f Newmarket Bid Opportunity ONLINE

Owner of Newmarket
Procurement Services Department
395 Mulock Drive, P.O. Box 328, STN Main
Newmarket, ON L3Y 4X7

T: (905) 953-5335
F: (905) 953-5137
http://Bids.newmarket.ca

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Corporation of the Town of Newmarket Standard Terms and Conditions

The Terms and Conditions contained within are applicable to all Corporation of the Town of Newmarket (the Owner's) Bid Opportunities and shall form part of the Owner's Bid Call Document

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1. Definitions

All initially capitalized terms not otherwise defined in these Standard Terms and Conditions shall have the meanings ascribed thereto in the Owner's Procurement by-law Number 2014-27, as it may be amended, restated, supplemented or replaced from time to time.

In the event of any inconsistency or conflict in the content of this document, such documents, as stated in Item 72 Order of Precedence shall take precedence and govern in the order stated.

"Addenda or Addendum" means such further additions, clarifications, deletions, modifications or other changes to any Bid Documents.

"Bid Call Document" means the Owner's solicitation document, which may be in the form of an Informal Quick Bid (Request for Quotation (QB) or Quick Bid Request for Proposal (QBRFP)), Request for Tender (RFT), Request for Proposal (RFP) or Sale (S). For greater certainty the term Bid Call Document includes but is not limited to; the Terms, the Owner Standard Terms and Conditions and the Instructions to Proponents.

"Bidder" means any person or entity who submits a bid submission in response to where price is the primary factor in the evaluation process for award determination. For clarity, the word "Bidder" shall also mean "Respondent" or "Offeror".

"Proponent" means any person or entity who submits a proposal submission in response to a solicitation where price is not the primary factor in the evaluation process for award determination. For clarity, the word "Proponent" shall also mean "Offeror".

"Consultant" means the selected Bidder or Proponent that has executed a Contract with the Owner to supply, perform the Work and/or Services described in a Bid Call Document.

"Owner" means the Corporation of the Town of Newmarket. Herein called "the Owner".

"Procurement by-law" means the Owner's Procurement Bylaw Number 2014-27, as it may be amended, restated, supplemented or replaced from time to time. **"Site" means the facility or location where the Work is to be performed.**

"Work" means the Work to be undertaken by the Consultant pursuant to the provisions of the Contract This definition shall include the supply of Goods and / or Services, Deliverables, Scope of Work etc.

2. Bid / Proposal Submission

The Bid Call Document shall state the **single method** for submitting a bid to the Owner, as follows:

a. Bid Opportunities identified as **ELECTRONIC BID SUBMISSIONS ONLY**, Proponents shall submit their bid submission electronically through the Owner's Bidding System.

b. Bid Opportunities identified as **HARD COPY BID SUBMISSIONS ONLY**, Proponents shall submit a hard copy of their bid submission as stated in the Bid Call Document.

3. English Language

All Bids / Proposal submitted shall be in the English language only. The Consultant, and in particular, all site foreman for construction projects, must be able to communicate effectively in the English language.

4. Procurement Bylaw

4.1 Bid / Proposal submissions will be called, received, evaluated, accepted and processed in accordance with the Procurement by-law 2014-27, as amended. By submitting a Bid / Proposal submission, the Proponent agrees to be bound by the terms and conditions of the Procurement By-law, as fully as if they were incorporated herein.

4.2 Use this hyperlink, to view a copy of the Procurement Bylaw Number 2014-27.

5. Proponent's Statement of Understanding

By submitting a Bid / Proposal Submission, it is understood and accepted by each Proponent that the Proponent has carefully examined all of the Bid Call Documents and has carefully examined the Work to be performed under the Contract, if awarded. The Proponent offers to furnish all labor, machinery, tools, apparatus and other means of implementation, and any other materials to complete the Work in strict accordance with the Bid Call Documents for the prices set forth in the Bid / Proposal.

6. Errors And Omissions

The Owner shall not be held liable for any errors or omissions in any part of its Solicitation. While the Owner has used considerable effort to ensure an accurate representation of information in its Solicitation, the information contained in the Bid Call Documents is supplied solely as a guideline for Proponents. The information is not guaranteed or warranted to be accurate by the Owner, nor is it necessarily comprehensive or exhaustive. Nothing in the Bid Call Documents is intended to relieve the Proponents from forming their own opinions and conclusions with respect to the matters addressed in the Bid Call Documents.

If a Proponent needs to address any discrepancies, errors and/or omissions in the Bid Document or if they be in doubt as to any part thereof they shall submit questions in writing as instructed in the Bid Document.

7. Examination Of The Place Of The Work

7.1 If applicable to the Work and notwithstanding any drawings or specifications provided in the Bid Call Documents, Proponents are required to satisfy themselves, by personal visitation and examination of each site for the Work, with respect to the existing conditions which may be encountered on or adjacent to the site, including without limitation, all underground/overhead utilities locations, surface & sub-surface conditions, existing structures on or adjacent to the sites, access routes and other conditions which may affect performance of the Work.

7.2 Access to the place of the Work will be provided during the site meeting (if applicable).

7.3 By submitting a Bid / Proposal submission, the Proponent acknowledges and agrees that he/she has satisfied themselves as to all the provisions of the Bid Call Documents and of all the conditions which may be encountered at the site or any other matter which may affect

performance of the Work and no claims may be made by the Consultant, that it was uninformed as to any of the conditions affecting the site or the provisions or conditions intended to be covered by the Contract.

7.4 Proponents shall accept sole responsibility for any error or neglect on their part in respect to the foregoing. No claims shall be accepted by the Owner for any additional labor, equipment or material cost that was not included in the Bid / Proposal submission and may be required for the proper execution and completion of the Work, due to any failure to comply with the above.

7.5 The Proponent is not entitled to claim at any time after the submission of its Bid / Proposal submission that there was any misunderstanding of the terms and conditions relating to site conditions. The Owner is not responsible for any misunderstandings on the part of the Proponent.

8. Enquiries

8.1 All requests for clarification and questions regarding the Bid Call Document shall be submitted in writing as instructed in the Bid Call Document prior to the stated deadline for emailed questions. All questions or clarifications should be specific to the Bid Call Document and should include references to a specific section or schedule and item number.

8.2 The Owner cannot guarantee that clarifications or questions received beyond the deadline will be answered by the Procurement Representative.

8.3 Requests will be answered by the Procurement Representative or forwarded to the appropriate technical contact for reply. Dependent on their nature, comments or answers will be returned via email from the Procurement Representative or through an addendum to the Bid Call Document should the information be applicable to all Proponents, in the opinion of the Owner.

8.4 Verbal clarifications shall not change any of the terms or conditions of the Bid Call Documents. Proponents shall only rely on information provided by the Owner in writing.

9. Bid Protests

9.1 Proponents shall have up to the stated deadline date and time in the Bid Call Document to submit a written question(s) or clarification request and/or concern pertaining to; the Bid Call Document, the procurement process, discrepancies, errors and/or omissions, or other matters to the Procurement Representative stated in the Bid Call Document.

9.2 The Owner reserves the right not to hear any protests, over matters of which the Proponent failed to notify the Procurement Representative, in accordance with the above paragraph.

9.3 All other Bid Protests shall be conducted in accordance with the Procurement Department's Policies and Procedures, as amended.

