



**Request for Qualifications  
Main Street and South New Street  
Lift Station and Sewer Design**

**RFQ026.11**

**RFQ Due Date: Thursday, April 14, 2011 at 2:00 P.M.**

City of Haverhill Purchasing Department  
City Hall, Room 105  
4 Summer Street  
Haverhill, MA 01830-5875

Telephone: (978) 420-3606  
[purchasing@cityofhaverhill.com](mailto:purchasing@cityofhaverhill.com)

**Addendum 1 - RFP019.11**  
**Rental Time at the Charles C. White Pool at Haverhill High School**

The City of Haverhill has revised several sections of the RFP. The details are listed below:

- **Description:**
  - Paragraph D (2) and (3): Add after the last sentence: Custodial fee will apply. Not to exceed \$120.00. The exact fee will be negotiated with the successful bidder.
- **Additional Contract Terms & Conditions:**
  - Paragraph M
    - Delete: The successful bidder will be required to indemnify and hold harmless the City of Haverhill for all damages to life and property that may occur due to his negligence or that of his employees, subcontractors (if any), or any others under his control or influence as necessary to complete the project. Such indemnification shall be liability and property damage insurance in amounts or at least one million dollars (\$1,000,000), same to include the city as an additionally named insured. In addition, the company hereby agrees, warrants and represents to the City that it will indemnify and insure against any and all damage caused by the Company to or against another co-locator tenant on the City property site.
    - Replace with: The successful bidder will be required to indemnify and hold harmless the City of Haverhill for all damages to life and property that may occur due to his negligence or that of his employees, subcontractors (if any), or any others under his control or influence as necessary to complete the project. Such indemnification shall be liability and property damage insurance in amounts or at least three million dollars (\$3,000,000), same to include the City of Haverhill and the Haverhill Public Schools as an additionally named insured. In addition, the company hereby agrees, warrants and represents to the City that it will indemnify and insure against any and all damage caused by the Company to or against another co-locator tenant on the City property site.
  - Paragraph N:
    - Delete: Renter will provide a Certificate of Insurance naming Haverhill High School as an additional Insured.
    - Replace with: Renter will provide a Certificate of Insurance naming the City of Haverhill and the Haverhill Public Schools as an additional Insured.
- **Regulations**
  - Paragraph J: Add the following sentence: A custodial fee will apply on weekends. Amount not to exceed \$120.00. The exact fee will be negotiated with the successful bidder.
  - Paragraph K
    - Delete: Any individual, firm, or corporation renting the Charles C. White swimming pool shall be responsible for any and all injuries to any person or persons using the said swimming pool under his or its agreement to use said pool, and said individual, firm or corporation shall save the City of Haverhill and the School Committee harmless from any and all injuries to persons or property of said person using the swimming pool. In the event that the Haverhill School System or the City of Haverhill shall be called upon to pay for any such injuries, the individual, firm, or corporation hiring said pool shall indemnify the City of Haverhill for any losses paid by the City.
    - Replace with: Any individual, firm, or corporation renting the facility shall be responsible for any and all injuries to any person or persons using the said swimming pool under his or its agreement to use said pool, and said individual, firm or corporation shall save the City of Haverhill and the School Committee harmless from any and all injuries to persons or property of said person using the swimming pool. In the event that the Haverhill School System or the City

of Haverhill shall be called upon to pay for any such injuries, the individual, firm, or corporation hiring said pool shall indemnify the City of Haverhill for any losses paid by the City.

*Please note that the City will require acknowledgement of any addenda issued to be included on the bid form.*

Robert DeFusco  
Purchasing Director  
City of Haverhill  
978-420-3606

# REQUEST FOR QUALIFICATIONS

RFQ026.11

## Introduction

Sealed qualifications submittals are hereby being solicited by the City of Haverhill for professional engineering services for the following projects:

1. Design, bid, and construction services for replacing Main Street sewer lift station.
2. Design only South New Street sewer lift station.

## Project Schedule

Due Date for Qualifications Submittals	Thursday, April 14, 2011
Recommend Rank Finalist	Thursday, May 5, 2011
Interview Finalist Begins	Monday, May 9, 2011
Notification of Award	Monday, May 23, 2011

## Background

### **Main Street**

Main Street sewer lift station is a submersible station, built in 1969, services 74-homes from Woodrow Avenue to Talmuth Avenue along Main Street. In addition there is another sewer lift station that discharges 125 gpm into the main street sewer, from Spinnaker Circle, which enters this lift station. Main Street station is made out of metal tank with a third of the diameter in the break down lane of Main Street

This station is showing metal fatigue as pieces of metal tank flakes off when we have to service this station. This station must be replaced, due to the tight confine space at Main Street; the City intends to replace this station on Meadow Lane on land behind 1030 Main Street.

