doing.
- (3) The Successful Proponent shall prepare and submit to the City a Services and Work schedule that indicates the timing of the major activities relating to the Project and provides sufficient detail of the critical events and their inter-relationship to demonstrate the same will be performed in conformity within the time provided in subsection (1).
- (4) Where the Successful Proponent fails or neglects to commence or to proceed with the provision of Services diligently and at a rate of progress that in the opinion of the City will ensure entire completion within the time provided for in the Contract or fails to meet a time requirement provided for in the Contract,

the City shall be entitled to recover from the Successful Proponent all losses, damages and expenses incurred by the City or may be incurred by the City by reason of such default by the Successful Proponent.

42. Time Is Of the Essence

Time is of the essence of this Contract and if the Successful Proponent fails to perform its obligations at the time fixed for performance under the terms of the Contract, the City may elect to terminate this Contract.

43. Delay

Without limiting any other rights or privileges of the City in the Contract with respect to delay, the Successful Proponent is not entitled to and releases and waives any rights to any remedies, damages (including special and consequential damages), expenses, costs (including legal costs), penalties or any other compensation, including any claims, actions or other legal proceedings, whether directly or indirectly related to any delays on the part of the City with respect to the following:

- (1) awarding of the Contract; and/or
- (2) providing notification to the Successful Proponent of award of the Contract; and/or
- (3) the commencement of the Successful Proponent's Services.

44. Modifications of Methods and Equipment

The Successful Proponent shall make such alterations in its methods, equipment and working forces, as the City in writing directs, without cost to the City, if at any time the methods or equipment or working force are found by the City to be: not in compliance with the requirements of the Contract; unsafe; or inadequate to ensure the protection, safety, or quality of the Services, Work or Project or to ensure a rate of progress sufficient in the reasonable opinion of the City to fully complete the Services or Work within the completion time required under the Contract or with due diligence.

45. Use of City Property and Character and Conduct of Employees

- (1) Where any part of the Services is to be carried out on property owned or occupied by the City, the Successful Proponent shall,
 - (a) use that property and require its employees and Sub-Consultants to use that property, only for such purposes as are reasonably within the scope of the Contract;
 - (b) refrain from committing waste on that property and use reasonable care to avoid causing any damage to any person or thing on that property or any neighbouring property;
 - (c) employ only orderly, experienced and competent persons to perform work or Services; and
 - (d) comply, and cause its agents, directors, officers, employees and Sub-Consultants to comply, with the City's zero tolerance of violence policy.

- (2) The Successful Proponent and its employees, agents, servants and Sub-Consultants shall neither bring onto nor allow the introduction or use of tobacco (except in strict compliance with the City's Smoking By-law), alcohol or illegal narcotics or controlled substances or any paraphernalia associated with any of these substances, upon any City property.
- (3) The Successful Proponent agrees to accept the Project site in its present condition and acknowledges and agrees that the City has not given any representation, warranty or condition, express or implied, in fact or by Law, as to the state, quality or condition in, on, or of the site, whether with respect to environmental matters or otherwise, or as to any other matter or thing, whether or not related to the foregoing. Furthermore, the Successful Proponent assumes any and all risks relating to the physical condition of the site. Neither the Successful Proponent nor any permitted occupant shall have any recourse to the City as a result of the nature or condition of the Project site, whether or not the City has or had actual or imputed knowledge of such nature and condition as at the Contract commencement date or at any other time during the term of the Contract.

46. Conflict of Interest, etc.

- (1) In performing the duties, providing advice and exercising all other rights and discretion associated with its role as a contractor, the Successful Proponent shall,
 - (a) act diligently, honestly and in good faith and in the best interests of the City;
 - (b) to the best of its ability make every effort to promote the interests and reputation of the City; and
 - (c) to the best of its ability assist the City in achieving its objectives and goals.
- (2) The Successful Proponent shall act ethically and fairly in all of its dealings with the City and all elected officials, officers, employees and Independent Consultants of the City, and co-operate with them in respect of the discharge of their duties to the City.
- (3) In performing any Services for or on behalf of the City, the Successful Proponent shall act in strict compliance with all applicable Laws and conform to the rules of conduct and performance of any trade association or professional regulatory body of which the Successful Proponent is a member or which otherwise governs the provision of such kind of Services.
- (4) The Successful Proponent shall not act in any case where there may be any conflict of interest between it (or any of its directors, officers, employees) and the City. The Successful Proponent shall notify the City of and fully disclose to the City, in writing and immediately upon same becoming known to the Successful Proponent, any potential or actual conflict of interest that may arise or has arisen prior to the execution of this Contract or during the performance of its duties under the Contract.
- (5) If the City determines that a conflict of interest exists, the City may, at its sole

discretion, suspend or defer the Work and/or the Services until the conflict is removed to the satisfaction of the City or terminate the Services of the Successful Proponent. If, during the course of the Work and/or the provision of Services, the Successful Proponent is retained by another client for a new assignment, giving rise to a potential conflict of interest, then the Successful Proponent shall so inform the Project Manager immediately. If the Project Manager determines that a conflict of interest exists, the Successful Proponent shall refuse the new assignment or shall take such steps as are necessary to remove the conflict of interest and, where the Successful Proponent fails to do this within a reasonable time, the City may terminate the Services of the Successful Proponent. The Successful Proponent shall be responsible and indemnify the City for all of the City's costs, expenses, losses and damages whatsoever which may be incurred or arise as a result of the Successful Proponent's breach of its obligations herein including but not limited to all costs incurred to replace the Services of the Successful Proponent, all delay costs, legal and other professional service costs, and lost revenue and opportunities.

- (6) Without limiting the foregoing provisions, except with the prior written consent of the City,
- (a) the Successful Proponent shall not act on behalf of the City with respect to any issue or in connection with any property in which the Successful Proponent or any director, officer or employee of the Successful Proponent has a direct or indirect pecuniary interest, including any contingent interest;
 - (b) before accepting any retainer to act on behalf of the City, the Successful Proponent shall exercise reasonable due diligence to confirm that there is no conflict of interest within the contemplation of this section;
 - (c) the Successful Proponent shall accept no commission, gratuity or other payment of any kind from any person, other than the City's payment for Services in accordance with the Contract, in respect of its performance or intended performance, duties or exercise or intended exercise of any influence, power or discretion associated with its provision of consulting Services to the City; and
 - (d) within two years of the date of providing the City with site specific advice or otherwise performing consulting Services on behalf of the City relating to any identifiable piece of land within the City (or any building or structure upon such land), the Successful Proponent shall not enter into any Contract with any other person under which the Successful Proponent or any director, officer, employee or nominee of the Successful Proponent may acquire any interest in that land (or building or structure).
- (7) This section shall apply to all Sub-Consultants of the Successful Proponent with necessary modifications.

47. Assignment and Sub-Consulting

Without limiting or restricting any other obligation or responsibility of the Successful Proponent under the Contract:

