

**CITY OF HAMILTON**

**PLANNING AND ECONOMIC DEVELOPMENT**  
*Tourism and Culture Division*

<b>TO:</b> Mayor and Members General Issues Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> October 3, 2012	
<b>SUBJECT/REPORT NO:</b> Public Art Procurement Process Review (PED12180) (City Wide) (Outstanding Business List Item)	
<b>SUBMITTED BY:</b> Tim McCabe General Manager Planning and Economic Development Department	<b>PREPARED BY:</b> Ken Coit (905) 546-2424 Ext. 6281
<b>SIGNATURE:</b>	

**RECOMMENDATIONS:**

- (a) That the Public Art Call for Artists Policy, attached as Appendix B to Report PED12180, be approved;
- (b) That the Public Art acquisition procedures be refined and implemented by Tourism and Culture Division staff to reflect the principles and guidelines set out in the Public Art Call for Artists Policy for all new Public Art acquisitions.
- (c) That Public Art acquisitions, as identified in the Public Art Call for Artists Policy, be exempt from the City's Procurement Policy, with such exemptions to be reflected in the Procurement Section's 2012 annual amendments to the Procurement Policy By-law.
- (d) That Item Q - Public Art Procurement Process under the General Issues Committee Outstanding Business - Planning - be removed from the outstanding business list.

**EXECUTIVE SUMMARY**

At the request of Council, staff has reviewed the concerns about the Public Art Procurement Process identified in the Arts Advisory Commission's Report (ACC12-002) in regard to fees required to obtain access to detailed procurement documents and the alignment of our Public Art process with Public Art acquisition standards and practices maintained by other Ontario municipalities. Tourism and Culture Division staff, working together with Procurement staff, have determined that, in order to address these concerns and to best meet the goals and objectives of both the Procurement Policy and the principles outlined in the Public Art Master Plan, the acquisition of Public Art should be exempt from the requirements of the Procurement Policy.

In order to achieve this, it is recommended that administration of the Public Art Acquisition Process become the responsibility of Tourism and Culture Division staff and be reflected as a Schedule B exemption within the Procurement Policy. This will allow Tourism and Culture Division staff to refine the current Public Art Acquisition Process and implement procedures for Public Art acquisition that reflect the principles and guidelines set out in the Public Art Call for Artists Policy, attached as Appendix B to Report PED12180. It is anticipated that the adoption of this Policy and refinement of the Public Art Acquisition Process and its procedures will increase the quality and number of submissions received in response to Public Art competitions by virtue of providing a more accessible and streamlined process that uses simpler documents. The end result being a maximization of value received for Public Art funds expended while also maximizing our outreach to artists and the arts community.

***Alternatives for Consideration*** – Not Applicable.

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

**Financial:**

There are no financial implications associated with the recommendations in Report PED12180.

**Staffing:**

There are no staffing implications associated with the recommendations in Report PED12180.

**Legal:**

The City's Procurement Policy By-law to be amended to reflect the exemption of the Public Art Acquisition Process from that policy as part of the Procurement Section's 2012 annual amendments to the policy.

## **HISTORICAL BACKGROUND**

### Public Art Procurement 2008 -2012

Currently, Public Art is acquired using the City's standard Procurement process and Request for Proposal (RFP) document. While the RFP document has evolved somewhat over the past six Public Art projects in order to tailor the document to artists, the procurement process and the RFP document in general, does not reflect the needs of the arts community or the Public Art acquisition standards and practices maintained by other Ontario municipalities and is more suited to the procurement of goods and services, consultants and construction contractors.

The method for accessing and obtaining the RFP documents has also evolved. In 2008 the RFP documents could be viewed for no charge at the Procurement Section office and purchased there for a fee of \$30 to \$40. Communication with artists during the RFP process was by way of fax only. In 2011 the Procurement Section began using the Biddingo online service. As a result, while RFP documents are now also available online, an additional fee of \$33.52 is charged to access those documents and all communication with artists now occurs only through the Biddingo online service.

