

NIAGARA FALLS WATER BOARD



REQUEST FOR PROPOSALS (“RFP”) NO. 2024-04 Lead Service Lateral Engineering Consulting Services

**Deadline for Sealed Proposal Submissions:
Friday, August 30, 2024 by 1:00 p.m. EST**

A mandatory pre-proposal information session will be conducted at the Water Treatment Plant, 5815 Buffalo Avenue, Niagara Falls, NY 14304 **on Tuesday, August 27, 2024 at 11:00 a.m.**

The deadline for receipt of written questions submitted to the Water Board’s contact, Douglas Williamson, P.E., (dwilliamson@nfwb.org), is **Wednesday, August 28, 2024** at 5:00 p.m.

AUTHORIZED WATER BOARD CONTACT:

The Water Board’s designated contact person for this Request for Proposals is:

Douglas S. Williamson, P.E.
Director of Technical & Regulatory Services
Niagara Falls Water Board
5815 Buffalo Avenue
Niagara Falls, New York 14304
(716) 299-7796
dwilliamson@NFWB.org

To receive updates regarding this RFP, email dwilliamson@NFWB.org to ask to be placed on the distribution list for RFP No. 2024-04.

1. Introduction and Project Description

a. Niagara Falls Water Board – Entity Information

The Niagara Falls Water Board (NFWB) 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 NFWB is issuing this request for proposals (RFP) seeking a qualified engineering consultant to assist the NFWB with EPA Lead and Cooper Rule Revision (LCRR) compliance, including completing the lead service lateral inventory (LSLI) that it is preparing as well as with Lead Service Line Replacement Program (LSLRP), Sampling Monitoring Program, Public Notification/Education/Outreach, and other components of LCRR compliance. EPA’s proposed Lead and Copper Rule Improvements (LCRI) will inform consultant’s work; as set forth herein, data gathering and project planning will include, to the extent feasible, the steps that are anticipated to be necessary if the proposed LCRI are adopted.

b. Initial Lead Service Lateral Inventory Description

The first task to be completed by the selected consultant will be to aid the NFWB in finalizing its initial LSLI. NFWB must complete and submit its initial LSLI by October 16, 2024. The inventory must include all service lines connected to the public water distribution system regardless of ownership status. Each service line must be characterized as lead, galvanized requiring replacement, lead status unknown (or unknown), or non-lead using approved methods which are described in the NYS DOH Service Line Inventory Guidance dated April 2023, available at:

https://www.health.ny.gov/environmental/water/drinking/docs/service_line_inventory_guidance_lcr.pdf. The selected consultant will prepare the NFWB service line inventory that corresponds to and includes all items listed on the NYSDOH LSLI template and includes fields for certain additional information as described below, including but not limited to a street address for each connection, information on whether a lead gooseneck, pigtail, or connector is present, installation dates for service lines if known, the size of the NFWB and customer-side service line, whether lead solder is present, and whether point-of-use or point-of-entry treatment is present. The NFWB LSLI will be publicly accessible through the internet, and the publicly accessible inventory must include locations for lead and galvanized requiring replacement service lines.

c. Water Distribution System

The NFWB’s distribution system consists of approximately 260 miles of various diameter water mains, 2,287 fire hydrants, over 5,000 valves, two elevated water storage tanks and over 19,000 metered services. The distribution system is a single pressure system. The Water System services the City and several “out-of-town” customers adjoining the City. The Water System also has two major inter-municipal interconnections with the Niagara County Water District that

allow for the purchase/sale of water in either direction for emergency or shut down maintenance events.

Treated water is pumped from the water treatment plant to the Water System’s 260 miles of pipe and also to the 56th Street elevated water storage tank that has a capacity of 2 million gallons (“mg”). The elevated tank provides added reliability to the Water System, as it will transparently pick up full system demand if the high-lift pump station is shutdown. A second 2 mg elevated storage tank at Beech Avenue is currently shut down and isolated from the Water System. The water distribution system utilizes various materials of construction including lined and unlined cast or ductile iron, polyvinyl chloride (PVC), reinforced concrete pressure pipe (RCPP), and high-density polyethylene (HDPE) varying in size from 6 inch to 30 inch.

