

REQUEST FOR PROPOSAL

RFP-P44-2011

**MUNICIPAL ELECTION COMPLIANCE AUDIT
FOR THE NIAGARA COMPLIANCE AUDIT COMMITTEE**

Proposal Submissions shall be received
no later than 2:00 p.m. local time

August 26, 2011

in the City Clerk's Office

Niagara Falls City Hall

4310 Queen Niagara Falls, ON L2E 6X5

INDEX AND DEFINITIONS

INDEX

Section 1	.....	General Description
Section 2	.....	Bidding Procedure
Section 3	.....	Terms of Reference
Section 4	.....	Instructions to Bidders
Section 5	.....	Appendices (available upon request)

DEFINITIONS

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

- 1 "City" means The Corporation of the City of Niagara Falls who is issuing this RFP on behalf of the
Niagara Compliance Audit Committee.
- 2 "Committee" means the Niagara Compliance Audit Committee
- 3 "City Representative" means Mr. Dean Iorfida, City Clerk, City of Niagara Falls
- 4 "Council" means the elected Council of the Town of Fort Erie who will authorize the issuance of a
Purchase Order or the execution of an Agreement (if any) as a result of this RFP process.
- 5 "Proponent" means a legal entity, being a person, partnership or firm that submits a Proposal in
response to this RFP.
- 6 "Proposal" means a proposal submission by a Proponent in response to this RFP, which includes all of
the documentation necessary to satisfy the submission requirements of this RFP.
- 7 "Purchase Order" means a Purchase Order issued by a member Agency (Municipality) of the Niagara
Compliance Audit Committee including this RFP, all appended documents and the Proposal submission
of the Selected Proponent.
- 8 "RFP" means this Request for Proposal in its entirety, inclusive of all appendices, attachments and any
addenda thereto.
- 9 "Selected Proponent" means the Proponent whose Proposal, as determined by a subgroup of Area
Clerks, administrators on behalf of the Niagara Compliance Audit Committee, through the evaluation
analysis described in the RFP, provides the best overall value in meeting the requirements of this RFP,
and to whom a Purchase Order may be issued or an Agreement executed.
- 10 "Services" means all services and deliverables to be provided by the Selected Proponent as described
in this RFP.

SECTION 1.0 GENERAL DESCRIPTION

The Corporation of the City of Niagara Falls, on behalf of the Niagara Compliance Audit Committee, is inviting Professional Accounting Firms to submit Proposal submissions containing qualifications and quotations to conduct a municipal election compliance audit, in accordance with this Request for Proposal (RFP) and the *Municipal Elections Act*, 1996, as amended. Proponents submitting a proposal must be licensed under the *Public Accountancy Act* and demonstrate a knowledge of the *Municipal Elections Act*.

SECTION 2.0 BIDDING PROCEDURE

2.1 Questions and Communications Regarding this Request for Proposal

All questions, requests for information, instructions or clarifications regarding any part of this RFP must be set out **in writing** and directed no later than 1:00 p.m., August 22, 2011 to:

Mr. Dean Iorfida, City Clerk
City's Clerks Office
Niagara Falls City Hall
4310 Queen Street
Niagara Falls, ON L2E 6X5
diorfida@niagarafalls.ca

All questions related to this Request for Proposal (RFP) or any clarification with respect to this RFP must be made no later than three (3) Business Days prior to the closing date 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 shall be issued as part of the RFP in the form of an Addendum. This proposal document and all addenda if any shall also be posted on the following Bid Opportunity pages:

<http://www.niagarafalls.ca/bids> (City of Niagara Falls)

<http://www.forterie.on.ca> (Town of Fort Erie)

<http://www.niagaracomplianceaudit.ca> (Niagara Compliance Audit Committee)

Section 2.0 Bidding Procedure....continued

2.2 Closing Date and Time

Proposals must be received no later than 2:00 p.m. local time, August 26, 2011 in the location stated in Section # 2.1 above

2.3 Proposal Envelopes and Submission Address

- a) Proposals are to be submitted by the Proponent in a sealed envelope (provided by the Proponent) that shall be addressed **only** to:

City Clerk
Niagara Fall City Hall
4310 Queen Street, Niagara Falls, ON L2E 6X5

Re: Compliance Audit RFP-P44-2011

- b) The Proposal number RFP-P44-2011 is to be clearly stated on the submission envelope directly under the Proponent's name and address
- c) Proposals received in the City Clerks Office by facsimile, e-mail or by any other means other than that stated herein **will not** be accepted.