Currently, in order for an artist to understand if they are eligible to submit a proposal in response to an RFP, they must visit the Procurement Section office during business hours and spend time reviewing the RFP documents or purchase the documents online for \$64.99 or in person for \$45.99. These fees are non-refundable. As a result, the Tourism and Culture Division has received ongoing complaints from artists and the arts community about the high cost of such fees, the complexity of the documents and the difficulty in accessing information in order to prepare a response to an RFP.

Since 2008 many other municipalities and organizations in Ontario and across the country have begun Public Art acquisition programs. These programs, which are in direct competition with Hamilton, provide procurement documents to artists online for no charge and reach out to attract artists through websites and organizations that directly serve artists. A 2012 survey of 21 Canadian municipalities conducted by Tourism and Culture Division staff, at the request of the Arts Advisory Commission, determined that Hamilton is the only municipality charging its prospective artists for access to Public Art procurement documents.

### Arts Advisory Commission Report – Concerns with the Current Public Art Procurement

In 2012, acting on complaints and concerns from the arts community, the Arts Advisory Commission, prepared a report (ACC12-002) for the June 20th General Issues Committee outlining concerns with the existing Public Art Procurement Process and recommending the following:

- (a) *That fees charged to proponents by the City of Hamilton for the acquisition of bid documents for Public Art procurements (as per 2012 Council-approved User Fees – Report FCS11096) be waived.*
- (b) *That Tourism and Culture staff and Financial Services (Procurement) staff investigate the feasibility of eliminating the fees for Public Art procurement charged by the Bidding service by purchasing an annual Bidding membership to use on behalf of proponents or by not using the Bidding service for Public Art procurement.*
- (c) *That the terms of reference for Public Art bid documents be made available on the website of the Tourism and Culture Division for the review of potential proponents.*

The AAC Report outlined the following reasoning for its recommendations:

*The success of Public Art procurement lies in the number and variety of proposals that are submitted. Charging a fee for the acquisition of bid materials is a barrier to participation in that:*

- *Approximately 1/3 of artists in Hamilton have incomes that are considered to be below the poverty line, making the fee prohibitive for many,*
- *Artists who have excellent ideas but limited experience with Public Art may be less inclined to take a chance on submitting a proposal if there is a fee involved and direct access is limited, and*
- *Direct competition with municipalities across the country who do not charge fees and provide direct access to documents put our program at a disadvantage and lower the chance of success.*

The AAC Report also outlined other issues that impact the success of the Public Art Program as follows:

*Through its experience in participating on all Public Art juries, the Arts Advisory Commission is aware of a number of issues with the current Public Art procurement process that are having an impact on the success of the Public Art program. These include:*

- *prohibitively complex bid documents,*
- *difficulty tailoring existing procurement processes to meet the unique needs of Public Art procurements (such as the use of citizen juries),*
- *lack of consistency with Public Art procurement processes in many other municipalities, and*
- *limited access to detailed bid information.*

*In order to make detailed bid information easily available to potential proponents in both Hamilton and beyond, the AAC recommends that the terms of reference for each Public Art competition be posted on the website of the Tourism and Culture Division, with clear instructions that artists wishing to bid must acquire complete bid documents from the appropriate source.*

Referred to Staff

Discussion Item g) ii of the June 20, 2012 General Issues Committee states:

*That the Report submitted by the Arts Advisory Commission (ACC 12-002) respecting the Public Art Procurement Process be referred to the General Manager of Planning for further review and report back to General Issues Committee.*

**POLICY IMPLICATIONS**

In order to ensure that the Public Art Acquisition Process and its procedures is in keeping with the needs of the arts community and reflects Public Art acquisition standards and practices maintained by other Ontario municipalities, while ensuring that the City's established procurement goals and objectives are maintained, a new policy document has been developed. The Public Art Call for Artists Policy, attached as Appendix B to Report PED12180, reflects the changes necessary to accomplish this.

