

# NIAGARA FALLS WATER BOARD



## REQUEST FOR PROPOSALS (“RFP”) NO. 2023-03

### ANNUAL AUDIT SERVICES

**Deadline for Proposal Submissions:  
September 15, 2023 by 2:00 p.m. EST**

One (1) hard copy and one (1) electronic copy via CD or thumb drive of the proposal may be delivered to the authorized Water Board contact at the address designated below **OR** complete PDF copies of proposals with all required forms and documents may be emailed to the authorized Water Board contact by the deadline indicated above and these will be kept confidential until the deadline. The Water Board cannot guarantee successful transmission or receipt of PDF files and proposers must limit total email size to under 20 megabytes. You may submit your proposal in multiple parts. If you do, please include a cover email indicating the number of parts you will submit. The Water Board contact will send an acknowledgement email on receipt of a proposal.

The deadline for receipt of written questions submitted to the authorized Water Board contact via email is **September 11, 2023** at 5:00 p.m. A written response to questions will be issued on or about September 13, 2023, 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:

Brian Majchrowicz, Director of Financial Services  
Niagara Falls Water Board  
5815 Buffalo Avenue  
Niagara Falls, New York 14304  
(716) 283-9770 x 7735  
[bmajchrowicz@NFWB.org](mailto:bmajchrowicz@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. 2023-03.**

## 1. Introduction

The Niagara Falls Water Board (“Water Board”) is issuing this request for proposals (“RFP”) seeking a qualified firm to perform its annual audits. The Water Board seeks to procure quality service at an appropriate cost, and prior experience providing annual audit services for public authorities or public benefit corporations is required.

## 2. Timetable

The timetable for proposal submission and for submission of written questions is set forth on the cover page for this RFP. No pre-proposal meeting currently is scheduled. It is anticipated that a proposal will be selected at the Water Board’s September 25, 2023 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. 2023-03.**

## 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 selected auditor also will perform services related to the Niagara Falls Public Water Authority, a legally distinct entity that was responsible for financing the acquisition of the Water Board’s system and which is responsible for financing future capital improvements, through the issuance of bonds. The Authority has no staff and has been audited as a blended component unit of the Water Board.

The Water Board employs approximately 115 individuals in a variety of operational and administrative functions. It also has ongoing obligations to certain retirees. The Water Board owns and operates a water treatment plant, a wastewater treatment plant, a pumping station located in the Niagara Gorge, two elevated water storage tanks, seven lift stations, and more than 500 miles of water and sewer service lines. The Water Board’s vehicle fleet is a mix of owned and leased vehicles and includes approximately 30 passenger vehicles, plus dump trucks, excavators, and other motorized equipment consistent with the nature of its operations.

The Water Board has exhausted the final option year in its agreement with its current auditors, who are included in the distribution list for this RFP. Copies of recent audited financial statements are available at: <https://nfwb.org/reports/financial/>.

The Water Board's auditors examine the Water Board and Authority's financial affairs at the end of each fiscal year (December 31) for the purpose of expressing an opinion on the Water Board and Authority's financial statements. It is expected that the auditors will review accounting and internal control systems and make recommendations for improvement. The auditor will prepare the financial statements and related notes for the Water Board's review and approval. The auditors should be prepared to offer ongoing assistance through the year by providing advice and consultation on financial matters as requested by management and providing services related to debt issuance if required during the engagement period. Debt issuances which may require a comfort letter are typically limited to 1-2 per year.

The Water Board uses Tyler Technologies' New World Enterprise Resource Planning software to maintain many of its financial records. Auditors will work with the Director of Financial Services to secure the records required to perform their work. Water Board books typically are closed and ready for audit by mid-February, and staff will be available for preliminary audit procedures to commence immediately following the Board's acceptance of a proposal.

## **5. Proposal Scope and Tasks**

The selected auditor will perform those tasks usual and customary for annual audits of the financial statements of a public authority. These include but are not limited to:

- a. Audit of financial statements in accordance with generally accepted auditing standards in the United States, Government Auditing Standards issued by the Comptroller of the United States, and Governmental Accounting Standards Board standards and guidance (including a management letter and report to the Board, and any additional separate written reports required by the applicable standards);
- b. Audit of investment practices in compliance with § 2925 of the Public Authorities Law and the requirements of Section 201.3 of Title Two of the Official Compilation of Codes, Rules and Regulations of the State of New York.
- c. Present to the Board of Directors on the results of the annual audit, including an explanation of the procedures followed, responding to questions, and commenting on any material items noted during the examination.