2.4 Proposal Submission Content

Proponents must submit clear typewritten pages and have a covering introductory letter on the Proponent's company letterhead which shall be signed in ink by an authorized officer of the firm.

The proposal submitted to the City shall cover all of the requirements as stated in this RFP in sufficient detail to allow the City's evaluation team to make a proper evaluation of each proposal received. Proposals received by the City that are vague in detail or do not adequately cover each item identified in Section 3, "Terms of Reference" and in compliance with the RFP may be rejected.

2.5 Costing

Proponents are herewith notified that this RFP calls for a total Lump Sum Cost for the completion of the work. No other costs will be considered or paid for by the municipality in question.

NOTE: Should the result of the audit lead to legal proceedings, and a representative from the accounting firm be required to testify, the representative would be paid the appropriate hourly rate.

2.6 Copies of Proposals

Proponents shall submit to the City, **one original plus four copies** of each Proposal. Each copy shall be an exact photocopy (including colour) of the original in every respect. The copies will be used by the evaluation team in its determination of a successful proponent.

SECTION 3.0
TERMS OF REFERENCE

3.1 General

The City of Niagara Falls and the Town of Fort Erie, on behalf of the Niagara Compliance Audit Committee, invites professional accountants to submit Proposal submissions including qualifications and quotations to conduct a municipal election compliance audit, in accordance with the *Municipal Elections Act*, 1996, as amended. Proponents must be licensed under the *Public Accountancy Act* and demonstrate knowledge of the *Municipal Elections Act*.

3.2 Background

Section 81(1) of the *Municipal Elections Act* states the following: an elector who is entitled to vote in an election and believes on reasonable grounds that a candidate has contravened a provision of the Act relating to election campaign finances may apply for a compliance audit of a candidate's election campaign finances.

Section 81.1(1) of the *Municipal Elections Act* states that a council or local board shall establish a committee for the purpose of section 81. The Regional Municipality of Niagara, the twelve (12) lower-tier municipalities and two school boards (District School Board of Niagara, Niagara Catholic District School Board) worked cooperatively to establish the Niagara Compliance Audit Committee (<http://www.niagaracomplianceaudit.ca>) to deal with any compliance audit applications made within the Niagara Region.

The Niagara Compliance Audit Committee received multiple requests, within the legislated time frame prescribed in the *Municipal Elections Act*. Having reviewed the written materials, heard oral submissions and conducted hearings pursuant to Section 81(5) of the *Municipal Elections Act*, the Niagara Compliance Audit Committee granted compliance audits of the 2010 municipal election campaign finances of the following:

1. John Hill, candidate for Councillor, Town of Fort Erie
2. Donald Lubberts, candidate for Councillor, Town of Fort Erie
3. Paul L. Collard, candidate for Councillor, Town of Fort Erie
4. Stephen Passero, candidate for Councillor, Town of Fort Erie
5. Doug Martin, candidate for Mayor, Town of Fort Erie
6. Ann-Marie Noyes, candidate for Mayor, Town of Fort Erie

The Niagara Compliance Audit Committee is satisfied that reasonable grounds have been demonstrated that the Candidates appear to have contravened provisions of the said Act relating to election campaign finances, and **further that the scope of the compliance audits shall be all inclusive and not restricted to the grounds of the specific compliance audit requests.**

Appendices to the RFP: A consolidated version of the compliance audit applications of the six (6) candidates is available upon written request to Mr. Dean Iorfida, City Clerk, City of Niagara Falls, E-mail: diorfida@niagarafalls.ca

3.3 Requirements of the Successful Proponent

The compliance audits of the six (6) candidates must be completed in accordance with the *Municipal Elections Act*, as per the following:

81 (8) Compliance Audit- auditor - Licensed only

Only auditors licensed under the *Public Accounting Act, 2004* or prescribed persons are eligible to be appointed auditors to conduct a compliance audit of a candidate's election campaign finances.

81 (9) Compliance audit - duty of auditor

An auditor appointed shall promptly conduct an audit of the candidate's election campaign finances to determine whether he or she has complied with the provisions of the *Municipal Elections Act* relating to election campaign finances and prepare a report outlining any apparent contravention by the candidate.

81(12) Powers of the auditor

For the purpose of the audit, the auditor is entitled to have access, at all reasonable hours, to all relevant books, papers, documents or things of the candidate and of the municipality or local board; and

Has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the audit as if it were an inquiry under the *Public Inquiries Act*.

