

# **REQUEST FOR PROPOSALS RATE CONSULTING SERVICES**

**ECWA Project No. 202500235**

## **GENERAL**

The Erie County Water Authority (the “Authority”) is a local public benefit corporation created in 1949 by a special act of the New York Legislature, codified as Article 5, Title 3 of the Public Authorities Law, to provide potable water to the residents of Erie County. The Authority is financially self-sustaining, paying all operating expenses from revenues generated by the sale of water to its customers. The Authority is not a component unit of either New York State or Erie County.

Public Authorities Law §2801(2) requires that Authority’s Board of Commissioners (“Board”) adopt a budget for the upcoming fiscal year and submit it to both the Chairperson of the Erie County Legislature and the Authorities Budget Office (“ABO”) by November 1<sup>st</sup> of each year. The Authority’s fiscal year ends on December 31<sup>st</sup>.

The Authority reserves the right to modify or cancel this Request for Proposals and/or the project, to reject any or all proposals, and to waive any or all irregularities. This Request for Proposals does not obligate the Authority to award a contract for this project or to reimburse any costs associated with the preparation of any proposal.

The Request for Proposals (“RFP”) is being conducted pursuant to New York State Finance law §§139-j and 139-k and the Authority’s Procurement Policy. The Procurement Policy is available by accessing the Authority’s website, <http://www.ecwa.org>, under the caption “Doing Business” and choosing Central Purchasing.

## **SCOPE OF SERVICES**

The Authority is seeking proposals from consulting firms (“Respondents”) to provide rate consulting services to the Authority. The Authority is seeking a three (3) year agreement with the option for two (2) additional one (1) year renewal periods, at mutually agreed upon terms. The services provided by the selected consultant shall include, but are not necessarily limited to, the following:

- A. Evaluate the current rate structure to ensure it meets the Authority’s revenue requirements, including capital plan financing assumptions, and make recommendations for changes, if necessary;
- B. Prepare a report on the effectiveness of the current rate structure, outlining recommended changes, if any, and present findings to the Board;
- C. Assist in preparing required documentation in the event of a bond issuance;

- D. Provide advice and recommendations during annual budget preparations in or around August and September;
- E. Attend meetings with the Authority's management and present findings to the Board; and
- F. Provide consulting services relative to rate analysis, revenue forecasting, and customer assistance programs, as needed. For example, the consultant may be asked to review if rates for a particular service are reasonable.

The general scope of work is further described in Article 1, § 1.04 of the sample Professional Services Agreement included as Attachment 1.

The methods of payment shall be per Article 2 of the sample Professional Services Agreement.

### **PROPOSAL REQUIREMENTS**

Proposals are to be concise, specific, and straightforward. All pertinent information is to be contained in the proposal. The use of artwork, special covers, and extraneous information in the proposals is discouraged. Proposals are to remain valid for a minimum of 90 days. The proposal is to address the following:

- Item 1:** Brief description of the respondent's business, its history and its ability to provide the requested and/or proposed services. Information as to the respondent's background and experience relative to this RFP and experience with municipal clients, preferably with public water utilities. Identify principals and officers of the respondent, including contact information.
- Item 2:** Three (3) references (preferably municipal utility clients) for which you provide the same or similar services to those which may be of interest to the Authority. Include contact/reference name and telephone number for each reference.
- Item 3:** Fees, Rates, Charges - List the fees and/or rates charged, period of time these rates/fees are in effect and any start-up costs.
- Item 4:** Completed Public Authorities Law forms, State Finance Law forms, and Statement Regarding Prevention of Unlawful Discriminatory Practices per Attachment 1, Appendix A.
- Item 5:** Proof of insurance in accordance with Erie County Water Authority Insurance Requirements per Attachment 1, Appendix C.

### **VALUE-ADDED CONSIDERATIONS**

Respondents are encouraged to list any relevant services or products that will be provided to the

Authority which are not priced in this proposal but will enhance the Authority's service to its customers.

### **INFORMATION REQUESTS**

All questions and requests for information are to be directed to the designated Authority Contact Person, Joyce Tomaka, CPA, Chief Financial Officer at 716-849-8443 or by email to [jtomaka@ecwa.org](mailto:jtomaka@ecwa.org), in accordance with New York State Finance Law §§139-j and 139-k. All questions and responses will be shared with all proposal recipients.

### **SUBMISSION OF PROPOSAL**

**Proposals will be accepted until 4:00 p.m. on Monday, February 9, 2026.** One hard (unbound) copy of the proposal may be delivered to Erie County Water Authority, 295 Main Street, Room 350, Buffalo, New York 14203 to the attention of Joyce Tomaka, CPA, Chief Financial Officer or an electronic version emailed to [jtomaka@ecwa.org](mailto:jtomaka@ecwa.org). Proposals received after this time will not be considered and will be returned unopened. All proposals being emailed must include in the subject line “**RFP PROPOSAL – RATE CONSULTING SERVICES.**” All proposals being mailed (including Federal Express, UPS, Priority Mail, etc.) or hand-delivered shall be directed to the attention of Joyce Tomaka, CPA, Chief Financial Officer, in a sealed envelope and be clearly marked on the outside of the mailing or hand delivered envelope as follows: “**RFP PROPOSAL – RATE CONSULTING SERVICES.**”

### **EVALUATION AND SELECTION**

All proposals will be evaluated by a small in-house committee made up of Authority personnel familiar with the proposed project. Interviews and/or presentations of the proposals will be requested if needed. Proposals will be evaluated based on the criteria listed above.