## **6. Additional Proposal Requirements**

Proposals should describe the auditor's proposed engagement timing, including interim and year-end field work. The audit should be complete no later than mid-March, to allow review and acceptance by the Board and Authority at a meeting typically scheduled for the fourth Monday in the month.

## **7. Qualifications**

Proposers are to provide a statement of qualifications meeting the requirements set forth in Appendix A. Proposers also must include in the statement of qualifications:

1. A description of their experience with auditing public authorities, public benefit corporations, and other government entities;
2. A description of the firm's familiarity with municipal financing issues, including assistance in municipal bond financing transactions;
3. A list of three or more references for recent government entity audits performed by the auditor;
4. A copy of proposer's most recent external quality review report prepared in accordance with government auditing standards; and
5. Disclosure of any potential conflict of interest your firm may have or encounter if selected as auditor, and your firm's plan for resolving the conflict.

If proposer intends to use subcontractors or sub-consultants to perform more than 10% of the work that is the subject of this RFP, proposer must include details regarding the sub-consultant or subcontractor's qualifications. At a minimum, the proposal must include information regarding the sub-consultant or subcontractor's business structure, experience, and resumes or other materials detailing the qualifications of key personnel.

## **8. Opportunities for Minority and Women-Owned Business Enterprises (MWBE) and Service-Disabled Veteran-Owned Businesses (SDVOB)**

No formal MWBE or SDVOB participation goals have been set for this RFP, as no subcontracting opportunities have been identified. However, offering subcontracting opportunities to NYS certified MWBE and SDVOB firms is highly encouraged. If proposer will use any MWBE or SDVOB firms, please be sure to note this in the proposal, including the name of the firm and the anticipated dollar amount of the MWBE participation.

## **9. Cost Proposal**

Provide separate proposed not-to-exceed fees (including all out-of-pocket costs) to perform the annual audit services described herein for the years ending December 31, 2023, 2024, and 2025. No additional fees may be charged without the prior express written consent of the Water Board, but proposers should include hourly rates for ancillary accounting and consulting.

## **10. Term**

The selected auditor will perform the 2023 audit and the Water Board shall have the option, in its sole discretion, to utilize the auditor's services for the 2024 and/or 2025 years. The selected auditor shall be responsible for submitting a letter requesting the Water Board's approval to conduct the 2024 and 2025 annual audits by September 30 of each of those years. After 2025, the Water Board and selected auditor may mutually agree to extend the engagement for additional one-year terms.

## **11. Contents of Agreement**

Except as otherwise may be agreed to in writing, the standard terms, conditions, and requirements set forth in Appendix A shall form a part of any agreement between the Niagara Falls Water Board and a proposer that responds to this Request for Proposals ("RFP"). **Complete all forms in Appendix A and return them with your proposal.**

## **12. Evaluation Criteria**

Proposals shall be examined and evaluated to determine whether the proposals meet the requirements of this RFP. The contract will be awarded based on the following criteria:

1. Demonstrated experience, capabilities, and professional qualifications;
2. Completeness of the proposal; and
3. Total proposed cost.

Proposing firms may be invited to present to the Water Board or to Water Board staff and will be expected to provide prompt responses to questions and inquiries submitted through the designated Water Board contact.

RFP DATED: August 30, 2023

## **APPENDIX A**

### **NFWB REQUEST FOR PROPOSALS (“RFP”) STANDARD TERMS, CONDITIONS, AND REQUIREMENTS**

Except as otherwise may be agreed to in writing, the following standard terms, conditions, and requirements shall form a part of any contract between the Niagara Falls Water Board and a proposer that responds to the Request for Proposals (“RFP”):

#### **A. Statement of Qualifications**

Proposers must submit a statement of qualifications that provides a description of proposer’s business structure, licensing, years in business, any experience with providing similar services along with the 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 proposer’s qualifications to perform. The statement of qualifications must also include the following:

1. Any other names under which proposer has done business in the past 10 years;
2. List all subsidiary and parent companies;
3. State whether proposer 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 proposer has filed for bankruptcy or been the subject of an involuntary bankruptcy proceeding; and
5. State whether proposer has been a party to any legal action or government investigation related to proposer’s business practices, or alleging that any of proposer’s agents or employees committed any act of fraud, collusion, bid rigging, price fixing, or bribery. If proposer, any of proposer’s principals, or any of proposer’s agents has pleaded guilty or entered into a consent order in connection with respect to any of these, provide details.

