

NIAGARA FALLS WATER BOARD



REQUEST FOR PROPOSALS (“RFP”) NO. 2019-02

Sanitary Sewer System Management Plan Year 12 Progress Evaluation

**Deadline for Sealed Proposal Submissions:
Friday, March 22, 2019 by 9:00 a.m. EST**

One (1) original, six (6) hard copies and one (1) electronic copy via CD or thumb drive of the proposal must be delivered to the authorized Water Board contact at the address designated below.

A non-mandatory proposal information session will be conducted at the address below at 10:00 a.m. on Friday, March 15, 2019.

The deadline for receipt of written questions submitted to the authorized Water Board contact via email is **Monday, March 18, 2019 at 5:00 p.m.** A written response to questions will be issued on or about **March 20, 2019, by 5:00 p.m.**

AUTHORIZED WATER BOARD CONTACT:

Proposing firms are advised that the Water Board’s designated contact person for all matters concerning this Request for Proposals is:

**Douglas Williamson, Director of Technical & Regulatory Services
Niagara Falls Water Board
5815 Buffalo Avenue
Niagara Falls, New York 14304
(716) 283-9770 x 229
dwilliamson@NFWB.org**

To receive updates regarding this RFP, email the authorized Water Board contact to ask to be placed on the distribution list for RFP No. 2019-02.

1. Introduction

The Niagara Falls Water Board (“Water Board”) is issuing this request for proposals (“RFP”) seeking analysis of flow monitoring data along with an engineering report related to the LaSalle sewer system, as mandated by NYSDEC Order on Consent R9-20080528-32. Sewer system improvements that have been completed based on the NYSDEC Order on Consent R9-20080528-32 must be documented. A revised plan may also need to be developed to continue repair and rehabilitation work in an effective and efficient manner in pursuit of SSO abatement. The LaSalle SSO Abatement Program, which was developed as a result of the NYSDEC Order on Consent R9-20080528-32, is identified in the Water Board’s Capital Improvement Program (CIP) for 2019 and ongoing years. This RFP seeks creative proposals that will add value for Water Board ratepayers.

2. Timetable

The timetable for proposal submission, a non-mandatory pre-proposal meeting, and for submission of written questions is set forth on the cover page for this RFP. All sealed proposals received will be opened publicly and the names of the consultants submitting proposals shall be read immediately after the deadline for proposal submission. It is anticipated that evaluation of proposals will be completed by March 25, 2019, and that submission of a recommendation to award to the Board of Directors will be at the Water Board’s March 25, 2019 meeting. The Water Board reserves the right to change any dates and deadlines at its sole discretion.

3. RFP Updates

The Water Board may, in its sole discretion, withdraw or modify this RFP in whole or in part, and may issue addenda in writing. The Water Board will use its best efforts to post updates to: <https://nfwb.org/reports/procurements/>. However, **to be certain to receive timely updates regarding this RFP, you must email the authorized Water Board contact to ask to be placed on the distribution list for RFP No. 2019-02.**

4. Background

The Water Board is a public benefit corporation created in 2002 by a special act of the New York State Legislature. Its mission is to provide safe and reliable water and wastewater management services to our community in an economical and efficient manner. In 2003, it acquired the drinking water, wastewater, and stormwater systems previously owned and operated by the City of Niagara Falls, a separate municipal entity.

The Niagara Falls Water Board (NFWB), and the City of Niagara Falls, New York prior to September, 2003, have been taking measures to improve sanitary sewer system performance and reduce sanitary sewer overflows (SSO’s) in the LaSalle area since the mid 1990’s. Although significant improvements have been realized, the NYS Department of Environmental Conservation (NYSDEC) has required the development of a program to abate all

NFWB SSO's. This program, developed by Parsons, was approved by the NYSDEC on January 8, 2008. The approved program is currently being implemented under an Order on Consent that was executed with the NYSDEC in 2009.

The approved program spans 18 years, with 2019 designated as Year 12. The required activity in Year 12 is an updated assessment of the sanitary sewer system's response to wet weather events and recommendations for changes to the detailed work plan to improve its effectiveness and likelihood of successfully abating SSO's by Year 18.

5. Goals for this Request for Proposals

The contract that results from this RFP will be awarded to the firm or company offering the best combination of merit and price, as determined by the Water Board. The Water Board's primary objectives for this RFP are to obtain:

- 1) An analysis of flow monitoring data along with an engineering report related to the LaSalle sewer system, as mandated by NYSDEC Order on Consent R9-20080528-32. Sewer system improvements that have been completed based on the NYSDEC Order on Consent R9-20080528-32 must be documented. A revised plan may also need to be developed to continue repair and rehabilitation work in an effective and efficient manner in pursuit of SSO abatement.
- 2) Reassessment of the rehabilitation priorities and recommendations on a five year cycle is required, as outlined in Table 4.2 of the Parson's August 2007 Sanitary Sewer System Management Plan, to document progress made during the program implementation and also to ensure that projects and limited available funds are focused on priority areas, as these may change during program implementation.