### **South New Street**

This station is another metal can submersible station built in 1967 failing due to the pump configuration. Six homes are connected on South New Street connect to this station. The selected engineering company shall provide site assessment and design plans only.

## Scope Of Service:

The City of Haverhill Wastewater Division is seeking a firm or group of firms to provide comprehensive plans and specifications Request for Qualifications Main Street and South New Street Lift Station and Sewer Design.

Designer services will include complete design services: site investigation, schematic design, design development, construction documents, independent cost estimating, bidding, public representation, construction administration and supervision, state, and all other code compliance and building commissioning and close-out. Work will be completed as funding becomes available.

The preliminary design phase shall include evaluating alternative designs, preparing preliminary design documents, necessary field inspection and survey for design purposes, and project cost estimates.

The final design phase shall include conducting a survey for design, preparing final drawings and specifications, preparing bid documents, filing applications for permits and approvals from applicable governmental authorities, and preparing revised project cost estimates.

Bid phase services shall include assisting the City in obtaining bids, issuing addenda, and assisting City in evaluating bids and awarding contract for the work.

Construction phase services shall include general administration of the construction contract, providing resident project representative, site visits, reviewing shop drawings, construction progress meetings; reviewing and processing periodic payment requests; reviewing requests for change orders; processing change orders; preparing as-built drawings; keeping daily project logs; and maintaining project records.

## **General Information and Proposal Submission Requirements**

- A. Qualifications are to be submitted by 2:00 p.m., Thursday, April 14, 2011, at which time they will be opened. Postmarks will not be considered. Submittals received after the deadline will not be considered.
- B. Four (4) copies of the sealed Qualifications as well as a copy in a PDF file format on a CD or diskette must be received at Haverhill City Hall, Attn: Robert J. DeFusco C.P.M., Purchasing, Room 105, 4 Summer Street, Haverhill, Massachusetts 01830 until the time indicated on the RFQ.
- C. Questions concerning this RFQ must be submitted in writing to: Robert J. DeFusco, email [rdefusco@cityofhaverhill.com](mailto:rdefusco@cityofhaverhill.com), before 2:00 PM on Thursday, March 31, 2011. Question may be delivered, mailed, emailed or faxed. Written responses will be mailed, emailed or faxed to all firms on record as having picked up/downloaded the RFQ.
- D. The City may cancel this RFQ, or reject in whole or in part any and all Qualifications, if the City determines that the cancellation or rejection serves the best interests of the City of Haverhill.
- E. Each firm will complete and submit the Standard Designer Application Form. See Appendix A.
- F. Each firm will sign and submit the Certification Statement. See Appendix B.
- G. A proposal must be signed as follow: 1) if the Firm is an individual, by her/him personally; 2) if the Firm is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the Firm is a corporation, by the authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation and the corporate seal affixed.
- H. Firms must bear all costs associated with their submittals including preparation, copying, postage, and delivery costs. The City will not be responsible for any costs or expenses incurred by firms responding to this RFQ.
- I. The City shall be under no obligation to return any Qualifications or materials submitted by a Firm in response to this RFQ.

