

## Request for Standing Offer Professional Services

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### Professional Fairness Consulting Services

**Requirement:**

The Corporate Services Department of City of Ottawa, hereinafter referred to as the City, is seeking offers to provide professional fairness consulting services as described in Annex "A".

**Period of Proposed Standing Offer:**

The proposed period of this Standing Offer is from the date of authorization to period ending 31 December 2008.

Subject to satisfactory service, terms and conditions, in the sole opinion of the Project Authority, the Standing Offer may be extended for an additional two (2) one (1) year terms. An extension is to be mutually acceptable, and subject to a continued requirement by the City.

Annually:

- the City may elect to remove qualified vendors from the Standing Offer;
- existing vendors may elect to remove themselves from the Standing Offer; and,
- Offers may be accepted by the City, which result in new vendors being added to the Standing Offer.

**General Provisions:**

To provide to the City, upon the terms and conditions set out herein, the professional services listed at the ***Firm Hourly Charge Rates*** identified in Annex B, as and when the City may require such professional fairness consulting services if the City authorizes and orders such professional services against this Standing Offer.

It is understood and agreed that:

- a) A contractual obligation will come into force only if there is an authorized "Call-up" against a Standing Offer and only to the extent stipulated in the call up;
- b) This document does not oblige the City to authorize or order any professional services whatsoever or to spend the estimated expenditure or any monies whatsoever; and
- c) The City's liability under this offer shall be limited to the actual amount of professional services "Called-up" within the period specified herein.

**Project Authority:**

The services provided will be subject to review and acceptance by the Project Authority hereby identified as the **Manager, Supply Management Division**.

**Inquiries:**

All inquiries regarding this Request for Standing Offer (RFSO) are to be directed to the Contracting Authority specified herein. Inquiries must be received in writing (e-mail) no later than **Monday, 27 November 2006**. All inquiries received, and the answers as provided by the Project Authority will be provided to all Offerers by way of written addendum, no later than **Wednesday, 29 November 2006** without naming the source of the inquiry.

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### Order of Precedence:

The documents listed below form part of the RFSO and will be incorporated into any resulting “Call-up” against the Standing Offer. If there is a discrepancy between the wording of one document and the wording of any other document, which appears on the list, the wording of the document, which appears first on the list, shall take precedence:

Request For Standing Offer  
Annex A - General Terms of Reference  
Annex B - Financial Offer and Contractual Acknowledgement  
Annex C - General Conditions - Professional Services - June 2006

### Call-Ups:

The City of Ottawa intends to authorize a number of Offers in accordance with Annex A, General Terms of Reference.

The Project Authority will choose the most appropriate resource on the basis of “Best Value”, which will take into account the following criteria:

- project with similar size and complexity of client organization work experience
- availability of funds
- availability of the Offerer
- names and related experience of the proposed resources
- qualifications and/or academic standing
- approach and methodology
- understanding of our needs
- availability
- confirmation of per diem rate for the proposed resource.

The Project Authority will provide the Offerer with a Terms of Reference describing the work to be performed. The Offerer will respond directly to the Project Authority with a detailed proposal including, as a minimum, the names and related experience of the proposed project manager and key team members, the approach and methodology to be applied to the assignment, the work schedule and the financial offer including the proposed level of effort by team member and firm hourly charge rate(s).

Formal confirmation will follow by issuance of a Purchase Order (Call-up against a Standing Offer).

Should a requirement for professional fairness consulting services be requested by the Project Authority, the Contracting Authority reserves the right to:

- call-up from the Standing Offer List
- select up to three (3) Offerers by invitation from the Standing Offer Call-Up List or advertise the requirement solely on MERX.

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### Presentation of Offer:

The offer should be presented in a clear and succinct manner demonstrating an understanding of the professional fairness consulting services using 8-½ x11 inch bonded paper. It is recommended that your offer for each proposed fairness consulting services categories not exceed *ten (10)* single-sided letter size pages, 10-point Times New Roman font format for each. Attachments, such as résumés, should be included.

### RATED EVALUATION CRITERIA (100 Points Total)

<u>Rated Evaluation Categories</u>	<u>Available Points</u>
<b>A: Service Offer</b>	
1. Experience of the Firm	20
2. Experience and Qualifications of Key Team Members	50
<b>B: Financial Offer</b>	30
<b>Total Available Points</b>	<b>100</b>

1. **Experience of the Firm (20 points)**

The Offerer should provide a company profile.