- (1) It shall be the Successful Proponent's responsibility to co-ordinate, control and check the Services or Work of its own forces and of all its Sub-Consultants and to ascertain that all Work and Services are performed in accordance with all Contract, governing regulations and the general standards of good commercial practice and professionalism as understood in Ontario, assuring only first class workmanship, and using only proper materials and methods as are suited to the function and performance intended.
- (2) The Successful Proponent shall be responsible for faithful and proper performance of the Contract.
- (3) Neither the City nor the Project Manager shall be construed to have any contractual relationship with any of the Successful Proponent's employees or Sub-Consultants.
- (4) No sub-contracting by the Successful Proponent shall relieve the Successful Proponent of any responsibility for the full performance of all obligations of the Successful Proponent under the Contract. Notwithstanding the approval of any Sub-Contractors by the City, the Successful Proponent shall be fully responsible for every Sub-Contractor's activities, works, Services and acts or omissions and shall either, in person or through an accredited agent, receive all notices, communications, orders, directions, instructions or legal services as if the Successful Proponent were performing the sub-contracted portion of the Services with its own resources.
- (5)
 - (a) The City of Hamilton's Barrier Free Design Guidelines 2006, as amended from time to time, shall be incorporated into all newly constructed, renovated and retrofitted buildings owned, leased or funded (partially or fully) by the City of Hamilton. Compliance is a condition upon which Site Plan approval and building permit will be issued. These Standards are to be used as minimum requirements to the design and construction of new and renovated buildings, parks, and facilities within the City of Hamilton. The prime Consultant shall comply with the Ontarians with Disabilities Act, 2001, S.O. 2001, Chapter 32, and Accessibility for Ontarians with Disabilities 2005, as amended, in the performance of its Services.
 - (b) Where minimum accessibility standards in the Ontario Building Code exceed the standards set out in the:
 - (i) City of Hamilton's Barrier Free Design Guidelines; and
 - (ii) Ontarians with Disabilities Act, 2001, S.O. 2001, Chapter 32; and
 - (iii) Accessibility for Ontarians with Disabilities 2005.The requirements of the *Ontario Building Code* will take precedent and apply.
- (6) Without limiting the foregoing, the Successful Proponent shall be responsible for complying with the Occupational Health and Safety Act (OHSA) throughout the term of the Contract and the City shall in no way be considered the constructor with respect to any part of the Project or Services for the purposes of the OHSA.

48. Project Identification

The Successful Proponent shall not use the City's logo or other insignia identifiable with the City without the prior written approval of the City.

49. Liens to Be Discharged

The Successful Proponent shall pay punctually all amounts owing to its suppliers in respect of all services and materials supplied by them with respect to the Contract, including any applicable interest, taxes, costs and other charges, and shall forthwith cause every lien preserved or perfected by any person with respect to the Contract or the subject matter of the Contract to be vacated or discharged, and as between the Successful Proponent and City all costs relating thereto shall be paid by the Successful Proponent and shall be at its expense.

50. Ownership of Documents, Use of Designs, etc.

- (1) All maps, drawings, plans, specifications, computer disks and other documents,
 - (a) provided by the City to a Proponent shall remain the property of the City and shall be returned by the Proponent to the City (whether or not the Proponent submits a Proposal) upon demand by the City for their return; or
 - (b) prepared by the Proponent as part of its Proposal shall be the property of the City and may be disposed of by the City as it considers fit.
- (2) Unless the City otherwise agrees in writing, where any plan, drawing or design is provided by a Proponent in connection with an RFP, then the submission of a Proposal by the Proponent shall be deemed to constitute a licence by that Proponent to construct one sample model of the work or project contemplated based upon that plan, drawing or design, where such a sample is required to make an informed decision concerning the attractiveness, functionality or other merit of the plan, drawing or design in question. The licence conferred herein shall not be deemed to constitute an assignment of any patent, copyright, trade mark or other intellectual property of the Proponent, unless otherwise provided in the RFP.

51. Deviation from Contract Documents and "Good Practice"

- (1) The Successful Proponent shall not deviate from the Contract without the prior consent of the City in writing.
- (2) The Successful Proponent covenants that it shall inspect, and shall cause all of its Sub-Consultants to do so as well, all elements, parts, items or surfaces affecting or involving their work and inform the City immediately, in writing, of any and all deviations from the drawings and specifications approved by the City and/or from accepted good practice and standards involving or affecting their work. Without limiting the Successful Proponent's obligations and responsibilities under the Contract, neither the Successful Proponent nor any of its Sub-Consultants shall proceed with their work if these deviations will influence or affect the appearance or quality of their work or any aspect of the Project until same are corrected by the Successful Proponent. The Successful

Proponent shall bear the cost of any delay caused by a deviation by it or any of its Sub-Consultants from the Contract or any accepted practice or standard required under the Contract, without the prior consent of the City. Nothing herein shall alter or derogate from the responsibility of the Successful Proponent under the Contract.

52. Successful Proponent's Default and City's Remedies

- (1) The provisions of this section are in addition to any other rights, privileges and remedies to which the City is entitled by Law, in equity or otherwise in the Contract.
- (2) The following shall constitute, without limitation, Acts or Events of Default ("Default") by the Successful Proponent (including any of its employees, officers, agents, partners or any other representative performing Work or Services pursuant to, or otherwise connected with, the subject matter of the Contract Documents:
 - (a) where the Successful Proponent fails or neglects to commence or to proceed with the provision of Services diligently and at a rate of progress that in the opinion of the City will ensure entire completion within the time provided for in the Contract;
 - (b) where the City determines reasonably that the Successful Proponent has abandoned its duties with respect to the Project or failed to observe and perform any of the provisions of the Contract, the determination of which the City shall be the sole judge;
 - (c) where the Successful Proponent publicly disparages the City, its Councillors and/or its officers, directors or employees;
 - (d) where the Successful Proponent has made any material misrepresentation with respect to the Contract;
 - (e) where the Successful Proponent fails to prosecute the Services with the required skill and diligence;
 - (f) where the Successful Proponent fails to comply with and maintain in good standing any insurance policies, professional certificates, permits, licences or approvals required by the Contract or commits any acts or omissions that jeopardizes or may jeopardize these policies, permits, licences or approvals;
 - (g) where the Successful Proponent fails to comply with or observe or perform, or breaches or violates, any provision, term, covenant, warranty, condition, responsibility and/or obligation of the Contract;
 - (h) where the Successful Proponent fails to comply with any Law;
 - (i) where the Successful Proponent fails to comply with any instruction or direction of the City;
 - (j) where the Successful Proponent sub-consults or sub-contracts the whole or any part of the Contract or the Services or makes an

assignment of the Contract or the Services thereunder or any part thereof, without the prior written consent of the City;

- (k) where the Successful Proponent defaults in the completion of the Services within the time limit under the Contract or within a City-extended time limit;
 - (l) subject to section 15 Performance Review of these Instructions to Proponents, where the Successful Proponent fails or refuses to correct, rectify or remedy any unsatisfactory or defective Services when so ordered by the City in writing;
 - (m) subject to section 15 Performance Review of these Instructions to Proponents, where the Successful Proponent fails to correct, rectify or remedy a deficiency or fails to desist from a violation of any of the provisions of the Contract after receiving written notice from the City to do so;
 - (n) where a lien arises with respect to the Services undertaken by the Successful Proponent under this Contract and remains unpaid by the Successful Proponent after demand to pay therefore, unless vacated or discharged and released by payment into a court of competent jurisdiction or otherwise, within five Business Days of such demand, save and except a valid lien of the Successful Proponent registered against the property affected by this Contract;
 - (o) where any of the goods, chattels or effects of the Successful Proponent shall at any time during the term of the Contract be seized or taken in execution of attachment; or if a writ of execution shall be issued against the goods, chattels or effects of the Successful Proponent; or if the Successful Proponent shall make any assignment for the benefit of creditors; or if the Successful Proponent shall be adjudged bankrupt or insolvent, commit any act of bankruptcy or insolvency or make any Proposal under or take advantage of any of the provisions of any act or statutes whatsoever that may be in force regarding bankrupt or insolvent debtors or debtors who are not able to or do not pay their debts promptly and in full; or if a receiving order or winding up order shall be made against or in respect of the Successful Proponent; or if any actions or proceedings shall be taken to wind up, dissolve or liquidate the Successful Proponent or its assets by, against or in respect of the Successful Proponent; or where a resolution is passed or any other act undertaken for the winding up of the Successful Proponent; or a receiver, manager or trustee is appointed in respect of the business or assets of the Successful Proponent, or any part of thereof, by a court of competent jurisdiction, or under any contract;
 - (p) where the Successful Proponent ceases or threatens to cease to carry on its business, or where the Successful Proponent makes or agrees to make a bulk sale of its assets; or defaults in payment of any indebtedness or liability to a Bank or other lending institution, whether secured or not.
- (3) Without restricting, limiting, precluding or otherwise prejudicing any other right, privilege or remedy of the City provided in the Contract or by Law or in equity,

in the event that the Successful Proponent has committed an Act of Default or an Event of Default has occurred, the City may provide written notice (“Default Notice”) to the Successful Proponent to the effect that if the Successful Proponent does not completely remedy the Default to the satisfaction of the City within five Business Days of delivery of the Default Notice, or such other period of time as may be specifically provided for under the Contract or otherwise granted by the City in writing, in its absolute discretion, then the City may terminate the Contract and/or the Services of the Successful Proponent immediately.