## **Additional Contract Terms & Conditions:**

- A. The contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. The proposal must comply with all Federal, State, and municipal laws, ordinances, rules and/or regulations.
- B. By submission of a proposal the Firm agrees to ensure that the work is assigned to the personnel and subcontractors identified in the proposal. In no event will the Firm be allowed to replace personnel or subcontractors identified in the proposal unless the City makes a prior determination that the qualifications of the replacement are equal to or exceed those of the individual or subcontractor being replaced.
- C. The successful Firm will not be permitted to assign or underlet the contract, nor assign either legal or equitably, any monies hereunder, or its claim thereto, without the previous written consent of the City.
- D. All words, signatures and figures submitted in these qualifications shall be in ink. Qualifications which are conditional, obscure or which contain additions not called for, erasures, alterations or irregularities, or any prices which contain abnormally high or low amounts for any item, may be rejected as informal. More than one proposal from the same Firm will not be considered.
- E. The selected Firm will be required to sign a contract with the City of Haverhill in which he/she accepts responsibility for the performance of services as stated in the submitted proposal and be prepared to commence work immediately upon execution of the signed contract.
- F. The City shall have unlimited rights, for the benefit of the City, in all drawings, designs, specifications, notes and other work developed in the performance of this contract, including the right to use same on any other City projects without additional cost to the City; and with respect thereto the Designer agrees and hereby grants to the City an irrevocable royalty-free license to all such data which he may cover by copyright and to all designs as to which he may assert any rights or establish any claim under any patent or copyright laws. The Designer shall not be responsible for changes made in the documents without the Designer's authorization, nor for the Division's use of the documents on projects other than the Project, unless this is a contract for design services for a master plan or prototype.
- G. The selected Designer must meet all State guidelines for Minority and Women-Owned business participation. As part of its submission for the proposal, prospective Bidders must state how they plan to meet these targets.
- H. The selected Designer is required to provide Errors and Omissions Insurance on all design work other than planning studies. [M.G.L. c. 7, §38H(f)], Liability insurance and must be willing to name the City of Haverhill as an additional insured. The minimum amount of Errors and Omission Insurance is 10 percent of the estimated construction cost or \$1 million, whichever is less. The Awarding Authority may choose to increase this requirement.
- I. Designers are prohibited from communicating directly with any employee of the City except as specified in this RFQ, and no other individual City employee is authorized to provide any information or respond to any question or inquiry concerning this RFQ. Violation of these conditions will be considered sufficient cause by the City to reject a Designer's proposal.
- J. All Qualifications and related documents submitted in response to this RFQ are subject to the Massachusetts Freedom of Information Law, M.G.L. Chapter 66, Section 10 and to Chapter 4, Section 7, subsection 26,

regarding public access to such documents. Statements or endorsements made by the Designer which are inconsistent with those statutes will be disregarded.

### **Engineering Selection**

The selection committee, using the criteria set forth hereinafter, will review submittals received in response to this RFQ. A maximum of three (3) firms may be selected as finalists for interview. The Selection Committee will rank the finalists in order of qualification.

The highest ranked firm shall submit a fee proposal upon request by the City. If an agreement is not reached within a reasonable period of time the City will initiate negotiations with the next highest ranked firm.

### **Fee**

The fee and scope of work for this project will be negotiated between the City and the selected firm.

### **Proposal Requirements**

Proposals must be submitted in the format described below. Proposals are to be prepared in such a way as to provide a straightforward, concise description of capabilities to satisfy the requirements of this RFQ.

Failure to submit qualifications in accordance with the instructions in this RFQ may disqualify a firm from any further consideration in the evaluation process. The City reserves the right to reject any and all submittals that fail to meet any material term, condition, or requirement of procedure.

Expensive bindings, colored displays, promotional materials are neither necessary nor desired. Emphasis should be concentrated on conformance to the RFQ instructions, responsiveness to the RFQ requirements, and on completeness and clarity of content.

Proposals must be completed in all respects as required in this section. A proposal may not be considered if it is conditional or incomplete.

Each copy of the submittal shall contain the following information:

1. Project title and location.
2. Name of firm, type of organization (Proprietorship, Partnership, Corporation, etc.), principal business of this firm and principal specializations, address, year established, and location of principal office.
3. Name, title, and telephone number of principal to contact.
4. Key persons including subcontractors, specialists, and individuals to be assigned to this project (list names, titles, Professional Engineer (P.E.) registration number and state of registration, disciplines, and project roles).
5. Include resumes for all key personnel (particularly the firm's proposed project manager, senior staff, and subconsultants), including subcontractor's personnel, detailing their professional background, qualifications, experience, education, certifications, registrations. Include only information relevant to this project specification.
6. List, by discipline, the average number of full time personnel employed throughout the preceding 6 month period in your firm's local office as well as firm's offices where work in this project will be performed. Indicate the total number in each discipline and the number holding Professional Engineer Registration.
7. Provide at least five (5) recent projects best illustrating current qualifications for this project. List projects by name, location, description of project, description of your firm's scope of work, project cost, start date, completion date, and client's representative and telephone number. Indicate individuals on your firm's staff who were involved in each project.
8. Additional information or description of resources supporting your firm's qualifications for this project.
9. List names and titles of all partners and directors. Include percent stock, registration number, and discipline.
10. Professional liability insurance. List name of company, aggregate amount, policy number, and expiration date.
11. List all work currently being performed. Include project name, location, description of project, description of your firm's scope of work, project cost, start date, completion date, and client's representative and telephone number.
12. The selected firm must identify any sub-consultants it expects to use on the project and describe their role. The firm will be considered the prime contractor and will be fully responsible for the performance of any task and the final product, including the timeliness of work performed by the sub-consultant.
13. Provide a detailed description of the firm's proposed project approach and an estimated time for the firm to perform scope of services as publicly advertised.