The issuance of this RFP constitutes only an invitation to present responses from potential parties. The Authority and the RFP review and selection committee reserve the right to determine in their sole discretion whether any aspect of the proposal satisfactorily meets the criteria set forth in this RFP. The Authority and its committee reserve the right to seek additional information and clarifications, as well as financial information, from the Respondents submitting a proposal. The Authority reserves the right to negotiate with any respondent submitting a response, and the right to reject any or all responses with or without cause, in the event that the RFP is withdrawn by the Authority for any reason. The Authority shall have no liability to any respondent for any costs or expenses incurred in connection with this RFP or otherwise.

The final scope of work and fee will be negotiated with the selected respondent. The Authority intends to enter into a professional services agreement that will be executed pending successful negotiation with the selected firm and authorization by the Authority's Board. A proposed professional services agreement is attached as Attachment 1. If an agreement cannot be negotiated within 15 days of notification to the designated respondent, the Authority may terminate negotiations with that respondent and negotiate an agreement with another respondent or respondents of its choice.

All firms submitting proposals will be notified of the selection results. It is anticipated that the selection process will be completed by March 9, 2026. The term of the professional services agreement is anticipated to commence on April 1, 2026.

## **ATTACHMENT 1**

### **SAMPLE PROFESSIONAL SERVICES AGREEMENT**

**PROFESSIONAL SERVICES AGREEMENT  
FOR RATE CONSULTING SERVICES**

This Agreement, effective as of [REDACTED] (“Effective Date”), by and between

**ERIE COUNTY WATER AUTHORITY**  
295 Main Street, Room 350  
Buffalo, New York 14203

hereinafter referred to as the “Authority,” and

XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
Address [REDACTED]

hereinafter referred to as “Consultant.”

**WHEREAS**, the Authority desires to enter into an agreement with the Consultant for rate consulting services, upon the terms and for the consideration set forth in this Agreement; and

**WHEREAS**, the Consultant represents it is properly qualified to render such services;

**NOW THEREFORE**, in consideration of the mutual promises set forth in this Agreement, the Authority and Consultant agree as follows:

**ARTICLE 1 – SERVICES OF CONSULTANT**

**1.01 Standard of Performance**

- A. ***Standard of Care:*** The Consultant shall perform its services under this Agreement in a manner consistent with the level of care and skill customarily exercised by other professionals with the same degree of knowledge and experience under similar circumstances. The Consultant will be responsible to the Authority for errors or omissions in the performance of services and for the failure to perform its services.
- B. ***Technical Accuracy:*** The Authority shall not be responsible for discovering deficiencies in the technical accuracy of Consultant’s services. Consultant shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Authority-furnished information.

**1.02 Compliance with Laws and Regulations, and Policies and Procedures**

- A. The Authority and the Consultant shall comply with all applicable federal, state, or local laws and regulations and all applicable Authority policies and procedures.
- B. The Consultant shall comply with the provisions set forth in Public Authorities Law §§ 2875, 2876, and 2878 of the laws of the State of New York. In response to the Authority's Request for Proposals, the Consultant submitted and signed the Public Authorities Law forms, a copy of which are attached to, and incorporated in, this Agreement as Appendix A.
- C. The Consultant shall comply with the provisions set forth in State Finance Law §§ 139(j) and 139 (k). In response to the Authority's Request for Proposals, the Consultant submitted and signed Forms A, B, and C, copies of which are attached to, and incorporated in, this Agreement as Appendix A.
- D. By executing this Agreement, the Consultant affirms under penalties of perjury, that there was no collusion in the proposal submitted to the Authority, upon which forms the basis of this Agreement.
- E. The Consultant shall comply with the provisions of the Human Rights Law (Executive Law §290, *et. seq.*) and Labor Law § 201-g of the laws of the State of New York. In response to the Authority's Request for Proposals, the Consultant submitted and signed the Statement Regarding Prevention of Unlawful Discriminatory Practices, a copy of which is attached to, and incorporated in, this Agreement, as Appendix A.
- F. The Consultant shall comply with the provisions of the Shield Act, codified at General Business Law § 899-aa of the laws of the State of New York.
- G. The Authority shall provide the Consultant in writing any and all Authority policies and procedures applicable to the Consultant's performance of services under this Agreement. The Consultant agrees to comply with such policies and procedures to the extent compliance is not inconsistent with professional practice requirements.
- H. If the Consultant, its employees, agents and/or subcontractors, wish to access any Authority property, they must notify the Authority's Security Officer and provide the following information: (a) government-issued photo identification for all site visitors; (b) a detailed statement indicating the purpose for the site visit; (c) the proposed date and time for the site visit; (d) the estimated start and finish time for the site visit; and (e) any additional information reasonably requested by the Authority's Security Officer. No person may visit any Authority Property without the authorization of the Authority and/or its Security Officer. While on Authority property, the Consultant's employees, representatives and engineers shall comply with the specific applicable security and access rules established by the Authority's Security Officer.