The Offerer should provide for each fairness consulting service category for which the Offerer wishes to be considered for, three (3) most relevant projects completed in the last five (5) years which required a comparable skill set and expertise. The following information should be included for each project:

- a) Project Title
- b) Client name and location
- c) Type of services provided
- d) Describe the approach to the project, overall methodology that was utilized
- e) Status of project
- f) Length of services provided (from/to)
- g) Dollar value
- h) List the two (2) key challenges of the projects and how your firm was able to overcome them
- i) Respective Role
- j) Name and coordinates of client reference

Failure to provide complete information will be the Offerers disadvantage. If the same project can be used to illustrate comparable skill and expertise in more than one category, you need not repeat the information, but simply make reference to the project.

The City reserves the right to contact the references to confirm the information provided.

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### 2. Experience, Knowledge and Qualifications of Key Team Members (50 points)

The Offerer should identify professional resources who will be available to undertake specific assignments under each fairness consulting service category listed. For each resource, identify the education, position, years of experience, qualifications and relevant project experience including experience with municipal government. Resumes should be included for each resource offered.

### SECTION B - FINANCIAL OFFER (30 points)

Please provide a Financial Offer using Annex B (attached) and return **one (1) copy** with your submission.

Points will be awarded based on *standard deviation* where the low **Firm Hourly Charge Rate** receives full points, and other offers lose points to the extent that they exceed the low cost responsive offer for each fairness consulting service category. The **Firm Hourly Charge Rate** is to be the **full cost** of service including all out of pocket expenses but excluding GST.

#### General Conditions:

The Offerer must certify acceptance of the General Conditions - Professional Services dated June 2006 which are attached as Annex "C", and which shall form part of and be incorporated into all "Call-ups".

#### Selection Process:

An evaluation team, overseen by City staff and facilitated by Supply Management, will review all offers received and score the offers using a "*consensus*" approach, in relation to the criteria and points that are identified.

Authorization of Standing Offer may be made solely on the basis of the offer submission, without a meeting with the Offerer. However, one or more Offerers may be asked to provide written clarification on their offer.

#### Basis of Selection:

The Offer(s) providing "*best value*", as determined by the highest total score(s) out of the 100 points, which are available within the identified evaluation criteria, will be recommended for authorization.

#### Authorization:

Authorization of Standing Offers will be made in accordance with the provisions of the City Purchasing By-Law.

#### Offer Validity:

Offers shall remain valid and open for acceptance by the City for a period of sixty (60) calendar days, following the due date for receipt of offers.

#### Submission of Offer:

Please provide **five (5)** copies of your offer and **one (1) copy** of your financial offer signed by an authorized official, in a sealed envelope, clearly identified as to contents and addressed to:

City of Ottawa  
Supply Management Division  
100 Constellation Crescent  
4th Floor West  
Nepean, ON K2G 6J8

Proposals **MUST** be received at this location **NOT LATER THAN 3:00 P.M. LOCAL TIME**, on  
**Tuesday, 12 December 2006.**

Offers received after the above due date and time will not be considered, but will be returned unopened, to the Offerer.

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### **Contracting Authority:**

For further information regarding the Request for Standing Offer, please contact:

City of Ottawa  
Supply Management Division  
100 Constellation Crescent  
4<sup>th</sup> Floor, West Tower  
Nepean, ON K2G 6J8

Attention: Daniel Farrell  
Title: Senior Policy and Purchasing Officer  
Telephone: (613) 580-2424 ext. 21505  
E-mail: daniel.farrell@ottawa.ca

Offerers are advised that all communications with the City related to this RFSO prior to the closing date must be directly and only with the Contracting Authority.

### **Note to Offerers:**

Offers should be submitted in the format requested, with an index and preferably including the criteria subject to point rating in a clear identifiable location. If an Offerer feels that the conditions will restrict it unnecessarily in any way, it should so state in its proposal. Any deviation from the stipulated conditions should be given in detail with an explanation as to why such deviations are being proposed. The City reserves the right to accept any offer as submitted without prior negotiations. It is the responsibility of the Offerer to obtain clarification of the requirements contained herein, if necessary, prior to submitting an offer.