- (4) Notwithstanding subsection (3) and without prejudice to or foregoing any other right, privilege or remedy of the City, in the event that emergency Work and/or Services is/are necessitated as a result of the Default of the Successful Proponent, such Work and/or Services may be undertaken immediately, without notice, by the City and all reasonable costs, expenses and expenditures of the City of such emergency Work and/or Services shall be borne by the Successful Proponent and payable forthwith upon written demand by the City, with particulars of the emergency and Work and/or Services necessitated thereby, and the City shall have no liability to the Successful Proponent for any loss or damage whatsoever resulting from such action by the City.
- (5) If the Default is not completely remedied to the satisfaction of the City in accordance with subsection (3), the City may terminate the Contract immediately and enforce any performance bond, letter of credit or other performance security provided by the Successful Proponent (where applicable).
- (6) A waiver of a Default shall not extend to, or be taken in any manner whatsoever to affect the rights of the City with respect to any subsequent default, whether similar or not.
- (7) The remedies provided in these Instructions to Proponents are in addition to all other legal, equitable or statutory remedies to which the City is otherwise entitled, as well as any other remedies stipulated in the Contract, and the taking of any one remedy shall not preclude the taking of any other remedy.
- (8) If the City terminates the Contract as a result of an Act or Event of Default, in addition to any other rights, privileges and remedies it is entitled to, the City may:
 - (a) take possession of all of the work in progress, Supplies, Goods, materials and equipment then at the Project site (at no additional charge for the retention or use of the equipment), and complete the Services by whatever means the City may deem appropriate under the circumstances;
 - (b) withhold any further payments to the Successful Proponent until the completion of the Services and the expiry of all obligations; and
 - (c) recover from the Successful Proponent loss, damage and expense incurred by the City or may be incurred by the City by reason of the Successful Proponent’s default (which may be deducted from any monies due or becoming due to the Successful Proponent, with any balance

remaining to be paid by the Successful Proponent to the City).

- (9) All costs, expenses and expenditures of the City herein shall be deemed an additional charge due to the City and shall be paid by the Successful Proponent upon demand and, if not so paid, shall bear interest at the Canadian Prime Interest Rate plus five percent (5%) calculated from the time the funds were due and payable to the City. "Canadian Prime Interest Rate" means the rate of interest publicly quoted from time to time by the Canadian Imperial Bank of Commerce as its prime rate for Canadian dollar commercial loans made at its main branch in Toronto Ontario, or the corresponding rate of such other Canadian chartered bank as the City of Hamilton may designate from time to time.
- (10) Unless the City otherwise agrees in writing and without limiting any other provision of this section, the failure, refusal or neglect by the Successful Proponent to deliver the Services in a diligent manner within the time specified or to promptly replace, remedy or correct the Successful Proponent's performance and/or Services as required pursuant to the Contract (when that originally supplied is rejected as unsatisfactory, unacceptable or deficient) shall be deemed to constitute an authority for the City to purchase and/or replace the Services in question on the open market. The Successful Proponent shall forthwith reimburse the City for all of its extra costs and expenses incurred to purchase and/or replace such Services, and the City's internal costs and any delay costs.

53. Information to be Kept Confidential

- (1) Confidentiality of records and information of the City relating to this Project must be maintained at all times. All documentation and communications, written and verbal, related to this Project and the Contract, whether provided by the City or on the City's behalf or otherwise is deemed confidential unless expressly provided otherwise. All correspondence, documentation and information provided by City and the City's Representatives to the Successful Proponent in connection with, or arising out of this Contract remains the property of the City; must be treated as confidential; and must not be used for any purpose other than for fulfillment of this Contract. Throughout the term of the Contract and thereafter, the Successful Proponent shall safeguard all information provided by the City and the City's Representatives and any other person at the request of the City, to the Successful Proponent or any of its directors, officers, employees, agents and representatives and, in particular, the Successful Proponent shall
 - (a) maintain in strict confidence all information concerning the City, its employees, representatives, Independent Consultants, residents or any other person that comes to it by reason of acting as a Successful Proponent to the City,
 - (b) not reproduce or disclose any such information to any person except as required by Law or as expressly permitted in advance by the City in writing,
 - (c) return forthwith and without demand all such information as may be in documentary form or recorded electronically upon the termination of its Services as a Successful Proponent,

- (d) not use any of the information, within the scope of this section, for any other purpose other than the purpose for which it was provided by the City or by any other person at the request of the City,
 - (e) not divulge or disclose any confidential information communicated to or acquired by it in the course of carrying out the Services provided for herein, except as may be required by Law or as expressly permitted in advance by the City in writing, and
 - (f) not use any of the information, within the scope of this section, on any other project without the prior written approval of the City.
- (2) This Contract is subject to the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”) and *Personal Health Information Protection Act* (“PHIPA”) as well as the City’s obligations thereunder. The Successful Proponent shall strictly comply with the requirements of such legislation as well as the *Personal Information Protection and Electronic Documents Act, 2000, c. 5*. The Successful Proponent shall protect all personal and confidential information of the City and the City’s Representatives, together with that of any person required by the foregoing Acts, and shall not deposit, store or hold any such information in such a manner that it is subject to seizure or disclosure under the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001*, as amended, in contravention of the provisions of MFIPPA, PHIPA or any other applicable Canadian privacy legislation.
- (3) All correspondence, documentation and information provided to the City and/or the City’s Representatives by the Successful Proponent in connection with, or arising out of this Contract, will become the property of the City and a record of the City. The foregoing records and the Contract are subject to the provisions of the MFIPPA and PHIPA and the City’s obligations thereunder and may be released pursuant to such Acts. Subject to foregoing, the City will use its best efforts not to disclose any information marked as confidential but shall not be liable in any manner to a Proponent or any other person where information is disclosed by virtue of an order of the Privacy Commissioner, a court of competent jurisdiction or otherwise as required by Law. The City further makes no representations or warranties that the identification of a document as confidential will prevent its release under the provisions of MFIPPA, PHIPA or otherwise under Law.

54. Non-disclosure and No Comment

- (1) The Successful Proponent shall not disclose, distribute, publish or issue any information, details or document concerning any aspect of this Contract, the Contract Documents, the Project and Services to a third party except:
- (a) where prior written authorization or consent of the City has been provided by the City, which consent may be unreasonably withheld by the City in its unfettered discretion; or
 - (b) where such disclosure, distribution, publication or issuance is necessary to perform the Services, is only to a person directly engaged in performing Services or work under the Contract and is only to the extent required for the Services or work to be performed; or

- (c) is required to be disclosed by Law.
- (2) The Successful Proponent shall restrain its employees and Sub-Consultants from giving unauthorized information or otherwise contravening this section.
- (3) After the Contract is awarded, the Successful Proponent shall refer all inquiries from all third parties not involved in carrying out the Contract that relate to the Contract or the Project, Work or Supply to be undertaken within the scope of the Contract to the City's Procurement Manager.

55. Information Provided by City

Unless expressly provided otherwise in the Contract, all information supplied by the City or on behalf of the City to the Successful Proponent for purposes of performing its Services in connection with the Project shall be provided solely for information purposes and does not form part of this Contract. The information is not guaranteed or warranted to be accurate by the City, nor is it necessarily comprehensive or exhaustive. The City accepts no responsibility for and/or liability with respect to the completeness and accuracy of such information. The Successful Proponent shall take all steps that it deems appropriate to satisfy itself of the accuracy of any such information and shall not make any claim against the City because of any error or inaccuracy that might exist in such information.