10. Bid Irregularity or Proposal Irregularity

Bid Irregularities and Proposal Irregularities shall be dealt with in accordance with the applicable schedule of either Schedule "B" or Schedule "C" of the Procurement Bylaw 2014-27, as amended.

11. Capability of Proponent

The Proponent shall, if requested by the Owner, provide evidence of experience, ability, capacity, financial resources, etc., if deemed necessary by the Owner for the performance of the Contract. The Owner reserves the right to investigate a Proponent's claim or background at any time and in any manner deemed appropriate by the Owner and shall not be required to disclose the information obtained or the source.

12. Non-Exclusive

Any Contract awarded as a result of this solicitation will be non-exclusive. The Owner may, at its sole discretion, purchase the same or similar services from other sources during the term of the Contract.

13. Duplicate Vendor Account Submissions

Proponents shall submit all Bids / Proposal submissions (including Green or Alternative Bids / Proposals) related to a Bid Opportunity from the same Vendor Account. If a Bid / Proposal submission is received from two Vendor Accounts related to the same Proponent, then the Owner shall only consider the Bid / Proposal submission last submitted. Any previous Bids / Proposals submitted shall be superseded by the last submission and will not be reviewed. It is the Proponent's sole responsibility to ensure that duplicate Vendor Accounts are not created or used inappropriately.

14. Bid / Proposal Results

In the case of Invitations to Tender (ITT), a public Bid opening will **not** be held. The Owner shall within two (2) hours of the Bid closing, post the names of the Proponents, on the Owner's Bidding System, http://Bids.newmarket.ca and the unverified Sub Total Contract amount (exclusive of taxes) – the Harmonized Sales Tax (H.S.T.) is additional. If Part Bids are acceptable, as stated in the Bid Call Document, the unverified Sub Total of each Part(s) Bid shall be posted. In addition, if a percentage (%) annual increase is requested, the percentage increase shall be posted. The closing time and date shall be determined by the Owner's Bidding System web clock.

The unverified Bid prices are subject to review, verification, calculation and adjustment by the Owner and if necessary, consideration by the Owner's Bid Review Panel, in accordance with the terms and conditions of the Bid Call Document and the Owner's Procurement Bylaw.

For all other procurement processes, other than ITT, a public bid opening will **not** be held and **the bid results will only be posted publicly once the Notice of Award is issued to the supplier(s).**

15. Checking of Bids

15.1 Bids opened are checked by the Procurement Representative and Consultant (if applicable) to ensure that:

i. The required Bid Deposit and undertaking to provide a Bond or Letter of Credit are properly executed and satisfy the requirements of the Bid Call Documents (if applicable).

ii. Bids / Proposal submissions comply with the Bid Call Documents, and that all items as specified have been bid on and all bid forms are completed, unless Part Bids are permitted under the Solicitation. Any Bid Irregularities shall be dealt in the manner described in the Bid Call Documents.

iii. All mathematical extension calculations are correct. Where there is an obvious error in the extended price, the unit price stipulated shall govern and the extended price shall be re-calculated using the unit price, along with the estimate quantity. Where there is an obvious calculation error in the addition of individual lump sum prices into a subtotal price, the Owner may make the appropriate mathematical correction to the subtotal price so that the calculation is correct.

16. Proponent's Teams (if Applicable)

16.1 In the event that more than one legal entity for the purpose of submitting a Bid / Proposal submission, the lead Proponent must be clearly identified. The Owner will contract only with the identified lead Proponent (herein referred to as the "Proponent") who shall be completely responsible for the full performance of the Contract, and who shall act at all times as the primary contact for the Owner. The business relationships between the Proponent and its team members shall be arranged by the Proponent and any resulting conflicts resolved without the Owner involvement.

16.2 The Proponent agrees that no member of the Proponent's team will be substituted for any other individual or firm without the express written authorization of the Owner.

16.3 Payments pursuant to the Contract will be made directly to the Proponent for distribution to the Proponent's team. The Proponent shall save the Owner harmless from all costs, damages, judgements, claims, demands, suits or other proceedings brought by any member of the supplier team in connection with the distribution of such fees.

17. Gifts and Donations

17.1 Consultants shall ensure that there will be no gifts, gratuities, discounts, special services or personal benefits provided or offered to any employee or representative or consultant of the Owner, prior to or during or upon completion of the Contract, from the Consultant or any of its employees or representatives in connection with the Contract. The Consultant shall report to the Procurement Services Coordinator any attempt by any employee or representative or consultant of the Owner to obtain any such or similar favour or personal benefit. Any material failure on the part of a Consultant to comply with this provision may be grounds for disqualification from a Bid or for termination if an award has already been made.

17.2 Should any prospective Consultant or any of its agents give or offer any gratuity or attempt to bribe any employee of the Owner, or to commit fraud, the Owner shall be at liberty to:(i) reject the Bid / Proposal of such Proponent, or (ii) terminate the Contract of such Consultant. If either the rejection of the Bid / Proposal or the termination of a Contract pursuant to this provision results in an increased cost to the Owner in having the Work completed, the Owner shall be entitled to rely upon the (as applicable) Bond or the Performance Bond (as applicable) to recover the increased costs incurred by the Owner as compensation and where the amount of the Bid Bond or the Performance Bond (as applicable) is insufficient to compensate the Owner, the Contactor shall indemnify the Owner for the full amount of the increased costs incurred by the Owner.

18. Conflict of Interest

18.1 Each Proponent, in their Bid / Proposal submission, shall declare on a separate sheet of paper or, in the case of electronic Bid '/ Proposal submission, the Proponent shall declare in the text field provided in the Bidding System, 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. Failure to comply with this requirement may render the Bid / Proposal non-compliant and shall cause the Bid / Proposal submission to be rejected. The Owner reserves the right to disqualify from further consideration Bids / Proposal submissions which in the Owner's sole opinion demonstrate a Conflict of Interest.

18.2 Any actual or potential situation that may be interpreted as either a Conflict of Interest or a potential Conflict of Interest arising during the term of a Contract must be reported immediately to the Owner. In the event of any Conflict of Interest or potential Conflict of Interest, the Consultant shall abide by the Owner's Employee Code of Conduct, as amended, see - http://www.newmarket.ca/TownGovernment/Documents/EmployeeCodeofConduct.pdf. Any failure to advise the Owner may result in termination of the Contract by the Owner.

19. Ethical Conduct

In addition to being in compliance with all applicable federal, provincial and municipal laws and regulations, within the context of a Contract, Consultants shall behave in an ethical manner having regard for and demonstrating care for, the condition of or well-being and fair treatment of all persons, places and things.

20. Inspection and Testing (If Applicable to the Work)

20.1 The Owner reserves the right to inspect and have a demonstration of any/all goods which may be offered, or of the Proponent's premises/equipment, prior to award and/or at any point during the Contract.

20.2 The inspection of all Bid items shall be carried out by the Owner or the Owner's consultant to determine whether or not they meet the requirements of the Bid Call Document and/or Contract, as applicable.

20.3 If any services, Work, material or workmanship which fails in any way to meet the terms of the Bid Call Document and/or Contract, the Owner will notify the Consultant and the Consultant will take immediate steps for corrective actions, at its own expense and within the time frames specified by the Owner. Should the Consultant fail to remedy any part of the rejected services, Work, material or workmanship, the Owner may make alternative arrangements for rectification and any expense(s) incurred by the Owner shall be paid by the Consultant within ten (10) business days' following receipt of an invoice or the costs shall be deducted from any payment owed the Consultant.