6. Proposal Scope and Requirements

This project involves some fieldwork, engineering analysis and reporting to achieve the program's Year 12 goals.

Recently, the NYSDEC has requested that the new flow monitoring report for Year 12 be written in substantial conformance with technical guidance that are presented in the Water Environment Federation (WEF) Manual of Practice FD-6 (MOP FD-6). The NYSDEC intends on utilizing the new monitoring data to enter into discussion about modifying the consent order upon completion of the Year 12 report.

Due to time constraints, the NFWB recently hired a flow monitoring company, TECSMITH Inc., to install (15) flow meters and (2) rain gauges in the LaSalle area for a three-month monitoring period with the option for a fourth month of monitoring (based on the sanitary sewer flow data recorded). These flow meters were installed by TECSMITH Inc. on March 11 and 12 2019, in order to capture the same sanitary sewer flow monitoring period for comparison to previously completed flow monitoring reports in 2003 and 2012.

The work is expected to include, but not be limited to, the following tasks:

1) Review of the following items:

- NFWB Regulations
- Parsons' August 2007 Sanitary Sewer System Management Plan
- Prior Parsons work
- Collection system maps & documentation
- Annual reports to the NYSDEC
- NYSDEC Order on Consent
- 2003 and 2012 flow monitoring reports
- Additional information as necessary

2) Working with TECSMITH, Inc. to conduct a field investigation, consisting of the following measures:

- Monitoring and recording sewer flow for a three month period in the original ten locations described in the 2007 Parsons report and the five additional locations that were added in 2019 in order to perform a flow data analysis per the Water Environment Federation (WEF) Manual of Practice FD-6 (MOP FD-6) requirements. Flow monitoring during March, April and May is anticipated with the option for a fourth month of monitoring in June (based on the sanitary sewer flow data recorded).
- Continuous rainfall measurement at two locations (the 56th Street and 101st Street lift stations) for the same three month period with the option for a fourth month.

The original ten locations are tabulated in Appendix B of the 2007 Parsons plan.

3) Conducting an engineering analysis of the new rainfall/sewer flow information with respect to the previous set of data from 2003 and 2012 along with the sewer repairs and improvements performed since that time. The analysis of 2019 rainfall/flow patterns shall be directly comparable to the 2012 and 2003 results, so that changes in sewer system wet weather behavior may be easily identified and quantified. Specific work performed from Year Zero through Year 4 have already been examined with respect to quantified changes in system response in the applicable subsewershed. Specific work performed from Years 6 through Year 10 shall be examined in light of the new monitoring results. Planned activities in Years 13 through Year 18 shall be examined in light of the new monitoring results. Reprioritization to favor the more effective corrective measures shall be examined and recommended as appropriate.

4) Reporting of study results. A draft report encompassing the effort shall be prepared and provided to the NFWB for review and comment. The report shall summarize all activities, analyses, results and recommendations. At least one meeting with the

NYSDEC, and addressing subsequent questions, is anticipated. Submit a final report in paper and electronic form.

The goal of the effort is to document system improvements and to continue repair and rehabilitation work in an effective and efficient manner in pursuit of SSO abatement.

The proposals are to include, at a minimum, the following items :

- Situation understanding,
- Understanding of applicable regulations and standards,
- Project approach, scope, and project organization,
- Demonstrated experience on similar projects,
 - Particular emphasis will be placed on recent experience with sewer flow monitoring & rehabilitation/repair projects
- Specific experience of key project professionals,
- Experience & qualifications of subconsultants/contractors
- Schedule, effort and budget breakdown :
 - Schedules shall be in bar chart form, detailing specific tasks.
 - Effort & budget shall be in a spreadsheet format using a task/hour estimate matrix.

7. M/WBE and SDVOB Requirements

The Consultant awarded an agreement as a result of this RFP will be required to utilize Minority, Women, and Disadvantaged Business Enterprises at the following percentages based on Niagara Falls Water Board policy:

M/WBE – 30%

SDVOB– 6%

Required forms and Water Board policy related to these M/WBE and SDVOB requirements are made part of this RFP as Appendix D.