Each offer will be evaluated solely on its content. Assessment of the offer commences immediately after closing date. The City does not accept offers submitted by facsimile transfer machines or electronic mail.

The City reserves the right to accept or reject any or all offers received or to cancel the RFSO in its entirety, all without any right of recourse on the part of any Offerer, and to seek clarification from one or more Offerers on the contents of their proposal submission.

The Contracting Authority will only make official modifications to the RFSO process, or to the actual "Terms of Reference" through official addendum issue. Any oral statement or other representation from any source should not be accepted as binding, unless confirmed through an official written addendum.

Offerers are advised that all communications with the City related to this RFSO during the bidding process must be made directly and only with the Contracting Authority. Any contact outside the Contracting Authority may result in disqualification from the bidding process.

Copies of this RFSO are available from the **MERX Distribution Unit**, telephone 1-800-964-6379 or via the internet at [www.merx.com](http://www.merx.com). MERX is the official and sole distributor of this RFSO and any addenda. If a Offerer obtains this document by means other than through MERX. Verification as to the accuracy of the document and receipt of any addenda shall be the sole responsibility of the Offerer.

The City relies on the electronic MERX advertisement to provide public notice of this business opportunity and is not obligated to notify past or present suppliers in any other manner.

**Annex A**  
**General Terms of Reference**

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**Professional Fairness Consulting Services**

The City seeks the services of professional fairness consulting services that can be categorized into three types of fairness consultant functions:

- 1. **Fairness Commissioner**
- 2. **Procurement Monitor**
- 3. **Process Auditor**

Offerers may submit offers for one category, a number of categories or all of the categories listed. Offers will be evaluated separately under each category identified.

*Please place a check mark in the space to the left of the category to be considered, and return this page with your offer.*

## Annex A General Terms of Reference

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### **Fairness Commissioner:**

The title of Fairness Commissioner reflects the intended broad scope of advice and oversight throughout most stages of a competitive process. The Fairness Commissioner, involvement usually begins at the early stages of a procurement to provide overall guidance and advice throughout the process. A Fairness Commissioner may be retained after the procurement process, during the document completion stages, and prior to the procurement document issuance stage.

Sometimes, a Fairness Commissioner is retained even earlier in the process to oversee pre-call development activities where staff undertakes vendor and other party consultations to gather information on potential solutions.

Typically, Fairness Commissioners will have roles across the following stages:

(i) Early stage involvement such as:

- Pointing out procurement document methods, their respective requirements and merits (e.g., Requests for Information/Expressions of Interest, or Request for Qualification that may precede issuance of procurement document for formal competition);
- Overseeing the procurement document design and development by raising for consideration:
  - up-front involvement of necessary legal/other parties;
  - objectives intended when selecting specifications, or mandatory and other criteria;
  - a range of available and preferred evaluation tools and techniques; and
  - the impact on fair and reasonable evaluation of various weightings for financial, service, quality, legislative compliance and interview components, relative to other acceptable weighting scenarios;
- Advising on the purpose, steps, degree of information provision and other processes for any call pre-release consultations held with potential tender bidders/RFP proponents;
- Pointing out avoidance of methods/approaches that can cause potential biases in design (due to embedded public policy issues) to enable appropriate vendor choice, beyond fairness of the process that ensues;
- Identifying potential inconsistencies, or lack of clarity in call document requirements, in order to meet approved and stated business objectives, statutory regulations, policy directives, administrative requirements and best practices for procurement;

(ii) Mid-Stage involvement such as:

- Verification of the roles, responsibilities, decision authorities, and reporting requirements of the designated internal procurement management team;
- Attending and monitoring any information, briefing, or other sessions held with bidders/proponents by the procurement management team to note anomalies and follow-up with procurement management team;

## Annex A General Terms of Reference

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- Ensuring that evaluation team members are provided with briefings on best practices including:
    - the principles and duties of fairness, care and proprietary information protection;
    - having a single-point of contact in place prior to and following evaluation;
    - avoidance and disclosure of conflict of interest, bias, and undue influence;
    - exclusion of any technical consultants used to design/establish call requirements;
    - inclusion of more than two persons as an evaluation team;
    - arms-length from political involvement/participation;
    - scoring procedures and sign-off on individual scoring sheets;
    - formal evaluation/scoring of any interview component of the evaluation process;
    - the preparation, treatment and retention of evaluation documents;
  