### **Comparative Criteria**

The relative merits of each submittal will be evaluated using the following Comparative Criteria

A. Prior Similar Experience

- Firm's experience on similar projects best illustrating current qualifications for this project.

B. Past Performance on Public and Private Projects.

- Quality, clarity, completeness and accuracy of contract documents and design contract.
- Effectiveness of meeting established program requirements and functions within allotted budget.
- Accuracy of cost estimates including assessment of contractors' requisitions for payment and change order proposals.
- Management ability to meet schedules including submission of design and contract documents and; processing of shop drawings, contractors' requisitions and change orders.
- Coordination, management and working relationship with contractors and subcontractors.

C. Financial Stability

- Depth of firm with respect to size and complexity of the project.
- Submit a statement from an independent certified public accountant (CPA) stating that he/she has examined the applicant's internal auditing controls. Said CPA shall prepare a most recent annual audited or sworn to balance sheet and income statement prepared according to Generally Accepted Accounting Principles (GAAP).
- Prompt payment of subcontractor fees.

D. Identity and Qualifications of the Consultants Who Will Work on the Project

- Identity, experience and qualifications of the persons and subcontractors who will work on this project.
- Involvement of persons assigned to this project in projects listed as firm's experience.

E. Other Criteria

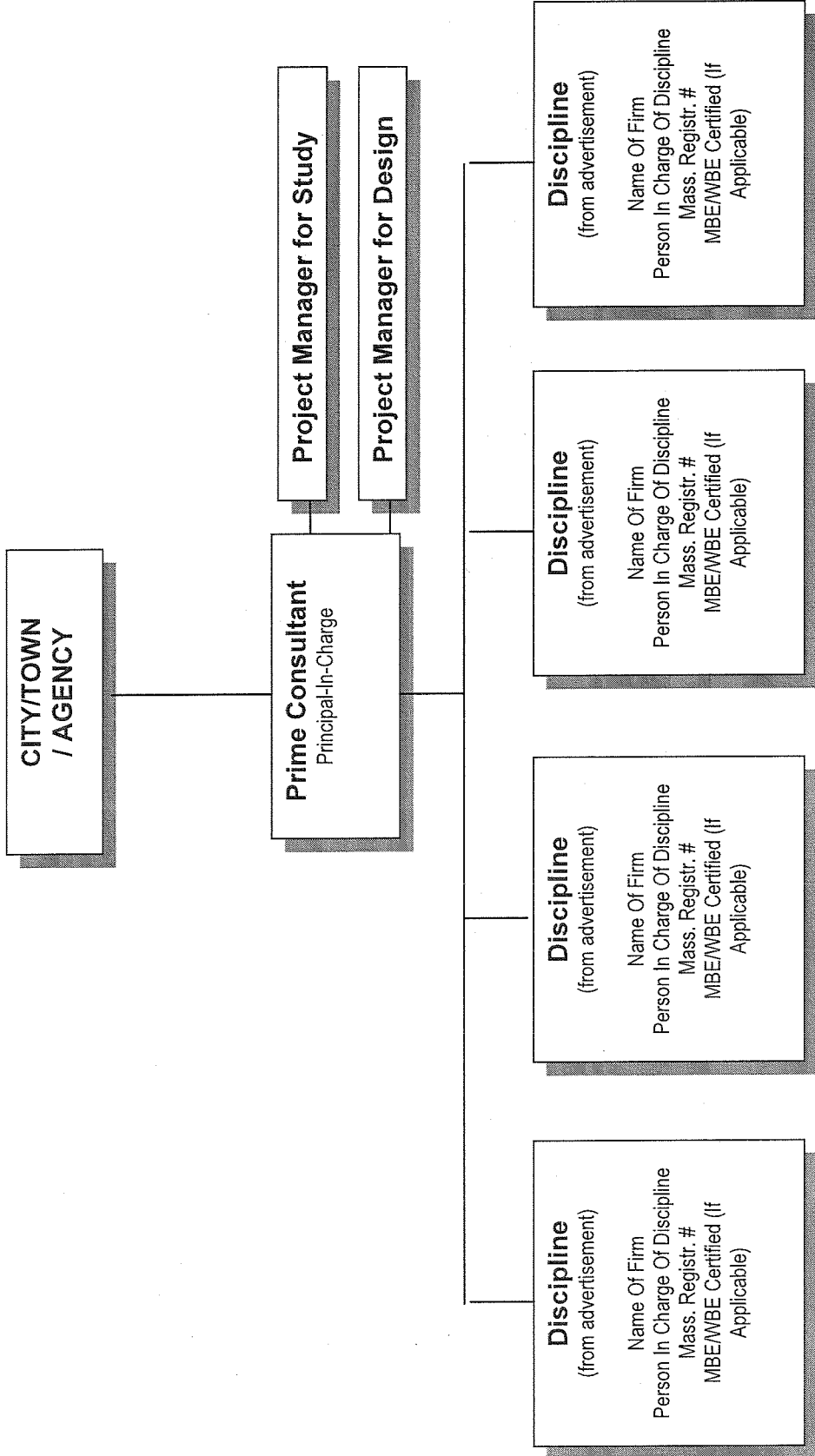
- The ability to undertake and complete the project in the time frame established by the RFQ.
- Current workload with other public and private projects that may affect the ability to meet deadlines.
- All evaluation criteria will be used to review the qualifications of persons or firms who will be employed by the designer. The City reserves the right to reject the use of any consultant or subcontractor and require the successful applicant to substitute a consultant or subcontractor reasonably acceptable to the City.
- Depth of firm with respect to size and complexity of the project.
- Geographical location of the Firm with respect to the proposed project.

