



ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

February 12th 2024

To: Terrence D. McCracken, Secretary to the Authority

From: Dave W. Aubertine, Director of Cybersecurity and IT *DWA*

Subject: Contract CONT-PS-001
POWER SYSTEM MODERNIZATION
ECWA Project No. 202300229/202400031

The IT Department Published an RFP on December 8, 2023 requesting bids for IBM iSeries/Power system modernization software. The Bid was sent to the following vendors:

- LANSA
- Rocket Software
- RJS/Fortra Software
- Fresche Solutions
- Profound Logic

On Thursday January 11th, 2024, the Authority received two (2) bids for the above referenced contract. The bids were reviewed, and software evaluations including demonstrations were conducted. The demonstrations included Sr. stakeholders within the authority as well as a team of engineers from IT. After reviewing for adherence to technical requirements and the ability to meet the ongoing needs of the Authority, the most acceptable bid was from Profound Software. They have demonstrated a good understanding of the scope and requirements for this contract.

The initial estimate from IT for the contract, which includes hardware and professional services for installation and migration, was \$100,000.00. The bid submitted by Profound Software is \$92,811.60 for 3 years including all licensing, training, and annual fees. This RFP 202300229 will be continued as project 202400031. The bid submitted from Fresche ranged from \$119,244.98-184,817.04 depending on licensing options, both of which exceed the budgeted amount.

We, therefore, recommend the award and execution of the above-referenced contract to Profound Software in the amount of \$92,811.60.

Budget Information:

DWA:dwa
Attachment cc:
C. Eaton
J. Tomaka
L.Kowalski
L.Lester,
T.McCracken
M.Carney

Unit: 8525

Capital Item 101682 POWER SYSTEM MODERNIZATION

\$100,000

DWA:dwa

Attachment cc:

C. Eaton

J. Tomaka

L.Kowalski

L.Lester,

T.McCraken

M.Carney

I:\Agenda\2024\2024-02-22\2024-02-02 PN CONT-PS-001 IBM Modernization Software\2024-02-12

Memo IBM Modernization RFP .docx

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

Contract: CONT-PS-001	Project No.: 202300229/202400031
Project Description: <u>Modernization Software/improved user interface for IBM iSeries/Power system</u>	

Item Description:



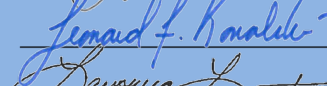




<input checked="" type="checkbox"/> Agreement	<input type="checkbox"/> Professional Service Contract	<input type="checkbox"/> Amendment	<input type="checkbox"/> Change Order
<input type="checkbox"/> BCD	<input type="checkbox"/> NYSDOT Agreement	<input checked="" type="checkbox"/> Contract Documents	<input type="checkbox"/> Addendum
<input checked="" 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 checked="" type="checkbox"/> Board Authorization to Execute	<input type="checkbox"/> Legal Approval
<input checked="" 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 checked="" type="checkbox"/> Other (if Applicable)		Date: <u>02/08/24</u>
<input checked="" type="checkbox"/> Chief Operating Officer		Date: <u>02/08/2024</u>
<input checked="" type="checkbox"/> Executive Engineer		Date: <u>2/12/2024</u>
<input checked="" type="checkbox"/> Director of Administration		Date: <u>02/12/2024</u>
<input checked="" type="checkbox"/> Risk Manager		Date: <u>2/12/2024</u>
<input checked="" type="checkbox"/> Chief Financial Officer		Date: <u>02/09/2024</u>
<input checked="" type="checkbox"/> Legal		Date: <u>2/12/2024</u>

APPROVED FOR BOARD RESOLUTION:

<input type="checkbox"/> Secretary to the Authority		Date: <u>2/12/2024</u>
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Remarks: Based upon review of submissions IT is recommending the bid is awarded to Profound Software along with execution of the agreement.

Resolution Date: _____ **Item No:** _____



Erie County Water Authority - Profound UI Software License, Maintenance and Training

Erie County Water Authority

3030 Union Rd #350
New York, NY 14203
United States

Jerome Schad

jschad@ecwa.org

Dave Aubertine

daubertine@ecwa.org
716-685-8210

Reference: 20230912-190147011

Quote created: September 12, 2023

Quote expires: March 31, 2024

Profound Logic Software, Inc.