**1.03** Whenever the Authority is operating under a Declaration of Emergency due to a pandemic, the Consultant, its employees, and agents shall comply with all health safety rules and regulations adopted by the State of New York, the County of Erie, or the Authority including, but not limited to, completing a health screening questionnaire, using personal protective face masks, or complying with any testing or vaccination requirements, before entering any Authority property.

**1.04** *Scope of Services*

- A. The Consultant agrees and represents it will provide services relating to rate consulting services relative to rate analysis, revenue forecasting, and customer service programs, as needed, as set forth in its response to the Authority's Request for Proposals, which is hereby incorporated and included in this Agreement as Appendix B.
- B. The Consultant agrees to evaluate the Authority's current rate structure, at least annually, to ensure it meets the Authority's revenue requirements, including capital plan financing assumptions, and to make recommendations for changes, if necessary;
- C. The Consultant agrees to prepare a report on the effectiveness of the current rate structure, outlining recommended changes, if any, and present findings to the Board, at least annually;
- D. The Consultant agrees to assist in preparing required documentation in the event of a bond issuance;
- E. The Consultant agrees to provide advice and recommendations during the Authority's annual budget preparation in or around August and September, annually;
  - 1. The Consultant shall provide a comprehensive analysis of proposed Operating and Maintenance revenues and Capital spending for the upcoming budget year;
  - 2. The Consultant shall provide a multi-year rate and spending projection for future planning purposes;
- F. The Consultant agrees to attend meetings with the Authority's management and to present findings to the Board;
  - 1. The Consultant shall meet with Authority management multiple times during annual budget preparations;
  - 2. The Consultant shall present its findings regarding the Authority's budget at either a monthly Board Meeting or a Budget Hearing at least once during annual budget preparations;

3. The Consultant's attendance at such management meetings and presentations to the Board may be either remote or in-person, at the Authority's discretion;
- G. The Consultant agrees to provide consulting services relative to rate analysis, revenue forecasting, and customer assistance programs, as needed;
1. Upon authorization from the Authority, the Consultant shall consulting services, as requested;
  2. Prior to undertaking work on a requested task, the Authority may request that the Consultant provide an estimate of time (broken down by title) and expenses to complete the task;
  3. The Consultant shall coordinate with the Authority's Chief Financial Officer or Comptroller regarding the scope of the requested task and deliverables related to the requested task prior to commencing work.

## ARTICLE 2 – PAYMENT FOR SERVICES

**2.01** The Consultant shall submit periodic invoices to the Authority, detailing the description of the services rendered to the Authority, in a form acceptable to the Authority's Chief Financial Officer and/or Comptroller.

**2.02** Costs for the services provided under this Agreement shall be billed at the following rates: ***[titles & hourly rates per the Consultant's proposal]***.

**2.03** Expenses will be reimbursed upon presentation of paid receipts with a total cost not to exceed \$ **[redacted]**. Payments for services will be based on detailed actual hours worked with a total cost not to exceed \$ **[redacted]**.

**2.04** Upon receipt of a properly submitted invoice, the Authority will remit payment within 30 calendar days.

## ARTICLE 3 – GENERAL PROVISIONS

**3.01** **Subcontract and Assignments:** The Consultant may not subcontract or delegate any of the work, services, and/or other obligations of the Consultant without the express written consent of the Authority's Executive Staff. The Authority expressly consents to the use of such subcontractors. The Authority and the Consultant bind themselves and their successors, administrators and assigns to the terms of this Agreement. The Consultant shall not assign, sublet or transfer its interest in the Agreement without the written consent of the Authority.

**1.02** **Amendments:** Any modification or variation from the terms of this Agreement must be in writing, authorized by a resolution of the Board of Commissioners of the Authority, and signed by all parties to be effective.

**3.03 Right to Terminate:** The Authority reserves the right to terminate the Consultant's services at any time, without cause, based on seven (7) days' written notice. Consultant shall not be entitled to lost profit and shall perform only such services, after notification of termination, as the Authority directs.

