



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

To: Jerome D. Schad, Chair
Peggy A. LaGree, Vice Chair
Michele M. Iannello, Treasurer

CC: Mark S. Carney, General Counsel
Joyce A. Tomaka, Chief Financial Officer
Russell J. Stoll, Chief Operating Officer
Leonard F. Kowalski, Executive Engineer

From: Terrence D. McCracken, Secretary to the Authority

Date: June 14, 2023

Subject: Professional Services Agreement with J. O'Connell and Associates, Inc.
Grant Consulting Services
Project No.: 202300135

On March 24, 2023, a Request for Proposals (the "RFP") was issued relating to Grant Writing Consultant Services. The RFP was posted to the Erie County Water Authority's (the "Authority") website and issued to the following companies:

- Briana Popek Grants
- C & S Companies
- The Harrison Studio
- J. O'Connell & Associates, Inc.
- Municipal Solutions, Inc.
- Robert J. Miller & Associates, Inc.
- Rotella Grant Management
- Upper Edge Consulting

The Authority received proposals from C & S Companies, J. O'Connell & Associates, Inc., and Rotella Grant Management. I reviewed the proposals along with a team of Authority personnel (the "Review Committee"). The Review Committee determined that J. O'Connell & Associates, Inc., provided the proposal best suited to the Authority's needs.

J. O'Connell & Associates is a certified Women Owned Business and has over thirty years of experience in providing grant consulting services. J. O'Connell & Associates has provided services to numerous municipal clients and has established working relationships with state and federal funding agencies. Additionally, J. O'Connell & Associates' focus is on grant consulting services and grant project administration.

J. O'Connell & Associates' annual fee for the first year of the contract is \$46,800 and would increase by \$2,400 annually. The firm has also provided an hourly rate for project administration services after a grant has been funded. These services would not exceed \$17,000 annually.

As Secretary to the Authority and as the Division Head overseeing these services, I believe it is in the Authority's best interest to hire J. O'Connell & Associates for grant consulting services. I am recommending the approval of the professional services agreement with J. O'Connell & Associates, Inc.

There is a resolution on today's agenda approving the execution of said agreement.
Thank you.

O&M Budget Information:

- Unit: 6030 Public Information
- Item No. 60 Special Services

ERIE COUNTY WATER AUTHORITY
 AUTHORIZATION FORM
 For Approval/Execution of Documents
 (check which apply)

Contract:	Project No.: 202300135
Project Description: <u>Professional Services Agreement with J. O'Connell & Associates, Inc.</u>	

Item Description:

<input type="checkbox"/> Agreement	<input checked="" type="checkbox"/> Professional Service Contract	<input type="checkbox"/> Amendment	<input type="checkbox"/> Change Order
<input type="checkbox"/> BCD	<input type="checkbox"/> NYSDOT Agreement	<input type="checkbox"/> Contract Documents	<input type="checkbox"/> Addendum
<input type="checkbox"/> Recommendation for Award of Contract	<input type="checkbox"/> Recommendation to Reject Bids		
<input type="checkbox"/> Request for Proposals			
<input type="checkbox"/> Other _____			

Action Requested:

<input type="checkbox"/> Board Authorization to Execute	<input type="checkbox"/> Legal Approval
<input type="checkbox"/> Board Authorization to Award	<input checked="" type="checkbox"/> Execution by the Chairman
<input type="checkbox"/> Board Authorization to Advertise for Bids	<input type="checkbox"/> Execution by the Secretary to the Authority
<input type="checkbox"/> Board Authorization to Solicit Request for Proposals	
<input type="checkbox"/> Other _____	

Approvals Needed:

APPROVED AS TO CONTENT:

<input type="checkbox"/> Director of HR	_____	Date: _____
<input checked="" type="checkbox"/> Chief Operating Officer	<u><i>Russell F. [Signature]</i></u>	Date: <u>6/14/2023</u>
<input checked="" type="checkbox"/> Executive Engineer	<u><i>Jeanard F. Koralik</i></u>	Date: <u>06/14/2023</u>
<input type="checkbox"/> Director of Administration	_____	Date: _____
<input checked="" type="checkbox"/> Claims Rep/Risk Manager	<u><i>Molly Jo Musarra</i></u>	Date: <u>6/15/2023</u>
<input checked="" type="checkbox"/> Chief Financial Officer	<u><i>[Signature]</i></u>	Date: <u>06/15/2023</u>
<input checked="" type="checkbox"/> Legal	<u><i>[Signature]</i></u>	Date: <u>6/15/2023</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority	<u><i>[Signature]</i></u>	Date: <u>6/15/2023</u>
--	---------------------------	------------------------

Remarks: Pending receipt of Insurance certificate. MJM

Resolution Date: _____	Item No: _____
-------------------------------	-----------------------

PROFESSIONAL SERVICES AGREEMENT

This Agreement, effective as of June 22, 2023 (“Effective Date”), is by and between

ERIE COUNTY WATER AUTHORITY

295 Main Street, Room 350
Buffalo, New York 14203

hereinafter referred to as the “Authority,” and

J. O’CONNELL & ASSOCIATES, INC.

10646 Main Street
Clarence, New York 14031

hereinafter referred to as the “Consultant.”

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

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, the Authority and the 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 its services and for the failure to perform its services.

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, codified as 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 Service:

- A. The Consultant agrees to provide grant consulting services to the Authority as set forth below:
1. The Consultant agrees conduct an initial needs assessment with Authority personnel, including, but not limited to, the Authority's Board of Commissioners, Executive Staff, and Department Heads.
 - a. The needs assessment shall include a review of current and future Authority projects and programs to target for potential funding.
 - b. The Consultant agrees to assist the Authority in defining objectives and strategies for funding.
 - c. The Consultant agrees to conduct additional meetings during the term of the Agreement to review additional projects and programs for potential funding.
 2. The Consultant agrees to research and review federal, state and foundation grant funding resources on an on-going basis for the duration of this Agreement to help match funding sources to Authority projects.
 - a. The Consultant agrees to inform the Authority of potential funding sources as they are released.
 - b. The Consultant agrees to assist the Authority in determining projects that are eligible for funding.
 - c. The Consultant agrees to assist the Authority in developing projects to meet funding source guidelines.
 3. After a particular funding opportunity has been identified as of interest to the Authority, the Consultant agrees to assign a staff writer to the grant opportunity.
 - a. The Authority agrees to designate a project liaison to work directly with the Consultant's staff writer.
 - b. The Consultant agrees to conduct an eligibility assessment to identify the Authority's readiness to make an application.
 - c. If the Authority authorizes proceeding with the development of an application for a grant, the Consultant agrees to:
 - i. Establish timelines for the project and define matching funds needed;

- ii. Prepare needed information and budgets for projects;
 - iii. Provide the Authority with progress reports, as requested;
 - iv. Submit draft proposals and amendments for review by the Authority;
 - v. Submit final proposals for signature;
 - vi. Assemble and submit proposals;
 - vii. Maintain records of all correspondence and provide copies of same to the Authority, upon request;
 - viii. Provide a final copy of the submitted application to the Authority's designated project liaison;
 - ix. Follow up with the grant funder for a review if the grant is denied.
- d. The Consultant agrees to request information to respond to the funding opportunity from the Authority.
 - e. The Consultant agrees to provide the Authority with a draft proposal at least five (5) business days prior to its submission deadline.
 - f. The Consultant agrees to incorporate feedback from the Authority within the proposal and to provide a final PDF copy of the grant application to the Authority no later than one (1) business day prior to its submission deadline.
4. During the term of this Agreement, the Authority agrees to:
- a. Provide the Consultant with copies of budgets, financial statements, engineering reports, architectural drawings, cost estimates, and other documentation necessary for inclusion in grant requests;
 - b. Provide Authority staff to work with Consultant in the development of proposals in a timely manner;
 - c. Review draft documents in a timely manner;
 - d. Notify Consultant of a grant award decision upon receipt.