8. Statement of Qualifications

Consultants must submit a statement of qualifications that provide a description of proposer's business structure, licensing, years in business, any experience with similar Engineering Services along with Project Description (including contact information for references), locations, description of key personnel for this project, and any other pertinent information that will help to demonstrate consultant's qualifications to perform. The statement of qualifications must also include the following:

1. Any other names under which consultant has done business in the past 10 years;
2. List all subsidiary and parent companies;

3. State whether consultant ever has been:
 - Debarred or suspended by any government entity from entering contracts with it;
 - Found not responsible by any government entity;
 - Declared in default or terminated for cause from any contract, or had any contract cancelled for cause; or
 - Required to pay liquidated damages on a contract.
4. State whether consultant has filed for bankruptcy or been the subject of an involuntary bankruptcy proceeding; and
5. State whether consultant has been a party to any legal action or government investigation related to proposer's business practices, or alleging that any of consultant's agents or employees committed any act of fraud, collusion, bid rigging, price fixing, or bribery. If consultant, any of consultant's principals, or any of consultant's agents has pleaded guilty or entered into a consent order in connection with respect to any of these, provide details.

9. Oral Presentations or Interviews

Prior to award, one or more proposing consultants may, in the sole discretion of the Niagara Falls Water Board, be invited to offer a presentation to Water Board staff and/or to the Board of Directors. The authorized Water Board contact will schedule the time and location of these presentations. Consultant shall bear all of its own costs for any such presentations or interviews.

10. Evaluation Criteria

All proposals received will be evaluated by a team of Water Board staff, based on technical qualifications, price, experience with the work, and other relevant factors. The cost for the project is to be based on hourly rates plus expenses, with a not-to-exceed ceiling. The successful firm will execute a standard Water Board agreement for engineering services.

11. Insurance

Consultant shall be required to procure and maintain at its own expense and without expense to the Niagara Falls Water Board, insurance for liability for damages imposed by law, of the kinds and amounts hereinafter provided, from insurance companies authorized to do business in the State of New York covering all operations under any contract that results from this RFP, whether performed by the consultant or its subcontractors. Before proceeding with any work under the contract that may result from this RFP, the successful proposer shall furnish to the Niagara Falls Water Board Certificate of Insurance form(s) and relevant insurance policy declarations and endorsements satisfactory to the Water Board exhibiting compliance with this paragraph and providing that the policies shall not be changed or canceled until thirty (30) days written notice has been given to the Niagara Falls Water Board. The types and limits of insurance shall be as follows:

1. Workers Compensation as required by Law (submit Form C-105.2);
2. Disability Benefits as required by Law (submit Form DB-120.1);
3. Employer's Liability with a minimum limit of \$100,000;
4. Commercial General Liability insurance: Bodily, Personal Injury, and Property Damage Liability limits each of at least \$1,000,000 per occurrence/\$2,000,000 aggregate, which shall include the following coverages:
 - a. Owner's Protective Liability
 - b. Premises – Operations
 - c. Broad Form Contractual
 - d. Independent Contractor and Sub-Contractor
 - e. Products and Completed Operations
5. Automobile Liability: \$1,000,000 single limit; and
6. Umbrella/Excess Liability: A minimum of \$5,000,000 on a per occurrence and aggregate basis; this shall be in excess of primary general, automobile and employer's liability limits.
7. Professional Liability/Errors and Omissions: \$2,000,000 (identified as a claim made or an occurrence policy) (required only if professional services are to be performed pursuant to the contract).

Certificates, declarations, and endorsements should be made to the Niagara Falls Water Board, 5815 Buffalo Avenue, Niagara Falls, NY 14304 and should reference the WSSLP program agreement.

The Niagara Falls Water Board, the Niagara Falls Public Water Authority, and the City of Niagara Falls, New York shall be named as an Additional Insureds on the Liability Policies (except for professional liability) with the following provision: The insurance company or companies issuing the policies shall have no recourse against the Niagara Falls Water Board or the Niagara Falls Public Water Authority for payment of any premiums or for assessments under any form of policy.

In the event that the consultant requires any subcontractor to procure insurance with regard to any of the operations under the contract resulting from this RFP and requires such subcontractor to name the consultant as an additional insured under such insurance, the consultant shall ensure that such policy names the Water Board, Niagara Falls Public Water Authority, and their officers and employees as additional insureds.

12. Indemnification and Waiver of Subrogation

The successful consultant, to the full extent permissible by New York law, must agree to indemnify and hold the Niagara Falls Water Board, its Directors, Officers, and Employees harmless against all loss, cost, or damage, on account of injury to person or damage to property as a result of any action or inaction of the consultant or its representatives or agents or subcontractors in performance of the contract resulting from this RFP and against all fines, penalties any other losses which the Niagara Falls Water Board shall be obliged to pay or incur in connection with the performance of the work under the contract.