## **Appendix A**

### **Standard Designer Application Form for Municipalities And Public Agencies not within DSB Jurisdiction 2005**



6. List **ONLY** Those Prime And Sub-Consultant Personnel Specifically Requested In The Advertisement. This Information Should Be Presented Below In The Form Of An Organizational Chart. Include Name Of Firm And Name Of The One Person In Charge Of The Discipline, With Mass. Registration Number, As Well As MBE/WBE Status, If Applicable:



<p>7. Brief Resume Of <b>ONLY</b> Those Prime Applicant And Sub-Consultant Personnel Requested In The Advertisement. Confine Responses To The Space Provided On The Form And Limit Resumes To <b>ONE</b> Person Per Discipline Requested In The Advertisement. Resumes Should Be Consistent With The Persons Listed On The Organizational Chart In Question # 6. Additional Sheets Should Be Provided Only As Required For The Number Of Key Personnel Requested In The Advertisement And They Must Be In The Format Provided. By Including A Firm As A Sub-Consultant, The Prime Applicant Certifies That The Listed Firm Has Agreed To Work On This Project, Should The Team Be Selected.</p>	
<p>a. Name And Title Within Firm:</p>	<p>a. Name And Title Within Firm:</p>
<p>b. Project Assignment:</p>	<p>b. Project Assignment:</p>
<p>c. Name And Address Of Office In Which Individual Identified In 7a Resides:</p>	<p>c. Name And Address Of Office In Which Individual Identified In 7a Resides:</p> <p>MBE <input type="checkbox"/></p> <p>WBE <input type="checkbox"/></p>
<p>d. Years Experience: With This Firm: _____ With Other Firms: _____</p>	<p>d. Years Experience: With This Firm: _____ With Other Firms: _____</p>
<p>e. Education: Degree(s) /Year/Specialization</p>	<p>e. Education: Degree(s) /Year/Specialization</p>
<p>f. Active Registration: Year First Registered/Discipline/Mass Registration Number</p>	<p>f. Active Registration: Year First Registered/Discipline/Mass Registration Number</p>
<p>g. Current Work Assignments And Availability For This Project:</p>	<p>g. Current Work Assignments And Availability For This Project:</p>
<p>h. Other Experience And Qualifications Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):</p>	<p>h. Other Experience And Qualifications Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):</p>

8a. Current And Relevant Work By Prime Applicant Or Joint-Venture Members. Include **ONLY** Work Which Best Illustrates Current Qualifications In The Areas Listed In The Advertisement (List Up To But Not More Than 5 Projects).

a. Project Name And Location Principal-In-Charge	b. Brief Description Of Project And Services (Include Reference To Relevant Experience)	c. Client's Name, Address And Phone Number (Include Name Of Contact Person)	d. Completion Date (Actual Or Estimated)	e. Project Cost (In Thousands)	
				Construction Costs (Actual, Or Estimated If Not Completed)	Fee for Work for Which Firm Was Responsible
(1)					
(2)					
(3)					
(4)					
(5)					

8b. List Current And Relevant Work By Sub-Consultants Which Best Illustrates Current Qualifications In The Areas Listed In The Advertisement (Up To But Not More Than 5 Projects For Each Sub-Consultant). Use Additional Sheets Only As Required For The Number Of Sub-Consultants Requested In The Advertisement.