  - Attending and monitoring evaluation team meetings to:
    - keep processes consistent with best practices (see above);
    - ensure all bids/proposals are evaluated in strict accordance with call specifications/criteria;
    - verification of bids/proposals evaluated as being non-qualified, non-compliant;
  
  - Ensuring that principles and measures of success for how the procurement process is carried out, are established and provided to the government client as public information;
  
  - Monitoring and documenting, at pre-identified points in the procurement process, the issues raised, solutions arrived at, and actions required and taken to ensure consistency with the original approved objectives;
- (iii) Late-stage involvement such as:
- Monitoring and immediate reporting to pre-identified senior management on any known or perceived conflicts of interest, occurrences of undue influence, or other factors (among management/evaluation team members, as well as key stakeholder representatives), that may negatively impact the integrity of the evaluation/scoring of assessment process;
  
  - Ensuring that the procurement management team, evaluation team members and other stakeholders understand ongoing confidentiality responsibilities post-contract award;
  
  - Advising on proper vendor/proponent de-briefing processes and complaint procedures;
  
  - In engaged for the contract negotiations/service-level agreement stage, ensure that the process is conducted in an ethical, structured manner by appropriate, skilled specialists adhering to the mandatory criteria/irrevocable terms and conditions of the RFP/tender; and
  
  - Providing a full report at the conclusion of the procurement process to accompany the recommendation of contract award, as to whether and how the process has complied with fairness, openness, and transparency requirements.

## Annex A General Terms of Reference

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### **Procurement (Fairness) Monitor:**

The Procurement Monitor role normally commences after completion of the procurement document, but sometimes prior to document release, to offer advice on critical aspects such as criteria clarity and pertinence, or evaluation techniques. In such cases, any advice from a Procurement Monitor on the procurement document itself, would tend to cover the steps or procedures that can be taken to remove problems later found (such as unintended barriers to appropriate responses given unduly prescriptive requirements), and to oversee that satisfactory and timely communication takes place with bidders/proponents on any necessary procurement changes.

A Procurement Monitor will have many of the same typical mid and late-stage procurement roles and responsibilities as those outlined above for a Fairness Commissioner.

### **Process Monitor/Auditor:**

Occurring only after the evaluation, or later-stage award process, the intent of this role is to provide after-the-fact fairness/audit assessment. A Process Monitor/Auditor is a party who was totally independent of the procurement process. The provide immediate response, but not limited to:

- Complaints or controversy about the process that get high-profile;
- Public demands for review in the context of value-for-money, or best-use;
- Demand for accountability and transparency about project impacts;
- Challenges respecting private sector participation in public responsibilities; and
- Questions around new types of competitive processes.

Accordingly, the focus of a Process Monitor/Auditor will be upon the evaluation stage, adequacy of the steps taken to mitigate risk (e.g., financial, credibility, or liability), and assessment of the integrity of documentation. Activities often include reviews of scoring and other related processes, how vendor debriefing/complaint processes were undertaken, and ensuring that correct documentation is in place. The Process Monitor/Auditor role has less time involvement than either the Fairness Commissioner or Procurement Monitor models.

### **Deliverables**

The responsibilities of the Fairness Consultant will be:

- The requirements as stated above;
- Providing a second opinion at key, pre-identified decision stages;
- Providing support to the purchasing manager in encouraging divisional best practices;
- Additional insight on correct competitive processes;
- Assisting the consideration of all aspects of evaluation processes for better understanding;
- Independent assurance of integrity of process with a signed attest statement;
- Assistance in the debriefing of unsuccessful proponents/vendors; and
- Final Report.

**Annex B**  
**Financial Offer and Contractual Acknowledgement**

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**Basis of Payment:**

<i>Job Classification</i>	<i>Individual</i>	<i>Firm Hourly Charge Rate</i>
<b>Fairness Commissioner</b>		\$

<i>Job Classification</i>	<i>Individual</i>	<i>Firm Hourly Charge Rate</i>
<b>Procurement Monitor</b>		\$

<i>Job Classification</i>	<i>Individual</i>	<i>Firm Hourly Charge Rate</i>
<b>Process Auditor</b>		\$

*Should a Proponent offer more than one individual per professional fairness consulting services category, the city will average the Firm Hourly Charge Rates in accordance with a weighted analysis intended to recognize the estimated use by the City and apply the average Firm Hourly Charge Rate for the financial evaluation.*

**Best/Most Favoured Clients:**

The Offerer is to certify that the hourly or per diem rates offered to the City of Ottawa in response to this competitive opportunity are at least as low as those offered to their best/most favoured clients. Should an audit, or subsequent information demonstrate that actual billing has exceeded the most favoured client rates, it is agreed that the Offerer shall make re-payment to the City in the amount found to be in excess of the lowest hourly or per diem rates.