3.4 Deliverables

The auditor will prepare compliance audits on the six individual candidates. Six individual reports or one composite report that addresses all the audits of the six individual candidates, are to be prepared by the auditor.

The compliance audit must be completed in accordance with s. 81(10) of the *Municipal Elections Act*, as per the following:

The auditor shall submit the report(s) to,

- a) the candidates;
- b) Fort Erie Town Council;
- c) Ms. Carolyn Kett, Clerk, Town of Fort Erie; and
- d) the applicant (s).

In addition to the report requirements listed above, the successful Proponent shall be required to present the findings of the compliance audit report(s) to the Niagara Compliance Audit Committee (three sitting members) at a committee meeting as determined by the procedures of the Niagara Compliance Audit Committee. The presentation will be in a venue open to the general public.

3.4 Evaluation Process and Criteria

An evaluation team of municipal clerks will evaluate the proposals based on the following criteria:

Cost (35 points)

- ✓ A total lump sum price is to be part of the proposal. (See page 8 for a definition on total lump sum price).

Time (10 points)

- ✓ The *Municipal Elections Act* indicates that it is the duty of the auditor to promptly conduct the audit. Based on such a stipulation, the evaluation team will be scored based on a proposed completion date.

Proposed Work Plan (25 points)

- ✓ a description of the methodology and approaches to be used to deliver a compliance audit in a comprehensive and prompt manner.
- ✓ any challenges or issues anticipated by the proponent and how such matters will be dealt with.
- ✓ Description, roles and CV's (curriculum vitae) of the Project Team.
- ✓ the proponent's requirements or expectations of Town of Fort Erie staff.

Experience and Qualifications (30 points)

- ✓ Audit firm licensed under the *Public Accountancy Act* (**mandatory**).
- ✓ Firm's demonstrated knowledge of the *Municipal Elections Act*, most notably, experience conducting compliance audits with respect to elections.
- ✓ Firm's reputation in the industry.
- ✓ Firm's experience working on similar reviews conducted at the Municipal, Provincial or Federal level. List at least three (3) similar past or present auditor consultant service contracts of similar size and scope as those of the work under this RFP (preferably in a municipal/public environment). References letters/ documents should also be included, if available.

3.5 Exclusions From Submitting a Proposal

The evaluation team reserves the right to not accept a Proposal from any Audit Firm, for which the following applies to any team member of that Audit Firm for the purposes of this RFP:

- ✓ Team member of the Audit Firm or their spouses have made a contribution to any candidate from the Town of Fort Erie during the 2010 municipal election campaign.
- ✓ Team member of the Audit Firm conducted the audit for the 2010 campaign contributions for any candidate from the Town of Fort Erie during the 2010 election campaign.

3.6 Rights and Reservations

The evaluation team reserves the right to reject all proposals received or to select any proposal that is in the Niagara Compliance Audit Committee's best interests and / or provides the best value for the Committee whether the selected proposal is the lowest priced or not. The selection team also reserves the right to make any decision of a successful proponent based on the evaluated criteria stated herein or upon factors that may be stated by any proponent that adds value to the process to the benefit of the Niagara Compliance Audit Committee

3.7 Total Lump Sum Price

The Total Lump Sum Price shall be defined as the total price, for all costs, whatsoever, including travel, miscellaneous expenses, office expenses, overhead, profit, meeting costs of any kind, all costs included to fulfil the requirements of the services defined in this RFP, and shall be exclusive of taxes. No other costs, fees etc. will be considered nor accepted by the Niagara Compliance Audit Committee.

3.8 Hourly Rate for Additional Services

Proponents must also state an hourly rate only for the provision (if needed) stated on Page 4 of this RFP , Section 2.5 :

NOTE: Should the result of the audit lead to legal proceedings, and a representative from the accounting firm be required to testify, the representative would be paid the appropriate hourly rate

SECTION 4.0 INSTRUCTIONS TO BIDDERS

4.1 RFP Closing Date and Time

Proposals must be received in the City Clerk's Office, Niagara Falls City Hall, 4310 Queen Street, Niagara Falls, Ontario **no later than 2:00 p.m. August 26, 2011**. Proposals submitted later than this stated time and date will not be accepted. Proposals will be opened by City Administrative Staff in accordance with established procedures.