**3.04 Indemnification:**

- A. To the fullest extent permitted by law, the Consultant agrees to indemnify and hold the Authority harmless from all third party claims, liabilities, damages and costs (including all reasonable attorney's fees, and cost of defense) to which the Authority, its officers, directors and employees may be subject to, arising out of the death or bodily injury to any person or the destruction or damage to any property to the extent caused by the negligent acts, errors or omissions, or willful misconduct of the Consultant's performance of services provided under this Agreement or anyone for whom the Consultant is legally liable.
- B. To the fullest extent permitted by law, the Authority agrees to indemnify and hold the Consultant harmless from all third party claims, liabilities, damages and costs (including all reasonable attorney's fees and cost of defense) to the extent caused by the negligent acts, errors or omissions of the Authority, its contractors, consultants or anyone for whom the Authority is legally liable.

**3.05 Confidential Information:**

- A. To assist the Consultant in the performance of this Agreement, the Authority may provide the Consultant with confidential information including, but not limited to information relative to the services to be performed. All information received by the Consultant in any fashion and under any conditions resulting from the rendering of the services in consideration of this agreement, are considered confidential. The Consultant shall hold in confidence and not disclose to any person or any entity, any information regarding information learned during the performance of services including but not limited to information relative to the services to be performed.
- B. The Consultant shall use at least the same degree of care to protect and prevent unauthorized disclosure of any confidential information as it would use to protect and prevent unauthorized disclosure of its own proprietary information. The Consultant shall use confidential information only in the performance of this Agreement. No other use of the confidential information whether for the Consultant's benefit or for the benefit of others shall be permitted.
- C. All data and information in any format submitted or made available to the Consultant by the Authority or any other person on behalf of the Authority, unless otherwise publicly available, and all data and information, and other work developed by the Consultant under this Agreement, shall be utilized by the Consultant solely in connection with the performance of services under this Agreement only and shall not be made available by the Consultant to any other person.

- D. In no event is the Consultant authorized to disclose confidential information without the prior written approval of the Authority. Consultant may provide such information to its Authority-approved subcontractors for the purpose of performing the services; or disclose such information, with notice to the Authority, if such information is required to be disclosed by law or court order.
- E. The Authority and the Consultant both agree that neither party shall disclose, in whole or in part, by any means whatsoever, any Proprietary Information provided by the disclosing party to any third party without the express prior written consent of the disclosing party. The receiving party shall not alter, modify, decompile, disassemble, reverse engineer, or create derivative works from the disclosing party's Proprietary Information. The receiving party shall use Proprietary Information of the disclosing party only for the limited purpose of in relation to services provided under this Agreement and not for any other purpose. Proprietary Information shall include, but is not limited to, specifications, frameworks, outlines, designs, process information, technical data, marketing and business plans, customers/client names/data, product road maps, pricing, toolkits, software, and/or intellectual property that the disclosing party considers to be protected by applicable laws.
- F. The terms of this paragraph shall be binding during and following the termination of this Agreement.

**3.06 Reliance on Data:** In performance of the services, it is understood that the Authority and/or others may supply the Consultant with certain information and/or data, and that the Consultant will rely on such information. It is agreed that the accuracy of such information is not within the Consultant's control and they shall not be liable for its accuracy, nor for its verification, except to the extent that such verification is expressly part of the Scope of Services.

**3.07 Opinions and Estimates:** The Consultant's opinions, estimates, projections, and forecasts of current and future costs, revenues, other levels of any sort, and events shall be made based on available information and the Consultant's expertise and qualifications as a professional. The Consultant does not warrant or guarantee that its opinions, estimates, projections or forecasts of current and future levels and events will not vary from the Authority's estimates or forecasts or from actual outcomes. The Consultant identifies costs, allocates costs to customer classes and provides rate models. The Consultant will not establish rates, which is the responsibility of the Authority.

**3.08 Insurance:**

- A. The Consultant agrees to secure and maintain such insurance as will protect itself from claims under the Workers' Compensation Act; claims for damages because of bodily injury, including personal injury, sickness or disease, or death of any of its employees or of any person other than its employees; and from claims for damages

because of injury to or destruction of property including loss of use resulting therefrom in the amounts indicated on Appendix C.

- B. The Consultant agrees to provide and maintain insurance that will provide coverage for claims arising out of the negligent performance of its services.
- C. The Consultant agrees to provide Certificates of Insurance certifying the coverage required by this provision.
- D. The Consultant agrees to provide the name of an employee who will be responsible for providing the Authority with current and updated Certificates of Insurance. The Authority requires the name of the employee, the employee's phone number and email address.

**3.09 Rights, Title and Interest to Specific Materials:**

- A. All deliverables under this Agreement, whether produced by the Consultant alone or with others, and regardless of whether produced during regular working hours, shall be considered the property of the Authority. The Consultant shall, during and after the terms of this Agreement, assign to the Authority, without further consideration, all right, title and interest in all deliverables under this Agreement. All deliverables under this Agreement shall be and remain the property of the Authority whether registered or not.
- B. In performing work under this agreement, the Consultant may be granted access to the Authority's documents, data and other information. The Consultant understands and agrees that the use of such documentation, data and information shall be treated as confidential information.