Consultant accepts: \_\_\_\_\_ Date: \_\_\_\_\_

**Method of Payment:**

Monthly payments shall be made based on stated deliverables following receipt and acceptance of an invoice by the Project Authority. The invoice should include a breakdown by each major task and progress to the date on the invoice and should include the total hourly charge out rates.

## Annex B

### Financial Offer and Contractual Acknowledgement

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Offerers should note the following when preparing their financial offer:

**Disbursements:**

All reasonable and proper expenses incurred by the Offerer shall be reimbursed under this item without any allowance thereon for overhead and or profit. All disbursements must be approved by the Project Authority in advance otherwise the Offerer risks having the claim for disbursement rejected. The following costs shall be included in the “*Firm Hourly Charge Rate*”:

- Communication expenses including facsimile, local phone and cellular charges;
- Administrative support provided by the Offerer’s staff to other members of its staff; and
- Standard PC or computeraided design and drafting equipment (excludes specialized equipment or software as identified in Offerer’s submission.);

In the case of approved travel from outside the City, the offer shall be reimbursed for authorized reasonable and proper travel and living expenses incurred by persons directly engaged in the performance of the work, at cost without any allowances thereon for overhead and profit, but not to exceed the limits outlined in Municipal travel and expenditure policies for professional staff, in effect at time of travel.

**Annex B**  
**Financial Offer and Contractual Acknowledgement**

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**Contractual Acknowledgement:**

The Offerer hereby agrees to be legally bound by the provisions of the resulting Contract, including, but not limited to, the General Conditions – Professional Services – June 2006 (Annex “C”), which are attached. The Offerer further acknowledges and agrees that the final terms of the resulting Contract with the City will be concluded and become legally binding on both parties upon receipt and acceptance by the Offerer of a Purchase Order issued by the City. The Offerer further agrees that acceptance of the Purchase Order will be deemed to take place five (5) Business Days after receipt of a Purchase Order, unless the Offerer provides the City with a written objection to, or refusal of, the Purchase Order within the said five (5) Business Day period.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_

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Signature	Name and Title ( <i>Print</i> )	Has the authority to bind the Offerer.
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Company Name

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Company Address

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Telephone No.

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E-mail Address

**Controlling or Managerial Relationships:**

Offerers **must** disclose all relationships with competing firms/fairness consultants that offer similar services where there may be a direct or indirect financial and controlling or managerial relationship.

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**Annex C**  
**General Conditions – Professional Services – June 2006**

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When a call-up is made against a Standing Offer, the “Offerer” will then become the “Contractor”, and the following General Conditions will apply:

**1 Status of the Contractor**

The Contractor is engaged as an independent contractor for the sole purpose of performing the Work. Neither the Contractor nor any of its personnel is engaged as an employee, servant or agent of the City of Ottawa herein after referred to as the City.

**2 Amendments**

No amendment to the Contract shall be binding unless it is incorporated into the Contract by written amendment executed by the authorized representatives of the City and of the Contractor.

**3 Conduct of the Work**

- (1) The Contractor represents and warrants that:(a) it is competent to perform the Work; and it has the necessary qualifications, including knowledge, skill and experience to perform the Work, together with the ability to use those qualifications effectively for that purpose.
- (2) The Contractor shall supply everything necessary for the performance of the Work
- (3) The Contractor shall:(a) carry out the Work in a diligent and efficient manner; (b) ensure the Work:(i) is of proper quality, material and workmanship; (ii) is in full conformity with the specifications; and (iii) meets all other requirements of the contract

**4 Compliance with Applicable Laws**

The Contractor shall comply with all laws applicable to the performance of the Work

**5 Subcontracting**

- (1) Unless otherwise provided in the Contract, the Contractor shall obtain the consent of the City in writing prior to subcontracting or permitting the subcontracting of any portion of the Work at any tier.
- (2) Notwithstanding subsection (1), the Contractor may, without prior consent of the City, subcontract such portions of the Work as is customary in the carrying out of similar contracts.
- (3) In any Subcontract, the Contractor shall, unless the City otherwise consents in writing, ensure that the subcontractor is bound by terms and conditions of the Contract.