The following tables provide information on the water mains and the approximate age of the pipes comprising the water distribution system:

Table 1
Water Distribution System Piping Material

<u>Water Main</u>	<u>Material Type</u>	<u>Length (ft)</u>
6-inch	PVC	1,500
8-inch	PVC	2,610
10-inch	PVC	700
12-inch	Asbestos Cement	5,500
20-inch	Cast/Ductile Iron	7,800
24-inch	RCPP	5,600
30-inch	RCPP	13,370
36-inch	RCPP	16,810
42-inch	RCPP	7,850
2-inch	Cast/Ductile Iron	700
4-inch	Cast/Ductile Iron	95,030
6-inch	Cast/Ductile Iron	596,540
8-inch	Cast/Ductile Iron	239,680
10-inch	Cast/Ductile Iron	121,455
12-inch	Cast/Ductile Iron	102,045
14-inch	HDPE	6,540
16-inch	Cast/Ductile Iron	59,660
20-inch	Cast/Ductile Iron	46,730
24-inch	Cast/Ductile Iron	26,230
30-inch	Cast/Ductile Iron	<u>9,060</u>
	Total	1,365,410

Table 2
Water Distribution System - Approximate Age of Pipe

Age	Feet	Percent
1890-1910	65,802	5%
1911-1930	515,179	38%
1931-1950	288,940	21%
1951-1970	251,682	18%
1971-1990	144,121	11%
1991-2021	101,772	7%
Total	1,367,496	100%

d. Water Service Lines and GIS Mapping

Most NFWB mains are located in the public street/right-of-way. Service lines are the property of the building owner, but the NFWB maintains the portion of the service line from the water main to the curb box. NFWB GIS mapping indicates a water service line for each parcel for record keeping purposes, but these lines do not presently identify the service line size or material and are not accurate for the service line’s location. The Current NFWB GIS software is ArcGIS Enterprise Version 10.6.1; Desktop: ArcGIS Pro Version 3.1.0. The NFWB uses Lucity Version 23.1, for asset management. These programs are interconnected, and it is possible to enter data in Lucity for any of the GIS labeled assets, including the individual service line placeholders.

The NFWB possesses few records from original building construction indicating water service line material. The City of Niagara Falls has indicated to the NFWB that it does not possess historical records with information on service line materials.

e. NFWB Resources

The NFWB has substantial in-house capabilities, including an ELAP certified environmental laboratory, GIS mapping, meter technicians who can collect data from service lines prior to meters, outside maintenance crews who can provide data during routing excavation, two combination sewer hydro excavation and vacuum trucks, and plans to designate a full-time staff member to assist in field work. It is prepared to perform additional data-collection activities using in-house forces but recognizes that the consultant will be required to procure additional services in order to meet the requirements and deadlines set forth in this RFP. The NFWB expects that the selected consultant will quickly come up to speed with available NFWB resources and will utilize and coordinate with NFWB personnel as appropriate. The NFWB anticipates that it will track its time and resources devoted to this effort using a technical force account for possible grant reimbursement.

f. Grant Funding

Under DWSRF Project No. 19405, the NFWB was awarded 2022 Bipartisan Infrastructure Law Lead Service Line Replacement funding through the Drinking Water State Revolving Fund, with a grant award up to \$472,780. The work that is subject to this RFP will be subject to reimbursement through this grant source, and the selected consultant shall ensure that the services performed meet the grant funding requirements and will assist in completing reimbursement forms/requests as needed, and will prepare an updated engineering report if required by the Department of Health or Environmental Facilities Corporation during review. Specific requirements of the grant funding include, but are not limited to, the following:

- Davis Bacon Federal Prevailing Wage rates – see <https://efc.ny.gov/davis-bacon-prevailing-wage-requirements>
- American Iron and Steel – see <https://efc.ny.gov/american-iron-and-steel-guidance>
- Build America/Buy America (BABA) domestic sourcing
- Federal Equivalency compliance including National Environmental Protection Act (NEPA) environmental review, federal cross-cutting authorities, disadvantaged business enterprises (DBE), single audit reporting, and surveillance services and equipment procurement, as applicable. See the documents for **equivalency** projects here: <https://efc.ny.gov/terms-conditions>
- Federal signage terms and conditions requiring a physical sign at construction sites. See <https://efc.ny.gov/system/files/documents/2024/03/construction-signage-guidelines.pdf>
- Minority and Women-owned Business Enterprises (MWBE) /Equal Employment Opportunities (EEO)/ Disadvantaged Business Enterprises (DBE) participation. EFC has established a combined 20% MWBE goal for this type of project, which may be any combination of MBE and/or WBE participation. DBE requirements are discussed in the EFC equivalency project terms and conditions documents available at <https://efc.ny.gov/terms-conditions>.

2. Scope of Work

A. Program Management and Administration [This scope of work is to be provided for each of the tasks below and a separate proposal/fee for Program Management and Administration is not required.]

Consultant will provide project management and administration services for the NFWB LSLI project and for other LCRR-related work. Consultant will designate in its proposal the qualified person who shall serve as the Program Manager. This individual shall be the NFWB's primary point of contact and responsible for overseeing the development and implementation of the NFWB's LCRR work plan, LSLI, Lead Service Line Replacement Program, Sampling Monitoring Program, Public Education, Notification, and Outreach Program, and for providing other Program Assistance.

