

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

**Contract:** \_\_\_\_\_ **Project No.:** 202100014  
**Project Description:** Van de Water Raw Water and High Service Pumping System Improvements

**Item Description:**

Agreement     Professional Service Contract     Amendment     Change Order  
 BCD     NYSDOT Agreement     Contract Documents     Addendum  
 Recommendation for Award of Contract     Recommendation to Reject Bids  
 Request for Proposals  
 Other \_\_\_\_\_

**Action Requested:**

Board Authorization to Execute     Legal Approval  
 Board Authorization to Award     Execution by the Chairman  
 Board Authorization to Advertise for Bids     Execution by the Secretary to the Authority  
 Board Authorization to Solicit Request for Proposals  
 Other \_\_\_\_\_

**Approvals Needed:**

**APPROVED AS TO CONTENT:**

<input checked="" type="checkbox"/> Sr. Distribution Engineer	<u><i>Bill Mc...</i></u>	Date: <u>12/7/2020</u>
<input checked="" type="checkbox"/> Chief Operating Officer	<u><i>Russell J. Stoll</i></u>	Date: <u>12/8/2020</u>
<input checked="" type="checkbox"/> Executive Engineer	<u><i>Jeanne F. Kondelik</i></u>	Date: <u>12/09/2020</u>
<input checked="" type="checkbox"/> Director of Administration	<u><i>Levonja L...</i></u>	Date: <u>12/9/2020</u>
<input checked="" type="checkbox"/> Risk Manager	<u><i>Molly G. Musarra</i></u>	Date: <u>12/08/2020</u>
<input checked="" type="checkbox"/> Chief Financial Officer	<u><i>Karen A. Pendergast</i></u>	Date: <u>12/07/2020</u>
<input checked="" type="checkbox"/> Legal	<u><i>Margaret A. Murphy</i></u>	Date: <u>12/9/2020</u>

**APPROVED FOR BOARD RESOLUTION:**

<input checked="" type="checkbox"/> Secretary to the Authority	<u><i>TCD</i></u>	Date: <u>12/09/20</u>
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**Remarks:** \_\_\_\_\_

**Resolution Date:** \_\_\_\_\_ **Item No:** \_\_\_\_\_



**ERIE COUNTY WATER AUTHORITY**  
**INTEROFFICE MEMORANDUM**

December 7, 2020

To: Terrence D. McCracken, Secretary to the Authority

From: William W. Wheeler, Distribution Engineer

A handwritten signature in blue ink, consisting of stylized initials "WW", is enclosed in a blue circular scribble.

Subject: Request for Proposals  
Van de Water Raw Water and High Service  
Pumping System Improvements  
ECWA Project No. 202100014

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Attached is a copy of the Request for Proposals for consulting engineering services for the pumping system improvements to the Van de Water Raw Water and High Service Pumping systems.

The 2021 Capital Budget (Unit 2515 Engr/Const Van de Water, Item 101587, Van de Water Pumping Improvements) includes funds for the design of pumping system improvements of the Van de Water Raw Water and High Service Pumps. The basis of design is scheduled for 2021 with the design to be completed under a separate project following approval of the basis of design. Construction is anticipated to begin 2022.

The RFP includes the development of a Basis of Design Report. The Van de Water Water Treatment Plant (VDW WTP) is a conventional water treatment plant with an overall rated capacity of 49.5 million gallons per day (MGD), located at 3750 River Road in Tonawanda. The VDW treatment plant receives flows from the VDW Raw Water Pumping Station (VDW RWPS) located at 3300 River Road, approximately 1.5 miles south of the water treatment plant. This project is to evaluate the pumping systems existing conditions at the overall rated capacity of 49.5 MGD, and the future conditions at an overall rated capacity of 82.5 MGD.

The project directly supports ECWA's Comprehensive Strategic Plan Initiatives 1: Resiliency of ECWA Infrastructure, 3: Expand ECWA's Regional Presence, 5: Enhance Customer Service, and Assets and 7: Emergency Preparedness.

I recommend that the Request for Proposals be issued to the following consulting engineers:

Arcadis  
Barton & Loguidice  
Brown & Caldwell  
GHD  
Hazen & Sawyer

To: Terrence D. McCracken  
Secretary to the Authority

- 2 -

December 7, 2020

In addition, the RFP will also be posted to the ECWA website.

The Engineering Department is requesting a Resolution to Solicit the Request for Proposals. The contact person for the Restricted Period for this RFP will be Michael J. Quinn, Senior Distribution Engineer.