**6 Replacement of Personnel**

- (1) When specific persons have been named in the Contract as the persons who must perform the Work, the Contractor shall provide the services of the persons so named unless the Contractor is unable to do so for reasons beyond its control.
- (2) If, at any time, the Contractor is unable to provide the services of any specific person named in the Contract, it shall provide a replacement person who is of similar ability and attainment.
- (3) The Contractor shall, before replacing any specific person named in the Contract, provide notice in writing to the City. The replacement must be acceptable to the Project Authority.

**Annex C**  
**General Conditions – Professional Services – June 2006**

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**7 Assignment**

- (1) The Contract shall not be assigned, in whole or in part, by the Contractor without the prior consent in writing of the City and any purported assignment made without that consent is of no effect.
- (2) No assignment of the Contract shall relieve the Contractor from any obligation under the Contract or impose any liability upon the City, unless otherwise agreed to in writing by the City.

**8 Time of the Essence**

Time is of the essence of the Contract.

**9 Security and Protection of the Work**

The Contractor shall keep confidential all information provided to the Contractor by or on behalf of the City in connection with the Work and all information developed by the Contractor as part of the Work, title to which vests in the City under the Contract, and shall not disclose any such information to any person without the written permission of the City.

**10 Inspection of the Work**

The Work and any and all parts thereof shall be subject to inspection. Services provided shall be to the satisfaction and acceptance of the City.

**11 Title**

- (1) Except as otherwise provided in the Contract, and except as provided in subsection (2), title to the Work or any part thereof shall vest in the City upon delivery and acceptance thereof by or on behalf of the City.
- (2) Upon any payment being made to the Contractor in respect of the Work or any portion of the Work, either by way of progress payments or accountable advances or otherwise, title to the Work so paid for shall vest in and remain in the City unless already so vested under any other provision of the Contract.
- (3) Notwithstanding any vesting of title referred to in this section and except as otherwise provided in the Contract, the risk of loss or damage to the Work or part thereof so vested shall remain with the Contractor until its delivery to the City in accordance with the Contract.
- (4) Any vesting of title referred to in subsection (2) shall not constitute acceptance by the City of the Work and shall not relieve the Contractor of its obligation to perform the Work in accordance with the Contract.

**12 Indemnity Against Third-Party Claims**

- (1) The Contractor shall indemnify and save harmless the City and its employees, officers and agents from and against any and all claims, actions, losses, expenses, costs, damages or other proceeding which they or any of them may at any time incur or suffer as a result of or arising out of:
  - (a) any injury to persons (including injuries resulting in death) or loss of or damage to property of others which may be or be alleged to be caused by or suffered as a result of the performance or non-performance of the Work or any part thereof, and
  - (b) any liens, attachments, charges or other encumbrances or claims upon or in respect of any materials, parts, work-in-process or finished Work furnished to, or in respect of which any payment has been made by, the City.

**Annex C**  
**General Conditions – Professional Services – June 2006**

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**13 Royalties and Infringement**

- (1) In this section, "Royalties" includes:
  - (a) license fees and all other payments analogous to royalties for, and also claims for damages based upon, the use or infringement of any patent, registered industrial design, trade mark, copyrighted work, trade secret, or other intellectual property right, and
  - (b) any costs or expenses incurred as a result of the exercise by any person of Moral Rights.
- (2) The Contractor shall indemnify and save harmless the City and its employees and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from the carrying out of the Contract or the use or disposal by the City of anything furnished by the Contractor under the Contract.
- (3) The City shall indemnify and save harmless the Contractor and its servants and agents against any claim, action, suit or other proceeding for the payment of Royalties, that results from or is alleged to result from the use by the Contractor in performing the Contract of equipment, Specifications or other information not prepared by the Contractor and supplied to the Contractor by or on behalf of the City, provided that the Contractor notifies the City immediately of any such claim, action, suit or other proceeding, but the City shall not be liable to indemnify or save harmless the Contractor for payment of any settlement unless the City has consented to the settlement.