56. Copyright and Use of Documents

The Total Contract Price shall include all payments made or to be made to any third party in respect of any right, patent, design, trademark or copyright used for the purpose of the Successful Proponent performing the Contract.

57. Governing Law

This Contract shall be governed by, subject to and construed in accordance with the laws of the Province of Ontario and the laws of Canada, as applicable to the matters herein. Unless the City otherwise agrees in writing, any action or other legal proceeding arising under or with respect to the Contract (including any motion or other interlocutory proceeding) shall be brought in a Court or a tribunal, whichever may be applicable, sitting in Hamilton, Ontario. In the event that there is no applicable Court or tribunal sitting in Hamilton, the proceeding shall be brought in the court (or other forum) of competent jurisdiction nearest to the City of Hamilton within the Province of Ontario.

58. Severance Where Provision Illegal, etc.

If any provision or provisions of this Contract or parts thereof or any of the Contract Documents or the application thereof to any person or circumstances shall be found is/are found to be invalid, unenforceable or void by any court or tribunal of competent jurisdiction, such provision or provisions or parts thereof shall be deemed severable and all other provision or provisions or parts of this Contract shall be deemed to be separate and independent therefrom and continue in full force and effect unless and until similarly found void and/or unenforceable. The remaining terms and provisions of the Contract and its application to any person or circumstances shall not be affected thereby, but this provision shall apply only insofar as the effect of that severance is not to change the fundamental nature of the obligations assumed respectively by each of the City and Successful Proponent.

59. Contract Non Exclusive

Unless otherwise expressly provided in the Contract Documents, no contract shall be deemed or construed to confer upon the Successful Proponent an exclusive right to supply those Services to the City for the Project or otherwise.

60. Accrued Rights and Remedies

Neither the expiration nor the termination of this Contract shall prejudice or affect any right of action, privilege or remedy which shall have accrued or shall thereafter accrue to the City.

61. Excessive Claims

- (1) The City may review and disallow an invoice, or reduce the amount of an invoice, submitted for hourly labour costs, or for material supplied, where the City's Procurement Manager concludes on reasonable grounds that the amount of that invoice is excessive, taking into account the time and materials that would ordinarily be required by a competent professional or tradesman to carry out the Work or Project to which the invoice relates.
- (2) Prior to disallowing or reducing an invoice under subsection (1), the City shall notify the Successful Proponent in writing of its intention to review the invoice in question, and shall allow the Successful Proponent to make written or oral representations to the City's Procurement Manager as to whether the amount invoiced is excessive. The Procurement Manager shall take those representations and all other relevant facts into account before reaching any conclusion under subsection (1). Any decision made by the Procurement Manager under this section is final and conclusive between the parties.
- (3) No invoice shall be disallowed under this section where the billing to which it relates is in strict accord with the terms of the Contract Documents.

62. Force Majeure

- (1) In this section, "Force Majeure" means a delay in the performance of the Services occurring other than as a result of the deliberate act or negligence of either party respectively, and which
 - (a) could not have been reasonably foreseen, and
 - (b) was caused by an event beyond the reasonable control of each party respectively,and for the sake of greater certainty shall include any one or more of the following:
 - (a) acts of God, the Queen or Her enemies;
 - (b) civil war; insurrections or riots;
 - (c) fires; floods; explosions; earthquakes or serious major accidents;
 - (d) unusually severe weather; epidemics or quarantine restrictions;
 - (e) governmental priorities or allocation regulations or orders affecting materials, labour, equipment and facilities;

- (f) fuel shortages or freight embargoes; or
 - (g) strikes or labour troubles causing cessation, slowdown or interruption of work or other similar events relating to a person other than the Successful Proponent (or any Sub-Consultant).
- (2) In the event of the occurrence of a Force Majeure,
- (a) the time for completing that portion of the supply Services, or the completion of the Project to which the RFP relates, which has been delayed by reason of the Force Majeure shall be extended by a period equal to the delay so caused;
 - (b) the date for the payment of any portion of the price or any costs or fees shall be adjusted accordingly, without adjustment of the price; and

but subject to the foregoing, each party shall be excused from performance so long as the Force Majeure persists, and shall not be considered to be in default under this section, if and to the extent that its failure of, or delay in performance is due to that Force Majeure.

- (3) Where a Force Majeure remains in effect for more than 90 days, either party may terminate the Contract upon 30 days written notice to the other party, provided at the time when that notice is given the Force Majeure is then continuing.
- (4) While a Force Majeure subsists which prevents the Successful Proponent from performing its Services with respect to the Project, the City may engage another consultant or supplier to perform those obligations on an interim basis.

63. Successors and Assigns

- (1) This Contract and all terms, covenants, conditions and provisions herein shall be binding upon and shall enure to the benefit of the City and the Successful Proponent and their respective permitted assigns, successors and legal representatives.
- (2) The Successful Proponent shall not assign, transfer or encumber in any manner or part this Contract without the prior written consent of the City. Any attempt to assign, transfer or encumber any of the rights, duties or obligations of this Contract without such consent of the City is void. The Successful Proponent shall not sub-contract this Contract or any part thereof to a third party or undergo a change in effective voting control (if the Successful Proponent is a corporation), without the prior written consent of the City. The Successful Proponent shall not change any approved Sub-Consultant without the prior written consent of the City. The Successful Proponent shall not change any approved Design Project Leader without the prior written consent of the City. No assignment, sub-consulting or sub-contracting shall, in any circumstances, relieve the Successful Proponent of its responsibilities, obligations and liabilities under the Contract.
- (3) It shall be a condition precedent of any approval or consent granted by the City, pursuant to this section, that the Successful Proponent shall be responsible for all costs of the City to investigate and consider a proposed Sub-Consultant or proposed assignee including but not limited to the City's

internal staff costs and all legal, financial and consultant costs. Such costs shall be payable by the Successful Proponent regardless of whether an approval or consent is granted or not. No approval of the City shall be effective until the Successful Proponent has first paid to the City its costs with respect to same. Any delay in the commencement of the Services or in the performance of the Services or the Successful Proponent's obligations under the Contract related to or arising from the City's consideration of the Successful Proponent's request for a Sub-Consultant change or assignment shall be solely borne by the Successful Proponent.

SPECIAL PROVISIONS

1. TERM OF THE CONTRACT

The Successful Proponent will enter into an agreement with the City of Hamilton commencing upon the issue of a Purchase Order and complete upon acceptance by the City of the final report and delivery of all required presentations and disclosure of applicable information in formats acceptable to the City. This term is estimated to run from approximately March 2012 through to October 31, 2012.

2. AWARD OF CONTRACT

Subject to the City's reserved rights and privileges set out in the Proposal, the Contract shall be awarded to the compliant Proponent who has met the Benchmark and the minimum required score for each Evaluation Category, if any, as set out in Table 1: Criteria for the Evaluation of Proposals with the lowest Price per Point.

If there is a tie, then the following tie-breaking measure will be used to select the Successful Proponent.

- a) The Proposal with the highest overall points, and if still tied,
- b) The Proposal with the highest points for Proposed Work Plan & Engagement Activities, and if still tied,
- c) The Proposal with the lowest Total Contract Price.

3. OCCUPATIONAL HEALTH AND SAFETY

The Work on this Project must be conducted in a safe manner. The Successful Proponent and all Sub-Consultants used on the Work for the City of Hamilton will comply with all applicable laws, regulations and by-laws of Canada, the Province of Ontario and the City of Hamilton, including but not limited to the Occupational Health and Safety Act, and all applicable regulations thereunder.

Without limiting any of the foregoing, the Successful Proponent shall have both a written occupational health and safety policy and program to implement that policy, and that all of our employees, Sub-Consultants and any other persons performing the Work shall be appropriately trained, licenced and certified, as required to perform the Work.

4. HARMONIZED SALES TAX (HST)

"Value Added Tax" (VAT) for the purposes of this section means the Federal Goods and Services tax and any similar tax the collection and payment for which has been imposed on the Successful Proponent by the tax legislation.