The Request for Proposals and Authorization Form will need prior approval by the Legal Department, Chief Financial Officer, and Risk Manager prior to being sent to the Board for consideration.

WWW:jmf

Attachments

cc: R.Stoll

L.Kowalski

M.Quinn

M.Wymer

D.Patton

L.Lester

W. Wheeler

VAWA-391-2101-X-16

**REQUEST FOR PROPOSALS  
FOR CONSULTING ENGINEERING SERVICES  
VAN DE WATER RAW WATER AND HIGH SERVICE  
PUMPING SYSTEM IMPROVEMENTS**

**ECWA Project No. 202100014**

**General**

The Erie County Water Authority (Authority) is seeking Professional Services Proposals for consulting engineering services for the improvements to the existing Raw Water and High Service pumping systems, at the Van de Water Raw Water Pump Station and Water Treatment Plant.

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

The Request for Proposal (RFP) is being conducted pursuant to the New York State Finance Law §§139-j and 139-k and the Erie County Water Authority's Procurement Disclosure Policy. The Procurement Disclosure Policy is available by accessing the Erie County Water Authority's web site – <http://www.ecwa.org>, under the caption "Doing Business with ECWA".

**Project Description**

The project consists of engineering services for the evaluation of required modifications and improvements to the existing Raw Water and High Service pumping system at the Van de Water Raw Water Pump Station and Water Treatment Plant. The work will be performed through a single contract.

The Van de Water Water Treatment Plant (VDW WTP) is a conventional water treatment plant with an overall rated capacity of 49.5 million gallons per day (MGD), located at 3750 River Road in Tonawanda. The VDW treatment plant receives flows from the VDW Raw Water Pumping Station (VDW RWPS) located at 3300 River Road, approximately 1.5 miles south of the water treatment plant. This project is to evaluate the pumping systems existing conditions at the overall rated capacity of 49.5 MGD, and the future conditions at an overall rated capacity of 82.5 MGD.

**A. Project A – Raw Water Pumping System**

The VDW RWPS houses various equipment, including pretreatment chemical feed system(s), influent screening and pumping systems. The VDW RWPS receives flows from the east branch of the Niagara River, through an intake structure and approximately 1,500-feet of an 84-inch concrete intake conduit leading into the pumping station. The water continues to flow through one of two traveling screens then into the pumping station's wet well.

The VDW RWPS currently has four (4) constant speed vertical turbine pumps, including two (2) pumps with a rated capacity of 23 MGD and two (2) pumps with a rated capacity of 19 MGD, both with total dynamic discharge heads of approximately 100-feet. The 23 MGD pumps are equipped with the original 480V, 450 HP reduced voltage (RVAT) starters manufactured by Eaton Electric. The 19 MGD rated pumps were upgraded, in 2008, with 480V, 400 HP variable frequency drives (VFD), manufactured by Siemens (Robicon), to provide additional flexibility in accommodating lower and varying flows. The four (4) pumps discharge into a common 54-inch raw water header which reduces to a 48-inch transmission main just outside the RWPS that continues to the water treatment plant. Note, the original station's construction included space and piping connections for two (2) additional pumps to be installed in the future that remain unused.

The pumping system was originally designed based on population and water demands that were projected in 1972. Since the plant's construction the RWPS has been operated well below the pump's rated capacity, most specifically the pump's design flow. The pump station at a low flow condition of 14-MGD, currently operates one 19-MGD pump at 60% speed to convey the flow to the WTP at a raw water main pressure of approximately 4.1 psi. The larger 23-MGD constant speed pumps do NOT operate 90% of the time due to their designed operating point and inefficiencies at the lower flows. Due to the pump(s) capacity issues, the 19-MGD variable speed pumps operate approximately 90% of the time due to the typically lower demands of the system.

The Authority would like to evaluate alternatives for the rehabilitation, and/or replacement of the existing pumps, motors and drives, in addition to the replacement of the larger pump's constant speed/soft-start drives with variable frequency drives. The project shall evaluate the performance and condition of the existing pumps, motors and drives to determine alternatives for the rehabilitation, or replacement of the equipment based on the existing rated capacity of 49.5 MGD and future capacity of 82.5 MGD. The project will also evaluate the building's existing utilities and available space to accommodate the two (2) additional VFDs for the larger pumps.