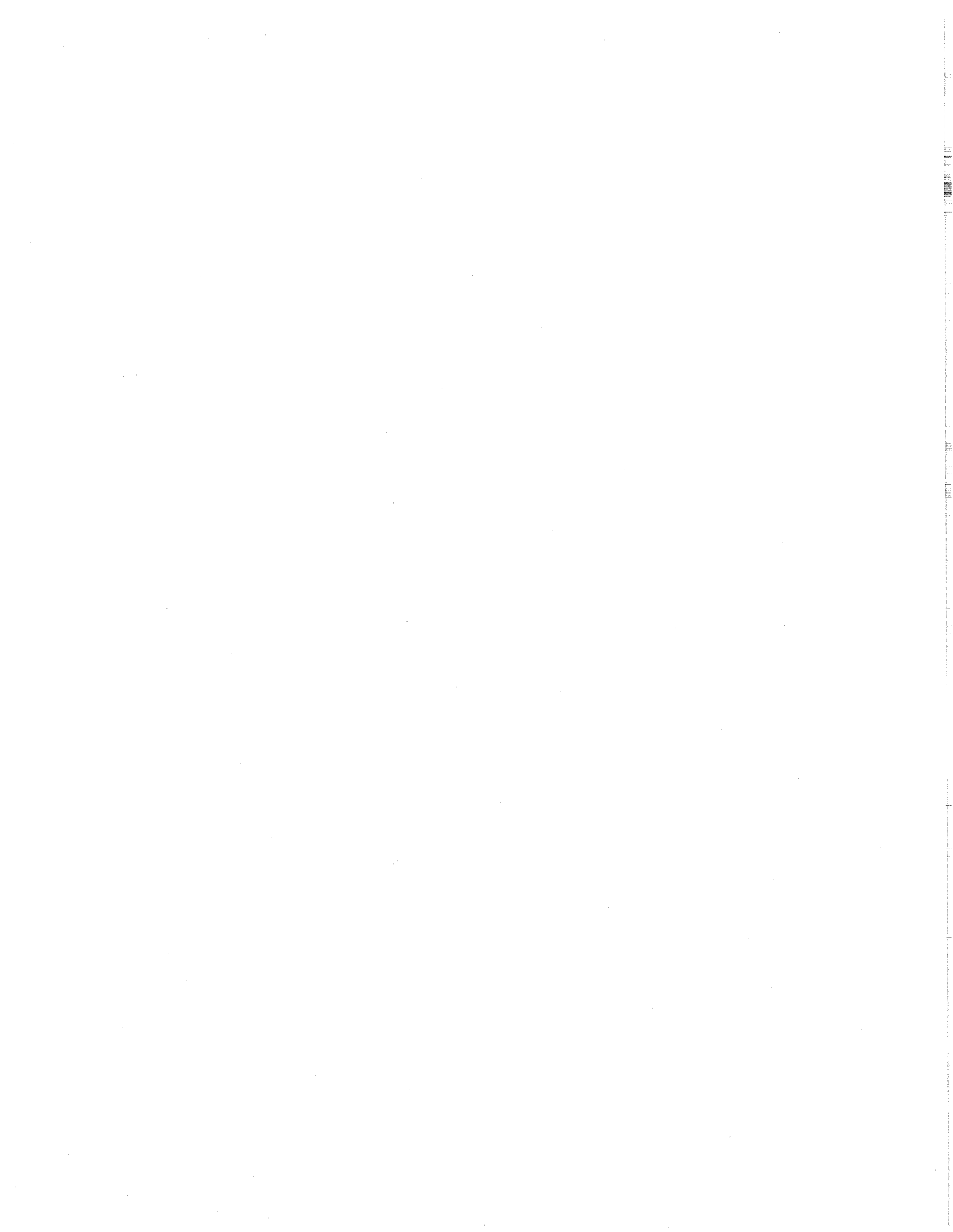
Sub-Consultant Name:	a. Project Name And Location Principal-In-Charge	b. Brief Description Of Project And Services (Include Reference To Relevant Experience)	c. Client's Name, Address And Phone Number. Include Name Of Contact Person	d. Completion Date (Actual Or Estimated)	e. Project Cost (In Thousands)	
					Construction Costs (Actual, Or Estimated If Not Completed)	Fee For Work For Which Firm Was/Is Responsible
(1)						
(2)						
(3)						
(4)						
(5)						

9. List All Projects Within The Past 5 Years For Which Prime Applicant Has Performed, Or Has Entered Into A Contract To Perform, Any Design Services For All Public Agencies Within The Commonwealth.