The Project Manager will work closely with NFWB staff to coordinate and ensure proper documentation of work by NFWB personnel. The Project Manager will train NFWB staff in LSL technology and/or techniques as applicable and shall review or create forms used for LSLI documentation. The Project Manager will provide excellent communication with the NFWB and contractors, will respond promptly to routine inquiries, and will provide formal status reports at least once per month. The Project Manager shall meet with NFWB staff as required and at a

minimum once every two weeks during the preparation of the LSLI. Meetings may be via videoconference if appropriate.

As part of this task, the Consultant will assist with identifying grant opportunities and with complying with requirements of the LCRR-related grant the NFWB already has been awarded. This assistance may include assisting with responses to status inquiries, helping to prepare paperwork required for reimbursement requests, and similar work.

Consultant also will assist the NFWB in seeking clarification from, or responding to inquiries from, EPA, DOH, or other regulatory bodies which relate to LCRR/LCRI matters.

Program Management and Administration is to be incorporated in each of the tasks described below, and a separate proposal/fee for this is not necessary for proposal submission.

B. Tasks

1. Service Line Inventory (“LSLI”)

Consultant will familiarize itself with NFWB resources and then will develop a work plan that can be completed within the timeline necessary to deliver an on-time LSLI. This work plan – and the LSLI – must be developed and executed consistent with NYS DOH Service Line Inventory Guidance and applicable EPA guidance. As noted above, the NYS LSLI Template must be followed, and additional information anticipated to be required under the LCRI is to be collected or documented. Information on service lines shall be accessible by street address for each service connection. Consultant’s deliverables shall include a database of the information collected or documented which contains the fields in the NYS LSLI Template plus any additional fields required under the LCRI.

In preparing the inventory, Consultant shall review existing material data collected by the NFWB. It is anticipated that Consultant will also utilize in-house or subcontracted predictive modeling software in developing data on the probability of lead service lines for the inventory; such modeling must follow NYS DOH and EPA standards or requirements.

Consultant will provide a software solution for making inventory information available to the public online, ideally using existing NFWB GIS resources. The software shall provide the ability to display information on the material of both public and private sides of the service lateral and should make provision for the display of additional information which may need to be made available for public access in the future (for example, gooseneck/connector material).

Consultant shall work with NFWB staff to develop a system for incorporating information obtained from field work into the initial inventory and for ongoing updates to the inventory. This may include, but is not necessarily limited to, development of a web-based application for field data entry that is connected to the inventory database.

Consultant shall train NFWB staff on updating and maintaining the inventory and database solutions that are implemented. Consultant shall provide NFWB with support needed to maintain the database until at least December 31, 2025 and shall ensure that all technology or software licenses or other information required for ongoing maintenance and updates are transferrable to the NFWB or another contractor as may be directed by the NFWB.

As part of this task, Consultant shall develop plans and materials for service line education and outreach, including for initial notifications to customers required under the LCRR or LCRI. Consultant shall also assist the NFWB in developing procedures to respond to customer inquiries, including but not limited to inquiries regarding incorrect service line material.

Consultant's work will include development of a program and procedure for identification of service lines with unknown materials utilizing investigative methods approved by NYS and EPA. This program must comply with applicable LCRR/LCRI deadlines. Consultant shall assist the NFWB in developing a plan for procurement of the services needed to complete this work.

The work to be completed under this task also shall include development of a plan for validation of non-lead service lines to achieve a 95% confidence level. Estimated costs for necessary fieldwork will be developed by the Consultant. Consultant shall assist the NFWB in developing a plan for procurement of the services needed to complete this work.

2. Develop a Lead Service Lateral Replacement Program

This task shall include the development of program(s) for the NFWB to replace any known or discovered lead service laterals in compliance with the LCRR and LCRI, as applicable. This task must take into consideration the rate of replacement required under the LCRR and LCRI, as applicable, as well as developing a plan for the NFWB to implement the logistics. Developing a lead service lateral replacement program is expected to include, but may not be limited to, the following tasks:

- Develop a program strategy and framework to prioritize replacement of lead service laterals, and best practices for implementation with input and approval by the NFWB.
- Assist the NFWB with creating a lead service lateral replacement program and submitting the plan to the NYS DOH.
- Assist the NFWB in responding to any question or comments from the NYS DOH and/or EPA regarding the proposed lead service lateral replacement program.
- Prepare cost estimates for lead service lateral replacement to be included in the NFWB's Capital Improvement Plan (CIP).
- Provide communication guidance, and campaign templates for public communication.
- Develop a program and associated standard operating procedures (SOP) to track service lateral replacement progress and for creation of reports on progress, costs, and other relevant metrics.
- Help the NFWB develop a program to track resident communications, such as letters and phone calls.

- Develop a program and associated SOPs to source distribute, track, and order pitcher/filters when lead laterals are disturbed, identified, and replaced on both an agreed upon schedule and an ad hoc basis.