The Total Contract Price shall include all taxes and customs and duties in effect at the time of the Proposal closing except for Value Added Taxes payable by the City to the Successful Proponent as stipulated in the Contract.

Any increase or decrease in costs to the Successful Proponent due to changes in such included taxes and duties after the time of the Proposal closing shall increase or decrease the Total Contract Price accordingly.

PROPOSAL SUBMISSION INFORMATION

Contract Number: C11-12-12

Consultant Services Required for the Citizen Engagement of Values Based Infrastructure Management

1.0 GENERAL

All costs and expenses related to the preparation, submission and presentation, including interviews and demonstrations, of a Proposal and the provision of additional information necessary for the evaluation of a Proposal shall be at the sole expense of the Proponent.

The evaluation of Proposals for this Project shall be a two-step process and shall be subject to any rights and privileges of the City set out in the RFP.

Proposals will be evaluated by the Evaluation Team according to the criteria and requirements set out in this RFP. In submitting the Proposal, Proponents agree that the decision of the Evaluation Team is final and binding, and will not be subject to review by any court and any Proponent breaching this provision will indemnify the City for all its costs as a result of same, save and except where the City has acted in manifest bad faith.

The RFP shall not obligate or commit the City to award a contract.

2.0 PROPOSAL SUBMISSION REQUIREMENTS **STEP 1 – TECHNICAL PROPOSALS**

2.1. General

2.1.1. Proponents should submit **SIX** complete copies of the Technical Proposal (one originally signed document, and **FIVE** identical photocopies. The City's Form of Proposal – (Step 1) (yellow pages) must be completed in full and be included in the front of the Technical Proposal submission.

2.1.2. The Technical Proposal and the Form of Proposal shall be submitted in a sealed package labeled "Step 1 – Technical Proposal".

2.1.3. The Technical Proposal shall be evaluated in step 1. No details of costs or rates are to be included in this part of the Proposal.

2.2. Step 1 - Evaluation of Technical Proposals

2.2.1. During step 1 of the evaluation process, all Proposals will be initially reviewed to determine compliance with the RFP requirements.

2.2.2. Any Proposal

2.2.2.1. not complying with the requirements of the RFP shall not be accorded any points or evaluated further, or

2.2.2.2. that fails to meet the required minimum score (if any) within an evaluation category may not be evaluated further,

subject to the exercise by the City, in its absolute discretion, of any right or privilege it may have in this RFP, including without limitation its right to waive irregularities. The City may exercise its rights and privileges under the RFP and reject a Proposal in accordance with same notwithstanding that it may be compliant with the remaining requirements of this Proposal.

2.2.3. The Evaluation Team will evaluate compliant (or deemed compliant as a result of the waiver by the City of any non-compliance) Technical Proposals, which have not been rejected by the City in accordance with a right or privilege of the City, and assign points) up to a maximum of **100** points. Proposals will be scored by consensus of the Evaluation Team. Proposals meeting or exceeding the Benchmark will proceed to step 2.

2.2.4. An initial determination of compliance (including deemed compliance at step 1) shall not preclude a finding by the City of non-compliance at step 2, particularly with respect to non-compliance with the requirements for the Form of Proposal – Schedule of Quantities and Prices or any other discovered non-compliance with the RFP requirements.

2.3. Step 1 - Evaluation Criteria

2.3.1. The criteria in Table 1: Criteria for the Evaluation of Proposals will be used in the step 1 evaluation. Proposal submissions must address these criteria in the identification and order protocol shown below. Not following this identification and order creates the risk to the Proponent that, even if the information has been provided, it may be overlooked and consequently not considered in evaluation of the Proponent's score.

2.3.2. The following is a table listing the evaluation categories, indicating:

- i) the maximum score attainable in each category; and
- ii) the required minimum score per category (if any) that must be attained in order to proceed to step 2 of the evaluation; and
- iii) the overall minimum score that must be attained ("Benchmark") in order to proceed to step 2 of the evaluation.

TABLE 1: Criteria for the Evaluation of Proposals

	Evaluation Category	Maximum Score Attainable	Minimum Required Score
1	<p>EVALUATION CATEGORY 1: Approach/Philosophy to Citizen Engagement</p> <p>1.1 Approach/Philosophy</p> <p>Provide a general description of the philosophy of citizen engagement that demonstrates the ability to receive meaningful feedback from a wide spectrum of the population.</p> <p>Describe how the citizen engagement process will adhere to the City’s principles on public participation as outlined in the Terms of Reference and based on the principles of the International Association of Public Participation (IAP2).</p>	10	6
2	<p>EVALUATION CATEGORY 2: Project Understanding</p> <p>2.1 Project Interpretation</p> <p>Describe the Proponent’s interpretation of the requirements requested by the City which forms the basis of this contract. Explain the Proponent’s interpretation of the City’s general theory and purpose for implementing a citizen engagement project of this nature.</p> <p>2.2 Understanding of End Results</p> <p>Describe the Proponent’s interpretation of how the results from the engagement process can be used by the City to adjust capital resources and the associated levels of service of the various infrastructure groups that the City uses to provide services to its residents.</p>	15	9
3	<p>EVALUATION CATEGORY 3: Proponent Project Experience</p> <p>3.1 Similar Projects</p> <p>List at least three similar projects of the same size, scope, and nature that were completed during the last consecutive five years. Include clients' names,</p>	25	15

	<p>addresses and telephone numbers, contact persons, the dates and locations, and approximate value of the works performed. The evaluation will be based on the extent to which these projects demonstrate the Proponent's ability to fulfil requirements and not on the number of projects listed. The Proponent shall give a brief description of the project according to the work as described above. The description should include the Proponent firm's involvement in the project, and any additional information which the Proponent believes will assist the City in evaluating past performance.</p> <p>Include a list of any similar <u>ongoing</u> projects. Prior to completion of evaluation, the City may contact any listed references.</p> <p>Explain how the Proponent's experience on these similar projects demonstrates:</p> <p>3.1.1 The Proponent's qualifications for the Work on this Contract.</p> <p>3.1.2 The Proponent's ability to perform the Work on this Contract.</p> <p>3.1.3 The Proponent's experience in communication with various wide-spread demographics.</p> <p>3.1.4 The Proponent's ability to work cooperatively with a client.</p> <p>3.1.5 The Proponent's ability to identify and implement the City's requirements.</p> <p>3.1.6 Evidence of past performance and ability to complete projects on time and within budget.</p> <p>3.1.7 The Proponent's knowledge of the City's requirements and procedures.</p> <p>3.1.8 The Proponent's ability to work with various levels of corporate management teams.</p> <p>3.1.9 The Proponent's ability to work co-operatively with the public, including diverse sectors of society.</p> <p>3.2 Terminated/Uncompleted Projects</p> <p>List descriptions of all your contracts which have been terminated prior to their completion including the circumstances surrounding the termination. Provide the name and telephone number of your client's representatives for such contracts.</p>		
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<p style="text-align: center;">EVALUATION CATEGORY 4: Project Team/Staff Experience</p> <p>4.1 Project Team Organization</p> <p>Provide an overall organizational chart as it relates to this Contract, including names, roles and responsibilities of each key team member. Clearly identify the roles proposed for each key team member. Include work scope identification, liaison with the City, technical support, project management and supervision for this Project.</p> <p>Where the Proponent's team includes sub-contractors, identify where the sub-contractors fit into the organization chart. Fully describe the role proposed for sub-contractors.</p> <p>4.2 Team Members</p> <p>Identify each key team member to be assigned to this Project. Describe the key team members' functions. Provide resumes or curriculum vitae for each key team member. Include any sub-contracted staff being proposed for the Project who will be key team members.</p> <p>Please note that key personnel proposed for the Project shall not be removed or replaced without obtaining the City's written consent at least 30 days in advance. If any named key personnel shall be replaced for any reason, the Proponent shall promptly assign an acceptable, equally qualified replacement. Failure to do so may result in the termination of the Contract. The City shall have the right to interview and approve any replacement of key personnel</p> <p>Indicate what quality control system you intend to employ to monitor all aspects of the citizen engagement project and what corrective measures you will take if there is a deficiency</p>	<p>4</p>	<p>10</p>	<p>6</p>
<p style="text-align: center;">EVALUATION CATEGORY 5: Proposed Work Plan & Engagement Activities</p> <p>5.1 Work Plan</p> <p>Provide an overall work plan chart as it relates to this Contract, including a description of a detailed plan for public engagement that will incorporate, at</p>	<p>5</p>	<p>40</p>	<p>30</p>