The Public Art Call for Artists Policy is reflective of the Procurement Policy By-Law's goals and objectives as well as the principles of the Public Art Master Plan. The acquisition process identified in the policy uses as a starting point the procurement documents that have been developed over the past six Public Art projects with the Procurement Section. However, it allows for that process to include greater opportunity for artist outreach, use of a voluntary jury and public consultation for project selection.

The new policy and Public Art Acquisition Process and its procedures continue to require compliance with:

- Policy #2 – Approval Authority;
- Policy # 17 – Conflicts of Interest; and,
- Schedule A – Statement of Ethics for Public Procurement

of the Procurement Policy By-Law as established by the Procurement Policy By-law.

**RELEVANT CONSULTATION**

Procurement Section, Financial Services Division, Corporate Services Department

Legal Services Division, City Manager's Office

Risk Management and Insurance, Treasury Services Division, Corporate Services Department

City of Hamilton Arts Advisory Commission

**ANALYSIS / RATIONALE FOR RECOMMENDATIONS**

Maximizing the Number and Quality of Submissions

The Public Art Acquisition Process is a fixed price process in which the value for money is maximized by attracting the largest number of high quality submissions possible. The City's Public Art Program is in competition with other municipalities and organizations to attract these submissions. Artists and arts groups have informed Tourism and Culture Division staff that the Public Art Acquisition Process currently being used by the City is not working to encourage artists to make submissions

The City's Arts Advisory Commission, artists and a review of other municipal Public Art programs have identified barriers within the City's current Public Art Acquisition Process that discourages artists from making submissions. These include:

- Not providing open and easy access to RFP eligibility requirements by requiring the exclusive use of the Biddingo web site and charging fees to access this information; and,
- By using complex and inflexible documents and processes that are not consistent with standards and practice in the arts sector and in other municipal Public Art programs.

The City of Hamilton was identified in a recent staff survey as the only Canadian municipality of 21 surveyed that charged a fee to access detailed RFP information for Public Art. Survey results are attached as Appendix A to Report PED12180.

Public Art Master Plan Principles

The City's Procurement Policy and its corresponding procedures and documents do not recognize the unique outreach needs of Public Art acquisition such as the use of volunteer citizen juries and public consultation. Both requirements being necessary for the process to satisfy the following Public Art Master Plan principles:

- Public Art will enhance and be reflective of our community; and,
- Public Art evolves openly through approved City of Hamilton policies, procedures and processes.

Exemption from the Procurement Policy By-Law

Exempting Public Art acquisition from the Procurement Policy By-Law by adding it to Schedule B of that policy, will allow the Tourism and Culture Division to administer the new Policy and process, while it continues to work with the Procurement Section, Risk Management and the Legal Services Division to develop and refine its acquisition documents, such that it will maximize artist and the arts community's participation in that process and will satisfy the goals and objectives of the Procurement Policy and the principles of the Public Art Master Plan.

**ALTERNATIVES FOR CONSIDERATION:**

Not applicable.

**CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)**

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

***Skilled, Innovative & Respectful Organization***

- ◆ A culture of excellence
- ◆ A skilled, adaptive and diverse workforce, i.e. more flexible staff
- ◆ More innovation, greater teamwork, better client focus

***Financial Sustainability***

- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner

***Growing Our Economy***

- ◆ A visitor and convention destination

**APPENDICES / SCHEDULES**

Appendix A - Municipal Public Art Programs in Canada: Bid Management  
Appendix B - Public Art Acquisition Policy