396 Congress Park Drive

Dayton, OH 45459
United States

Prepared by: Johnny Fitisemanu

Futurization Consultant
jfitisemanu@profoundlogic.com
+19492789367

Total **\$92,811.60**

PRODUCTS & SERVICES	QUANTITY	PRICE
REQUIRED - Profound UI Development Software License	1	\$39,375.00
REQUIRED - Standard Annual Maintenance for Profound UI Development License	3	\$29,532.00 / year for 1 year
REQUIRED - Profound UI Deployment Software License (Backup)	1	\$7,350.00 after 70% discount
REQUIRED - Standard Annual Maintenance for Profound UI Development License (Backup)	3	\$8,859.60 / year after 70% discount for 1 year
REQUIRED - Profound UI Software Training	1	\$7,500.00

PRODUCTS & SERVICES	QUANTITY	PRICE
OPTIONAL - Hourly Rate for Out of Scope Work	1	\$195.00
SUMMARY		
Annual subtotal		\$38,391.60 after \$20,672.40 discount
One-time subtotal		\$54,420.00 after \$17,150.00 discount

Total	\$92,811.60
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Comments

Hello Dave,

Upon reviewing your RFP for IBM modernization, I am confident that our solutions meet all the stated technical requirements and I am pleased to present the following proposal.

Additional notes:

- The software license is a one-time fee, licensed by partition and based on processor group, and is a perpetual license, which allows unlimited users.
- 1 year of software annual maintenance is due at the same time as the software license fee - see below descriptions for what is included in your annual maintenance.
- Beginning year 2, you're only paying for the software annual maintenance, **which is optional and can be declined on your renewal date at your own discretion.**
- A 10% discount is available for prepayment of 3 years of annual maintenance.
- **The training we provide is for your development staff only, we do not provide training for end users.**
- We offer professional services and the hourly rate for any additional work is \$195 per hour.

Once the software is downloaded and installed (typically takes less than 10 minutes) you can login and begin using the software. Once your training has been scheduled and completed, your development team will be able to convert your green screens to a web based interface and begin adding new features that you didn't have before, that will give your users new functionality, increase operational efficiencies, increase user adoption and learning, meet growing business demands, inspire new development, leverage and extend your investment into your IBMi.

Purchase terms

Net 30. All permanent license keys will be delivered upon receipt of payment. Annual maintenance increases will not exceed 5% in any given year.

Signature

Signature

Date

Printed name

Countersignature

Countersignature

Date

Printed name

Endorsement

<i>Policy Period</i>	APRIL 7, 2023 TO APRIL 7, 2024
<i>Effective Date</i>	APRIL 7, 2023
<i>Policy Number</i>	3605-31-62 WUC
<i>Insured</i>	PROFOUND LOGIC SOFTWARE INC
<i>Name of Company</i>	FEDERAL INSURANCE COMPANY
<i>Date Issued</i>	JANUARY 18, 2023

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under Who Is An Insured, the following provision is added.

Who Is An Insured**Additional Insured -
Scheduled Person
Or Organization**

Persons or organizations shown in the Schedule are **insureds**; but they are **insureds** only if you are obligated pursuant to a contract or agreement to provide them with such insurance as is afforded by this policy.

However, the person or organization is an **insured** only:

- if and then only to the extent the person or organization is described in the Schedule;
- to the extent such contract or agreement requires the person or organization to be afforded status as an **insured**;
- for activities that did not occur, in whole or in part, before the execution of the contract or agreement; and
- with respect to damages, loss, cost or expense for injury or damage to which this insurance applies.

No person or organization is an **insured** under this provision:

- that is more specifically identified under any other provision of the Who Is An Insured section (regardless of any limitation applicable thereto).
- with respect to any assumption of liability (of another person or organization) by them in a contract or agreement. This limitation does not apply to the liability for damages, loss, cost or expense for injury or damage, to which this insurance applies, that the person or organization would have in the absence of such contract or agreement.

Liability Endorsement
(continued)

Under Conditions, the following provision is added to the condition titled Other Insurance.

Conditions

**Other Insurance –
Primary, Noncontributory
Insurance – Scheduled
Person Or Organization**

If you are obligated, pursuant to a contract or agreement, to provide the person or organization shown in the Schedule with primary insurance such as is afforded by this policy, then in such case this insurance is primary and we will not seek contribution from insurance available to such person or organization.

Schedule

Persons or organizations that you are obligated, pursuant to a contract or agreement, to provide with such insurance as is afforded by this policy.

All other terms and conditions remain unchanged.

Authorized Representative





Profound Software License Agreement

This Software License Agreement (hereinafter "Agreement") is a legal agreement between you and Profound Logic Software, Inc. ("Licensor")

1. Definitions

1.1 "Software" shall mean all computer programs, data files, skins, templates, and documentation identified in the accompanying documentation.