Role P, C, JV *	Phases St., Sch., D.D., C.D., A.C.*	Project Name, Location And Principal-In-Charge	Awarding Authority (Include Contact Name And Phone Number)	Construction Costs (Actual, Or Estimated If Not Completed)	Completion Date (Actual or Estimated) (R)Renovation or (N)New
		1.			
		2.			
		3.			
		4.			
		5.			
		6.			
		7.			
		8.			
		9.			
		10.			
		11.			
		12.			

\* P = Principal; C = Consultant; JV = Joint Venture; St. = Study; Sch. = Schematic; D.D. = Design Development; C.D. = Construction Documents; A.C. = Administration of Contract





## **Appendix B Certifications**

### **I. CERTIFICATE OF NON-COLLUSION**

The undersigned certifies under penalties of perjury that this proposal or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee club, or other organization, entity, or group or individuals.

\_\_\_\_\_  
Signature of individual submitting proposal or proposal

\_\_\_\_\_  
Name of Business

### **II. TAX COMPLIANCE CERTIFICATION**

Pursuant to M.G.L. Chapter 62C, Sec. 49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the City relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

\_\_\_\_\_  
Signature of individual submitting proposal or proposal

\_\_\_\_\_  
Name of Business

### **III. OTHER STATUTORY REQUIREMENTS**

- Certification that the designer or construction manager has not given, offered or agreed to give any person, corporation or other entity any gift, contribution, or offer of employment as an inducement for, or in connection with, the award of the contract for design services;
- Certification that no consultant to or subcontractor for the designer or construction manager has given, offered or agreed to give any gift, contribution, or offer of employment to the designer or construction manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the designer or construction manager;
- Certification that no person, corporation or other entity, other than a bona fide full-time employee of the designer or construction manager, has been retained or hired by the designer or construction manager to solicit for or in any way assist the designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation, or other entity be paid a fee or other consideration contingent upon the award of the contract to the designer; and
- Certification with respect to contracts which exceed \$10,000 or which are for the design of a building for which the budgeted or estimated construction costs exceed \$100,000 that the designer has internal accounting controls as required by M.G.L. c. 30, §39R(c) and that the designer has filed and will continue to file an audited financial statement as required by M.G.L. c. 30, §39R(d).
- Certification in writing that he or she has complied with state tax laws, reporting of employees and contractors, and withholding and remitting of child support. [M.G.L. c. 62C, §49A]



**Design Services – Lift Station and Sewer Design**

**RFP026.11**

**(For information only: This contract will be completed by the City at time of award.)**

This agreement is made and entered into this \_\_\_th day of \_\_\_\_\_, 2011 by and between the CITY OF HAVERHILL (“the CITY”), a municipal corporation and existing under the laws of the Commonwealth of Massachusetts, and \_\_\_\_\_, a  corporation duly organized and existing under the laws of the Commonwealth/or  as a D/B/A duly registered at: \_\_\_\_\_ (“The CONTRACTOR”).

ARTICLE I. DEFINITION: “THIS CONTRACT” as used herein shall mean that these Articles of Agreement and “the qualification documents,” which include without limitation, the instructions to Designer, the Contractor’s qualifications or proposal, the specification, terms and conditions, requirements, the applicable addenda, any final documents representing negotiated terms, and all documents and forms submitted with the Contractor’s proposal or proposal

ARTICLE II. SCOPE:

ARTICLE III. KEY PERSONNEL: The names and time commitment of the staff committed to the project on a full-time basis is outlined in Appendix A – Key Personnel. ). No substitutions may be made without the City’s written approval.

ARTICLE IV. DURATION. The Contractor shall commence the performance of THIS CONTRACT on or as soon thereafter as this agreement is fully executed and end on \_\_\_\_\_.

ARTICLE V. TERMS. The CONTRACTOR agrees to furnish and deliver services, to the CITY in accordance with the proposal documents of \_\_\_\_\_ (qualification opening date).

TOTAL CONTRACT VALUE: \$ \_\_\_\_\_ U.S. Dollars.

ARTICLE VI. PAYMENT. The CITY agrees to pay to the CONTRACTOR the sum set forth in the Contractor’s proposal. Payments will be linked progress, such as the completion of designated milestones. The cost of redesign if the plans are unsatisfactory or if the construction bids exceed either the cost estimate or the available appropriation will be negotiated in final contract. In addition, the designer will not receive any extra payments for additional work that should have reasonably been anticipated by the designer.