**3.10 New York Law and Jurisdiction:** Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement which is not disposed of by agreement between the Consultant and the Authority shall be governed, interpreted and decided by a court of competent jurisdiction of the State of New York in accordance with the laws of the State of New York.

**3.11 Conflicts of Interest:** The Consultant represents that it has advised the Authority in writing prior to the date of signing this Agreement of any relationships with third parties, including competitors of the Authority, which would present a conflict of interest with the rendering of the services, or which would prevent the Consultant from carrying out the terms of this Agreement or which would present a significant opportunity for the disclosure of confidential information. The Consultant will advise the Authority of any such relationships that arise during the term of this Agreement. The Authority shall then have the option to terminate the Agreement without further liability of the Consultant, except to pay for services rendered.

**3.12 Additional Conditions:** The Consultant and the Authority acknowledge that there may be additional conditions, terms and provisions which shall apply specifically to the services

to be performed. The parties agree to negotiate in good faith to agree upon such additional terms.

**3.13 Entire Agreement:** This Agreement constitutes the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein. This Agreement supersedes all prior contemporaneous communications, representations, or agreements, whether oral or written with respect to the subject matter hereof and has been induced by no representations, statements or agreements other than those herein expressed. No subsequent agreement made between the parties shall be binding on either party unless reduced to writing and signed by an authorized officer of the party sought to be bound by such agreement.

**3.14 Independent Status:**

- A. Nothing contained in the Agreement shall be construed to render either the Authority or the Consultant, an owner, member, officer, partner, employee or agent of the other, nor shall either party have authority to bind the other in any manner, other than as set forth in this Agreement, it being intended that the Consultant shall remain an independent contractor responsible for its own actions. The Consultant is retained by the Authority only for the purpose and to the extent set forth in this Agreement.
- B. The Consultant is free to choose the aggregate number of hours worked and the scheduling of such hours as it shall see fit at its discretion within the limitations set forth in Article 1.
- C. Neither the Consultant nor its employees shall be considered under the provisions of this Agreement or otherwise as having an employee, servant or agency status or as being entitled to participate in any plans, arrangements or distributions of the Authority.
- D. In providing the services under this Agreement, the Consultant represents and warrants that it has complied with all applicable federal, state and local laws particularly with respect to licenses, withholdings, reporting and payment of taxes. The Consultant agrees to furnish copies of documentation to the Authority evidencing its compliance with such laws. The Consultant further represents and warrants that any income accruing to the Consultant and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

**3.15 Doing Business Status:** The Consultant represents it is qualified to do business in State of New York and has registered with the New York Secretary of State.

**3.16 Gratuities:** The Consultant shall prohibit its agents, employees and consultants from using their positions for personal financial gain, or from accepting any personal advantage from anyone under circumstance which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their official duties. The Consultant or its

employees shall not, under circumstances which might be reasonably interpreted as an attempt to influence the recipients in the conduct of their duties, extend any gratuity or special favor to employees of the Authority.

- 3.17** **Notice:** Any notices required by this Agreement or otherwise shall be delivered by United States Postal mail or personal delivery upon the addresses hereinbefore stated. Any change in such addresses shall be required to be in writing to the other party and acknowledged as such.

#### **ARTICLE 4 – SEVERABILITY**

- 4.01** Any provision or part of the Agreement held to be void or unenforceable by a court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties, which agrees that the Agreement shall be reformed to replace such stricken provisions or part thereof with a valid enforceable provision that comes as close as possible to expressing the intent of the stricken provision. The validity and enforceability of all other provisions of this Agreement shall not otherwise be affected.

#### **ARTICLE 5 – DURATION**

- 5.01** All services to be provided under this Agreement shall be provided over a three (3) year period from April 1, 2026 through March 31, 2029 with two (2) potential one (1) year extensions at mutually agreed upon terms.
- 5.02** The Authority reserves the right to terminate this Agreement in the event it is found that the Certification filed by the Consultant in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Consultant in accordance with the written notification terms of this Agreement.

#### **ERIE COUNTY WATER AUTHORITY**

By: \_\_\_\_\_  
Jerome D. Schad, Chair

**XXX**

By: \_\_\_\_\_  
XXX

**STATE OF NEW YORK    )**  
**COUNTY OF ERIE        ) ss:**

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2026, before me personally came Jerome D. Schad to me known, who, being by me duly sworn, did depose and say that he resides in Amherst, New York, that he is the Chair of the Erie County Water Authority described in the above instrument; and that he signed his name thereto by order of the Board of Commissioners of said Authority.

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

**STATE OF NEW YORK    )**  
**COUNTY OF ERIE        ) ss:**

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2026, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he/she resides in \_\_\_\_\_, that he/she is the \_\_\_\_\_ of the Corporation described in the above instrument; and that he/she signed his/her name thereto by order of said corporation.