20.4 All cost associated with the inspection or testing of any service/material that does not meet the Owner's specification shall be charged to the Consultant.

21. Purchase Order

21.1 Payment for work satisfactorily performed in the opinion of the Owner is Net Thirty (30) days.

21.2 For payment purposes a Purchase Order may be generated and issued to the Consultant. The terms and conditions of the Contract supersede those of any Purchase Order issued.

21.3 An alternate payment option, via the Owner's Corporate Purchase Card (P-Card), may be available to the Consultant at the sole discretion of the Owner, based upon considerations which include, but may not be limited to, its practical application given the commodities or services purchased and the terms and conditions of the Contract.

21.4 All payment requests shall be provided with an up to date Insurance Certificate and a copy of the Consultant's valid WSIB Clearance certificate where applicable.

21.5 Where there is a question of non-performance, payment in whole or in part may be withheld. In the event a cash discount, the withholding of payment as provided herein shall not deprive the Owner from taking such discount.

22. Invoicing

22.1 All invoices shall be sent to the Town of Newmarket, Finance Department, to the Attention of: Accounts Payable, 395 Mulock Drive, Newmarket, ON L3Y 4X7. Alternatively, electronic copies of invoices may also be sent to accountspayable@newmarket.ca.

22.2 All invoices submitted by the Consultant shall reference the Purchase Order number and conform to the order and content as set out in the Owner's Purchase Order form and shall provide additional information as follows:

- Harmonized Sales Tax shown separately
- Consultant's HST registration number

22.3 The Invoice shall contain sufficient detail in accordance with the items and unit prices of the awarded Bid / Proposal submission. For example: Time and Material Contracts should provide a breakdown of labour and material utilized for the project based on the contract unit rate and/or lump sum prices.

23. Set Off Clause

The Consultant hereby agrees that the Owner may, at any time, set-off against any monies due or payable to the Consultant, any monies including but not limited to; property taxes (or any penalties and/or interest thereon) owing to the Owner by the Consultant at the time such monies become due and payable to the Consultant.

24. Taxes

24.1 Proponents shall submit Bid / Proposal prices (including unit pricing) **exclusive** of all applicable taxes.

24.2 In addition to the H.S.T. Registration number, the Consultant shall state the amount of H.S.T. separately on all invoices.

24.3 Where a change in Canadian Federal or Provincial Taxes occurs after the Bid / Proposal closing date for the Contract, which change could not have been anticipated at the time of Bidding, the Owner shall increase or decrease Contract payments to account for the exact amount of the change involved and the Contract will be deemed to be amended accordingly.

25. Availability of Funds

25.1 All Awards are subject to the approval of Department Head, C.A.O., Committee and/or Council

(as applicable, in accordance with the Procurement by-law) and the availability of funds.

25.2 In the event that the sub total Contract Bid / Proposal amount from the selected Proponent exceeds the Owner budget for the Solicitation, the Owner reserves the right to:

- Where in the opinion of the Owner it is possible to do so, award part of the Solicitation to the selected Proponent(s); or
- Negotiate, where it is in the Best Interest of the Owner, in the opinion of the Procurement Services Coordinator; or
- Cancel the Solicitation in its entirety.

26. Payment of Workers

The Consultant shall pay or cause to be paid weekly/biweekly to every worker employed in the execution of the Contract, wages at not less than the following rates:

i. For workers employed in the execution of the Contract, who are in contractual relationship with a union, the minimum rate of wages shall be the union rate of wages in the particular district or locality in which the Work is undertaken.

ii. For workers employed in the execution of the Contract, who are not in contractual relationship with a union, the minimum rate of wages shall be the current Fair Wage Schedules of the Labour Standards Branch, of the Ministry of Labour, in the particular district or locality in which the Work is undertaken. Revisions made to the schedule during the course of the Contract shall apply from the effective date of such revisions and all additional resultant costs shall be borne by the Consultant.

27. Estimated Quantities and Provisional Items

27.1 The quantities listed in the Bid Call Document are estimates only. The Owner reserves the right to increase or decrease the estimated quantities shown in the Bid Call Document and will adjust the Contract amount accordingly based on the unit price or lump sum price, whichever is applicable. The Owner will only pay the Consultant for the actual quantity used based on the unit price(s) or extended price. The Consultant acknowledges that this may result in the Contract payment being less than their total Bid / Proposal amount for the Contract.

27.2 Items listed in the Bid / Proposal form as **"Provisional Items",** may or may not be required for completion of the Work called for under the Contract. The necessity and/or actual quantities of these items shall be determined by the Owner at the time of award or as the Work progresses. Should any of these items be required, the Consultant shall be compensated on the basis of the unit prices(s) quoted. In the event that any or all of these items are found not to be required, the Consultant may not claim extra payment for loss of anticipated profits.

27.3 The Consultant may be required to supply additional services or services to additional locations, or add additional quantities of item(s), if required, by the Owner. Acceptance of additional service or item(s) may be added with the understanding that the rates and discounts submitted by the Proponent in their Bid / Proposal submission would apply.

27.4 The Owner may, in its sole and absolute discretion, include or delete any or all Provisional Price(s) in the final Contract price.

28. Over Shipments of Goods (If applicable to the Work)

Any over shipments made are the responsibility of the Consultant. The Owner reserves the right to reject and return, at the Consultant's expense, any goods in excess of the quantity ordered or, at the Consultant's discretion, the Owner may keep the goods on a "no charge" basis.

29. Emergency Telephone Number

Prior to commencing the Work, the Consultant shall provide the Owner with the name(s) and telephone number(s) of his/her representative(s) who can be contacted on a 24-hour basis in case of an emergency during the term of the Contract.

30. Identification, Uniform and Site Safety Requirements (If applicable to the Work)

30.1 If working at an Owner facility, all representatives of the Consultant or Consultant are required to sign in at reception upon arrival at the Owner's facilities and obtain and wear a visitor identification card at all times while at the Owner's facilities. Upon leaving, all representatives shall sign out at reception and return the visitor identification card. Tradesmen (service personnel) shall in addition to the above, wear a company uniform with a nameplate identifying the name of their employer.

30.2 In addition, all of the Consultant's staff and/or sub-Consultants shall be equipped with proper Personal Protective Equipment (PPE), in accordance with all federal, provincial or municipal laws, acts, and/or regulations.

31. Meetings

31.1 The Consultant's representative(s), as requested by the Owner, shall attend all meetings required for the Work.

31.2 The Consultant's representative(s) attending meetings shall be thoroughly versed and knowledgeable with respect to the proposed topics of discussion and shall have the authority to make the necessary decisions and commitments with respect to matters agreed upon at the meetings.

32. Reporting

The Consultant may be required to submit a Contract utilization report. These reports may be requested monthly, quarterly, annually or at the conclusion of the Contract and must be submitted to the Procurement Representative within five (5) business days of the request, at no additional cost.

33. No Substitutions

Where materials are specified in the Bid Call Document, Consultant shall not ship or use any alternative materials without the prior written approval by the Owner.