2. Intellectual Property

2.1 OWNERSHIP. You acknowledge and agree that the Software, including the intellectual property rights, moral rights and goodwill therein and any derivative works thereof, is owned by and shall remain the property of Licensor and is protected under copyright, patent, and trademark laws and other domestic and international laws.

2.2 TRADEMARKS. Licensor has numerous trademarks and service marks (collectively, "Trademarks") including, without limitation, PROFOUND LOGIC SOFTWARE, the profound logic software logo, MODERNIZATION MADE EASY, INNOVATIVE SYSTEM i SOFTWARE, INNOVATIVE SYSTEM i SOLUTIONS, THE SMARTER CHOICE FOR WEB DEVELOPMENT. No right, license or interest in or to Trademarks is granted to You under this Agreement.

2.3 OUTPUT: The Software may be used to create computer source code. Licensor claims no ownership in source code created using the Software in accordance with this Agreement. Notwithstanding the foregoing, no right, title, or interest is granted with respect to Licensor's templates except to the extent the templates are incorporated into such source code.

3. ACTIVATION

3.1 Upon Acceptance, you will be issued an evaluation license key allowing You to use an evaluation version of the Software as permitted under the Evaluation License Grant as set-forth in Article 4. The Evaluation License Grant shall remain in effect for thirty (30) days or as otherwise mutually agreed. Upon completion of the Activation, you are granted rights under the Commercial License Grant to use the fully functional version of the Software as set forth in Article 5.

3.2 The Software may be downloaded free of charge but will not be fully functional until Activation is completed. "Activation" refers to the process of activating the



Software so that it is fully functional for use under the Commercial License Grant under Article 5. In consideration for the Commercial License Grant, you shall pay Licensor the applicable payment during Activation at the then-current rates. Upon receipt of payment, Licensor shall issue You a custom license key allowing You to use the Software as permitted under the Commercial License Grant. The Commercial License Grant shall be effective upon Activation and shall remain in effect until this Agreement is terminated pursuant to Section 9.2.

3.3 Licensor reserves the right to increase fees, or to institute new fees at any time, upon reasonable notice. You shall be responsible for all taxes, if any, arising from payment of fees.

4. EVALUATION LICENSE GRANT. Licensor grants to You a limited non-exclusive, non-transferable license, with no right to sublicense, to load, copy and use the Software only as specified in this Article 4. The Software is being licensed, not sold. You may install one copy of the Software onto one computer server (the IBM iSeries, IBM AS/400, IBM i5, or IBM System i computer server) for use by you, your employees, and authorized independent contractors so long as the computer server is located at Your business premises or are otherwise under Your direct control. You may use the Software solely for evaluation purposes. This Evaluation License Grant is for machine-readable code only and, except for certain templates that may be provided in source code format, does not include source code.

5. COMMERCIAL LICENSE GRANT. Contingent upon Activation, Licensor grants to You a limited non-exclusive, non-transferable license, with no right to sublicense, to load, copy and use the Software only as specified in this Article 5. The Software is being licensed, not sold. You may install one copy of the Software onto one computer server (the IBM iSeries, IBM AS/400, IBM i5, or IBM System i computer server) for use by You, Your employees, and authorized independent contractors so long as the computer server and computer workstations are located at Your business premises or are otherwise under Your direct control. You may use the Software solely for internal business purposes. This Commercial License Grant is for machine-readable code only and, except for certain templates that may be provided in source code format, does not include source code.

6. Restrictions

6.1 All copies of the Software shall include Licensor's owners' copyright, trademark, patent, and other proprietary notices as appear in the originals. You shall maintain accurate records regarding upon which computer server the Software is loaded, the users who have access to that computer server, and, as applicable, all permitted copies of the Software.

6.2 You may not rent, lease, sublicense or lend the Software or its rights under the license; circumvent a technological measure that effectively controls, or is intended to



control, access to the Software; or alter, remove or obscure any proprietary legend, copyright or trademark notice contained in or on the Software. You agree to use reasonable efforts to protect the Software from unauthorized use, reproduction, distribution or publication.

6.3 REVERSE ENGINEERING. You may not reverse engineer, reverse assemble, decompile or disassemble the Software. You further acknowledge and agree not to modify, translate or create derivative works based on the Software.