4.2 Proposal Submission Delivery

Proposals must be submitted in sealed envelopes or packages and must have the Proposal number and description and the name of the Proponent (company) clearly stated on the exterior of all envelopes/packages. Proposals submitted including those by mail or courier must have this information on the exterior (outside) delivery envelope. The City of Niagara Falls will not assume any responsibility for deliveries by mail or courier. It is the Proponent's sole responsibility to ensure all mail or courier and all other methods of delivering their Proposal arrive at the stated location prior to the closing date and time. Fax or E-mail Proposals will not be accepted.

4.3 Proposal Submissions to be Signed

A duly authorized official of the Proponent's company must sign a covering letter on the Proponent's company's letterhead, stating the contents of the Proposal. The full name, address and contact telephone numbers of the Proponent's company must be stated in this covering letter in order for the Proposal to be considered valid.

4.4 Acceptance of RFP's Terms and Conditions

All Proponents, by submitting a Proposal in response to this RFP, shall agree to comply with all the conditions, requirements, and instructions of this RFP as stated or implied herein. Any alteration, erasure, or interlineations by the Proponent of this RFP shall constitute cause for rejection of the Proponent's Proposal. Exceptions (if any) to this RFP must not be added to the Proponent's Proposal pages, but must be on Proponent's covering letter and must accompany the Proponent's Proposal.

4.5 Rights of the City

- a) The City reserves the right, in its absolute discretion to accept Proposals which are deemed to be most advantageous to itself and the right to reject any or all Proposals in each case without giving any notice. All Proposals received will not necessarily be accepted. In no event will the City be responsible for the costs of the preparation or the submission of a Proposal from any Proponent.
- b) Proposals which contain conditions or otherwise fail to conform to the Instructions to Bidders of this RFP may be disqualified or rejected. The City may, however, in its sole discretion, reject or retain for its consideration Proposals, which are non-conforming because they do not contain the content or form required by this RFP or for failure to comply with the Instructions to Bidders of this RFP.
- c) Except as expressly and specifically permitted as set in the terms and conditions of this RFP, no Proponent shall have any claim for any compensation of any kind whatsoever, as a result of participating in this RFP, and by submitting a Proposal each Proponent shall be deemed to have agreed that it has no claim.
- d) The City reserves the right to exercise complete and unfettered discretion in all aspects of the conduct of this RFP and any subsequent procurement process, the assessment and evaluation of Proposal submissions, including the determination of criteria and choice of the Selected Proponent, without incurring any liability whatsoever to any Proponent, including any liability for costs, expenses, losses or damages, and without giving any reason therefore.

- e) The City also reserves the right to: modify specific details and deadlines, cancel this RFP at any time prior to or following the stated RFP closing time, consider Proponents who have not responded to this RFP, request additional information if deemed necessary by the City and to take any steps whatsoever the City deems necessary to choose a Selected Proponent.
- f) The City reserves the right to negotiate price, terms, conditions or any matter whatsoever with the highest ranked Proponent (the "Selected Proponent"). Should negotiations with the highest ranked Proponent not be successful, the City reserves the right to enter into negotiations with the next highest ranked **or any other** Proponent regardless of ranking or to cancel the RFP completely or to cancel and re-issue the RFP.
- g) The Proponent agrees by submitting a proposal in response to this RFP that the City has no obligation to reveal the results of or reasons for its decision in selecting a successful Proponent and agrees that no de-briefing will be provided to any Proponent by the City.
- h) The City reserves the right to waive informalities and minor inconsistencies at its sole discretion.

4.6 Questions Regarding the RFP and Addenda

- a) Questions regarding this RFP must be submitted in writing only to Mr. Dean Iorfida, City Clerk E-mail: diorfida@niagarafalls.ca no later than 1:00 p.m., local time, August 22, 2011. Questions received later than this stated time and date may not be acknowledged nor answered.
- b) No City representative, whether an official, agent or employee, other than the Project Coordinator is authorized to speak for the City with respect to this RFP, and any Proponent who uses any information, clarification or interpretation from any other representative does so entirely at the Proponent's own risk.
- c) The City will not be bound by any representation made by an unauthorized person, but any attempt by a Proponent to bypass the RFP process may be grounds for rejection of its Proposal.
- d) The City of Niagara Falls will not be responsible for any verbal comment or suggestion by any City staff, appointed or elected official of the City or by any consultant retained by the City in respect to this RFP.
- e) Proponent's Questions if deemed necessary of a response and any City directed changes or alterations to this RFP will be issued in the form of an addendum or addenda. Addenda will be posted on the City's Bid Opportunities Web Site: www.niagarafalls.ca/bids. It is the Proponent's sole responsibility to check this Web Site often to avail themselves of any posted addenda. The front page of any addenda posted must be completed and signed by the Proponent and affixed to their Proposal. Proposals that do not include all addenda may be rejected.