The successful consultant also must agree to waive all rights against the Water Board, including its officials and employees, for any damages or losses that are covered under any insurance required by this RFP or in the resulting contract, or any other insurance applicable to the operations of the consultant and/or its subcontractors in the performance of the contract.

13. Independent Contractor

The successful consultant and its employees will operate as an independent contractor and are not considered Water Board employees. Consultant must identify its subcontractors, if any, in its proposal, but award of a contract shall not create any relationship between the subcontractors and Water Board, and consultant shall be responsible for the entire contract. The Water Board shall have the right to reject any proposed subcontractors.

14. Conflicts of Interest and Prohibition on Political and Religious Activity

By submitting a proposal in connection with this RFP or by assuming the responsibility of a contract awarded hereunder, consultant stipulates that, upon information and belief, no member of the governing body of the Water Board, or officer or employee of the Water Board, forbidden by Law, is interested in, will derive benefit from, or will be a party to, the contract between consultant and the Water Board. Consultant warrants that no payment, gift, or thing of value has been or will be made, given, or promised any Director, Officer, or Employee of the Water Board, or any member of the immediate family of any Director, Officer, or Employee of the Water Board (spouse, parent, sister, brother, or child) to obtain this or any other agreement between the parties. Consultant agrees that its provision of services under any contract that may result from this RFP shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under any contract that may result from this RFP be used for such purposes. The consultant further agrees that if awarded an agreement as a result of this RFP, there shall be no religious worship, instruction, or proselytizing as part of or in connection with the consultant's provision of services under that contract, nor shall any of the funds provided under this Agreement be used for such purposes.

15. Non-Collusion

Consultant must submit a signed statement of non-collusion on the form attached hereto as Appendix B.

16. Non-Discrimination and Prohibition Against Sexual Harassment

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, or marital status. By submitting a proposal, consultant agrees that it shall submit an Equal Employment Opportunity (“EEO”) Policy Statement to the Water Board containing at a minimum the terms therefore as set forth in Appendix D.

By submission of this proposal, each proposing consultant and each person signing on behalf of any proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the proposer has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law. Consultant’s proposal must include the Statement on Sexual Harassment form at Appendix E.

17. Prohibited Business Practices

1. **Iran Divestment Act.** By submitting a proposal in connection with this RFP or by assuming the responsibility of a contract awarded hereunder, consultant certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerors pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>. Consultant further certifies that it will not utilize in connection with any contract that may be awarded as a result of this RFP any subcontractor that is identified on the Prohibited Entities List.
2. **International Boycott Prohibition.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, that by submitting a proposal in response to this RFP or by assuming the responsibility of a contract awarded hereunder, consultant agrees, as a material condition, that neither the consultant nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If consultant, or any of the aforesaid affiliates of consultant, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or

any other appropriate agency of the United States subsequent to the consultant's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The consultant shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

3. **MacBride Fair Employment Principles.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), by submitting a proposal in connection with this RFP or by assuming the responsibility of a contract awarded hereunder the consultant hereby stipulates that the consultant either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

18. Successors and Assigns

Any contract resulting from this RFP shall inure to the benefit of and be binding upon the legal representatives and successors of the parties, respectively, but the successful consultant may not assign the contract without the Water Board's written permission.

19. Proposal Package Submission Requirements

1. Proposal packages are due on or before the proposal due date and time at the location set forth on the cover page of this RFP.
2. Proposers shall deliver one (1) clearly marked original and six (6) copies of the proposal package. To prevent waste, proposers are encouraged to print and/or copy responses on both sides of the page.
3. One (1) electronic copy of the complete proposal package also is required, on CD or USB drive. The preferred method is PDF conversion from the consultant's source files rather than simply scanning the proposal documents (to minimize file size and maximize quality), though scanned documents are acceptable. The electronic copy of the proposal should be provided as one document with the pages in the same order as the paper original. If this is not possible, the electronic copy files should be named in a way so that they can be read in the same order as the paper original (e.g., naming the files "Proposal Part 1," "Proposal Part 2," etc.).
4. Only one original copy of each of the appendices requiring a signature is required, which may be submitted only as part of the paper original proposal and need not be included in the electronic copy of the proposal.
5. The sealed outer envelope enclosing any materials submitted in response to this RFP shall be addressed to the Water Board contact set forth on the cover page of this RFP. The outer envelope containing the proposal materials must clearly indicate the proposer's name and address, and must clearly be marked:

**PROPOSAL ENCLOSED –
RFP NO. 2019-02**

Sanitary Sewer System Management Plan
Year 12 Progress Evaluation

6. Proposals may be hand delivered. Proposers shall be responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the information required in item “5” above, appears on the outer envelope used by such service.