5. The Consultant agrees to provide the Authority with monthly reports summarizing the Consultant's time expended and describing activities undertaken by the Consultant during the previous month.
- B. The Consultant agrees to provide project administration services to the Authority as set forth below:
1. Upon the request of the Authority's Secretary, after the Authority has been award a grant, the Consultant shall provide a project administrator to facilitate the Authority's management of the funded project.
 2. The project administrator shall:
 - a. Notify the Authority of deadlines and or milestones associated with funding;
 - b. Assist in obtaining all required information for successful grant administration;
 - c. Conduct a review of existing submittal documents;
 - d. Meet and communicate with Authority personnel in order to gather information needed for submission of grant reimbursement requests.
 - e. Follow-up on grant reimbursement requests that have been submitted on the client's behalf.
 - f. Report to funding agencies on the Authority's behalf:
 - i. Submit project activity status report to funding agencies;
 - ii. Provide additional information, in consultation with the Authority, that is requested by funding agency reviewers;
 - iii. Submit close-out documentation as required.

ARTICLE 2 – COMPENSATION

2.01 The Consultant shall submit monthly invoices to the Authority in a form acceptable to the Authority's Chief Financial Officer and/or Comptroller. Payment for services will be made within 45 days of receipt of a properly submitted invoice.

2.02 The Consultant agrees to provide grant consulting services as set forth in paragraph 1.04(A) at the following monthly rates:

- A. \$ 3,900 per month for Agreement Year 1 (July 1, 2023 – June 30, 2024);

- B. \$ 4,100 per month for Agreement Year 2 (July 1, 2024 – June 30, 2025);
- C. \$ 4,300 per month for Agreement Year 3 (July 1, 2025 – June 30, 2026);
- D. \$ 4,500 per month for Agreement Year 4 (July 1, 2026 – June 30, 2027), if renewal option is exercised; and
- E. \$ 4,700 per month for Agreement Year 5 (July 1, 2027 – June 30, 2029), if renewal option is exercised.

2.03 If requested by the Authority, the Consultant agrees to provide project administration services at a rate of \$85.00 per hour. Project administration services shall not exceed \$17,000.00 annually and \$85,000.00 for the term of this Agreement.

2.04 Audit: The Authority reserves the right to audit the Consultant's records to verify bills submitted and representations made. For this purpose, the Consultant agrees to make company records available for inspection upon written notice by the Authority. The Authority shall have two years from the date of the Consultant's final bill to complete its audit. If the audit establishes an overcharge, the Consultant agrees to refund the excess.

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 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.

3.02 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. The Consultant shall not be entitled to further compensation or 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 professional services provided under this Agreement and those of its subcontractors 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, engineers, or anyone for whom the Authority is legally liable.

3.05 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 B.
- 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.

3.06 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.

3.07 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 being subject to further obligations under its terms, except for the payment of services already rendered by the Consultant. So long as the Consultant reports such a conflict as required by this section, the Consultant will have no further obligations for completing the scope of services under the terms of this Agreement.

3.08 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.

3.09 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.

3.10 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 2.
- 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.

3.11 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.

3.12 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 circumstances 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.

3.13 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-year period from July 1, 2023 through June 30, 2026. The parties may agree in writing to extend this Agreement under the same terms and conditions, or upon such terms and conditions acceptable to the Authority, for two (2) additional one-year (1) 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 Service Provider in accordance with the written notification terms of this Agreement.

IN WITNESS WHEREOF, the parties do hereby enter and execute this Agreement effective June 22, 2023, the date of the Authority’s adopting resolution authorizing its execution.

ERIE COUNTY WATER AUTHORITY

By _____
Jerome D. Schad, Chair

O’CONNELL & ASSOCIATES, INC.

By _____
Jean K. O’Connell, President

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of June, in the year 2023, 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 Board of Commissioners for the Erie County Water Authority described in the above instrument; and that he signed his name thereto by order of the Board of Commissioners.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the ____ day of June, in the year 2023, before me personally came Jean K. O’Connell, to me known, who, being by me duly sworn, did depose and say that she resides in _____, New York, that she is the President of the Corporation described in the above instrument; and that she signed her name thereto by order of the Board of Directors 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.