Currently, the Authority is evaluating a capital improvement project that will include the construction of a second, parallel 48-inch raw water transmission main from the RWPS to the WTP. The additional raw water transmission main shall be considered completed and ready for parallel use in the evaluation of alternative for the future 82.5 MGD RWPS pumping capacity.

## **B. Project B – High Service Pumps**

The VDW WTP is a conventional water treatment plant with a rated capacity of 49.5 million gallons per day (MGD) and was constructed and placed into service in July 1980.

The WTP was constructed with four (4) vertical turbine high service (a.k.a. delivered water) pumps that are designed to convey flows to the Ball Pump Station's two (2) 4.2-MG tanks and Veteran's Park 4-MG tank, with provisions to also convey flows to the Colvin 1.25-MG storage tank.

The existing high service/delivered water pumping system includes two (2) 20-MGD constant speed pumps and two (2) 15-MGD variable speed pumps, all with the capacity at a total dynamic discharge head of approximately 200-feet. The 20-MGD pumps are 3-stage, constant speed pumps and operate at a maximum speed of 900-rpm. The 20-MGD pumps are equipped with 4,160V/1,250 HP motors and Across-the-Line start contactors, manufactured by Westinghouse.

The 15-MGD pumps are 2-stage, variable speed and operate at a maximum speed of 1,200 rpm. The 15-MGD pumps are equipped with 4,160V/900HP motors and variable speed drives (with bypass), manufactured by Toshiba.

As with the RWPS pumps, the high service/delivered water pumps have also been originally designed based on population and water demands that were projected back in 1972. The high service pumps were designed and constructed based on both “initial” and “future” demand projections, in that the pumps were all provided with separate, additional pump bowl assemblies and impellers to be installed in the future. Additionally, the pumps were equipped with the larger motors and drives as required for the additional stage (i.e. bowl assembly and impeller) installation to meet the future increases in flow and discharge head requirements of the system.

Since the plant’s construction the high service pumps have been operating below the pump’s rated capacity of flow and discharge head due to lower flows and distribution system hydraulic conditions. The variable speed pumps (i.e. Pump No. 4 and Pump No. 5) are operated approximately 95% of the time, with flows ranging between 13.77 – 21.7 MGD, due to the issues of the larger pump’s capacity and system demands. This typical wide range of flows, results with the pump operating inefficiently and mostly outside of their specific range of “best efficiency point”.

The Authority would like to evaluate alternatives for the rehabilitation, or replacement of the existing pumps, motors and drives, in addition to the replacement of the larger pump’s constant speed/soft-start drives with variable frequency drives. The project shall evaluate the performance and condition of the existing pumps, motors and drives to determine alternatives for the rehabilitation, or replacement of the equipment based on the existing rated capacity of 49.5 MGD and future capacity of 82.5 MGD. The project will also evaluate the building’s existing utilities and available space to accommodate the two (2) additional VFDs for the larger pumps.

The Consultant is required to perform a desktop hydraulic analysis for both projects, based on data provided by the Authority, to properly size the pumps.

Drawings of the existing facility will be made available to interested consultants.

### **Scope of Work**

The general scope of work is described in the example Professional Services Contract included as Attachment 1. The methods of payment shall be per the Professional Services Contract.

### **Information Requests**

All questions and requests for information are to be directed to the designated ECWA Contact Person, Michael J. Quinn, PE, Senior Distribution Engineer at 716-685-8203 (email:mquinn@ecwa.org), in accordance with New York State Finance Law §§139-j and 139-k. An optional pre-proposal meeting will be held virtually via video conference (no in-person meeting) on XXXX, 2021 at 10:00 a.m. local time to discuss the project. All prospective bidders that wish to attend the virtual meeting must email above referenced designated ECWA Contact Person by XXXX, 2021. The video conference invitation shall be sent via email on XXXX, 2021.

Individual site inspections can be requested by prospective bidders which will require compliance with the Authority's COVID-19 policies prior to the visit.