34. Performance

The Consultant shall thoroughly complete each specified task in a professional manner, using trained, experienced staff and quality equipment/materials. The Proponent warrants that its employees, agents, sub-Consultants and/or representatives have the qualifications, experience, knowledge, skills and abilities necessary for the fulfilment of the Contract. Services will be performed in accordance with the frequencies specified. The whole of the Services and the

manner of performing them shall be done to the satisfaction of the Owner.

35. Training

Where necessary or otherwise specified in the Bid Call Document, the Consultant will be required to provide qualified training personnel to instruct the Owner's operators until they are familiar and competent in the operation and daily maintenance of the purchased goods or services. Unless otherwise stated, the cost of training shall be included in the bid / proposal cost submitted.

36. Warranty/Fit for Intended Use (If applicable to the Work)

36.1 The Proponent warrants that the Work, goods, materials, equipment and/or services supplied by the Proponent to the Owner will be in full conformity with the Bid Call Documents, and any samples provided. The Proponent further warrants that the goods, materials and/or equipment are of merchantable quality, and fit for the intended use and will perform according to the requirements set out by the Owner as well as in accordance with all published performance specifications contained in any of the Proponent's product manuals. For greater certainty, equipment and materials shall be new, the latest model, and shall be complete with all necessary accessories for operation.

36.2 The Owner will be afforded a reasonable period of time (not greater than thirty (30) calendar days) for the purpose of inspecting the goods to confirm their compliance with the specifications, terms and conditions of the purchase order.

36.3 Unless a greater warranty period is stated in the Bid Call Document, the warranty period shall be for a minimum of one (1) year on all goods, services and construction. Unless stated otherwise in the Bid Call Document, the warranty period shall commence for goods and services the day after delivery and acceptance or installation date, if installation occurred at a later date and for construction, as stated in the Bid Call Document.

36.4 This general warranty (stated above) is independent of and without prejudice to any specific warranty or service guarantee offered by the Consultant or third party manufacturer or supplier of the Goods in connection with the purpose for which the Goods were purchased. The Consultant shall assign to the Owner any warranty or service guarantee offered by a third party manufacturer or supplier of the Goods. Notwithstanding this assignment, if at any time up to one (1) year from the date of delivery or installation (if applicable) the Owner determines the Goods or any part do not conform to these warranties, the Owner shall notify the Consultant within a reasonable time after such discovery, and the Consultant shall then promptly correct such nonconformity at the Consultant's expense. Goods used to correct nonconformity shall be similarly warranted for one (1) year from the date of installation. The Consultant's liability shall extend to all liabilities, losses, damages, claims and expenses incurred by the Owner caused by any breach of any of the above warranties.

36.5 Upon rejection of good(s) or equipment the same shall be removed by the Consultant from the premises of the Owner within five (5) days after notification unless public health and safety require immediate destruction or other disposal of such rejected good(s) or equipment, in which case the Owner may take such actions as it deems necessary, and the Consultant shall reimburse the Owner for the cost of such actions within ten (10) business days' following receipt of an invoice. Rejected items left longer than five (5) days shall be considered as abandoned and the Owner shall have the right to dispose of them as its own property.

37. No Lemon Policy (If applicable to the Work)

Any equipment purchased by the Owner shall be subject to a “No Lemon Policy” whereby after three attempts to repair a recurring malfunction, the Owner, in its sole discretion can direct the Consultant to replace the equipment, at the Consultant’s cost, on a like-for-like basis and new at no additional cost to the Owner.

38. Delivery Schedule (If applicable to the Work)

Time is of the essence for the delivery or provision of the Work requested herein. The delivery date shall be adhered to, as the Owner is relying on that date for their part of its operations. Failure to comply with the time schedule in providing the goods and services may result in the Owner taking further action to obtain an alternative supply, in which event the cost incurred shall be charged to the Consultant. If such cost is not paid by the Consultant, it shall be deducted from the balance of the purchase price owing.

39. F.O.B. Destination Point (If applicable to the Work)

39.1 All shipments shall be FOB Destination, Freight Prepaid and Allowed.

39.2 The F.O.B. Prepaid Destination point shall be the destination as indicated on the purchase order. For greater certainty, the Consultant shall be responsible for the payment of shipping, bearing the cost of shipping and for all liability related to the goods until the goods are delivered to and accepted by the Owner at the Owner’s facility or if stated, the actual Facility Room or Department location indicated on the purchase order.

39.3 Once Contract is awarded, the Owner shall provide a release schedule to the Consultant, advising when materials are required. Note: There is not delivery dock at the Newmarket Municipal Office, 395 Mulock Drive, Newmarket, Ontario L3Y 4X7.

40. Damage Claims (If applicable to the Work)

40.1 The Proponent agrees that all products to be provided shall be new and of the latest model, unless otherwise stated in the Bid Call Document, in good operating condition and free of defects in workmanship and material, and the Consultant shall repair or replace any damaged or marred items caused or occasioned through the handling or installation by the Consultant or otherwise occasioned in transit.

40.2 The Consultant shall protect the Work, the Owner property, and any surrounding private property from damage.

40.3 The Consultant accepts full responsibility for any damage caused by the Consultant, or its officers, employees, workers, equipment or sub-Consultants to any part of the Owner’s property, including but not limited to any buildings, parking lots, sidewalks, curbs, store fronts, doors, walls, light standards, landscaping, or equipment of the property and will promptly report to the Owner, in writing and remedy any such damage in accordance with the Owner instructions.

40.4 The Owner, acting reasonably, shall allocate such damages between the Consultant and the Owner.

41. Completion Date (If applicable to the Work)

41.1 The Contract requirements shall be completed within the number of Working Days or by the stated completion date indicated in the Bid Call Document and/or within the Contract.

41.2 If the time limit is not sufficient to permit completion of the Work by the Consultant working a reasonable number of hours each day or week on a single shift basis, it is expected that additional shifts shall be required throughout the life of the Contract to the extent deemed necessary by the Consultant to insure the Work shall be completed within the time limit specified. Any additional costs occasioned by compliance with these provisions shall be considered to be included in the prices bid / proposed for the various items of Work and no additional compensation shall be allowed.

41.3 Extension of Contract time may be considered by the Owner, in accordance with the provisions of the Contract and in accordance with the Owner's Consultant Performance Procedure.

42. Prohibited Behaviors

42.1 While performing the Contract, the Consultant's employees, agents, representatives, and/or sub-consultants must conduct themselves in a safe, pleasant, and responsible manner at all times, and for greater certainty shall not:

a) Consume alcoholic beverages, narcotics or prescription drugs which may impair their abilities while in the performance of services for the Contract, or be under the influence of same when reporting to duty;
b) Smoke on property owned or leased by the Owner.
c) Use foul, profane, vulgar or obscene language or gestures;
d) Solicit gratuities or tips from any person for services performed under the Contract;
e) engage or participate in any action which may constitute a public nuisance or disorderly conduct;
f) Engage or participate in any willful, negligent or reckless action in disregard of safety or sanitary requirements or regulations;
g) Perform Work without having obtained any required clearance, including security clearances;
h) Play radios or other sound equipment, or wear ear/head phones;
i) Overly fraternize with Owner staff, clients, tenants, or visitors to the site or building nor unnecessarily disrupt business while performing their duties;
j) Interfere with building or staff property;
k) The Consultant shall respect the boundaries and not trespass on any private properties, without prior, written approval from the property owner, and the Owner.
l) The Consultant shall take appropriate measures to avoid any situation where the general public is required or encouraged to trespass on adjacent lands.
m) The Consultant shall not park, store materials or equipment on private property without prior written permission from the property owner, and the Owner or
n) At the request of the Owner or Consultant, the Consultant shall remove from the Site any person (whether employed on the Work or not) who, in the opinion of the Owner or Consultant, is incompetent, intoxicated or otherwise impaired, or who is conducting himself (or herself) improperly, and the Consultant shall not permit any such person to remain on the Site nor return to the Site without the written approval of the Owner or Consultant as the case may be.