Municipality	City Administers Public Art Program?	Cost to Acquire Bid Documents		Where Call Documents are Available				Notes/Comments
		Highest Fee/Bid for all Third-party Sites	Fee for RFP Pick Up from City	Paid Third-party Site (e.g. Biddingo)	Ad/Full Bid Available on City's Website	Ad/Full Bid Available at Free Third-party Site (e.g. public art listserv, Akimbo.ca)	Available at City to Pick Up	
City of Hamilton	Yes	\$64.69	\$45.99	Full Bid	No	Ad	Yes	Tax included
City of Toronto	Yes	\$0	\$0	No	Yes	Yes	N/A	
City of Ottawa	Yes	\$0	\$0	No	Yes	Yes	No	
City of Mississauga	Yes	\$0	\$0	Biddingo	Full Bid	Ad	No	
City of Winnipeg	Arms length	\$0	\$0	No	N/A	N/A	N/A	
City of Kitchener	Yes	\$0	\$0	No	Yes	Yes	Selected Projects	
City of Burlington	Third-party Administration	\$0	\$0	No	Full Bid	Full Bid	No	
City of Vancouver	Yes	\$0	\$0	No	Yes	Yes	On Request	
City of St.Catharines	Yes	\$0	\$0	No	Full Bid	Ad Only	On Request	
City of Victoria	Yes	\$0	\$0	No	Yes	No	Yes	
City of Calgary	Yes	\$0	\$0	APC	Ad	APC	No	Alberta Purchasing Connection
City of Edmonton	Arms length	\$0	\$0	No	Yes	Ad Only	On Request	
City of Montreal	Yes	\$0	\$0	No	Yes	No	No	
City of Medicine Hat	Yes	\$0	\$0	APC	Ad	Yes	No	Alberta Purchasing Connection
City of Saanich	Yes	\$0	\$0	No	Yes	No	Yes	
City of Waterloo	Yes	\$0	\$0	No	No	Yes	No	
City of Port Coquitlam	Yes	\$0	\$0	No	Full Bid	Ad	Yes	
City of Saskatoon	Yes	\$0	\$0	No	Yes	Yes	Yes	
City of Thunder Bay	Yes	\$0	\$0	No	Yes	Ad Only	Yes	
City of Brantford	Yes	\$0	\$0	No	Yes	TBD	Yes	New Program
City of Surrey	Yes	\$0	\$0	No	Full Bid	Full Bid	No	



# PUBLIC ART CALL FOR ARTISTS POLICY

(Draft August 31)

## 1.0 PURPOSE

To direct the development of documents and processes used in the acquisition of works of *public art* by the City of Hamilton.

## 2.0 DEFINITION

Public Art

*Public art* is created by artists or in collaboration with artists through a public process and existing in publicly accessible City of Hamilton property.

## 3.0 CITY OF HAMILTON PROCUREMENT POLICY

The documents and processes used to acquire works of Public Art by the City of Hamilton shall be in compliance with the following sections of the Procurement Policy By-Law:

- Policy # 2 Approval Authority;
- Policy # 17 Conflicts of Interest; and,
- Schedule A – Statement of Ethics for Public Procurement.

## 4.0 PRINCIPLES

The documents and processes used to acquire works of Public Art by the City of Hamilton shall:

- Be open, transparent and competitive;
- Treat all artists participating in an objective and equitable fashion;
- Maximize value by encouraging the submission of a large number of high-quality of proposals;
- Consider durability, ongoing maintenance, public safety and any other relevant technical issues in all evaluations;
- Encourage excellence and creativity in design;

- Recognize and encourage new ideas and innovation;
- Recognize diversity in types of public art, artists' approach and artists' experience;
- Respect the intellectual rights of the artist;
- Encourage art reflective of the community through the use of public consultation and citizen juries; and,
- Be in compliance with all City of Hamilton conflict of interest policies.

## 5.0 ACQUISITION PROCESS GUIDELINES

The following process guideline is intended as a general guide and may be adjusted to allow for the specific project requirements in terms of the scale and type of art, project goals/themes and contextual issues resulting from public consultation.

### 5.1. Initial Public Consultation

Public art staff conducts a focus group and/or public meeting to determine theme(s) or subject(s) for the public art that has meaning for the community.

This along with site, budget and technical information is used by public art staff to develop a Call for Artists document. This document is used to solicit submissions from artists.

### 5.2. Initial Submission

The Call for Artists document is posted on the City's public art webpage, promoted via the internet through arts and community groups and other appropriate means.