### **Proposal Requirements**

Proposals are to be concise, specific and straightforward. All pertinent information is to be contained in the proposal. The use of artwork, special covers, and extraneous information in the proposals is discouraged. Proposals are to remain valid for a minimum of 60 days. Each proposal is to include the following:

- Item 1 - Qualifications and related experience, particularly on the type of projects outlined above. Include a minimum of three references for similar work including project name, location, contact person, budget, date of completion and state the relevance to this project.
- Item 2 - Project understanding, technical approach and detailed scope of services. Identify any suggested revisions to and expand upon the detail of the general scope of work as outlined herein.
- Item 3 - Project staffing for all key personnel and subcontractors. Identify the proposed role of all staff proposed for this project. Provide a table of the current and projected workload of each proposed project staff member as it relates to availability to perform the proposed work. Provide the office of each proposed project staff member and the location(s) where work will be performed. Provide resumes of the proposed personnel with listed experience applicable to this project. Indicate personnel role on the projects listed under Item 1 above.
- Item 4 - Qualifications of resident inspector(s) including applicable education, training, experience, and certification.
- Item 5 - Work performed for the Water Authority in 2018, 2019, and 2020.
- Item 6 - Current remaining workload with the Water Authority.
- Item 7 - Completed Section 139 of State Finance Law per Attachment 1, Appendix C (pp. 40-48).
- Item 8 - Proof of insurance in accordance with Erie County Water Authority Insurance Requirements for Professional Services per Attachment 1, Appendix B.
- Item 9 - Proposed project schedule, showing duration of all tasks from preliminary design through construction completion.
- Item 10 - Fee proposal which is to include a breakdown of engineering fees for each task showing personnel, hours, hourly rates (billing and direct labor), overhead rates, and subcontractor costs for each task. Provide information on direct costs including estimated total direct cost for non-lump sum tasks. Note that the

direct labor multiplier for resident inspection shall be limited to 2.80. All consultants shall include Special Services lump sum cost of \$20,000 for the purposes of this proposal.

Consultant shall utilize their proposed construction duration as the basis for the cost shown below for Resident Inspection. Consultant shall state specifically the number of manhours assumed for onsite Resident Inspection services.

Proposals shall include the following form for comparison purposes:

<b>Project 202100014 – RFP for VAN DE WATER RAW WATER AND HIGH SERVICE PUMPING SYSTEM IMPROVEMENTS</b>	
<b>Basis of Design</b>	\$
<b>Special Services</b>	\$ <b>20,000.00</b>
<b>TOTAL:</b>	\$

**Proposals will be accepted until 4:00 p.m. on XXXXX, 2021.** Five hard copies of the proposal and one digital .pdf file (on a USB flash drive) are to be delivered to Erie County Water Authority, 3030 Union Road, Cheektowaga, NY 14227 to the attention of Mr. Leonard F. Kowalski, PE, Executive Engineer. Proposals received after this time will not be considered and will be returned unopened. All proposals being mailed (including Federal Express, UPS, Priority Mail, etc.) or hand delivered shall be directed to the attention of Mr. Kowalski in a sealed envelope and be clearly marked on the outside of the mailing or hand delivered envelope as follows: “VAN DE WATER RAW WATER AND HIGH SERVICE PUMPING SYSTEM IMPROVEMENTS”

**Evaluation and Selection**

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

The final scope of work and fee for the engineering services for the project will be negotiated with the selected firm(s). Professional Service Contracts will then be executed pending successful negotiation and authorization by the Water Authority Board of Commissioners. All firms submitting a proposal will be notified of the selection results. It is anticipated that the selection process will be completed in XXXX 2021, and that the agreement will be executed in XXXX 2021.



## ATTACHMENT 1

Project No. \_\_\_\_\_

Contract \_\_\_\_\_

### PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES

This Agreement, effective as of \_\_\_\_\_, 2021 (“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

#### **Consultant Name**

Consultant Address

hereinafter referred to as the “Engineer.”

The Authority project, for which engineering services are to be provided under this Agreement, relates to improvements to the existing Raw Water and High Service pumping systems, at the Van de Water Raw Water Pump Station and Water Treatment Plant (the “Project”).

In consideration of the mutual promises set forth in this Agreement, the Authority and the Engineer agrees as follows:

#### **ARTICLE 1 – THE PROJECT**

**1.01** The Project consists of engineering services for the evaluation, design and construction of modifications and improvements to the existing Raw Water and High Service pumping system at the Van de Water Raw Water Pump Station and Treatment Plant. All work will be performed under this Agreement. The Project will involve the following components which will be included in a single set of design documents to be constructed under this Agreement.

A. **Raw Water Pumps:** The Engineer will evaluate new and/or rehabilitated pumps, motors and variable frequency drives, at the existing Van de Water Raw Water Pump Station. The Project includes, but is not limited to, the following:

1. Hydraulics:

- a. Conduct a desktop hydraulic analysis for use in sizing pumps based on Authority provided data, for current capacity of 49.5 MGD and future capacity of 82.5 MGD;

- b. Evaluate alternatives and design Raw Water pumps, motors and drives to meet existing capacity of 49.5 MGD and that is expandable to 82.5 MGD (i.e.: impeller change, added stage, addition of new pumps, etc.);
- c. Evaluate existing raw water transmission main and future secondary transmission main on selected pumps;
- d. Evaluate surge relief conditions for current capacity of 49.5 MGD and future capacity of 82.5 MGD and design recommendations.