20. Additional Information about RFP

1. Rely Only Upon Formal Information.

- a. The Water Board shall not be bound by any oral or written information released prior to the issuance of the RFP.
- b. The Water Board shall not be bound by any oral or written representations, statements, or explanations other than those made herein, in Water Board written responses to proposer inquiries, or in formal written addenda to this RFP.

2. Communication with Water Board and Lobbying Law.

Consultants are advised that, from the date this RFP is issued until the award of the contract, no contact by consultants or their agents with the Water Board or Water Board personnel related to this solicitation is permitted, except as shall be authorized by the authorized Water Board contact indicated on the cover page of this RFP.

Pursuant to State Finance Law Sections 139-j and 139-k, this RFP includes and imposes certain restrictions on communication between respondents and the Water Board during the procurement process. A respondent is restricted from making contacts from the date the RFP is issued through the final contract award by Water Board (the "Restricted Period"). During the Restricted Period, respondents may only contact the designated contact regarding this RFP. The designated contact is identified on the cover page of this RFP. Respondents are responsible for complying with State Finance Law Sections 139-j and 139-k. Directors, officers and employees of the Water Board are required to record certain information when contacted during the Restricted Period. A review of whether such contacts were permissible contacts will be considered in connection with any determination of responsibility of the respondent. Failure of any respondent to timely certify or to disclose accurate and complete information or the submission of any intentionally false or intentionally incomplete certification may result in the rejection of the contract award or if such contract has been executed, then the immediate termination of the contract. Violations may result in debarment of the respondent from proposing on or obtaining governmental procurement contracts in the State of New York.

Consultants are required to complete and return with their proposal Appendix F, New York State Finance Law Sections 139-j and 139-k ("Lobbying Law") – Disclosure Statement.

3. Questions Regarding the RFP.

- a. All inquiries regarding this solicitation shall be emailed to the authorized Water Board contact by the date and time indicated on the cover page of this RFP. The subject line for such inquiries should indicate the RFP name and number in the subject line, e.g. "RFP No. 2019-02 - Sanitary Sewer System Management Plan Year 12 Progress Evaluation Question."
- b. Compiled questions and responses will be posted on the Water Board's website at <https://nfwb.org/reports/procurements/> on or after the date indicated on the cover page of this RFP, but to receive these responses as early as possible, you must email the authorized Water Board contact to ask to be placed on the distribution list for RFP No. 2019-02.

4. Addenda to the RFP.

- a. The Water Board shall issue responses to inquiries related to substantive issues and any other corrections or amendments to the RFP that it deems necessary prior to the proposal due date in the form of written addenda. Such addenda will be posted on the Board's website: <https://nfwb.org/reports/procurements/>, and the Water Board will use its best efforts to send copies to those who have asked to be placed on the distribution list for this RFP.
- b. It is the consultant's responsibility to assure receipt of all addenda. The proposer should verify with the authorized Water Board contact prior to submitting a proposal that all addenda have been received. Consultant's shall acknowledge the number of addenda received as part of their proposals using Appendix A.

21. Freedom of Information Law – Claim of Confidential, Proprietary, or Trade Secret Information

The Water Board is subject to the provisions of the Freedom of Information Law ("FOIL"), N.Y. Public Officers Law, Sections 84 through 90, relating to public access to agency records. The consultant shall specifically identify those portions of the proposal deemed to be confidential, proprietary information, or trade secrets and provide any justification why such material, upon request, should not be disclosed by the Water Board. The top of each page containing such information must be clearly marked in bold type "**PROPOSER BELIEVES THAT THIS INFORMATION IS PROTECTED FROM DISCLOSURE UNDER THE STATE FREEDOM OF INFORMATION LAW.**" Such information deemed by the proposer to be confidential/proprietary shall be easily separable from the non-confidential/non-proprietary sections of the proposal.

The Water Board accepts no responsibility for disclosure of information designated as exempt from disclosure, but the Board does intend to evaluate, on a case-by-case basis, whether exemption from disclosure applies when a FOIL request is made to the Water Board for examination of such a proposal. Consultants should be aware that any and all terms of their respective proposals, including proposed pricing, may be the subject of discussion at Board of Directors meetings that are open to the public.