	<p>a minimum, the aspects of the general plan that has been established by City staff as described in this document. The description shall outline the Proponent's approach to all tasks it has determined to be necessary to complete the entire scope of work for this contract.</p> <p>All works under this Contract shall be completed as outlined in the Terms of Reference and Project Timeline. Therefore the work plan shall identify how all Works will be carried out and completed within the prescribed timeframe. Provide a schedule for the engagement activities, including time allowances to fully develop, prepare for and complete engagement activities/events, as well as to complete all reporting/ documentation of individual events and the overall project. The project work plan should include time to present the final report to the Project Team and Corporate Advisory Team (CAT).</p> <p>5.2 Plan for Utilization of Resources</p> <p>Indicate the firm's plan for utilization of its resources that will allow the City flexibility in scheduling of stakeholder meetings and will accomplish rapid completion of the requested Work after it is assigned, using the personnel proposed for this Contract. Provide an estimate of the time requirements for each major task and a person-hours summary for each team member.</p> <p>5.3 Use of Sub-Contractors</p> <p>Indicate how the Proponent's firm intends to perform the Project (i.e., as an independent company with own forces, or a combination involving a prime and sub-contractors). Provide an overall corporate organizational chart depicting the essential organizational elements and senior personnel of all proposed firms.</p> <p>5.4 Project Management</p> <p>Indicate the Proponent's project management methods to:</p> <ul style="list-style-type: none"> (i) manage coordination between the various aspects of the Project, (ii) meet schedules, (iii) manage internal stakeholder and citizen communication requirements, and (iv) discuss the Proponent's capabilities to 		
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	<p>staff this Project to ensure completion on schedule.</p> <p>5.5 Customer Service</p> <p>Provide a sample notification/advertisement which the Proponent's firm would distribute to Hamilton residents and businesses to inform citizens of this initiative.</p> <p>Submit a detailed description of the Proponent firm's course of action pertaining to concerns and complaints of residents and businesses.</p> <p>Submit a sample description of the Proponent firm's reporting criteria resulting from citizen engagement activities.</p>		
Benchmark (Minimum Required Score)			80
Maximum Attainable Points		100	

2.4. Optional Interviews

- 2.4.1.** Prior to step 2, the City, at its sole discretion, reserves the right to conduct interviews with Proponents. Proponents with scores above the overall Benchmark (required minimum score) and meeting the minimum required score, if any, shall be interviewed. The interviews will be held for the sole purpose of which will be to verify the scores which the Evaluation Team has applied to those Proponents being interviewed. The interviewers will ask questions relating to the criteria set out in step 1, the RFP Documents, and the Proponent's Proposal. Proponents are not permitted to present any information not previously included in their Proposal.
- 2.4.2.** The Proponent's project leader and key members of the project team, as named in the Proposal submission must be in attendance at the interview. Proponents shall keep the number of presenters to the interview to no more than three people.
- 2.4.3.** No scoring will be given directly to the interview. The Evaluation Team will consider its prior scoring of the Proposals and adjust any, all, or none of the criteria up or down as the Evaluation Team agrees in consensus.
- 2.4.4.** Any interviewed Proponent falling below the Benchmark and/or any required minimum score in any evaluation category will not move on to step 2. All interviewed Proponents whose scores remain at or greater than the Benchmark and meet the required minimum score in each evaluation category will move on to step 2.

3.0 PROPOSAL SUBMISSION REQUIREMENTS

STEP 2 – COST PROPOSALS

3.1. General

3.1.1. The Cost Proposal shall be evaluated in step 2, in conjunction with the Technical Proposal. The Cost Proposal shall be submitted in a separate sealed package labeled “Step 2 – Cost Proposal” and shall include any additional costing information. **Failure to submit the Cost Proposal in a separate sealed package will cause your Proposal to be disqualified.**

3.1.2. Proponents shall submit **TWO** complete copies of the Cost Proposal. The City’s Form of Proposal – Cost Proposal (Step 2) (purple pages) must be completed in full and be included in the front of the Cost Proposal submission.

3.1.3. The Form of Proposal – Cost Proposal (Step 2) (purple pages) shall include all costs to complete the Project including any provisional costs, if any.

3.2. Step 2 – Evaluation of Cost Proposals

3.2.1. Only those Proponents who have met or exceeded the Benchmark in step 1, (Table 1 Criteria for the Evaluation of Proposals) will proceed to step 2.

3.2.2. All Proposals succeeding through step 1 and receiving an evaluation score, as adjusted after the interview (if at all) at or greater than the Benchmark and meeting the required minimum scores, if any, will have their Form of Proposal – Cost Proposal (Step 2) package marked “Step 2 Cost Proposal” opened and evaluated during step 2.

3.2.3. The compliant Proposals will be evaluated for best value by calculating the Price per Point (i.e., Total Contract Price / Total evaluation points).

3.2.4. The compliant Proposal with the lowest Price per Point will be recommended for award.

Table 2: Sample Evaluation Table for Step 2 - Cost Proposal:

Section	Minimum/Maximum Score	Proposal A Points	Proposal B Points	Proposal C Points	Proposal D Points
1. Approach/Philosophy to Citizen Engagement	6/10	7	9	6	8
2. Project Understanding	9/15	10	15	9	9
3. Proponent Project Experience	15/25	20	23	15	15
4. Project Team/Staff Experience	6/10	8	9	6	8
5. Proposed Work Plan & Engagement Activities	30/40	35	37	30	14
Total Points	80/100	80	93	66	not calculated
Proposal \$	\$ X	\$280,000	\$302,250	Not Opened	Not Opened
Price per Point	\$X/Total Points	\$3,500	\$3,250	NA	NA

Proposal A has met the Benchmark score and all minimum required scores for each Section.

Proposal B has met the Benchmark score and all minimum required scores for each Section.

Proposal C pricing submission would not be opened as the Benchmark of 80 points has not been met.

Proposal D pricing submission would not be opened as the minimum required score for Section 5 point count for section 5 is 30 points.

Therefore, in this example, Proposal B would be the Successful Proponent and recommended for award.

FORM OF PROPOSAL - (STEP 1)

Contract Number: C11-12-12

Name, Title or Brief Description of Project:

Consultant Services Required for the Citizen Engagement of Values Based Infrastructure Management

Legal Name of Proponent: _____
(THIS NAME MUST EXACTLY MATCH THE NAME ON ALL DOCUMENTATION REQUIRED OF THE SUCCESSFUL PROPONENT EG; INSURANCE CERTIFICATE, WSIB CERTIFICATE)

Incorporated Under the Laws of: _____

(Specify Province; Canada or otherwise and relevant statute)

Business Address: _____
(include street, city, province and postal code)

Head Office Address: _____
(if different than above, include street, city, province and postal code)

Telephone Number: _____

Fax Number: _____

Email Address: _____

To: Procurement Manager,
City of Hamilton,
Standard Life Building,
9th Floor, Suite 900,
120 King St. West, Hamilton. L8P 4V2
(the "City")

Date: _____

1. The undersigned Proponent, having carefully examined the RFP Documents, hereby proposes and offers:
 - (a) to render all Services and provide all things necessary to perform same;
 - (b) to furnish all labour, service, Goods, materials, equipment and all incidentals;
 - (c) to pay all applicable Taxes and all other charges as specified; and
 - (d) to fully, properly, diligently and in good faith undertake, perform and complete all of the Proponent's (and upon any award of the Contract those of the Successful Proponent) duties, obligations and responsibilities under the Contract Documents,

in full accordance with the Contract Documents.