#### **B. General Conditions of RFP**

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 proprietary rights are clearly and specifically set forth in the proposal.

### **C. Proposal Firm and Irrevocable for 90 Days**

A signed proposal shall be considered a firm offer on the part of the proposer, 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, proposer 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.

### **D. Oral Presentations or Interviews**

Prior to award, one or more proposers 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. Proposer shall bear all of its own costs for any such presentations or interviews.

### **E. Contract Negotiations**

Upon selection, the successful proposer 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 proposers and to request the submission of best and final offers from those proposers, who after the conclusion of such discussions/negotiations, still are under consideration for award. No proposer 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.

Unless otherwise agreed, the contents of the selected proposal and any modifications agreed upon in writing during negotiations, together with the RFP, will 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 proposer, issue a new RFP, or take any other action consistent with the best interests of the Water Board.

### **F. 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.

### **G. Rely Only Upon Formal Information**

1. The Water Board shall not be bound by any oral or written information released prior to the issuance of the RFP.
2. 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.

### **H. Questions Regarding the RFP**

1. All inquiries regarding this RFP 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.
2. Compiled questions and responses usually 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 the 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 this RFP.

### **I. Addenda to the RFP**

3. 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 usually 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.
4. It is the proposer'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. Proposers shall acknowledge the number of addenda received as part of their proposals using this Appendix's Form No. 1.

### **J. 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. Proposal submission instructions are set forth on the first page of the RFP document.
2. If submitting a paper copy, to prevent waste, proposers are encouraged to print and/or copy responses on both sides of the page.
3. For electronic copies, the preferred method is PDF conversion from the proposer'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. 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 with the RFP number and title from the cover page of the RFP.



5. 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 “4” above, appears on the outer envelope used by such service.

### **K. Personnel**

If awarded a contract, proposer agrees to provide adequate and competent personnel to fulfil its contractual obligations, with said personnel having the necessary licensing, education, training, and experience in the specialties that are necessary to perform proposer’s obligations. Proposer agrees that its personnel, including sub-contractors, shall comply with any credentialing, security, badge, orientation, safety, or other requirements, procedures, or protocols as the Water Board may from time-to-time establish.

### **L. Insurance**

Proposer 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 proposer or its subcontractors. Before proceeding with any work under the contract that may result from this proposal, 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.~~ **REQUIREMENT WAIVED FOR THIS PROCUREMENT.**

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.

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, for both Ongoing and Completed Operations on a primary and non-contributory basis, on the Liability (General Liability, Auto Liability and Excess 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 proposer 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 proposer as an additional insured under such insurance, the proposer shall ensure that such policy names the Water Board, Niagara Falls Public Water Authority, and their officers and employees as additional insureds.

#### **M. Indemnification and Waiver of Subrogation**

The successful proposer, 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 proposer 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 proposer 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 appendix or in the resulting contract, or any other insurance applicable to the operations of the proposer and/or its subcontractors in the performance of the contract.

#### **N. Coordination and Cooperation with Third Parties**

Proposer agrees and acknowledges that if the contract calls for work on Water Board property, there may be other ongoing projects on site for all or part of proposer's performance. The Water Board or its representative will take reasonable steps to avoid any conflicts between work performed by proposer and any third party, but proposer shall be responsible for actively communicating and cooperating with the Water Board's representative and any third party, including but not limited to other contractors or subcontractors of the Water Board, as necessary to ensure coordination of performance of services.