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

# **Appendix A**

## **Required Forms**

**NON-COLLUSIVE BIDDING CERTIFICATION**

as mandated by Public Authority Law § 2878

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

(1) The prices in this bid or 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 bidder/respondent or with any competitor; and

(2) Unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the bidder/respondent and will not knowingly be disclosed by the bidder/respondent prior to opening, directly or indirectly, to any other bidder/respondent or to any competitor; and

(3) No attempt has been made or will be made by the bidder/respondent to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

**NOTICE**

(Penal Law § 210.45)

IT IS A CRIME, PUNISHABLE AS A CLASS A MISDEMEANOR UNDER THE LAWS OF THE STATE OF NEW YORK, FOR A PERSON, IN AND BY A WRITTEN INSTRUMENT, TO KNOWINGLY MAKE A FALSE STATEMENT, OR TO MAKE A FALSE STATEMENT, OR TO MAKE A STATEMENT WHICH SUCH PERSON DOES NOT BELIEVE TO BE TRUE.

Affirmed under penalty of perjury this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_\_\_

FIRM NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

\_\_\_\_\_  
ZIP \_\_\_\_\_

AUTHORIZED SIGNATURE \_\_\_\_\_

TYPED NAME OF AUTHORIZED SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_ TELEPHONE No. \_\_\_\_\_

\_\_\_\_\_

## SECTION 2875 OF THE PUBLIC AUTHORITIES LAW

### §2875. GROUND FOR CANCELLATION OF CONTRACT BY PUBLIC AUTHORITY.

A clause shall be inserted in all specifications or contracts hereafter made or awarded by any public authority or by any official of any public authority created by the state or any political subdivision, for work or services performed or to be performed or goods sold or to be sold, to provide that upon the refusal of 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 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 to provide also that
- (b) any and all contracts made with any public authority or official thereof, since the effective date of this law, by such person and by any firm, partnership, or corporation of which he is a member, partner, director or officer may be canceled 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 termination shall be paid.

This is to CERTIFY that neither the undersigned nor any member, partner, director, or officer of the firm has refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, 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.

\_\_\_\_\_  
(Name of Individual, Partnership or Corporation)

By \_\_\_\_\_  
(Person authorized to sign)

(SEAL)

## **SECTION 2876 OF THE PUBLIC AUTHORITIES LAW**

### **§2876. DISQUALIFICATION TO CONTRACT WITH PUBLIC AUTHORITY**

Any person who, 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 a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, 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 any official of any public authority created by the state or any political subdivision, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the provisions of section twenty-six hundred three of this article.

It shall be the duty of the officer conducting the investigation before the grand jury, the head of a state department, the chairman of the temporary state commission or other state agency, the organized crime task force in the department of law, the head of a city department or other city agency before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer or director, to the commissioner of transportation of the state of New York, or the commissioner of general services as the case may be, and the appropriate departments, agencies and officials of the state, political subdivisions thereof or public authorities with whom the persons so refusing and any firm, partnership or corporation of which he is a member, partner, director or officer, is known to have a contract. However, when such refusal occurs before a body other than a grand jury, notice of refusal shall not be sent for a period of ten days after such refusal occurs. Prior to the expiration of this ten day period, any person, firm, partnership or corporation which has become liable to the cancellation or termination of a contract or disqualification to contract on account of such refusal may commence a special proceeding at a special term of the supreme court, held within the judicial district in which the refusal occurred, for an order determining whether the questions in response to which the refusal occurred were relevant and material to the inquiry. Upon the commencement of such proceeding, the sending of such notice of refusal to answer shall be subject to order of the court in which the proceeding was brought in a manner and on such terms as the court may deem just. If a proceeding is not brought within ten days, notice of refusal shall thereupon be sent as provided herein.

This is to CERTIFY that neither the undersigned nor any member, partner, director, or officer of the firm has refused to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, 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.

\_\_\_\_\_  
(Name of Individual, Partnership or Corporation)

By \_\_\_\_\_  
(Person authorized to sign)

(SEAL)

## **FORMS A, B, and C**

### **STATE FINANCE LAW REQUIREMENTS**

The Erie County Water Authority (the “Authority”) is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). When the Authority seeks to procure goods or services by means of an Invitation or Notice to Bid, or a Request for Proposals, the State Finance Law imposes certain restrictions on anyone who may wish to offer goods or services to the Authority as an Offerer, as that term is defined in §§ 139-j(1)(h) and 139-k(1)(h).

During the Restricted Period, as defined in §§ 139-j(1)(f) and 139-k(1)(f), when bids or proposals are being solicited, the Authority will designate a contact person with whom the Offerer may contact for information and other authorized purposes as set forth in §139-j of the State Finance Law. The designated contact is identified in the Notice to Bidders, or in the Request for Proposal. An Offerer is authorized to contact the Authority’s designated contact for such purposes as set forth in § 139-j(3).