BID NOT ACCEPTABLE WITHOUT FOLLOWING CERTIFICATION:

Affirmed under penalty of perjury this 13th day April, 2023

FIRM NAME J. O'Connell & Associates

ADDRESS 10646 Main St.

Clarence NY ZIP 14031

AUTHORIZED SIGNATURE Jean K. O'Connell

TYPED NAME OF AUTHORIZED SIGNATURE JEAN K. O'CONNELL

TITLE President TELEPHONE No. (716) 759-8580

ext 211

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.

J.O'Connell & Associates, Inc.
(Name of Individual, Partnership or Corporation)

By Jean K O'Connell
(Person authorized to sign)

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.

J. O'Connell & Associates Inc.
(Name of Individual, Partnership or Corporation)

By Jean K. O'Connell
(Person authorized to sign)

FORMS A, B, and C

SECTION 139 OF STATE FINANCE LAW

Pursuant to State Finance Law §§139-j and 139-k, this Invitation to Bid includes and imposes certain restrictions on communications between a Governmental Entity and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers, through final award and approval of the Procurement Contract by the Governmental Entity. The designated contact is identified in the Notice to Bidders. Governmental Entity employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. 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.

Form A - Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law.

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

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

Contract Termination Provision.

FORM A

**Offerer's Affirmation of Understanding of and Agreement Pursuant to State
Finance Law §139-j(3) and §139-j(6)(b)**

Instructions:

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible contacts 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 Government Entity relative to permissible contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

By: Jean K. O'Connell Date: 4-13-23

Name: JEAN K. O'CONNELL

Title: PRESIDENT

Contractor Name: J. O'CONNELL & ASSOCIATES, INC

Contractor Address: 10646 MAID ST.

CLARENCE, N.Y. 14031

FORM B

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

Instructions:

A Governmental Entity must obtain the required Certification that the information 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 the Certification and provide it to the procuring Governmental Entity. It is required that the Certification 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 Governmental Entity with respect to State Finance Law §139-k is complete, true, and accurate.

By: Jean K. O'Connell Date: 4-13-23

Name: JEAN K. O'CONNELL

Title: PRESIDENT

Contractor Name: J. O'CONNELL & ASSOCIATES, INC

Contractor Address: 10646 Main ST. CLARKS, NY 14031

FORM C

Offerer's Disclosure of Prior Non-Responsibility Determinations

Background:

New York State Finance Law §139-k(2) obligates a Governmental Entity 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-k(1). State Finance Law §139-j sets 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 within the necessary timeframe. See State Finance Law §139-j(10)(b) and §139-k(3).

Instructions:

A Governmental Entity 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 Governmental Entity 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:

J. O'CONNELL & ASSOCIATES, INC.

Address: 10646 MAIN ST.

CLARENCE, NY 14031

Name and Title of Person Submitting this Form: JEAN K. O'CONNELL

PRESIDENT

Contract Procurement Number: PROJECT # 20230004B

Date: 4.13.23

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)

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-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 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

The 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 Governmental Entity may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this contract.

**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: Jean K. O'Connell Date: 7-13-23

Name: JEAN K. O'CONNELL

Title: PRESIDENT

Offerer Name: J. O'CONNELL & ASSOCIATES, INC.

Offerer Address: 10646 MAIN ST. CLARENCE, N.Y. 14031

APPENDIX B
INSURANCE REQUIREMENTS

**INSURANCE REQUIREMENTS
GRANT CONSULTING SERVICES
PROJECT 202300135**

The following minimum insurance requirements shall apply to vendors providing services to the Erie County Water Authority (the “Authority”). If a service or project, in the opinion of the Authority, represents an unusual or exceptional risk, the Authority may establish additional insurance requirements for that service or project. 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. These requirements include but are not limited to the minimum insurance requirements.

Insurance Requirements:

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

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

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

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

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