22. General Conditions

The issuance of this RFP does not commit the Water Board to award a contract or to pay any costs incurred by proposers in the preparation of proposals or for any work performed in connection therewith. In addition, the Water Board reserves the following rights:

1. To postpone or cancel this RFP;
2. Reject any or all proposals received in response to this RFP;
3. Award a contract without any discussion with proposers;
4. Retain a successful proposer for only a portion of the scope of services;
5. Accept a proposal other than the proposal offering the lowest price;
6. Waive or modify any irregularities in proposals received;
7. Consider proposals or modifications received at any time before the award is made, if such is in the best interest of the Board;
8. Request clarification and/or additional information from the proposers during the evaluation process; and
9. Utilize any and all ideas submitted in the proposals received, unless those ideas are covered by legal patent or proprietary rights and the patent or those rights are indicated by the proposers.

23. Exceptions to RFP

The contract to be entered into shall include the requirements of this RFP among its terms and conditions, with such changes to which the Water Board may agree. Submission of a proposal constitutes consent to these terms and conditions. Any exceptions must be explicitly stated in the proposal and separately listed in a separate attachment to the body of the proposal entitled "Exceptions." Failure to list exceptions separately in the "Exceptions" attachment shall be deemed to constitute consent to all such terms and conditions herein and shall constitute a binding waiver by the proposer of all exceptions not listed. A general exception or reservation to the legal or technical terms and conditions shall be deemed a nullity and may also result in the Water Board rejecting the proposal as non-responsive.

24. Proposal Firm and Irrevocable for 90 Days

A signed proposal shall be considered a firm offer on the part of the consultant, and the Water Board may insist on the strict performance of all elements of the proposal, unless the Water Board specifically waives a proposal element in writing during negotiations. By submitting a proposal, consultant agrees that its offer is firm for a period of 90 days from the

deadline for proposal submissions, as may be amended or extended by way of an addendum to this RFP.

25. Contract Negotiations

Upon selection, the successful consultant may be invited to negotiate a contract with the Water Board, though the Water Board reserves the right to award a contract on the basis of the initial offers received, without discussions. Therefore, each initial offer should contain the proposer's best terms from a technical and cost standpoint.

The Water Board reserves the right to enter into discussions/negotiations with one or more consultants and to request the submission of best and final offers from those consultants, who after the conclusion of such discussions/negotiations, still are under consideration for award. No consultant shall have any rights against the Water Board arising from an invitation to enter into discussions/negotiations or to submit a best and final offer.

At the Water Board's discretion, the contents of the selected proposal, together with the RFP, may be incorporated into and made part of the final contract. Should negotiations fail to result in a signed contract within a reasonable period of time as defined by the Water Board, the Water Board reserves the right to terminate negotiations and select another consultant, issue a new RFP, or take any other action consistent with the best interests of the Water Board.

26. Proposer Acceptance of RFP Terms

Proposals will not be accepted as complete without a signed certification of acceptance of RFP terms, Appendix C. The submission of a proposal signifies that the proposer:

1. Acknowledges and accepts the terms and conditions in this RFP;
2. Intends to compete for the award of the contract described herein;
3. Will be reasonable in contract negotiations; and
4. Acknowledges and accepts that the final contract will include all terms and requirements set forth in this RFP, plus such additional terms and conditions which may be required by law or as may be incorporated at the Water Board's discretion, subject to negotiation.

RFP DATED: **March 11, 2019**

APPENDIX A

ACKNOWLEDGEMENT OF ADDENDA

RFP TITLE: RFP NO. 2019-02, Sanitary Sewer System Management Plan Year 12
Progress Evaluation

DIRECTIONS: Complete Part I or Part II, whichever is applicable.

PART I: LISTED BELOW ARE THE DATES OF ISSUE FOR EACH
ADDENDUM RECEIVED IN CONNECTION WITH THIS RFP:

ADDENDUM # 1: DATED _____ , 20__

ADDENDUM # 2: DATED _____ , 20__

ADDENDUM # 3: DATED _____ , 20__

ADDENDUM # 4: DATED _____ , 20__

ADDENDUM # 5: DATED _____ , 20__

ADDENDUM # 6: DATED _____ , 20__

PART II: _____ INITIAL HERE IF NO ADDENDUM WAS RECEIVED
IN CONNECTION WITH THIS RFP INITIAL HERE

DATE: ____/____/____

PROPOSER (SIGNATURE): _____

PROPOSER (NAME): _____

PROPOSER (FIRM): _____

APPENDIX D

PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS and SERVICE DISABLED VETERAN OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The NIAGARA FALLS WATER BOARD (“NFWB”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to NFWB, to fully comply and cooperate with NFWB in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to NFWB pursuant to the Contract and applicable law.