#### **O. Safety and Site-Specific Safety Plan**

Proposer shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work to be performed by proposer,

and shall take all necessary precautions for the safety and protection of all persons who may be affected by the work of proposer or its subcontractors. If requested by the Water Board, prior to the commencement of work, proposer agrees that it shall submit to the Water Board or its representative copies of a Safety Program and Site-Specific Health & Safety Plan. The Safety Program shall describe proposer's overall safety policy, regulatory compliance plan, and applicable safety standards. The Site-Specific Health & Safety Plan shall identify the project work scope, contain a safety hazard analysis for the associated contract tasks, and include the following:

- specific safety procedures appropriate and necessary to complete the work;
- personal protective equipment to be used by proposer or its subcontractors for associated project tasks;
- documentation that proposer and its subcontractors are in compliance and current with required OSHA training; and
- a description of the frequency and types of air monitoring, personnel monitoring and instrumentation to be used, if any.

The proposer's equipment and method of operation shall be in full compliance with OSHA Standards and satisfy all Federal, State and Local Health & Safety regulations. The Water Board may but is not obligated to provide proposer with comments on the Safety Program and Site-Specific Health & Safety Plan, but in no event does the Water Board assume responsibility for the adequacy or completeness of these plans or for adherence by proposer or proposer's subcontractors to the same.

#### **P. Independent Contractor and Identification of Subcontractors**

The successful proposer and its employees will operate as an independent contractor and are not considered Water Board employees. Proposer 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 proposer shall be responsible for the entire contract. The Water Board shall have the right to reject any proposed subcontractors.

#### **Q. 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 proposer may not assign the contract without the Water Board's written permission.

#### **R. 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 proposer shall specifically identify any portions of the documents submitted with 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 document. Proposers should be aware that any and all terms of their respective proposals may be the subject of discussion at Board of Directors meetings that are open to the public.

### **S. Records**

If awarded a contract, proposer shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under the contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the Water Board and its representatives, shall have access to the Records during normal business hours at an office of the proposer within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The Water Board shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the proposer shall timely inform an appropriate Water Board official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Water Board's right to discovery in any pending or future litigation.

### **T. Compliance with Breach Notification and Data Security Laws**

Proposer agrees that if awarded a contract to perform work for the Water Board it shall comply with the provisions of the New York State Information Security Breach and Notification laws, General Business Law §§ 899-aa and 899-bb and State Technology Law § 208.

### **U. Prevailing Wage and Workforce Reporting**

Proposer shall pay prevailing wages as required by law for any work performed for the Water Board in connection with this proposal, and per New York Executive Law and Executive Order Number 162, proposer and any of its subcontractors may be required to submit a quarterly Workforce Employment Utilization Report in the format provided by the Water Board reflecting the entirety of proposer and its subcontractors' workforces performing work on the contract and located within New York State, as well as the salaries of any such employees.

### **V. Payment Terms and Requirements**

If awarded an agreement, proposer agrees to provide complete and accurate billing invoices to the Water Board on a monthly basis, and will comply with cover sheet requirements or other invoice submission procedures as the Water Board may from time to time require. Invoices submitted must contain sufficient information and documentation to support the charges submitted. Documentation may include time sheets, expense vouchers and any other supportive documentation requested by the Water Board or its representative. If proposer is in compliance with applicable prevailing wage laws and has satisfactorily completed all required Minority,

Women, and Disadvantaged Business Enterprise and Service-Disabled Veteran-Owned Business utilization and reporting requirements, payment shall be made monthly on the basis of invoices submitted by proposer, each payment to be due sixty (60) days after receipt of the invoice, unless the Water Board reasonably disputes some or all of the invoice.

#### **W. Exemption from Sales Tax**

The Water Board is exempt from state and local fees, taxes, franchise taxes, sales taxes or other excise taxes. Proposals shall not include any such taxes or fees.

#### **X. 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 proposer 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, proposer 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 this Appendix’s Form No. 4.

By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal 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. The proposal must include the Statement on Sexual Harassment form at this Appendix’s Form No. 5.

#### **Y. Iran Divestment Act**

By submitting a proposal in connection with this RFP or by assuming the responsibility of a contract awarded hereunder, proposer 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>. Proposer further certifies that it will not utilize in connection this contract any subcontractor that is identified on the Prohibited Entities List.

#### **Z. 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 or by assuming the responsibility of a contract awarded hereunder, proposer agrees, as a material condition, that neither the proposer 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 proposer, or any of the aforesaid affiliates of proposer, 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 proposer’s execution, such contract, amendment or modification thereto shall

be rendered forfeit and void. The proposer shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

**AA. MacBride Fair Employment Principles**

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), by submitting a proposal or by assuming the responsibility of a contract awarded hereunder the proposer hereby stipulates that the proposer 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.