6.4 SECURITY MEASURES. Authorized operation and use of the Software may be subject to hardware and/or software security measures. Tampering, alteration or removal of such measures may prevent the proper operation of the Software. The Software may include programming devices which without warning prevent the operation of the Software after the duration of a license expires.

7. Confidentiality

7.1 CONFIDENTIAL INFORMATION. In the course of carrying out this Agreement, You may be exposed to certain proprietary technologies, processes, software, trade secrets, data and/or know-how ("Confidential Information") of Licensor. Notwithstanding the foregoing, in no event shall Confidential Information include any information which (i) was publicly known or made generally available in the public domain prior to the time of exposure; (ii) becomes publicly known or made generally available to the public through no fault of You; (iii) is in Your possession, at the time of exposure without confidentiality restrictions; or (iv) is independently developed by You as evidenced by a contemporaneous writing.

7.2 LIMITED USE. You agree not to use any Confidential Information for any purpose except in accordance with this Agreement. You agree not to disclose any Confidential Information to third parties, except to Your employees and authorized independent contractors for whom it is appropriate to disclose and permit the use of such Confidential Information for purposes of this Agreement.

7.3 MAINTENANCE OF CONFIDENTIALITY. You shall take all commercially reasonable measures to protect the secrecy of and avoid unauthorized disclosure and unauthorized use of the Confidential Information. You shall reproduce any proprietary rights notices on any approved copies of Confidential Information in the same manner in which such notices were set forth in or on the original.

8. Limited Warranty; Warranty Disclaimer; Limitation of Liability

8.1 Each party warrants that it is duly organized and is duly authorized to execute and deliver this Agreement and to perform its respective obligations hereunder.



8.2 EXCEPT FOR THE LIMITED WARRANTY IN SECTION 8.1, LICENSOR PROVIDES THE SOFTWARE "AS-IS." LICENSOR MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. LICENSOR EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND INFORMATIONAL CONTENT. THERE IS NO WARRANTY THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR VIRUS-FREE, OR THAT THE SOFTWARE WILL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE OR QUALITY. YOU ASSUME THE ENTIRE RISK OF SELECTION, INSTALLATION, AND USE OF THE SOFTWARE.

8.3 IN NO EVENT AND UNDER NO LEGAL THEORY, INCLUDING WITHOUT LIMITATION, TORT, CONTRACT, OR PRODUCTS LIABILITY, SHALL LICENSOR, ITS LICENSORS, ITS AFFILIATES, OR ITS REPRESENTATIVES BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER MALFUNCTION, OR ANY OTHER KIND OF COMMERCIAL DAMAGE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF LICENSOR, ITS LICENSORS, ITS AFFILIATES, OR ITS REPRESENTATIVES EXCEED THE TOTAL FEES PAID UNDER THIS AGREEMENT DURING THE PRECEDING TWELVE (12) MONTH PERIOD.

9. TERM AND TERMINATION

9.1 TERM. The term of this Agreement shall commence upon Acceptance and remain in effect until terminated pursuant to Section 9.2.

9.2 TERMINATION. This Agreement may be terminated as follows.

9.2.1 Licensor may terminate this Agreement immediately and without notice after the expiration of the Evaluation License Grant hereunder unless the Commercial License Grant is purchased prior to such time under terms mutually agreed to by the parties;

9.2.2 Licensor may terminate this Agreement immediately and without notice upon breach of any material provision of this Agreement by You; or

9.2.3 The parties may jointly terminate this Agreement by mutual written agreement.

9.3 EFFECT OF TERMINATION. Upon termination the Software may be deactivated and rendered inoperable, without prior warning to You. You shall return all copies of the Software to Licensor and/or permanently delete any and all remnants of the Software on



all computers and computer networks. Articles 2, 7, 8 and Sections 6.2, 6.3, 6.4, 9.3, 10.2, and 10.4 shall survive this Agreement;

10. MISCELLANEOUS.

10.1 **TRANSFERABILITY.** Except as may be otherwise agreed to in writing, neither party may assign this Agreement. Notwithstanding the foregoing, either party may assign this Agreement as part of a corporate reorganization, consolidation, merger or sale of substantially all assets or all stock of the assigning party's company, provided that the assigning party shall provide written notice of such assignment to the other party. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties.

10.2 **NOTICES.** All notices to Licensor under this Agreement must be in writing to Profound Logic Software, 562 Congress Park Drive, Dayton, OH 45459 through (i) personal service, or (ii) via certified mail, return receipt requested. All notices to You under this Agreement must be in writing to the contact person on Your account through (i.) personal service, or (ii.) via certified mail, return receipt requested. Notice shall be effective upon personal service or delivery of the certified mail, as the case may be.