**14 Copyright**

- (1) The City shall have the sole ownership of copyrights to all materials produced under the contract.
- (2) Reproduction of any documents or other data for use by anyone is forbidden, without express permission in writing by the City.

**15 Default by the Contractor**

- (1) Where the Contractor is in default in carrying out any of its obligations under the Contract, the City may, upon giving written notice to the Contractor, terminate for default the whole or any part of the Contract, either immediately, or at the expiration of a cure period specified in the notice if the Contractor has not cured the default to the satisfaction of the City within that cure period.
- (2) Where the Contractor 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 Contractor, or an order is made or a resolution passed for the winding up of the Contractor, the City may upon giving notice to the Contractor, immediately terminate for default the whole or any part of the Contract.
- (3) Upon the giving of a notice provided for in subsection (1) or (2), the Contractor shall have no claim for further payment other than as provided in this section, but shall be liable to the City for any amounts, including milestone payments, paid by the City and for all losses and damages which may be suffered by the City by reason of the default or occurrence upon which the notice was based, including any increase in the cost incurred by the City in procuring the Work from another source. The Contractor agrees to repay immediately to the City the portion of any advance payment that is unliquidated at the date of the termination. Nothing in this section affects any obligation of the City under the law to mitigate damages.

**Annex C**  
**General Conditions – Professional Services – June 2006**

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**16 Termination for Convenience**

- (1) Notwithstanding anything contained in the Contract, the City may, at any time prior to the completion of the Work, by giving notice to the Contractor, terminate the Contract as regards all or any part of the Work not completed. Upon a termination notice being given, the Contractor 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 City 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.
- (2) In the event of a termination notice being given pursuant to subsection (1), the Contractor 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 Contractor has not already been so paid or reimbursed by the City:
  - (a) 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;
  - (b) the cost to the Contractor for all Work terminated by the termination notice before completion, the cost to the Contractor being determined in accordance the Contract Price and percentage completed;
- (3) The Contractor 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 City under this section, except to the extent that this section expressly provides.

**17 Accounts and Audit**

- (1) The Contractor shall keep proper accounts and records of transactions and activities, in addition to all expenditures or commitments made by the Contractor in connection therewith and shall keep all documents, invoices, receipts and vouchers relating thereto. All such accounts and records as well as any invoices, receipts and vouchers shall at all times during the contract period be open to audit, inspection and examination by the City.
- (2) Copies of said records shall be provided to the City when requested by the employee responsible for the contract so that they can be maintained in accordance with the City's Records Management Policy and Records Retention and Disposition By-law 2003-527.
- (3) When activities requiring the collection or handling of personal information are contracted out, the contract shall set out the privacy protection and security obligations assumed by the Contractor.

**18 Notice**

Any notice shall be in writing and may be delivered by hand or by courier, by registered mail, or by facsimile or other electronic means that provides a paper record of the text of the notice, addressed to the Party for whom it is intended at the address in the Contract or at the last address of which the sender has received notice in accordance with this section. Any notice shall be deemed to be effective on the day it is delivered, mailed or electronically sent.

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**General Conditions – Professional Services – June 2006**

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**19 Conflict of Interest**

- (1) Neither the Consultant nor any person, firm or corporation associated or affiliated with or subsidiary to the Consultant shall tender for the construction of a project, or have an interest either directly or indirectly in the construction of a project that arises from the Services provided as a result of this contract, without the prior written consent of the City.
- (2) The Consultant is required to disclose to the City, prior to accepting this assignment any potential conflict of interest.
- (3) If a conflict of interest exists, the City may, in its discretion, either withhold this assignment from the Consultant until the matter is resolved to the satisfaction of the City, or award the assignment to another Consultant.
- (4) The Consultant acknowledges and agrees that he/she/it shall not act, work or provide services, directly or indirectly, for, or to, another person, or persons, partnership, corporation, association or organization whose interests are in any way adverse, or contrary (in the opinion of the City of Ottawa), to those of the City of Ottawa with regard to the project for which the consultant was retained by the City. In the event of a breach of this obligation by the consultant he/she/it shall be responsible for all costs incurred or suffered by the City, including legal costs on a solicitor and client basis.