**BB. Prohibition on Purchase of Tropical Hardwoods**

The proposer certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State, otherwise, the proposal may not be considered responsive. Proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**CC. Conflicts of Interest and Prohibition on Political and Religious Activity**

By submitting a proposal or by assuming the responsibility of a contract awarded hereunder, proposer 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 proposer and the Water Board. Proposer 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. Proposer 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 proposer 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 proposer's provision of services under that contract, nor shall any of the funds provided under this agreement be used for such purposes.

**DD. Non-Collusion**

Proposer must submit a signed statement of non-collusion on the form that is this Appendix's Form No. 2.

**EE. Communication with Water Board and Lobbying Law.**

Proposers are advised that, from the date this RFP is issued until the award of the contract, no contact by proposers or their agents with the Water Board or Water Board personnel related to this RFP 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.

Proposers are required to complete and return with their proposal this Appendix's Form No. 3, New York State Finance Law Sections 139-j and 139-k ("Lobbying Law") – Disclosure Statement.

**FF. Waiver of Immunity**

As a condition of any contract award, the proposer agrees, acknowledges, and accepts that pursuant to Public Authorities Law § 2875, upon the refusal by a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, (a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal, and (b) any and all contracts made with any public authority or official thereof, by such person and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but

any monies owing by the public authority for goods delivered or work done prior to the cancellation or termination shall be paid.

#### **GG. Termination**

The following terms shall apply to any contract entered into as a result of this request for proposals:

1. For Cause: For a material breach that remains uncured for more than thirty (30) days or other specified period after written notice to the contractor, the contract may be terminated by the Water Board at the contractor's expense where contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the contract, or for nonperformance, or upon a determination that contractor is nonresponsible. Such termination shall be upon written notice to the contractor. In such event, the Water Board may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.
2. For Convenience: By written notice, this contract may be terminated at any time by the Water Board for convenience upon thirty (30) days written notice and without penalty or other early termination charges due. Such termination of the contract shall not affect contractor's right to recover for any work performed or materials acquired under the contract prior to the date of such termination, provided that contractor cancels, prior to the effective date of the termination, as many outstanding obligations as possible and agrees not to incur any new obligations after receipt of the notice of termination without approval by the Water Board. If the contract is terminated pursuant to this subdivision, the Water Board shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.
3. For Violation of the Sections 139-j and 139-k of the State Finance Law: The Water Board reserves the right to terminate the contract in the event it is found that the certification filed by the contractor in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Water Board may exercise its termination right by providing written notification to the contractor.

#### **HH. Governing Law and Venue**

These terms and conditions and the contract shall be governed by the laws of the State of New York. Each of the parties to these terms and conditions and the contract submits to the exclusive jurisdiction and venue of the State and Federal courts located in Niagara County, New York, or if the required Federal courts are not located in Niagara County, to the Federal courts located in Erie County, New York.

#### **II. Service of Process and Notices**

In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), proposer agrees that if awarded a contract it consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon proposer's actual receipt of process or upon the Water Board's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Proposer must promptly notify the Water Board, in writing, of each and every change of address to which service of process can



be made. Service by the Water Board to the last known address shall be sufficient. Proposer will have thirty (30) calendar days after service hereunder is complete in which to respond. A copy of all notices to the Water Board shall be provided to: Legal Department, Niagara Fall Water Board, 5815 Buffalo Avenue, Niagara Falls, NY 14304.

**JJ. No Waiver of Rights**

No failure or delay (in whole or in part) on the part of either the Water Board or proposer to exercise any right or remedy pursuant to the terms and conditions herein shall impair its ability to later exercise any such right or remedy, operate as a waiver thereof, or affect any other rights or remedies that may be available under the law or in equity, except to the extent it causes actual prejudice to the other party. No waiver by either party of any covenant, condition, term or provision of the contract shall be deemed to have been made by that party unless such waiver is in writing and signed by an authorized representative of the party.