4.7 Completion of all Information and Data Required

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

4.8 Non-Acceptance Due to Existing Obligations to the City

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

4.9 Conforming with all Laws

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

4.10 Award Requirements

In the event that the City accepts a particular Proposal, the City will issue a Purchase Order to the selected Proponent or request the Proponent to execute a standard agreement with the City. Within ten (10) days of notification by the City of award, the selected Proponent must provide all insurance and other required documents to the City Clerk. Failure to provide the said documentation within this time period may result in cancellation of the award. The City may, in its sole discretion, extend this ten (10) day period.

4.11 Ethical Standards

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

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

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

4.12 Single Point of Contact

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

4.13 Publicity Regarding this RFP and the Proponents Proposal

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

4.14 Potential for Conflict of Interest

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

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

4.15 Non-Collusive Proposal Certification

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

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

4.16 Legal Claims and Damages

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

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

4.17 Examination Of Records

The Proponent agrees that the City of Niagara Falls or any of their duly authorized representatives shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Proponent involving transactions related to this Agreement.

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

The Proponent agrees to defend the City of Niagara Falls at Proponent's own expense, in all suits, actions or proceedings in which the City of Niagara Falls is made a defendant for actual or alleged infringement of any Canadian or foreign letters patent, inventions, intellectual property rights, copyright trademarks, technology rights or any other related rights to the above including payment of all legal and court costs, resulting from the City of Niagara Falls' contractual relationship with the Proponent and the Proponent's use of any or all technologies, methodologies, strategies in providing the services required herein. The Proponent further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding against the City of Niagara Falls. The Proponent agrees to indemnify and hold harmless the City of Niagara Falls from any and all license, royalty and proprietary fees or costs, including legal and court costs, which may arise out of the City of Niagara Falls' contractual relationship with the Proponent and the Proponent's use of any or all technologies, methodologies, strategies in providing the services required herein. It is expressly agreed by Proponent that these covenants are irrevocable and perpetual.

4.19 Ownership of Submissions

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

4.20 Irrevocable Offer

By submitting a Proposal in response to this RFP, the Proponent thereby acknowledges that offers contained within its Proposal shall be irrevocable and remain open for acceptance by the City for a period of not less than ninety (90) days from the closing date and time specified in this RFP.

4.21 Indemnification

a) The Selected Proponent shall indemnify and save harmless the City from and against all claims, actions, losses, expenses, costs, demands, suits and other proceedings or damages of every nature and kind whatsoever which the City, its employees, officers or agents may suffer as a result of the negligence of the said Proponent, its employees, officers or agents in performance of this Agreement;

b) The Selected Proponent shall indemnify and save harmless the City from and against all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever which the City, its employees, officers or agents may suffer as a result of misuse, misappropriation or alleged misuse or misappropriation by the said Proponent, its employees, officers or agents of intellectual property in the performance of this Agreement; and

c) The City agrees to indemnify and save harmless the Selected Proponent from and against any and all claims, losses, damages, liability and costs arising out of or in any way connected with the presence, discharge, release or escape of contaminants of any kind, excluding only such liability as may arise out of the negligence of the said Proponent in the performance of the services to the City as described in this RFP.

4.22 Insurance

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

- a) Professional Liability (errors and omissions coverage) for the performance of Services by the Selected Proponent providing that the policy is:
- .1 In the amount of not less than Two Million Dollars (\$2,000,000) total coverage, and Two Million Dollars (\$2,000,000) coverage per claim;
 - .2 Not to be construed as a limit of the liability of the Selected Proponent in the performance by the said Proponent of the Services under this Agreement; and
 - .3 Notwithstanding anything to the contrary contained in this Agreement, kept in full force and effect for a period of time ending no sooner than two years after the termination or expiry of this Agreement, as the case may be;
- b) Comprehensive General Liability, provided that the policy:
- .1 is in the amount of not less than Five Million Dollars (\$5,000,000), per occurrence;
 - .2 add the City as additional insured;
 - .3 has provisions for cross-liability as between the Selected Proponent and the City, broad form contractual liability, owner's/contractor's protective liability, contingent employer's liability, employers liability, non owned automobile liability and personal injury liability;
 - .4 provides non-owned automobile coverage; and
 - .5 provides for thirty (30) days' prior written notice of cancellation or material change;