42.2 On the written request of the Owner, the Consultant immediately shall remove any employee, sub-Consultant, representative or agent for engaging or participating in any of the foregoing prohibited activities, or for any other reason, where it is in the Owner's Best Interest. The employee or sub-Consultant so removed shall not be placed in another Owner facility or assigned to any Contract between the Owner and the Consultant.

43. Non-Resident Consultant

If the Consultant is a non-resident of Ontario or Canada:

a) It shall obtain from the Retail Sales Tax Branch a certificate showing that the Consultant has registered with the Retail Sales Tax Branch and shall submit such certificate to the Owner at the same time that it furnishes the Bonds; and

b) It shall not commence the Work or order any materials or equipment for the Contract until it has registered with the Retail Sales Tax Branch; and

c) It shall obtain all necessary approvals, consents, permits, licences, certificates, registrations and other authorizations required by law, prior to execution of the Contract.

44. Non-Resident Sub-Consultant

The Consultant shall ensure that all sub-consultants whom it proposes to use for carrying out any of the Work and who are non-residents of Ontario or Canada have:

a) Registered with and have complied with the requirements of the Retail Sales Tax Branch before they commence any such Work; and

b) Obtained all necessary approvals, consents, permits, licences, certificates, registrations and other authorizations required by law prior to execution of the subcontract.

45. Protection of Public (If applicable to the Work)

45.1 The Consultant shall provide adequate warning signage, devices, barricades, guards, flagmen, or other necessary precautions shall be taken by the Consultant to give advice and reasonable protection, safety and warning to persons and vehicular traffic concerned in the area(s) affected by the Contract.

45.2 The Consultant shall position barricades to adequately keep pedestrian traffic away from ladders and other equipment.

46. Clean Up (If applicable to the Work)

During performance and completion of work, the Consultant shall remove all unused equipment and instruments of service, all excess or unsuitable material and debris, and legally dispose of the debris. The Consultant shall leave the entire area in a neat, clean and acceptable condition as approved by the Owner. Failure to do so may require the Owner's employees to perform necessary clean up and the Consultant will be either; 1) invoiced for the direct cost associated with such clean up. All such invoices shall be due and payable within ten (10) business days or 2) such direct costs shall be deducted from any monies owed to the Consultant.

47. Packaging and Disposal (If applicable to the Work)

The Consultant shall eliminate or reduce the amount of packaging to the extent possible and shall remove packaging from delivered and installed items. Packaging once removed, must be recycled or transported and disposed of in accordance with all applicable laws and regulations governing waste disposal. Further, the Consultant must indicate where garbage is taken for disposal when requested to do so by the Owner.

48. Contract Alterations and Amendments

48.1 Owner shall have the right at any time to order changes in the Work in accordance with the terms of the Contract. Alterations, additions, or deletions to the Contract, shall not be valid or binding on the Owner unless authorized in writing by the Procurement Representative and the Consultant, using the Owner's Contract Change Order Form.

48.2 Except as stated in the contract change order, the Work shall remain unaltered and the rights and obligations of the Parties shall remain unaltered and in full force and effect. The cost of the Contract, including costs to the Consultant of the remaining Work, shall not change except as may be specified in the change order. Each Contract change order, unless otherwise specified, shall be deemed to incorporate the terms and conditions of the Contract and shall be deemed to be part thereof.

48.3 In all cases of misunderstanding and disputes, verbal arrangements shall not be considered. The Consultant shall produce written authority in support of its contentions and shall advance no claim in the absence of such written authority, or use, or attempt to use any conversation with any parties against the Owner or in prosecuting any claim against the Owner.

49. Evaluation of Performance

49.1 The Owner's Procurement bylaw and Consultant Performance procedure require the Owner to evaluate Consultant performance on all publicly bid Contracts and to consider "past performance" evaluations on prior Contracts, when determining award selection. Performance on this Contract will be a consideration in evaluating future Bid / Proposal submissions by the Consultant.

49.2 Proponents should acquaint themselves with the Owner's Consultant Performance Procedure.

50. Termination of Contract

50.1 **Termination for Consultant Default**

Notwithstanding anything to the contrary in this document, should the Consultant fail to comply with a direction or decision of the Owner properly given under the terms of the Contract, or where the Consultant is deemed by the Owner to be in default in any other manner as set forth by the following reasons constituting default, the Owner may, after giving ten (10) days prior written notice to the Consultant, give notice to immediately terminate this Contract, in whole or in part, and without charge with respect to all or any part of the Contract. Reasons constituting default include:

a) The Consultant commits a material breach of its duties and obligations under this Contract, unless, in the case of such breach, the Consultant, within ten (10) calendar days after receipt of written notice of such breach from the City, in a manner satisfactory to the Owner in its sole, absolute and non-reviewable discretion, (a) cures such breach and (b) indemnifies the Owner for any resulting damage or loss;

b) The Consultant commits numerous breaches of its duties under the Contract that collectively constitutes a material breach;

c) A change in control of the Consultant where such control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of

the Consultant are acquired, by any entity, or the Consultant is merged with or into another entity to form a new entity, unless the Consultant demonstrates to the satisfaction of the Owner that such event will not adversely affect its ability to perform the services under the Contract;

d) The Consultant commits fraud or gross misconduct; or the Consultant has contravened the Owner Supplier Code of Conduct.

e) Where the Consultant becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or where a receiver is appointed under a debt instrument or a receiving order is made against the Consultant, or an order is made or a resolution passed for the winding up of the Consultant.

In the event of a termination notice being given under the provisions of this section, the Consultant shall be liable to the Owner for any milestone payments paid by the Owner for unfinished work, including all losses and damages which may be suffered by the Owner by reason of the default or occurrence upon which the notice was based, and also including any increase in the cost incurred by the Owner in procuring the Work from another source.

In the event of a termination notice being given under the provisions of this section, the Owner may do such things and incur such costs as it deems necessary to correct the Consultant's default, including without limitation the withholding of payment due or accrued due to the Consultant for services rendered pursuant to this Contract, which moneys may be set off by the Owner against any expenses that it may incur in remedying a default or failures as described above.

In the event of a termination notice being given under the provisions of this section, the Consultant shall agree to repay immediately to the Owner the portion of any advance payment at the date of the termination. In the event of a termination notice being given under the provisions of this section, and subject to the resolution of any claim or claims which the Owner may have against the Consultant as set forth in the previous three paragraphs, payment will be made within thirty (30) days of the date of the invoice from the Owner to the Consultant for the value of all finished work delivered and accepted by the Owner, such value to be determined in accordance with the rate (s) specified in the Contract.

No specific remedy expressed in the Contract is to be interpreted as limiting the rights and remedies which the Owner may be entitled to, to mitigate damages, under any contract or otherwise in law.