**20 Survival**

All of the Contractor's obligations of confidentiality and all of the Contractor's representations and warranties set out in the Contract as well as the provisions concerning indemnity against third party claims, royalties and infringement, intellectual property rights and accounts and audit shall survive the expiry of the Contract or the termination of the Contract for default, for convenience or by mutual consent, as shall any other provision of the Contract which, by the nature of the rights or obligations set out therein, might reasonably be expected to be intended to so survive.

**21 Entire Agreement**

The Contract constitutes the entire and sole agreement between the parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Contract. There are no terms, covenants, representations, statements or conditions binding on the parties other than those contained in the Contract.

**22 Award**

Any award resulting from this RFSO will be in accordance with the City Purchasing By-Law and may be subject to City Council approval.

**23 Municipal Freedom of Information and Protection of Privacy Act**

The City of Ottawa is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended ("MFIPPA") with respect to, and protection of, information under its custody and control. Accordingly, all documents provided to the City in response to this Request for Proposal may be available to the public unless the party submitting the information requests that it be treated as confidential.

All information is subject to MFIPPA and may be subject to release under the Act, notwithstanding your request to keep the information confidential.

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**24 Fraud or Bribery**

Should the Contractor or any of his/her agents give or offer any gratuity to, or attempt to bribe any member of the awarding body, officer or servant of the City, or to commit fraud against the City, the City shall be at liberty to declare the proposal void forthwith, or to take the whole or any part of the contract out of the hands of the Contractor, and to invoke the provisions of termination.

**25 Successors and Assigns**

The Contract shall enure to the benefit of, and shall be binding upon, the successors and permitted assignees of the City and of the Contractor.

**26 Suspension of the Work**

The City may at any time, by written notice, order the Contractor to suspend or stop all or part of the Work under the Contract for a period of up to 180 days. The Contractor shall immediately comply with any such order in the manner that minimizes the cost of so doing. At any time prior to the expiration of the 180 days, the City shall either rescind the order or terminate the Contract, in whole or in part, under the provisions for termination under the contract.

**27 Insurance:**

(1) Without restricting the generality of the Indemnification provisions, the Consultant shall, during the term of this Agreement, provide, maintain and pay for:

- (a) Commercial General Liability Insurance with limits of not less than \$1,000,000.00 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof. Such insurance coverage shall be in the name of the Consultant and shall name the City of Ottawa as an additional insured thereunder.

The Commercial General Liability insurance shall include coverage for:

- premises and operations liability
- products or completed operations liability
- blanket contractual liability
- cross liability
- severability of interest clause
- contingent employers liability
- personal injury liability
- owner's and contractor's protective coverage
- liability with respect to non-owned licensed motor vehicles

- (b) Automobile Liability Insurance for owned/leased licensed vehicles with limits of not less than \$1,000,000.00 inclusive per occurrence for bodily injury, death and damage to property; and,

- (c) Professional Liability Insurance with a policy limit for each single claim of not less than \$250,000.00.

(2) The Consultant *shall* provide the City with proof, in a form satisfactory to the City, of the insurance required under this section prior to the commencement of work.

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- (3) If the City requests to have the amount of coverage increased or to obtain other special insurance for the Services for the Project, then the Consultant shall endeavour forthwith to obtain such increased or special insurance at the City's expense.
- (4) All the above insurance policies shall contain an endorsement to provide all Named Insureds and Additional Insureds with thirty (30) days prior written notice of cancellation in whole or in part.

**28 Confidential information**

For a period of two (2) years from the date of completion, or acceptance, of the project regardless of the date the Consultant ceases to act, work or provide services for, or to, the City pertaining to the project:

- (1) Information communicated by the City to the Consultant, or by the Consultant to the City, in the course of carrying out the Services provided for herein shall not be either divulged or used by the Consultant on any other project unless prior approval, in writing, is obtained from the City.
- (2) Further, any information that is not common knowledge, and may therefore be considered confidential by the City, that is acquired in the course of carrying out the work or developed by the Consultant is part of the work provided herein, shall not be used or divulged by the Consultant unless prior approval, in writing, is obtained from the City.
- (3) Notwithstanding the foregoing, the obligation of confidentiality shall not pertain to information which:
  - a) as at the time of disclosure, or thereafter became, part of the public domain, or
  - b) as required to be disclosed by law or court order, where, in such cases, all reasonable attempt will be made to notify the City in advance of doing so.