Municipal Election Compliance Audit - Niagara Compliance Audit Committee

- c) The Selected Proponent shall also furnish the City with a certified copy of a Standard Automobile Liability Insurance Policy on all owned and leased vehicles with inclusive limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence for bodily injury and property damage with a deductible not greater than Five Thousand Dollars (\$5,000.00);
- d) All policies listed above:
 - .1 Shall apply as primary insurance and not excess to any other insurance available to the City; and
 - .2 To remain in force until final acceptance of the services described herein by the City; and
- e) At the expiry date of the policies, the Selected Proponent shall provide original signed Certificates or electronic equivalents thereof, evidencing renewals or replacements to the City prior to the expiration date of the original policies, without notice or request by the City.

4.23 Withdrawal of Proposal

- a) Proponents shall be permitted to withdraw their Proposal after the Proposal has been delivered to the Supply and Services Section at any time up to the official closing time by submitting a written request from the Proponent to the Manager of Supply and Services, prior to the date and time specified for the Proposal closing. Proponents will not be allowed to withdraw their Proposal following the RFP stated closing date and time.
- b) The City reserves the right to withdraw, at its discretion, this Request for Proposal at any time and shall not be liable for any expense, cost, loss or damage incurred or suffered by any Proponent as a result of such withdrawal.

4.24 No Post Submission Adjustments

No adjustments by any Proponents to their Proposal will be permitted after the stated closing date and time for this RFP.

4.25 Verification and Clarification

- a) Notwithstanding any clause, term or condition of this RFP, the City at its sole discretion, reserves the right to verify or clarify any information or data contained in a Proponent's Proposal. Such requests by the City shall not constitute any opportunity by the Proponent to adjust, improve or in any manner add to their Proposal.
- b) If in the sole opinion and determination of the City, the Proponent has misinterpreted the services required in the RFP or underestimated the hours or value of the services to be performed or has submitted unbalanced prices or fees, not accurately reflecting the services requested, the City may reject the Proposal.

4.26 Conflicts of Interest

- a) In its Proposal, the Proponent must disclose to the City any potential conflict of interest that might compromise the performance of the service. If such a conflict of interest does exist, the City may, at its discretion, refuse to consider the Proposal.
- b) The Proponent must also disclose whether it is aware of any City employee, City Council member or member of a City agency, or commission thereof having a financial interest in the Proponent and the nature of that interest. If such an interest exists or arises during the evaluation process or the negotiation of the Agreement, the City may, at its discretion, refuse to consider the Proposal or withhold the awarding of any Agreement to the Proponent until the matter is resolved to the City's sole satisfaction.

c) If, during the Proposal evaluation process or the negotiation of the Agreement, another City giving rise to a potential conflict of interest retains the Proponent, then the Proponent will so inform the City. If the City requests, then the Proponent will refuse the new assignment or will take such steps as are necessary to remove the conflict of interest concerned. Proponents must declare in their Proposal all conflicts of interest or any situation that may be reasonably perceived as a conflict of interest that exists now or may exist in the future. The City reserves the right to disqualify a Proponent in the event of a conflict, real or perceived.

4.27 Failure or Default of Proponent

If the Proponent, for any reason, fails or defaults in respect of any matter or thing which is an obligation of the Proponent under the terms of the RFP, the City may disqualify the Proponent from the RFP and/or from competing for future tenders or RFPs issued by the City for a period of one year. In addition, the City may at its option either:

a) Consider that the Proponent has withdrawn any offer made, or abandoned the Agreement if the offer has been accepted, whereupon the acceptance, if any, of the City shall be null and void; or

b) Require the Proponent to pay the City the difference between its Proposal and any other Proposal which the City accepts, if the latter is for a greater amount and, in addition, to pay the City any cost which the City may incur by reason of the Proponent's failure or default, and further the Proponent will indemnify and save harmless the City, its elected and appointed officers and officials, employees and agents from all loss, damage, liability, cost, charge and expense whatever which it, they or any of them may suffer, incur or be put to by reason of such default or failure of the Proponent.

4.28 Non-Exclusivity

The awarding of an Agreement to a Selected Proponent shall not be a guarantee of exclusivity.

4.29 No Assignment

The Consultant shall not assign any part of this service which may be awarded to it under the execution of an Agreement without prior written consent of the City. Such written consent however, shall not under any circumstances relieve the Consultant of its liabilities and obligations under this RFP and said executed Agreement.