All Owner information (including copies thereof) shall be returned to the Owner within thirty (30) days' following notice of termination in the form specified by the Owner. In addition, the Owner shall have the right to take possession of and use any completed or partially completed portions of the Work despite any Contract provisions expressed or implied to the contrary.

Upon the termination or expiry of this Contract, or the completion of the Work, the Consultant shall promptly discontinue use of any Data, and return the same to the Owner.

50.2 **Termination for Convenience**

a) Notwithstanding anything contained in the Contract, the Owner may, at any time prior to the completion of the Work, by giving notice to the Consultant, terminate the Contract as regards all or any part of the Work not completed. Upon a termination notice being given, the Consultant shall cease work in accordance with and to the extent specified in the notice, but shall proceed to complete such part or parts of the Work as are not affected by the termination notice. The Owner may, at any time or from time to time, give one or more additional termination notices with respect to any or all parts of the Work not terminated by any previous termination notice.

b) In the event of a termination notice being given pursuant to this section , the Consultant shall be entitled to be paid, to the extent that costs have been reasonably and properly incurred for purposes of performing the Contract and to the extent that the Consultant has not already been so paid or reimbursed by the Owner:

i. on the basis of the Contract Price, for all completed Work that is inspected and accepted in accordance with the Contract, whether completed before, or after and in compliance with the instructions contained in, the termination notice; or

ii. the cost to the Consultant for all Work terminated by the termination notice before completion, the cost to the Consultant being determined in accordance the Contract Price and percentage completed.

c) The Consultant shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of, or directly or indirectly arising out of, any action taken or termination notice given by the Owner under this section, except to the extent that this section expressly provides.

51. Indemnification

The Consultant shall indemnify and hold harmless the Owner, its officers, Council members, partners, agents and employees from and against all actions, claims, demands, losses, costs, damages, suits or proceedings whatsoever which may be brought against or made upon the Owner and against all losses, liabilities, judgements, claims, suits, demands or expenses which the Owner may sustain, suffer or be put to resulting from or arising out of the selected Consultant's actions or omissions in the performance or rendering of any Work or service required hereunder to be performed or rendered by the Consultant, its agents, officials and employees, or any damage or injury caused to any third party by reason of or arising out of any breach, violation or non-performance of any provision of the Contract by the Consultant, its agents, officials and employees. This indemnification shall include any legal costs incurred by the Owner on a substantial indemnity basis, including those incurred to defend any criminal prosecutions against the Owner, resulting from the actions of the selected Consultant.

52. Legal Jurisdiction

The jurisdiction for all legal matters, disputes and issues arising in connection with any Solicitation, Bid, Proposal or Contract shall be Newmarket, Ontario and all Proponents submitting Bids / Proposals and all Consultants agree that they shall and will deal with any legal matters concerning this solicitation only in and through the courts of the Province of Ontario.

53. Laws and Regulations

The Consultant shall comply with all applicable statutes, laws, by-laws, regulations, ordinances and orders whether Federal, Provincial, Municipal or otherwise, at any time in effect during the term of the Contract, and all rules and requirements of the Police and Fire departments, or other governmental authorities, and all C.S.A. approvals, if required. The Consultant shall obtain and pay for all necessary permits and licenses, and shall not do or suffer to be done anything in violation of any such laws, ordinances, rules or requirements. If the attention of the Consultant is called to any such violation on his/her part, or of any person employed or engaged by the Consultant, he/she shall immediately desist from and/or correct such violation.

54. Water Quality Management Standard (if applicable to the Work)

The Town of Newmarket's water/wastewater division has implemented a Drinking Water Quality Management System (DWQMS) for the provision of safe drinking water to meet the legislated requirements of the Ontario Ministry of the Environment's Drinking Water Quality Management Standards ("DWQMS"). All goods and services must meet specific requirements of the DWQMS as it relates to the provision of safe drinking water. A copy of the Town's DWQMS Policy, Operational Plan and Standard Operating Procedures are available from the Water/Wastewater Division.

55. Ontario College of Trades and Apprenticeship Act, 2009 (If applicable to the Work)

The Consultant shall be responsible for compliance with the Ontario College of Trades and Apprenticeship Act, 2009, as amended. The Consultant shall be responsible for providing written proof of trade qualifications, such as a certificate of qualification or apprenticeship Contract, to ministry inspectors.

56. The Occupational Health and Safety Act

56.1 The Consultant, for purposes of the Ontario Occupational Health and Safety Act (the "OHSA"), shall be designated as the Constructor for this project and shall assume all of the responsibilities of the "Constructor" as set out in the OHSA and its regulations. The foregoing shall apply notwithstanding that the Consultant has been referred to as the "Consultant" in this and any other related document.

a) The Consultant acknowledges that they have read and understood the Occupational Health and Safety Act (RSO 1990, C-0.1, as amended).

b) The Consultant covenants and agrees to observe strictly and faithfully the provisions of the said Occupational Health and Safety Act and all regulations and rules promulgated thereunder, and in particular (without limiting the generality of the foregoing), the provisions regarding the obligations and responsibilities of the "Constructor".

c) The Consultant agrees to indemnify and save the Owner harmless for damages or fines arising from any breach or breaches of the said Occupational Health and Safety Act including but not limited to the legal fees incurred by the Owner.

d) The Consultant agrees to assume full responsibility for the enforcement of the said Occupational Health and Safety Act to ensure compliance therewith.

e) The Consultant further acknowledges and agrees that any breach or breaches of the Occupational Health and Safety Act whether by the Consultant or any of its sub-consultants, may result in the immediate termination of the Contract. The Owner reserves

the right to draw from the Contract deposit or surety (if available) to complete the said Work to the Owner specifications.

f) The Consultant shall allow access to the Work site on demand to representatives of the Owner to review Work sites to ensure compliance with the Occupational Health and Safety Act, but no such review shall relieve the Consultant from its responsibilities as Constructor.

g) The Consultant agrees that any damages or fines that may be assessed against the Owner by reason of a breach or breaches of the Occupational Health and Safety Act by

the Consultant or any of its sub-consultants shall entitle the Owner to set-off the damages so assessed against any monies that the Owner may from time to time owe the Consultant under the Contract or under any other Contract whatsoever.

h) The Consultant shall provide a list of all controlled hazardous materials or products containing hazardous materials, all physical agents or devices or equipment producing or emitting physical agents and any substance, compound, product or physical agent that is deemed to be or contains a designated substance in accordance with the Workplace Hazardous Materials Information System (WHMIS) as defined under the Ontario Occupational Health and Safety Act and shall provide appropriate Material Health and Safety Data Sheets for these substances used for the performance of the required Work, all prior to the performance of the Work.

i) When hazardous materials, physical agents and/or designated substances are used in the performance of the required Work or may have been used in the original construction, the selected Consultant shall ensure that the requirements of the Ontario Occupational Health and Safety Act and associated regulations are complied with.

j) The Owner reserves the right to terminate the Contract without obligation for non-compliance with the terms set out herein, health and safety regulations, the Environmental Protection Act, associated regulations or other applicable legislation.

k) The Consultant shall perform the Work so as to cause the public the least inconvenience possible. In particular, the Consultant shall not obstruct any street, thoroughfare, or footwalk longer or to a greater extent than necessary.

l) The Consultant shall take all reasonable precaution necessary to ensure the safety of the workers and the general public, particularly children who may play in the area of Work.