Pursuant to the State Finance Law, the Authority is also required to make certain findings before making any determinations as to the qualifications and eligibility of those seeking a procurement contract, as that term is defined in State Finance Law §§ 139-j(1)(g) and 139-k(1)(g). Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings of non-responsibility occurring within a 4-year period, the Offerer will be debarred from obtaining procurement contracts with the Authority. Further information about these requirements can be found in §§139-j and 139-k of the New York State Finance Law and the Erie County Water Authority’s Procurement Disclosure Policy.

The following forms will be used by the Authority to make such findings:

Form A - Offerer’s Affirmation of Understanding of, and Agreement to Comply with, the Authority’s Permissible Contact Requirements During the Restricted Period.

Form B - Offerer’s Certification of Compliance with State Finance Law.

Form C - Offerer’s Disclosure of Prior Non-Responsibility Determinations.

**FORM A**

**Offerer's Affirmation of Understanding of, and Agreement to Comply  
with, the Permissible Contact Requirements During the Restricted Period**

**Instructions:**

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). The Authority must obtain a written affirmation of understanding and agreement to comply with procedures regarding permissible contacts with the Authority in the restricted period for a procurement contract in accordance with State Finance Law §139-j and §139-k. It is required that this affirmation be obtained as early as possible in the procurement process, but no later than when the Offerer submits its proposal.

Offerer affirms that it understands and agrees to comply with the procedures of the Authority relative to permissible contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**FORM B**

**Offerer's Certification of Compliance  
With State Finance Law §139-k(5)**

**Instructions:**

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). The Authority must obtain a Certification that the information submitted for a procurement contract is complete, true, and accurate regarding any prior findings of non-responsibility, such as non-responsibility pursuant to State Finance Law §139-j. The Offerer must agree to sign the Certification, under penalty of perjury, and to provide the Certification to the Authority. The Certification should be obtained as early as possible in the process, but no later than when an Offerer submits its proposal.

**Offerer Certification:**

*I certify that all information provided to the Authority relating to the awarding of a procurement contract is complete, true, and accurate.*

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**FORM C****Offerer's Disclosure of Prior  
Non-Responsibility Determinations****Background:**

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). New York State Finance Law §139-k(2) obligates the Authority to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. In accordance with 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 State Finance Law §139-j; or (b) the intentional provision of false or incomplete information to a Government Entity.

The terms "Offerer" and "Governmental Entity" are defined in State Finance Law §§139-j(1). And §139-k(1), These sections also set forth detailed requirements about the restrictions on contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, 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 a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and the Offerer is the only source capable of supplying the required Article of Procurement, as that term is defined in State Finance Law §§ 139-j(1)(b) and 139-k(1)(b), within the necessary timeframe. See State Finance Law §139-j(10)(b) and §139-k(3).

**Instructions:**

The Authority must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Authority conducting the Governmental Procurement no later than when the Offerer submits its proposal.

**FORM C (Continued)****Offerer's Disclosure of Prior Non-Responsibility Determinations**

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

Contract Procurement Number: \_\_\_\_\_

Date: \_\_\_\_\_

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):
- No                      Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):
- No                      Yes
3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle)
- No                      Yes
4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

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

Date of Finding of Non-Responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

**FORM C (Continued)**

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):                      No                      Yes

6. If yes, please provide details below.

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

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

Offerer certifies that all information provided to the Erie County Water Authority with respect to State Finance Law §139-k is complete, true, and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **CONTRACT TERMINATION PROVISION**

### **Instructions:**

A Contract Termination Provision will be included in each procurement contract governed by State Finance Law §139-k. New York State Finance Law §139-k(5) provides that every procurement contract award subject to the provisions of State Finance Law §§139-k and 139-j shall contain a provision authorizing the governmental entity to terminate the contract in the event that the certification is found to be intentionally false or intentionally incomplete. This statutory contract language authorizes, but does not mandate, termination. “Government Entity” and “procurement contract” are defined in State Finance Law §§ 139 j(1) and 139-k(l).

This required clause will be included in a covered procurement contract.

A sample of the Termination Provision is included below. If a contract is terminated in accordance with State Finance Law §139-k(5), the Erie County Water Authority, as a governmental entity, is required to include a statement in the procurement record describing the basis for any action taken under the termination provision.

### **Sample Contract Termination Provision**

<p>The Erie County Water Authority, as a governmental entity, reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this contract.</p>
---

**OFFERER'S STATEMENT REGARDING PREVENTION OF  
UNLAWFUL DISCRIMINATORY PRACTICES**

The Erie County Water Authority (the "Authority"), as an employer in New York State, is subject to the Human Rights Law, codified as Executive Law §290, *et. seq.*, and Labor Law §201-g. The Authority seeks to provide a work environment that is free from unlawful discriminatory practices as they are defined in Executive Law §296, as well as from inappropriate harassing conduct even if not deemed unlawful, to its employees, contractors, subcontractors, vendors, consultants, and any other person providing services on Authority premises. Pursuant to the Human Rights Law, it shall be unlawful to discriminate against an individual, or to subject an individual to harassment, due to age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence. Accordingly, the Authority requires that any Offeror of a proposal or bid, agree to sign the following statement regarding unlawful discriminatory practices, including, but not limited to sexual harassment, under penalty of perjury. This statement should be provided to the Authority as early as possible in the procurement process, but not later than at the time of execution of a contract with the Authority. Failure to agree to sign the statement may result in the Authority deeming the bid or proposal withdrawn by the Offerer.