**APPENDIX A, FORM No. 1**

**ACKNOWLEDGEMENT OF ADDENDA**

RFP TITLE: \_\_\_\_\_  
(Write the RFP No. and Title on the Line Above)

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 A, FORM No. 2**

**CERTIFICATE OF NON-COLLUSION**

Pursuant to New York State Public Authorities Law, Article 9, Title 4, Section 2878, the undersigned proposer hereby subscribes and affirms as true, under the penalties of perjury, the following statement of non-collusion:

By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

- (1) The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly, to any other proposer or to any competitor; and,
- (3) No attempt has been made or will be made by the proposer to induce any other person, partnership, or corporation to submit or not to submit a proposal for the purpose of restricting competition.

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

PROPOSER (SIGNATURE): \_\_\_\_\_

PROPOSER (NAME): \_\_\_\_\_

PROPOSER (FIRM): \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.:  
 COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ as a representative of \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the entity on behalf of which the individual acted executed the instrument.

\_\_\_\_\_  
 Notary Public

## APPENDIX A, FORM No. 3

### 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 comply, together with additional information and instructions.

#### Instructions

New York State Finance Law §139-k(2) obligates the NFWB to obtain specific information regarding prior non-responsibility determinations. 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 entity<sup>1</sup> 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**

**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 (attach additional pages if necessary):** \_\_\_\_\_

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\_\_\_\_\_

**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, provide details regarding the termination/withholding below:

Governmental Entity: \_\_\_\_\_

Year of Termination/Withholding:\_\_\_\_\_

Basis for Termination/Withholding (attach additional pages if necessary):

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**NOTICE OF 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 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.**

**Proposer’s Affirmation and Certification**

By signing below, the Proposer:

- a) Affirms that the 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.

DATE: \_\_\_/\_\_\_/\_\_\_\_\_

PROPOSER (SIGNATURE): \_\_\_\_\_

PROPOSER (NAME): \_\_\_\_\_

PROPOSER (FIRM): \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.:  
 COUNTY OF \_\_\_\_\_ )

On the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ as a representative of \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the entity on behalf of which the individual acted executed the instrument.

\_\_\_\_\_  
 Notary Public

**APPENDIX A, FORM No. 4**

**EQUAL EMPLOYMENT OPPORTUNITY (“EEO”)  
POLICY STATEMENT AND AGREEMENT**

Proposer hereby agrees to the following EEO policy with respect to its work on any contract awarded in connection with this RFP:

- 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 Niagara Falls Water Board (“Water Board”) contracts.
- b) This organization shall state in all solicitations or advertisements for employees that in the performance of the Water Board 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 Water Board, this organization 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 this organization’s obligations herein.
- d) This organization shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Proposer and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, pregnancy or pregnancy-related conditions, gender identity, familial status, 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 section (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.

**ACCEPTED AND AGREED:**

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

PROPOSER (SIGNATURE): \_\_\_\_\_

PROPOSER (NAME): \_\_\_\_\_

PROPOSER (FIRM): \_\_\_\_\_





**APPENDIX A, FORM No. 6**

**REQUEST FOR PROPOSALS  
ACKNOWLEDGEMENT AND CERTIFICATION**

As a duly-authorized representative of the proposer indicated below, I hereby acknowledge that by submitting a proposal in connection with

\_\_\_\_\_,  
(write RFP Number and Title)

proposer has made a firm offer and agrees to be bound by its terms. Proposer has carefully read the RFP and all addenda, and in submitting this proposal acknowledges proposer understands and agrees to be bound by the requirements set forth in the RFP, except as explicitly stated on a separate sheet attached to this proposal and entitled "Exceptions." Proposer agrees and understands that the terms and conditions set forth in the RFP addenda shall be incorporated into any contract or agreement awarded in connection with this RFP, and agrees to be bound by those terms and conditions.

I recognize that all information submitted is for the express purpose of inducing the Water Board to enter a contract with the submitting business entity. I affirm, under the penalties of perjury, that to the best of my knowledge the information contained in the proposal is full, complete, and truthful.

DATE: \_\_\_/\_\_\_/\_\_\_\_\_

PROPOSER (SIGNATURE): \_\_\_\_\_

PROPOSER (NAME): \_\_\_\_\_

PROPOSER (FIRM): \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.:

On the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ as a representative of \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the entity on behalf of which the individual acted executed the instrument.

\_\_\_\_\_  
Notary Public