II. Contract Goals

- A. For purposes of this Contract, NFWB hereby establishes an overall goal of **30%** for MWBE participation, **10%** for New York State-certified minority-owned business enterprise (“MBE”) participation and **20%** for New York State-certified women-owned business enterprise (“WBE”) participation and 6% for Service-Disabled Veteran Owned Business enterprise (SDVOB) (collectively, “MWBE/SDVOB Contract Goals”) based on the current availability of MBEs, WBEs and SDVOBs.
- B. For purposes of providing meaningful participation by MWBEs and SDVOBs on the Contract and achieving the MWBE and SDVOB Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com> and SDVOBs at the following internet address: <https://online.ogs.ny.gov/SDVOB/search>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women's Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.
- D. The Contractor must document "good faith efforts," pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs and SDVOBs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
 - 1. Evidence of outreach to MWBEs and SDVOBs;
 - 2. Any responses by MWBEs and SDVOBs to the Contractor's outreach;
 - 3. Copies of advertisements for participation by MWBEs and SDVOBs in appropriate general circulation, trade, and minority or women-oriented publications;
 - 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by NFWB with MWBEs and SDVOBs; and,
 - 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE and SDVOB participation.

III. Equal Employment Opportunity ("EEO")

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
 - 1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 - 2. The Contractor shall submit an EEO policy statement to NFWB within seventy-two (72) hours after the date of the notice by NFWB to award the Contract to the Contractor.

3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, NFWB may require the Contractor or subcontractor to adopt a model statement.
4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form C - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by NFWB.

D. Form A - Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by NFWB on a QUARTERLY basis during the term of the Contract.
2. Separate forms shall be completed by the Contractor and any subcontractors.

3. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis (Form D).
- E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE/SDVOB Utilization Plan

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE/SDVOB Utilization Plan, or shall submit an MWBE/SDVOB Utilization Plan at such time as shall be required by NFWB, through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to NFWB, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE/SDVOB Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE/SDVOB Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, NFWB shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

V. Waivers

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE/SDVOB Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by NFWB (Form B). Such waiver request must be supported by evidence of the Contractor’s good faith efforts to achieve the maximum feasible MWBE/SDVOB participation towards the applicable MWBE/SDVOB Contract Goals. If the documentation included with the waiver request is complete, NFWB shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If NFWB, upon review of the MWBE/SDVOB Utilization Plan, quarterly MWBE/SDVOB Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE/SDVOB Contract Goals, and no waiver has been issued in regards to such

non-compliance, NFWB may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE/SDVOB Contract Goals.

VI. Quarterly MWBE/SDVOB Contractor Compliance Report

The Contractor is required to submit a quarterly MWBE/SDVOB Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to NFWB by the 10th day following the end of each quarter during the term of the Contract.

VII. Liquidated Damages – MWBE/SDVOB Participation

- A. Where NFWB determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE/SDVOB participation goals, the Contractor shall be obligated to pay to NFWB liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 1. All sums identified for payment to MWBEs and SDVOBs had the Contractor achieved the contractual MWBE/SDVOB goals; and
 2. All sums actually paid to MWBEs and SDVOBs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by NFWB, the Contractor shall pay such liquidated damages to NFWB within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES-SERVICE DISABLED VETERAN OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

M/WBE/SDVOB AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor)_____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE/SDVOB

This organization will and will cause its contractors and subcontractors to take good

faith actions to achieve the M/WBE/SDVOB contract participations goals set by the Water Board, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs, WBEs. Or SDVOBs, including solicitations to M/WBE/SDVOB contractor associations.
- (2) Request a list of State-certified M/WBE/SDVOBs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBE/SDVOBs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBE/SDVOBs and encourage the formation of joint venture and other partnerships among M/WBE/SDVOB contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBE/SDVOBs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE/SDVOB contract participation goals.
- (6) Ensure that progress payments to M/WBE/SDVOBs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE/SDVOB participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Water Board contracts.

(b)This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization’s obligations herein.

(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Water Board contract

Agreed to this _____ day of _____, 2_____

By _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison)
responsible for administering the Minority and Women-Owned Business Enterprises-Service Disabled
Veteran Owned Business- Equal Employment Opportunity (M/WBE/SDVOB-EEO) program.