**Offerer Statement:**

*I certify, under penalty of perjury, that the following statements are accurate:*

- *Offerer is aware of its obligations under the Human Rights Law (Executive Law §290, et. seq.*
- *Offerer complies with the provisions of Executive Law §290, et. seq., including Executive Law §296, and does not permit unlawful discriminatory practices or harassment based on an individual's age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence in its workplace.*
- *Offerer complies with the provisions of Labor Law §201-g, has implemented a written policy addressing sexual harassment in the workplace which meets the minimum standards of Labor Law §201-g, and provides annual sexual harassment prevention training to all of its employees.*

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Offerer Name: \_\_\_\_\_

Offerer Address: \_\_\_\_\_

\_\_\_\_\_

**Appendix B**

**Consultant's Proposal**

## **Appendix C**

### **Insurance Requirements**

## INSURANCE REQUIREMENTS FOR SERVICES AGREEMENT

### COST OF SERVICE AND RATE STRUCTURE CONSULTING SERVICES

#### ECWA Project No. 202500235

The following minimum insurance requirements shall apply to vendors providing services to the Erie County Water Authority (ECWA). All insurance required herein shall be obtained at the sole cost and expense of the contractor, including deductibles and self-insured retentions, and shall be in full force and effect on the contract commencement date and for the duration of the contract.

**a. Workers Compensation:**

Part 1: Workers Compensation: Statutory

Part 2: Employers Liability: \$1,000,000.

Note: If New York State domiciled employees are used, coverage to be New York Statutory for both Parts 1 and 2. **C 105.2 Required.**

**b. New York Disability Benefits Liability:** Statutory coverage if New York State domiciled employees are used. **DB 120.1 Required.**

**c. Commercial General Liability:**

- \$2,000,000. General Aggregate
- \$2,000,000. Products/Completed Operations Aggregate
- \$1,000,000. Each Occurrence
- \$1,000,000. Personal Injury/Advertising Liability
- Erie County Water Authority to be scheduled as an Additional Insured for both on-going and completed operations (attach Additional Insured endorsement to Certificate of Insurance)
- Insurance to be primary and non-contributory

**d. Automobile Liability:**

- \$1,000,000. Each Accident
- Erie County Water Authority to be scheduled as an Additional Insured.

**e. Professional Liability:**

- \$5,000,000 Per Claim
- \$5,000,000 Aggregate

**f. Cyber Liability:**

- \$1,000,000 Per Claim
- \$1,000,000 Aggregate

Certificates of Insurance to be provided to ECWA prior to start of work as follows:

ACORD 25 including copy of Additional Insured Endorsement Note: If coverage provided for NYS domiciled employees require Forms C 105.2 and DB 120.1 for Workers Compensation and NYS

DBL.

Certificates of Insurance, on forms approved by the New York State Department of Insurance, must be submitted to ECWA prior to the award of contract. Renewals of Certificates of Insurance, on forms approved by the New York State Department of Insurance, must be received by ECWA 30 days prior to the expiration of the insurance policy period.

Certificates of Insurance and renewals, on forms approved by the New York State Department of Insurance, must be submitted to ECWA prior to the award of contract. Each insurance carrier issuing a Certificate of Insurance shall be rated by A. M. Best no lower than "A-" with a Financial Strength Code (FSC) of at least VII.

The professional service provider shall name ECWA, its officers, agents and employees as additional insured on a Primary and Non-Contributory Basis, including a Waiver of Subrogation endorsement (form CG 20 26 11 85 or equivalent), on all applicable liability policies.

Any liability coverage on a "claims made" basis should be designated as such on the Certificate of Insurance. Such insurance shall continue through the term of this Agreement and vendor shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Acts Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that vendor has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

To avoid confusion with similar insurance company names and to properly identify the insurance company, please make sure that the insurer's National Association of Insurance Commissioners (N.A.I.C.) identifying number or A. M. Best identifying number appears on the Certificate of Insurance. Also, at the top of the Certificate of Insurance, please list the project number.

Acceptance of a Certificate of Insurance and/or approval by ECWA shall not be construed to relieve the outside vendor of any obligations, responsibilities or liabilities.

Certificates of Insurance should be e-mailed to [mmusarra@ecwa.org](mailto:mmusarra@ecwa.org) or mailed to Ms. Molly Jo Musarra, ECWA Claim Representative/Risk Manager Erie County Water Authority, 295 Main Street – Room 350, Buffalo, New York 14203-2494, or If you have any questions you can contact Ms. Musarra by e-mail or phone (716) 849-8465.