Receipt of the RFP Documents from the City is hereby acknowledged.

The Total Contract Price is submitted in a separate package marked "STEP 2" and is set out in the Form of Proposal [see Form of Proposal – Cost Proposal (Step 2)]. The Total Contract Price is in Canadian dollars and excludes GST. Any Goods and Services Tax payable is for the account of the City and is in addition to the above Total Contract Price.

2. **Addenda**

I/We have made any necessary inquiries with respect to Addenda issued by the City and have ensured that we have received, examined and provided for all Addenda to the Request for Proposal in this Proposal.

NOTE: Any Addenda issued are posted on the following website:

biddingo.com/hamilton

3. **Commencement and Completion**

If awarded the Contract, I/we, the Proponent, agrees to commence and complete work as per the Contract documents. I/We undertake that

- I/we will provide all necessary documents required as set forth prior to the commencement of this project;
- Completion of the Project will be achieved within the time allowed for completion as prescribed in the Terms of Reference.

4. **Contract**

It is understood and agreed by me/us that a binding Contract shall come into being upon acceptance of this Proposal by the City. The subsequent execution of any agreement or contract for works, if any, is a formality and not a condition precedent to the existence of a binding Contract. The *Contract Documents* for this RFP shall constitute the Contract, including any Addenda issued, subject to such modifications as may be agreed to in writing between the parties.

5. Execution

If this Proposal is accepted by the City and the City is proceeding with the internal approvals for the award of the Contract, then I/we shall provide required proof of insurance and all other required submittals within ten (10) Business days of notification from the City.

6. Additional Work

I/We also agree that if this Proposal is accepted, I/we shall execute whatever additional or extra work that may be required, in accordance with the RFP Documents.

7. Time Open for Acceptance

This offer is irrevocable and is to continue open to acceptance by the City for a period of **90 calendar days** after the date and time set for closing (submission) of Proposals. The City may at any time within the above **90 calendar day** period accept this Proposal whether or not any other Proposal has previously been accepted, upon notice of acceptance in writing to me/us personally delivered or mailed to me/us by ordinary prepaid mail to the address set forth on the Form of Proposal page of this Request for Proposals and any notice so mailed shall be deemed to have been received on the date of mailing thereof and any notice so delivered shall be deemed to have been received on the date the notice is so delivered.

8. Electronic Funds Transfer

I/We acknowledge and agree to provide the City with the information required for the City to make payment by EFT.

9. Occupational Health and Safety

I/We understand and agree that the Work must be conducted in a safe manner. Accordingly, I/we confirm that I/we and all Sub-Consultants used on the Work for the City of Hamilton will comply with all applicable laws, regulations and by-laws of Canada, the Province of Ontario and the City of Hamilton, including but not limited to the Occupational Health and Safety Act, and all applicable regulations thereunder. Further, without limiting any of the foregoing, I/we confirm that I/we have both a written occupational health and safety policy and program to implement that policy, and that all of our employees, Sub-Consultant and any other persons performing the Work are appropriately trained, licenced and certified, as required to perform the Work.

10. No Collusion / Conflict of Interest

I/We hereby declare that no person, firm or corporation other than me/us has any interest in this Proposal or in the proposed Contract(s) for which this Proposal is made. I/We further declare that this Proposal is made without any connection to, comparison of figures, arrangements with or knowledge of, any other corporation, firm or persons making a Proposal for the same work and is in all respects fair and without fraud or collusion.

I/We confirm that we have complied with section 23 of the Instructions to Proponents regarding affiliates and corporations which are not at arm's length.

I/We declare that no member of the City of Hamilton, and no officer, employee or agent of the City of Hamilton has or will have an interest indirectly or directly as a contracting party, partner, shareholder, surety or otherwise in the performance of the Contract(s), or in the supply, work or business to which they relate or in any portion of the profits thereof, or in any of the monies to be derived there from.

11. Interpretation

I/We confirm that I/we have received no oral communication, representation, information, instruction or advice (collectively referred to as “representation”) from any officer, employee, agent, or any other person acting on the behalf of or at the direction of the City which in any way amends or modifies the content of this Request for Proposals, any Addenda thereto, or any performance of Services, works, obligations or responsibilities or the exercise of any rights thereunder or with respect thereto. I/We specifically release and waive any right and claim I/we may have to a claim for negligence, misrepresentation, misstatement or otherwise for any oral communication or representation whatsoever. I/We represent that I/we have not been induced by any oral communication or representation whatsoever to submit this offer and acknowledge that the City is relying on the representations and waiver made by us herein. I/We further acknowledge that I/we have carefully reviewed, understand and agree to the communication provisions of the Instructions to Proponents.

I/We acknowledge and agree that I/we have not assumed that any information concerning our operations, business or personnel or any other information required to be provided by me/us when submitting our Proposal is known to the City, regardless of whether such information may be actually previously known to the City or not. Further, I/we acknowledge and agree that all information to be provided by me/us is to be complete and full and in such detail as required.

12. Procurement Policy

In submitting a Proposal in response to the RFP, I/we agree and acknowledge that I/we have read and will be bound by the terms and conditions of the City’s Procurement Policy. I/We understand that the City’s Purchasing Policy can be viewed on the City’s website at

<http://hamilton.ca/Procurement/ProcurementPolicyBylaw>

per: _____
(Printed Name of Officer)

(Original Signature)

I / We have the authority to bind the Proponent.

FORM OF PROPOSAL - COST PROPOSAL – (STEP 2)

Contract Number: C11-12-12

Name, Title or Brief Description of Project:

**Consultant Services Required for the Citizen Engagement of
Values Based Infrastructure Management**

Total Contract Price: \$ _____
(in figures)

The Total Contract Price:

- ◆ Does not include G.S.T or HST as of July 1, 2010
- ◆ Is in Canadian Funds

Proposal Submitted By: _____
(Legal Name of Proponent)

TERMS OF REFERENCE

SCOPE OF WORK

The City of Hamilton is continually developing an internal asset management program that aims to optimize investment decisions in the City's corporate infrastructure. In 2009 the City completed the second iteration of the *State of the Infrastructure of Public Works Assets*. Similar reports have also been completed for the City's corporate facilities and community services infrastructure. These reports gave a letter-grade to each infrastructure group within the City in an easy to read infrastructure report card format. In order to improve the grades of each infrastructure group, City staff began a review of the correlation between infrastructure investment requirements and the associated level of service that is provided.

These reports and the review of service levels indicated that the asset management system is now reaching a stage where the City would like to engage its citizens in a conversation about their values and priorities of City provided services. It is expected that the results from the citizen engagement initiatives will be used to adjust current levels of services of the various services the City of Hamilton provides to its residents.

All services that the City provides will be included in the discussions with the citizens, however at this stage the results from the engagement process will drive only the direction of infrastructure investments (i.e. the results will not necessarily be used to direct staffing resources or other non-infrastructure related assets).

The City established a Corporate Advisory Team (CAT) with representation from various City departments. The CAT will function as a steering committee over the duration of the engagement process.

The City has a general plan which provides an overview for the public engagement process. The following points summarize the main components of the plan:

- Interviews with Council and senior management to discuss their experience with public engagement and to identify what has or has not worked well at the City.
- Development of a stakeholder list from internal staff and Council.
- Communication to stakeholders regarding initiation of the engagement process.
- Engaging stakeholders to discuss their values and priorities as they relate to services the City provides.
- Analyze results from the stakeholder engagement to frame a subsequent discussion on trade-offs of services as they relate to the direction of capital resources.

- Engage stakeholders in a discussion regarding options for future allocation of capital resources amongst various infrastructure groups and how the differences in investment levels will affect service levels.
- Analyze and report on the results from the trade-off discussion.