4.30 Sub-Consultants or Service Providers

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

4.31 Personnel and Performance

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

4.32 Restrictions Contained in a Proposal

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

4.33 Warranties and Covenants

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

4.34 Payment Schedule

a) A payment schedule satisfactory to the City shall be provided to the Selected Proponent covering the services as stated in this RFP. No fees or reimbursable expenses shall become payable to the said Proponent pursuant to the award other than pursuant to one or more signed schedules (if applicable).

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

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

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

4.35 Termination

Nothing herein shall be construed as giving the Selected Proponent the right to perform the services stated in this RFP beyond the time when such services become unsatisfactory to the City of Niagara Falls; and in the event that the said Proponent shall be discharged before all the services contemplated hereunder have been completed, or the services are for any reason terminated, stopped or discontinued because of the inability of the said Proponent to perform the services as stated in this RFP, the said Proponent shall be paid only for that portion of the said services which shall have been satisfactorily completed at the time of termination.

4.36 Termination For Convenience of the City

The City of Niagara Falls, upon giving thirty (30) days written notice (unless a longer period is given) may cancel the Purchase Order or terminate the Agreement, in whole or in part, when it is in the best interest of the City of Niagara Falls. To the extent that the Purchase Order is cancelled or Agreement is terminated, the City shall be liable only for payment in accordance with the payment provisions of the Purchase Order or Agreement for services rendered prior to the effective date of termination.

4.37 Ownership of Documents Submitted to the City

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

4.38 Confidentiality of Information

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

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

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

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

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

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

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

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

4.39 Waiver of Rights

a) Each Proponent acknowledges and agrees that the City is likely to receive, and be required to deal with, multiple RFP Proposals, all of which may contain or disclose information considered by their Proponents to be of special, unique, secret or proprietary nature, and that such information and the manner in which the City may use it may be entitled or subject to protection under any of Canada's intellectual property laws, the Competition Act, Municipal Freedom of Information and Privacy Protection Act or the common law relating to unfair competition.

b) The City will not accept any RFP Proposal that is subject to a reservation by the Proponent of any such rights, and each RFP Proponent, by virtue of filing an RFP Proposal pursuant to this RFP, expressly waives any and all protection to which the Proponent might otherwise be entitled in respect of that RFP Proposal under all of the foregoing laws, and expressly releases the City and its staff, as well as the qualified Proponents from any claims, actions, suits and proceedings whatsoever for the infringement of any intellectual property right or for the use of any secret or proprietary information disclosed to the City in that RFP Proposal.

c) Each Proponent shall indemnify and save harmless The Corporation of the City of Niagara Falls and its Staff, against all claims, actions, suits and proceedings brought by any person in respect of the infringement or alleged infringement of any patent, copyright, trademark or industrial design or the use or misuse in connection with their RFP Proposal, including any and all costs incurred by the City.

4.40 Anti-Lobbying Restrictions and Required Disclosure

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

b) In the event of any such lobbying, the City may reject any RFP Proposal by that Proponent without further consideration and terminate that Proponent's right to continue in the RFP and any subsequent procurement process. All correspondence or contact by interested parties with the City must be directly and only with the City contact person identified in this Proposal document. It should be duly noted by all Proponents that this anti-lobbying restriction extends from the release date of this RFP through to the date and time when the City formally awards the Agreement, by purchase order i.e., after the RFP evaluations and award. Any lobbying undertaken during this time frame by any Proponent or the Proponent's team members, or anyone involved with their RFP Proposal may result in immediate disqualification from the process. This anti-lobbying restriction is not meant to affect the day-to-day operations of the City, its staff and its elected and appointed officers and officials and agents of the City that may necessarily include contact with potential Proponents to this RFP regarding other business.

c) This section shall not be intended to disallow any meetings, interviews or clarifications requested or authorized by the City, its authorized staff, the City's representative or their authorized designates.

4.41 Announcement by City

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

4.42 Notification to Proponents

Any notice that the City may be required or desired to give to the Proponent shall for all purposes be deemed to have been sufficiently and properly given if posted on the City's Bid Opportunities Web Page: www.niagarafalls.ca/bids and shall irrefutably be presumed to have been received by the Proponent on the day of the said posting.