10.3 **GOVERNING LAW.** This Agreement shall be construed and governed in accordance with the substantive laws of the State of Ohio, and any claim related to this Agreement or the Software shall be brought in a competent court in Cincinnati, Ohio. You hereby waive any defense that You are not subject to the jurisdiction of such courts, that any such action is brought in an inconvenient forum, or that venue of the action is improper.

10.4 **AUDIT.** From time to time, Licensor may hire a disinterested third party to audit and inspect Your books, records, computers, and computer networks for compliance with this Agreement. All such audits shall be during normal business hours and on dates mutually agreed, and You agree to cooperate in such audits and inspections. Licensor agrees to cover all audit costs.

10.5 **UNENFORCEABILITY.** It is intended that this Agreement shall not violate any applicable law. If, at any time or for any reason, any provision becomes unenforceable or invalid, such provisions shall be amended to bring them into legal compliance and to preserve to the maximum extent possible the intent of the parties, and the remaining provisions shall remain unaffected and continue with the same effect as if such unenforceable or invalid provision had not have been inserted herein.

10.6 **NO WAIVER.** Failure of either party to exercise its rights under this Agreement shall not be construed as a waiver of that party's rights, including without limitation the right to seek remedies arising from past, present or future breach by the other party.



10.7 HEADINGS. The headings and captions in this Agreement are for convenience purposes only and shall not be used to construe the terms of this Agreement.

10.8 ENTIRE AGREEMENT. This Agreement contains the entire understanding between the parties with respect to the matters contained herein. This Agreement supersedes all prior agreements between the parties, whether oral or written, express or implied, as to the matters contained herein. No waiver, consent, modification, amendment or change of the terms of this Agreement shall be binding unless in writing and signed by the parties.

10.9 EXPORT. You shall not export or re-export directly or indirectly (including by remote access) any part of the Software outside of the jurisdiction in which You obtained it without the appropriate United States or foreign government licenses.

Company: _____

Profound Logic Software Inc.

Signature: _____

Signature:

Name: _____

Name:

Title: _____

Title:

Date: _____

Date:

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 3rd day January, 20 24

TERMS Due upon receipt DELIVERY DATE AT DESTINATION To Be Determined

FIRM NAME Profound Logic Software, Inc.

ADDRESS 1133 Camelback St. #12559

Newport Beach ZIP 92658

AUTHORIZED SIGNATURE 

TYPED NAME OF AUTHORIZED SIGNATURE Michael Killian

TITLE Sr. VP of sales TELEPHONE No. (937) 439-7925 ext. 753

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.

Profound Logic Software, Inc.

(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.

Profound Logic Software, Inc.

(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 Requirement 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

Offeror'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 Offeror submits its proposal.

Offeror 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: Jan-03-2024

Name: Michael Killian

Title: Sr. VP of Sales

Contractor Name: Profound Logic Software, Inc.

Contractor Address: 1133 Camelback St. #12559 Newport Beach, CA 92658

FORM B


**Offeror'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 Offeror 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 Offeror submits its proposal.

Offeror 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: Jan-03-2024

Name: Michael Killian

Title: Sr. VP of Sales

Contractor Name: Profound Logic Software, Inc.

Contractor Address: 1133 Camelback St. #12559 Newport Beach, CA 92658

FORM C**Offeror'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 Offeror 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 "Offeror" 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 Offeror 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 Offeror 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 Offeror is necessary to protect public property or public health safety, and the Offeror 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 Offeror submits its proposal.

FORM C (Continued)

Offeror's Disclosure of Prior Non-Responsibility Determinations

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

Profound Logic Software, Inc.

Address: 1133 Camelback St. #12559 Newport Beach CA 92658

Name and Title of Person Submitting this Form: Michael Killian

Sr. VP of Sales

Contract Procurement Number:

Date: Jan-03-2024

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)

Offeror 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:  _____
Signature

Date: Jan-03-2024

Name: Michael Killian

Title: Sr. VP of Sales

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(1).

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

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 Offeror 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 Offeror 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 Offeror.

Offeror Statement:

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

- *Offeror is aware of its obligations under the Human Rights Law (Executive Law §290, et. seq.*
- *Offeror 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.*
- *Offeror 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: Jan-03-2024

Name: Michael Killian

Title: Sr. VP of Sales

Offeror Name: Profound Logic Software, Inc.

Offeror Address: 1133 Camelback St. #12559 Newport Beach, CA 92658