PROPOSAL REQUIREMENTS

The City is seeking proposals from interested firms to convey their approach to citizen engagement relating to infrastructure service delivery and to describe their plan to undertake the engagement process. The Technical Proposal should include the following:

- A general description of the philosophy of citizen engagement that demonstrates the ability to receive meaningful feedback from a wide spectrum of the population.
- A description of a detailed plan for public engagement that will incorporate, at a minimum, the aspects of the general plan that has been established by City staff as described in this document.
- A clear description of how the results from the engagement process can be used by the City to adjust capital resources and the associated levels of service of the various infrastructure groups that the City uses to provide services to its residents.
- A clear description of the strategy for completing a successful project, how a successful project will be achieved, and the risks associated with undertaking public engagement.
- A detailed description of the types and frequency of engagement activities that will be undertaken, including the staff members that will be assigned for the mediation of any engagement activities/events.
- A description of at least three examples of projects of similar size and complexity that the firm has completed over the past five years, including client name and contact information, the year the project was completed, and the value of the project.
- A description of the experience of the team that will be assigned to the Project. It is fully expected that the individuals named in the proposal will be available throughout the assignment and involved as described in the Project plan.
- A schedule for the engagement activities, including time allowances to fully develop, prepare for and complete engagement activities/events, as well as to complete all reporting/documentation of individual events and the overall Project. The Project work plan should include time to present the final report to the Project Team and CAT.
- An estimate of the time requirements for each major task and a person-hours summary for each team member.

- A description of how the citizen engagement process will adhere to the City's principles on public participation (outlined below).

The City of Hamilton is promoting a citizen centered government that effectively engages its residents in the decision making process. The City has recently adopted a policy for citizen engagement based on the principles of the International Association of Public Participation (IAP2). The guiding principles of the public engagement policy are as follows:

1. Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.
2. Public participation includes the promise that the public's contribution will influence the decision.
3. Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers.
4. Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
5. Public participation seeks input from participants in designing how they participate.
6. Public participation provides participants with the information they need to participate in a meaningful way.
7. Public participation communicates to participants how their input affected the decision.

PROJECT TIMELINE

The City's estimate of the project timeline is described below, however it is expected that a detailed project work plan will be included in the submission. The final timeline will largely be dependent on the availability of City Councilors, and therefore it is likely that this timeline will be adjusted during the course of the Project.

- February 2012: Closing date of the RFP
- March 2012: Award of project to successful Proponent
- March – July, 2012: Complete development of materials and undertake citizen engagement activities/events
- July-September 2012: Reporting of results from engagement activities
- September 2012: Presentation of final report and summary of findings

SUBMISSION LABEL
Step 1 - Technical Proposal

IMPORTANT:

**THIS SUBMISSION LABEL
IS TO BE USED FOR RETURNING
STEP 1 - TECHNICAL PROPOSAL**

PROPOSAL SUBMITTED BY:

Legal Name
of Proponent: _____

Address: _____

PROCUREMENT SECTION

**City of Hamilton
Standard Life Building
9th Floor
120 King Street West
Hamilton, ON L8P 4V2**

C11-12-12

**Consultant Services Required for the Citizen Engagement of Values Based Infrastructure
Management**

SUBMISSION LABEL
Step 2 – Cost Proposal

IMPORTANT:
THIS SUBMISSION LABEL
IS TO BE USED FOR RETURNING
STEP 2 - COST PROPOSAL

PROPOSAL SUBMITTED BY:

Legal Name
of Proponent: _____

Address: _____

PROCUREMENT SECTION
City of Hamilton

Standard Life Building
9th Floor
120 King Street West
Hamilton, ON L8P 4V2

C11-12-12
Consultant Services Required for the Citizen Engagement of Values Based Infrastructure
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 Procurement Section
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Date Issued: Friday, February 10, 2012

City of Hamilton

REQUEST FOR PROPOSAL

C11-12-12

Consultant Services Required for the Citizen Engagement of Values Based Infrastructure Management

ADDENDUM 1

The following queries and responses, issued by the Procurement Section shall form part of the **Request for Proposal** documents for the above, and the revisions and additions noted herein and any attachments shall read in conjunction with all other documents. This Addendum shall, however, take precedence over all previously issued **Request for Proposal** documents where differences occur.

Included in this Addendum are:

1 pages – Addendum 1

1.0 Applicant Questions and City Responses

Question #1	A question about the Consultant Services Required for the Citizen Engagement of Values Based Infrastructure Management RFP. In the RFP it states that: "The City has recently adopted a policy for citizen engagement based on the principles of IAP2." Can you please confirm whether the City currently has an engagement policy it has adopted, or if this means that the City has adopted just the IAP2 principles to guide it's activities?
Response #1	The City's Senior Management Team has adopted the IAP2 principles to guide departmental engagement projects at this time.

END OF ADDENDUM 1

Applicants providing a signed Form of Proposal have made any necessary inquiries with respect to addenda issued by the City and have provided for all addenda in their Proposal submission.

**All addenda will be posted on the City's Biddingo.com bid portal at:
biddingo.com/hamilton**

Procurement Section, City of Hamilton, Ontario

(Revised: January 30, 2012)



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Date Issued: Wednesday, February 15, 2012

City of Hamilton

REQUEST FOR PROPOSAL

C11-12-12

**Consultant Services Required for the Citizen Engagement of
Values Based Infrastructure Management**

ADDENDUM 2

The following queries and responses, issued by the Procurement Section shall form part of the **Request for Proposal** documents for the above, and the revisions and additions noted herein and any attachments shall read in conjunction with all other documents. This Addendum shall, however, take precedence over all previously issued **Request for Proposal** documents where differences occur.

DELETE:

**Closes: 3:00:59 pm, Hamilton time
Thursday, February 16, 2012**

REPLACE WITH:

**Closes: 3:00:59 pm, Hamilton time
Friday, February 17, 2012**

END OF ADDENDUM 2

Applicants providing a signed Form of Proposal have made any necessary inquiries with respect to addenda issued by the City and have provided for all addenda in their Proposal submission.

**All addenda will be posted on the City's Biddingo.com bid portal at:
biddingo.com/hamilton**

Procurement Section, City of Hamilton, Ontario
(Revised: January 30, 2012)



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Date Issued: Thursday, February 16, 2012

2 Pages

City of Hamilton
REQUEST FOR PROPOSAL
C11-12-12
Consultant Services Required for the Citizen Engagement of
Values Based Infrastructure Management

ADDENDUM 3

The following queries and responses, issued by the Procurement Section shall form part of the **Request for Proposal** documents for the above, and the revisions and additions noted herein and any attachments shall read in conjunction with all other documents. This Addendum shall, however, take precedence over all previously issued **Request for Proposal** documents where differences occur.

1.0 Applicant Questions and City Responses

Question #2	The City's terms of reference (page 76) indicates that the proponent is to develop a stakeholder list based on recommendations from council and senior management. Bullet one under Proposal Requirements (pg 77) indicates that the City is interested in "receiving meaningful feedback from a wide spectrum of the population". Can the City please clarify the level of public engagement that is anticipated i.e. multiple points of public consultation with one stakeholder group.
Response #2	The City is seeking proposals from interested firms to convey their approach to citizen engagement relating to infrastructure service delivery and to describe their plan to undertake the engagement process. The Citizen Engagement Plan as outlined in this RFP should capture a wide spectrum of Hamilton's population and may require multiple points of consultation with any applicable stakeholder groups, as presented by Proponents through the Technical Evaluation of this RFP.
Question #3	The number of points of contact, and the best method for public consultation is still to be worked out through the execution of this project. Is it correct to assume that the City will pay for facility rental fees and refreshments associated with the consultation process, and the cost for public advertisements/mailings, or should a provisional allowance be included in our fee proposal?

Response #3	Cost Proposals shall include all costs required for the execution of the contract, including but not limited to facility rental fees and refreshments associated with the consultation process, and the cost for public advertisements/mailings.
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END OF ADDENDUM 3

Applicants providing a signed Form of Proposal have made any necessary inquiries with respect to addenda issued by the City and have provided for all addenda in their Proposal submission.

**All addenda will be posted on the City's Biddingo.com bid portal at:
biddingo.com/hamilton**

Procurement Section, City of Hamilton, Ontario

(Revised: January 30, 2012)