4.43 Materially False, Incorrect or Misleading Information

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

4.44 Public Comment or Promotion of RFP Proposal

Except for Proponent interviews, meetings or presentations specifically authorized or arranged by the City contact person or authorized designate, neither Proponents nor their representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to publicly promote or advertise their Proposal, or their interest or participation in the RFP and subsequent procurement processes (if any) without the City's prior written consent, which consent may be arbitrarily withheld or delayed.

4.45 Failure to Comply

Failure to comply with any material requirements of this RFP may result in disqualification of a Proponent and/or the rejection of the Proponent's RFP Proposal.

4.46 Order of Precedence

In the event of any inconsistency or conflict in the contents of the following documents, such documents shall take precedence and govern in the following descending order:

- Purchase Order or Agreement
- Addenda (if any) as issued
- This RFP document including all appendices and attachments
- The Proponent's proposal submission

4.47 Rights to Proposal Submission Document

Upon receipt of the Proponent's Proposal submission, the City shall retain the right to determine the use of the proposal submission for its own purposes. Proponent's shall not use their proposal submission for any other purposes whatsoever, including revealing any content of their proposal submission or making copies for other agencies, firms or companies not being a legal part or division of the Proponent's company, unless permission for any such use is receiving in writing by the Proponent from the Corporation of the City of Niagara Falls. Proponents must make a request in writing to the City for the intended use of their proposal submission for any other purposes than as stated herein.

4.48 Proposal Submission and Correspondence in English

Proposal submissions must be prepared in English and Proponents must be able to converse and correspond fluently in English directly or through an interpreter supplied by and at the total cost to the Proponent.

4.49 Suspension of Activity

a) All Proponents are advised and put on notice that notwithstanding anything else contained in this RFP that all Proponents are forewarned and advised that if the City chooses not to proceed with this RFP process or any subsequent procurement process or any stage including, without limitation, the completion of the RFP process, the commencement, implementation or completion of any RFP process or other procurement process and/or the award, negotiation or the finalization of any Purchase Order or agreement and that accordingly, all Proponents acknowledge and agree that if any such processes are suspended, terminated or cancelled at any time or times

during any stage of the RFP process or subsequent procurement process (if any) by the City, then the Proponents shall have no claim against the City for any costs, expenses, losses including loss of profits, liabilities or damages whatsoever.

b) The City reserves the right to exercise complete and unfettered discretion in all aspects of the conduct of the RFP and any subsequent procurement process, the assessment and evaluation of proposal submissions, including the determination of criteria and the choice, if any, of a Selected Proponent, without incurring any liability whatsoever to any Proponent, including any liability for costs, expenses, losses or damages, and without giving any reasons therefore.

c) Without limiting the generality of the foregoing, The City, in its sole and unfettered discretion, reserves the right to change the dates, schedules and deadlines set out in this RFP, or to change the scope of the project, or to cancel the RFP or the Project, without stating reasons therefore and accordingly The City also reserves the right to accept or to reject any or all of the proposal submissions and the City reserves the right to proceed as, in its sole and unfettered discretion, following receipt of the proposal submissions, including, without limitation, issuing a second or more, or a modified proposal for the project or entering into negotiations with any Proponent.

d) The lowest priced proposal submission received will not necessarily be accepted.

e) The issuance of this RFP and the receipt of any proposal submission by any Proponent does not commit the City to issue a Purchase Order or execute an agreement with or to pay any costs incurred in the preparation of any proposal by any Proponent, or in any Proponent's attendance at any meetings with The City.

4.50 Liability for Errors

While the City has used considerable efforts to ensure an accurate representation of information in this RFP, the information contained in this RFP is supplied solely as a guideline for Proponents. The information is not guaranteed or warranted to be accurate by the City, nor is it necessarily comprehensive or exhaustive. Nothing in this RFP is intended to relieve Proponents from forming their own opinions and conclusions with respect to the matters addressed in this RFP.

4.51 Agreement with Terms

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

4.52 Modification of Terms and Addendums

The City reserves the right to modify the terms of the RFP. Any modifications or changes to the RFP will be issued in the form of an addendum and will be posted on the City's Bid Opportunities Web Page. It is the Proponent's sole responsibility to check this Web Page often to avail themselves of any posted addenda.

4.53 Litigation with The City

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

SECTION 5.0
APPENDICES

Appendices to the RFP:

A consolidated version of the compliance audit applications of the six (6) candidates is available upon written request to Mr. Dean Iorfida, City Clerk, City of Niagara Falls, E-mail: diorfida@niagarafalls.ca