Typical initial submissions requirements as outlined in the Call for Artists document may include:

- a. A one page artist's concept statement.
- b. Conceptual sketch of proposed work(s).
- c. Curriculum vitae of the Artist(s).
- d. Images of recent relevant work by the principal Artist(s).
- e. Other criteria specific to the project.

### 5.3. Initial Adjudication

Initial submissions are reviewed for basic compliance with the Call for Artist document requirements by public art staff. Compliant submissions are provided to the Jury for review.

The Jury meets to adjudicate submissions against criteria outlined in the Call for Artists document that may include:

- a. Concept and approach.
- b. Qualifications and professional experience.
- c. Quality of previous work.
- d. Other criteria specific to the project.

A number of artists' submissions that best meet the criteria will be selected by the Jury to make a detailed submission. A minimum number of three and maximum of six submissions is preferred.

#### 5.4. Detailed Submission

The artists selected in the initial adjudication are invited to make a second more detailed submission.

Typical Submissions Requirements as outlined in the Call for Artists document may include:

- a. Site plan.
- b. Plan, elevation and section drawings to scale.
- c. A maquette and/or fully colour renderings.
- d. Details of sub-consultants or sub-contractors.
- e. Fabrication and installation plan.
- f. A brief statement for long-term maintenance and conservation.
- g. Artist's concept statement for public review.
- h. Any other information specific to the project.

An honorarium is paid to artists for completion of this work.

#### 5.5 Detailed Submission Review

Detailed submissions are reviewed for basic compliance and compliant submissions are provided to jurors for review.

Technical advisors meet to review the material and fabrication methods proposed against the material guidelines included in the Call for Artists document and good conservation standards for the purpose of identifying any major concerns.

Each artist is sent a standard set of interview questions, based on the criteria set out in the Call for Artist document.

Artists, whose submissions have a material or fabrication issue, will receive a letter identifying the issue and requesting that the artist address the issue at the interview.

## Artist Interviews

The Jury is assembled to interview each artist.

Artists are asked to respond to the set of questions that they received via letter or e-mail.

Those artists that received a notification of material or fabrication issue are asked to indicate how they will address that concern.

Artists are not to provide any new information at this stage that will alter the general content or the conceptual intent of their proposal.

Artists may be asked to make minor revisions to their submissions to reflect material or fabrication changes recommended by technical advisors. If a material or fabrication concern is not addressed to the satisfaction of the jury, the submission may be rejected.

### 5.7 Final Public Consultation

The short listed artists' detailed submissions are presented to the public. The public are asked to review the proposals and comment on how the proposal responds to the following:

- a. The competition theme(s).
- b. The local physical and social context.

This information is collected and analyzed by City staff. The information is provided to the Jury for consideration in the final adjudication of the site responsiveness and community engagement criteria or other relevant criteria. The information is not binding on the Jury.

### 5.8 Final Adjudication

The Jury is assembled to discuss the information provided to date and to adjudicate the submissions in terms of the public consultation information and against criteria outlined in the Call for Artists document that may include:

- a. Technical Requirements.
- b. Site Responsiveness and Community Engagement.
- c. Proposal Resolution.
- d. Project Details.
- e. Artistic Excellence.
- f. Any other criteria specific to the project.

The Jury develops a consensus score for all of the short listed submissions in each of the criteria. The submission with the highest score is awarded the commission.

A document outlining the reasoning for the Jury's decision is to be made available to the artists and public.

## 6.0 THE JURY

The jury shall typically consist of a diverse group of citizen volunteers with various interests in the community, site and project theme along with artists and those with expertise in the arts. All members of the Jury should have respect for the creative process and be comfortable working in group situations. The Jury shall be advised on process and technical issues by City staff.

The size of a Jury is dependent on the scope and complexity of the project but generally shall be a maximum of seven exclusive of advisors.

Jury meetings shall be facilitated by City staff and shall make decisions by consensus.

Jury members shall be selected by the City's public art staff in consultation with the local Councillor, relevant City staff and community stakeholders.

The names of all jurors shall remain confidential until the winning submission is announced.



Hamilton

Tourism and Culture Division  
Planning and Economic Development Department