56.2 If any person is killed or Critically Injured (as defined in R.R.O. 1990, Regulation 834 made under the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1), in addition to complying with the reporting requirements under the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1, the Consultant shall notify the Owner immediately and in any event by no later than twelve (12) hours after the Critical Injury or death occurred.

56.3 In addition to complying with the reporting requirements under the Occupational Health and Safety Act, R.S.O. 1990, Chapter O.1, the Consultant shall notify the Owner of any other incident or injury (apart from a death or Critical Injury) as soon as possible, but in any event by no later than five (5) business days after the incident or injury occurred.

57. Safety Data Sheets (formerly Material Safety Data Sheets) (If applicable to the

Work)

The Consultant shall supply current Safety Data Sheets for all controlled products supplied on or before delivery of initial shipments and again sixty (60) days prior to expiry of the sheet. Failure to comply with this instruction or to label products in accordance with the amended Hazardous Products Act and the new Hazardous Products Regulations (HPR) may result in cancellation of the Contract, in which event any existing stocks shall be removed and credited back to the Owner in full by the Consultant. The Owner shall be under no obligation whatsoever, to any Consultant who does not comply with the Owner's procedure in this regard.

58. Workplace Safety and Insurance Board (WSIB)

The Consultant shall be in good standing with the Workplace Safety and Insurance Board and shall furnish the Owner with satisfactory evidence, in the form of a valid WSIB Clearance Certificate:

- Within the timeframe specified in the award letter, and, in any event, prior to the commencement of the Work ;
- Prior to release of each and every progress draw or every sixty (60) days throughout the term of the Contract; and
- At any other time during the Contract at the Owner's request.

If the Consultant is an Independent Operator, the Consultant is required to provide the Owner with a valid Independent Operator's Ruling issued by WSIB:

- Within the timeframe specified in the award letter, and, in any event, prior to the commencement of the Work;
- Prior to release of each and every progress draw or every sixty (60) days throughout the term of the Contract; and
- At any other time during the Contract at the Owner request.

In order to obtain an Independent Operator's Ruling, the Consultant must download the form that corresponds to the applicable classification from the WSIB site at: http://www.wsib.on.ca and submit the completed form to WSIB. The WSIB Independent Operator's Ruling is to be submitted to the Owner prior to commencement of the Contract. To ensure that the WSIB Independent Operator's Ruling is obtained within the time period specified in the Owner's award letter, the Consultant shall ensure that an **"Expedited Ruling"** is requested. (For more information about obtaining an "Expedited Ruling", please contact your local Workplace Safety & Insurance Board Office.)

The Owner recommends that all Independent Operators obtain valid WSIB optional insurance providing for long term disability coverage.

Failure of the recommended Proponent to provide the above-noted documentation within the timeframe set out in the award letter may result in cancellation of the award notice to the Proponent and the Owner may proceed to award to another Proponent.

Failure of the Consultant, to provide the above documentation, at any time during the Contract, may result in the termination of the Contract.

59. Health and Safety

The Consultant shall provide the Owner, prior to commencement of Work, with a written copy of

the Health and Safety Policy for their firm as well as any sub-consultant retained by the Consultant, along with Health and Safety procedure(s) relevant to the Work to be performed where applicable. If the firm does not have written procedures relevant to the Work, then the firm shall be expected to abide by the Owner's safety procedures in addition to the Occupational Health and Safety Act (the "Act") and its regulation (re: duties of Consultants and employers).

It is expected the Consultant will have had no prior order relating to a contravention of the Act or its regulations. Should that not be the case, the Consultant is to advise of any prior order and provide a detailed explanation of the order and how it does or does not impact the Consultant's ability to perform the Work. It is also expected that the Consultant's; sub-consultants will have had no prior order relating to a contravention of the Act or its regulations. Should that not be the case, the Consultant is to advise of any prior order made against a sub-consultant and provide a detailed explanation of the order and how it does or does not impact its ability to perform its portion of the Work on behalf of the Consultant.

The Consultant accepts that (a) any attendance by Town staff or a Town consultant at the Work project is only for the purpose of the inspection of Work progress and quality control assurance of the Work, (b) all health and safety obligations under the Act and its regulations are the sole responsibility of the Consultant, and (c) if any health and safety issue is observed by the Town or its consultant while at the Work project site it will be reported to the Consultant and it will be the Consultant's responsibility to investigate and take any necessary action to correct the issue.

60. Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

In accordance with the Municipal Freedom of Information and Protection of Privacy Act, the personal information Proponents provide in response to this Solicitation is being collected under authority of the Municipal Act and will be used exclusively in the selection process and may be used for budgetary purposed for future bids. All Bids / Proposals submitted shall become the property of the Owner and may be disclosed in accordance with a request made under MFIPPA. In accordance with requirements of MFIPPA, Proponents are reminded to identify in their submission material, any specific scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause them injury. Complete Bids / Proposals are not to be identified as confidential. Should Proponents have any questions in this regard, please consult the Owner's Information and Privacy officer at Corporate Services – Legislative Services Department at 905- 895-5193.

61. Confidentiality

61.1 Proponents shall not at any time before, during or after completion of the Work, divulge any information communicated to or acquired by the Proponent or disclosed by the Owner in the course of the Contract and while carrying out the Work without the prior written consent of the Owner.

61.2 All reports, data, documents, materials and information of any kind whatsoever prepared in the course of carrying out the Work are the sole and exclusive property of the Owner. Any breach of this requirement for confidentiality may result in the Contract being terminated and may also result in damages being assessed including but not limited to; the Owner right to draw from the Contract deposit or surety (if available) or claiming any amounts owing to the Consultant under the Contract.

61.3 All documents and records in the custody or under the control of the Owner including but not

limited to the Bid / Proposal submission and all other information delivered by the Proponent pursuant to the Bid Call Document shall become the property of the Owner, and the Owner may use any such information, including pricing information provided by the Proponent, for the purpose of or in connection with cost estimating for other projects, and for such purpose, the Owner may disclose such information to consultants retained by the Owner.

61.4 Please note that all Consultants and their employees are strictly prohibited from speaking to the media about any aspect of their Work for the Owner. All media inquiries should be directed to the Owner's Corporate Communications department. Failure to comply with this will result in documentation of the matter by way of the Owners Consultant Performance Process and may result in termination of the Consultant's contract with the Owner.

62. Publicity

62.1 The Owner may, in its sole discretion, acknowledge the Consultant in any publicity or publication. The Consultant shall not make use of its association with the Owner in any publicity or publication without the prior written consent of the Owner.

62.2 Please note that all Consultants and their employees are strictly prohibited from speaking to the media about any aspect of their Work for the Owner. All media inquiries should be directed to the Owner's Corporate Communications department. Failure to comply with this will result in documentation of the matter by way of the Owners Consultant Performance Process and may result in termination of the Consultant's contract with the Owner.

63. Accessibility

63.1 All accessibility standards — including the accessible customer service standard — are now part of one regulation: the Integrated Accessibility Standards Regulation (O. Reg. 191/11).

63.2 The Owner is committed to providing equal treatment to people with disabilities with respect to the use and benefit of Owner's services, programs, and goods in a manner that respects their dignity and that is equitable in relation to the broader public. All Consultants with the Owner must comply with all laws applicable to the performance of the work.