ARTICLE VII. TERMINATION. The following shall constitute events of default under THIS CONTRACT requiring immediate termination: a) any material misrepresentation made by the CONTRACTOR, b) any failure by the CONTRACTOR to perform any of its obligations under THIS CONTRACT including, without limitation, the following: (i) failure to commence performance of THIS CONTRACT at the time specified in THIS CONTRACT due to a reason or circumstance within the Contractor’s reasonable control, (ii) failure to commence performance of THIS CONTRACT with sufficient personnel and equipment or with sufficient material to ensure the completion of THIS CONTRACT within the specified time due to a reason or circumstance within the Contractor’s reasonable control, (iii) failure to commence performance of THIS CONTRACT in a manner reasonably satisfactory to the CITY, (iv) failure to promptly re-perform with reasonable time the services that were rejected by the CITY as erroneous or unsatisfactory, (v) discontinuance of the services for reasons not beyond the Contractor’s reasonable control, (vi) failure to comply with a material term of THIS CONTRACT, including without limitation, the provision of insurance and nondiscrimination, and (vii) any other acts specifically stated in THIS CONTRACT as constituting a basis for termination of THIS CONTRACT.

ARTICLE VIII. DAMAGES. From any sums due to the CONTRACTOR for materials, supplies or equipment delivered, the CITY may keep for its own the whole or any part of the amount for expenses, losses and damages as directed by the Purchasing Agent, incurred by the CITY as a consequence of purchasing materials, supplies or equipment as a result of any event of default, failure, omission or mistake of the CONTRACTOR in furnishing or delivering materials, supplies or equipment as provided in THIS CONTRACT.

ARTICLE IX. ERRORS AND OMISSION INSURANCE. The minimum amount of required insurance is 10 percent of the estimated construction cost or \$1 million, whichever is less. The awarding authority may choose to increase this requirement. The designer must provide the City with a certificate of insurance coverage prior to contract award.

ARTICLE X. RIGHT TO USE DOCUMENTS. The City shall have unlimited rights, for the benefit of the City, in all drawings, designs, specifications, notes and other work developed in the performance of this contract, including the right to use same on any other City projects without additional cost to the City; and with respect thereto the Designer agrees and hereby grants to the City an irrevocable royalty-free license to all such data which he may cover by copyright and to all designs as to which he may assert any rights or establish any claim under any patent or copyright laws. The Designer shall not be responsible for changes made in the documents without the Designer's authorization, nor for the Division's use of the documents on projects other than the Project, unless this is a contract for design services for a master plan or prototype.

ARTICLE XI. CONFLICT. In the event there is a conflict between these Articles and the proposal documents, the proposal documents: shall supercede these Articles.

ARTICLE XII. FUNDING. GOVERNING LAWS AND ORDINANCES. THIS CONTRACT is made subject to: the availability of funds, all the laws of the Commonwealth of Massachusetts and the ordinances of the CITY, and if any such clause thereof does not conform to such laws or ordinances, such clause shall be void (the remainder of THIS CONTRACT shall not be affected) and such law or ordinance shall be operative in lieu thereof.

ARTICLE XIII. EQUAL OPPORTUNITY. The CONTRACTOR in the performance of all work under THIS CONTRACT will not discriminate on the grounds of race, color, sex, age, religious creed, disability, national origin or ancestry, sexual orientation, marital status, family status, military status, or source of income in the employment practices or in the selection or retention of subcontractors, and in the procurement of materials and rental equipment. The CITY may cancel, terminate or suspend the contract in whole or in part for any violation of this Article.

ARTICLE XIV. ASSIGNABILITY. The CONTRACTOR shall not assign, sell, subcontract or transfer any interest in THIS CONTRACT without prior written consent of the CITY. This AGREEMENT and any document referenced and incorporated herein or attached represent the ENTIRE CONTRACT and shall only be modified by written addendum between the Parties.

IN WITNESS WHEREOF, the parties have hereto and to two other identical instruments set their hands and seals the day first above written.

Approved as to Form:

City of Haverhill:

\_\_\_\_\_  
William D. Cox, Jr.  
City Solicitor

\_\_\_\_\_  
James J. Fiorentini  
Mayor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Robert J. DeFusco C.P.M.  
Purchasing Director

FOR THE CONTRACTOR:

\_\_\_\_\_  
Robert Ward  
Deputy DPW Director

Corporate Secretary:

Certified as to Availability of Funding:

\_\_\_\_\_  
Charles Benevento  
Director of Finance & City Auditor