3. Sampling Monitoring Program

The Consultant shall develop a sampling monitoring plan that will be provided to the NFWB and will be in accordance with the LCRR and LCRI, as applicable. The NFWB expects the selected provider to develop a program to manage sampling, sample kit distribution, and sampling results across the service area within compliance of the LCRR and LCRI, as applicable. Developing a sampling monitoring program is expected to include, but may not be limited to, the following tasks:

- Working with NFWB staff and building on existing in-house resources, develop a database to track samples with the ability to show all historical and future samples and results for a given location.
- Distinguish by type of sample location (profile, routine compliance, school/childcare, special customer request).
- Create sampling plans for the NFWB based on the LCRR and LCRI, as applicable.
- Provide 1st and 5th liter sample result tracking and reporting for both LSL and non-LSL sites pursuant to the requirements of the LCRR and LCRI, as applicable.
- Track and adjust tier sites.
- Assist the NFWB in identifying schools and childcare facilities that are required to be sampled.
- Support school and childcare facility sampling for both the LCRR and LCRI, as applicable.
- Provide an SOP to track fixture level sampling, remediation data, and sampling of all fixtures of a school or childcare facility.
- Manage and perform all the samplings from the customer, laboratory, and school/childcare facility.
- Create a resident communications database for the NFWB's use, to track notifications (i.e., letters, phone calls) to residents, regulatory agencies, etc.
- Provide an SOP for reporting results to customers and primacy agencies within EPAs required timeframes depending on the results obtained.
- Create a database to order, track, and ship sampling kits.
- Provide an SOP to import and export data from NFWB software systems like GIS.

- Assist the NFWB in tracking and addressing customer issues, provide educational materials, and manage lab coordination.
- Review NFWB's current corrosion control program and make recommendations for any needed revisions to the program in order to maintain compliance with the LCRR and LCRI, as applicable.

3. Proposal Requirements

Proposers are encouraged to exercise creativity and innovation in crafting proposals. The Water Board seeks to procure efficient and effective services that add value for Water Board ratepayers. Sub-consultants, subcontracting, and/or joint ventures are permitted.

It is requested that proposals not exceed 20 pages in length (exclusive of required forms/appendices).

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;
- Experience & qualifications of subconsultants/contractors;
- Specific experience of key project professionals;
- Proposed schedule.

Descriptions of qualifications and experience are to focus on LCRR compliance. Proposals should demonstrate:

- Deep understanding of LCR/LCRR/LCRI requirements and regulatory experience with NYS DOH and EPA;
- Experience with various LSL identification techniques including predictive modeling;
- Demonstrated success in creating LSLI and technology to facilitate both inventory and required customer notifications;
- Experience with the logistics of a LSLI program such as coordinating sampling and customer notifications; and
- Experience with relevant public outreach programs.

4. Additional Requirements

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 contract 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.** Consultants also must comply with the Environmental Facilities Corporation State Revolving Fund Mandatory Terms and Conditions, available at: <https://efc.ny.gov/system/files/documents/2023/11/equivalency-tc-2024.pdf>.

5. Fee

The NFWB recognizes that the exact scope and engineering effort required for some tasks may not be readily quantified. Proposals should provide a statement describing the estimated hours and fee for each task and the basis for the estimate (for example, assumptions based on the system size, prior experience, etc.). Estimated personnel, hours, rates, and subcontractor costs should be supplied for each task. Fee estimates must include software licensing costs. Invoicing to the NFWB shall be on a time and material basis unless otherwise agreed. Consultant should provide a recommendation regarding a contingency for each task to be approved as part of its contract for its fees or for subconsultant services. For each task, Consultant shall provide a proposed overall maximum fee, the amount of which shall not be exceeded without a subsequent proposal for approval by the NFWB Board of Directors explaining the need for additional fee. All proposals should reflect an additional allowance of \$25,000 for additional related work, which may be allocated to an individual task or to separate discrete work related to the LCRR/LCRI requirements upon mutual agreement of NFWB management and the Consultant.

6. Evaluation of Proposals

The NFWB anticipates reviewing the proposals immediately after the due date set forth on the first page of this RFP. Proposers are advised to present their best proposal at submission as an award may be based on the initial offers received. NFWB staff may enter into negotiations with multiple proposers as deemed appropriate or necessary in their discretion and will request that the NFWB Board of Directors award this project at the NFWB’s next meeting. As set forth in Appendix A, exceptions to the RFP must be set forth explicitly and listed in a separate attachment.

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. Situational understanding (20 points);
2. Demonstrated experience, capabilities, and qualifications (40 points);
3. Completeness of the proposal (20 points); and
4. Proposed fees (20 points).

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

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.
2. Proposers shall deliver one (1) clearly marked original 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 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 “5” 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.

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 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

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): _____

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