63.3 Consultants who deal with the public or other third parties on behalf of the Owner, as well as Consultants who participate in developing Owner's policies, practices or procedures governing the provision of goods and services to members of the public or other third parties, must conform with the Integrated Accessibility Standards Regulation (O. Reg. 191/11), in particular Part IV.2, for Customer Service.

63.4 Pursuant to the above, Accessibility Standards for Customer Service, Consultants who deal with the public or other third parties on behalf of the Owner, as well as Consultants who participate in developing Owner policies, practices or procedures governing the provision of goods, services and construction to members of the public or other third parties shall ensure that all of its employees, agents, volunteers, or others for whom it is responsible, receive training about the provision of goods and services provided to people with disabilities. The Accessible Customer Service Training shall be provided in accordance with Part IV.2, of the Integrated Accessibility Standards Regulation for Customer Service and shall include, without limitation, a review of the purposes of the AODA and the requirements of the Customer Service Regulation, as well as instruction regarding all matters set out in the Customer Service Regulation.

63.5 Consultants who provide goods, services or facilities on behalf of the Owner shall ensure that all

of its employees, agents, volunteers, or others for whom it is responsible, receive training on the requirements of the accessibility standards referred to in the Integrated Regulation and on the Human Rights Code as it pertains to persons with disabilities.

63.6 The Consultant shall submit to the Owner or Ministry, if requested, documentation describing its accessibility training policies, practices and procedures, and a summary of the contents of training, together with a record of the dates on which training is provided and the number of attendees. The Owner reserves the right to require the Consultant, at the Consultant's expense, to amend its accessibility policies, practices and procedures if the Owner deems them not to be in compliance with the requirements of the Integrated Accessibility Standards Regulation (O. Reg. 191/11). The Consultant shall only assign those employees who have successfully completed training in accordance with such Regulations to provide services to, or on behalf of, the Owner.

63.7 The Consultant shall ensure that any information, products, deliverables and/or communication (as defined in the Integrated Regulation) produced pursuant to the Contract shall be in conformity with World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and shall be provided in accessible Word, Excel, PowerPoint, PDF or other format requested by the Owner.

63.8 The training shall be provided to each employee, agent, sub-consultant or volunteer in the Consultant's business as soon as possible after he or she is assigned to Work on Owner property or at an Owner facility. The Consultant shall keep records of the training provided, including dates when the training is provided, the number of employees who received training and individual training records. The Owner reserves the right to inspect the Consultant's training records. The Consultant agrees to provide the Owner upon request with the training records within ten (10) business days.

63.9 Use this hyperlink to access to the Owner web based AODA Training Link Owner's on-line training manual.

64. The Personal Property Security Act

The Consultant warrants that it has the full power and legal right and the responsibility to convey title to all products/goods/inventory/equipment which shall pass to the Owner in accordance with the terms of the Contract and all goods and products hereunder shall be free from all registered and unregistered liens, encumbrances, charges, security interests, mortgages, or any third party statutory claims. All transactions contemplated under the Contract shall be in the ordinary course of business of the Consultant within the meaning of the Personal Property Security Act.

65. Ownership and Delivery of Materials / Information

65.1 The Consultant agrees that all information and material of any kind whatsoever acquired or prepared by or for the Consultant pursuant to the Contract or in preparation of the Bid / Proposal submission shall, both during and following the termination of the Contract, be the sole property of the Owner, including all information and material provided by the Owner to the Consultant for the purposes of the Contract. Accordingly, the Consultant hereby assigns to the Owner all rights (including all intellectual property rights), title and interest it may have from time to time in the Work to the Owner.

65.2 Upon the request of the Owner, the Consultant agrees to deliver forthwith to the Owner all materials and information specified in the request that is/are the property of the Owner and in the possession or under the control of the Consultant. No copy or duplicate of any such material or information delivered to the Owner shall be retained by the Consultant and/or supplier team

without the prior written approval of the Owner. The Consultant further agrees not to destroy any material or information which is the property of the Owner without the Owner's prior written approval. This provision survives the expiration or termination of the Contract.

66. Intellectual Property

66.1 The Consultant shall pay all royalties and license fees required for the Work provided. The Consultant represents and warrants that it has the sole and unrestricted right, title and interest or good and sufficient power, authority and right to use any intellectual property required for the completion of the Work.

66.2 The Consultant shall, at its own expense, defend all claims, actions or proceedings against the Owner based on any allegation that any Work or any part of the Work performed or the supply of any material in the performance of a Contract constitutes an infringement of any trademark, patent, copyright or other proprietary right, and it shall pay to the Owner all costs, damages, charges and expenses, including its lawyers' fees on a substantial indemnity basis occasioned to the Owner by reason thereof.

66.3 If, in any action or proceeding the Work or any part thereof is held to constitute an infringement of any trademark, patent, copyright or other proprietary right, the Consultant shall forthwith either secure for the Owner the right to continue using the Work or shall at the Consultant's expense and with the Owner's prior written approval, replace the infringing items with non-infringing Work or modify them so that the Work no longer infringes any such right.

67. Survival of Clauses

Clauses pertaining to indemnity, liability, ownership of information, use of information, warranty, confidentiality and publicity, shall survive the expiration or other termination of the Contract, in addition to any other clauses which survive by operation of law or for which survival is implied by the clause itself. The survival period shall be a minimum period of two (2) years.

68. Force Majeure

It is understood and agreed that the Consultant shall not be held liable for any losses resulting if the fulfilment of the terms and conditions of the Contract shall be delayed or prevented by wars, acts of public enemies, fires, floods, acts of God, or for any other cause not within the control of the Consultant and which by the exercise of reasonable diligence the Consultant is unable to prevent. Should the performance of any Contract be delayed or prevented as herein set forth, the Consultant agrees to give immediate written notice and explanation of the cause and probable duration of any such delay.

69. Non-Waiver

No condoning, excusing or overlooking by the Owner of any default, breach or non-observance by the Consultant at any time or times in respect of any provision herein contained shall operate as a waiver of the Owner 's right hereunder in respect of any continuing or subsequent default, breach or non-observance or so as to defeat or affect in any way the rights of the Owner herein in respect of any such continuing or subsequent default or breach, and no waiver shall be inferred from or implied by anything done or omitted by the Owner save only an express waiver in writing. Any Work completed by the Owner required by this Contract to be done by the Consultant shall not relieve the Consultant of his/her obligations to do that Work.

70. Non-Assignment

The Contract awarded as a result of this Solicitation may not be assigned by the Consultant without the prior written consent of the Owner. Such written consent, if granted, shall not under any circumstances relieve the Consultant of his/her liabilities and obligations under the Contract, and shall be within the sole and unfettered discretion of the Owner and may be unreasonably withheld.

71. Severability

If any provision of these Standard Terms and Conditions is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of these Standard Terms and Conditions shall remain in full force and effect.

72. 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 order:

a) Agreement (Contract)
b) Addenda
c) Special Provisions
d) Special Specifications and all associated Quantity Sheets detailing Contract Unit Prices
e) Specifications
f) Contract Drawings
g) Standard Drawings
h) Supplemental General Conditions
i) General Conditions
j) Instructions to Proponents
k) Owner's Standard Terms and Conditions
l) Bid / Proposal Submission
m) Appendices

Later dates shall govern within each of the above categories of documents.