M/WBE/SDVOB Contract Goals

_____ % Minority and Women's Business Enterprise Participation

_____ % Minority Business Enterprise Participation

_____ % Women's Business Enterprise Participation

_____ % Service-Disabled Veteran Owned Business Enterprise Participation

(Authorized Representative)

Title: _____

Date: _____

APPENDIX F



New York State Finance Law Sections 139-j and 139-k ("Lobbying Law") — Disclosure Statement

General Information All procurements by the Niagara Falls Water Board ("NFWB") in excess of \$15,000 annually, are subject to New York State's State Finance Law Sections 139-j and 139-k, effective January 1, 2006 ("Lobbying Law").

Pursuant to the Lobbying Law, all "contacts" (defined as oral, written or electronic communications with the NFWB intended to influence a procurement) during a procurement - from the earliest notice of intent to solicit bids/proposals through final award and approval - must be made with one or more designated Point(s) of Contact only. Exceptions to this rule include written questions during the bid/proposal process, communications with regard to protests, contract negotiations, and RFP conference participation. Nothing in the Lobbying Law inhibits any rights to make an appeal, protest, or complaint under existing administrative or judicial procedures.

Violations of the policy regarding permissible contacts must be reported to the appropriate NFWB officer and investigated accordingly. The first violation may result in a determination of non-responsibility and ineligibility for award to the violator and its subsidiaries, affiliates and related entities. The penalty for a second violation within four (4) years is ineligibility for bidding/proposing on a procurement and/or ineligibility from being awarded any contract for a period of four (4) years. The NFWB will notify the New York State Office of General Services ("OGS") of any determinations of non-responsibility or debarments due to violations of the Lobbying Law. Violations found to be "knowing and willful" must be reported to the NFWB Executive Director and OGS.

Moreover, the statutes require the NFWB to obtain certain affirmations and certifications from bidders and proposers. This Disclosure Statement contains the forms with which offerors are required to

Instructions New York State Finance Law §139-k(2) obligates the NFWB to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to New York State Finance Law §163(9). In accordance with New York State Finance Law §139-k, an offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any governmental entity due to: (a) a violation of New York State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a governmental entity.

As part of its responsibility determination, New York State Finance Law §139-k(3) mandates consideration of whether an offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any offerer that fails to timely disclose accurate or complete information under this section, unless the factual elements of the limited waiver provision can be satisfied on the written record.

Disclosure of Prior Non-Responsibility Determinations

Name of Bidder/Proposer: _____

Address: _____

Name and Title of Person Submitting this Form: _____

Has any governmental entity¹ made a finding of non-responsibility regarding the Bidder/Proposer in the previous four years? Yes No

If yes: Was the basis for the finding of the Bidder's/Proposer's non-responsibility due to a violation of State Finance Law §139-j? Yes No

¹ A "governmental entity" is: (1) any department, board, bureau, commission, division, office, council, committee or officer of New York State, whether permanent or temporary; (2) each house of the New York State Legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the state; (6) a municipal agency, as that term is defined in paragraph (ii) of subdivision(s) of section one-c of the Legislative Law; or (7) a subsidiary or affiliate of such a public authority. (SFL §139-j, paragraph 1.a.)



New York State Finance Law Sections 139-j and 139-k ("Lobbying Law") — Disclosure Statement

Was the basis for the finding of Bidder's/Proposer's non-responsibility due to the intentional provision of false or incomplete information to a governmental entity? Yes No

If yes to any of the above questions, provide details regarding the finding of non-responsibility below:

Governmental Entity: _____ Year of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

Has any governmental entity terminated or withheld a procurement contract with the Bidder/ Proposer due to the intentional provision of false or incomplete information? Yes No

If yes, please provide details regarding the termination/withholding below:

Governmental Entity: _____ Date of Termination: _____

Basis for Termination: _____

(Add additional pages as necessary)

Bidder's/Proposer's Affirmation and Certification

By signing below, the Bidder/Proposer:

- a) Affirms that the Bidder/Proposer understands and agrees to comply with the policy regarding permissible contacts in accordance with New York State Finance Law Sections 139-j and 139-k.
- b) Certifies that all information provided to the NFWB with respect to New York State Finance Law §139-j and §139-k is complete, true and accurate.

By: _____ Date: _____
(Signature of Person Certifying)

Print Name and Title: _____ Title: _____

Bidder/Proposer or Contractor/Consultant (Full Legal Name): _____

Address of Bidder/Proposer or Contractor/Consultant: _____

NFWB's Right to Terminate

The NFWB reserves the right to terminate a Contract (including any lease, license, entry permit, or sale documents) in the event it is found that the certification filed by the Bidder/Proposer, in accordance with New York State Finance Law §139-k, was intentionally false or intentionally incomplete. Upon such finding, the NFWB may exercise its termination right by providing written notification to the Bidder/Proposer in accordance with the written notification terms of the Contract.