2. Mechanical:

- a. Determine required improvements/modifications and/or removal of piping, valves, pump check valves, and associated mechanical equipment for the rehabilitation, or replacement of the four (4) raw water pumps, based on recommended pump sizes determined as result of hydraulic analysis;
- b. Evaluate and provide recommendations for surge relief system improvements, as required.

3. Structural:

- a. Conduct a structural analysis of existing facility to house the additional VFD equipment;
- b. Prepare a preliminary design of new pump pads and pipe supports, as required.

4. Electrical:

- a. Investigate existing electrical service, its ability to meet the service requirements of the new pumping system, and required electrical rework;
- b. Provide a list of new electrical equipment (power, cable, conduit, etc.) associated with the new pumping systems, including new electrical service if necessary.

5. HVAC:

- a. Investigate the required HVAC improvements (gas unit heaters, exhaust fan components, AC for electrical equipment) associated with the new pumping system. The existing HVAC is currently being evaluated by another consulting engineer, LaBella Associates. The Engineer shall collaborate with the current consulting engineer regarding the new

HVAC requirements prior to providing any additional improvements within the BOD.

6. Controls:

- a. Evaluate and provide recommendations for MCC, control logic, and SCADA integration to operate the new pumping system;
- b. Evaluate and provide recommendations for replacement/new instrumentation, including, but not limited to pressure sensors, flow meter, etc.

**B. High Service Pumps:** The Engineer will evaluate new and/or rehabilitated pumps, motors and variable frequency drives, at the existing Van de Water Plant. This project includes, but is not limited to, the following:

1. Hydraulics:

- a. Conduct a desktop hydraulic analysis for use in sizing pumps based on Authority provided data, for current capacity of 49.5 MGD and future capacity of 82.5 MGD;
- b. Evaluate alternatives and design High Service pumps, motors and drives to meet existing capacity of 49.5 MGD and that is expandable to 82.5 MGD (i.e.: impeller change, added stage, addition of new pumps, etc.);
- c. Evaluate existing transmission main and future secondary transmission main on selected pumps;
- d. Evaluate surge relief conditions for current capacity of 49.5 MGD and future capacity of 82.5 MGD and design recommendations.

2. Mechanical:

- a. Determine required improvements/modifications and/or removal of piping, valves, pump check valves, and associated mechanical equipment for the rehabilitation, or replacement of the four (4) raw water pumps, based on recommended pump sizes determined as result of hydraulic analysis;
- b. Evaluate and provide recommendations for surge relief system improvements, as required.

3. Structural:

- a. Conduct a structural analysis of existing facility to house the additional VFD equipment;
- b. Prepare a preliminary design of new pump pads and pipe supports, as required.

4. Electrical:

- a. Investigate existing electrical service, its ability to meet the service requirements of the new pumping system, and required electrical rework;
- b. Provide a list of new electrical equipment (power, cable, conduit, etc.) associated with the new pumping systems, including new electrical service if necessary.

5. HVAC:

- a. Investigate the required HVAC improvements (gas unit heaters, exhaust fan components, AC for electrical equipment) associated with the new pumping system. The existing HVAC is currently being evaluated by another consulting engineer, LaBella Associates. The Engineer shall collaborate with the current consulting engineer regarding the new HVAC requirements prior to providing any additional improvements within the BOD.

6. Controls:

- a. Evaluate and provide recommendations for MCC, control logic, and SCADA integration to operate the new pumping system;
- b. Evaluate and provide recommendations for replacement/new instrumentation, including, but not limited to pressure sensors, flow meters, etc.

## ARTICLE 2 – COMPLIANCE STANDARDS

### 2.01 Standard of Performance

- A. **Standard of Care:** The standard of care for all professional engineering and related services performed or furnished by the Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the time and in the same locality.

- B. **Technical Accuracy:** The Authority shall not be responsible for discovering deficiencies in the technical accuracy of the Engineer's services. The Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Authority-furnished information.

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

- A. The Authority and the Engineer shall comply with all applicable federal, state or local laws and regulations and all applicable Authority policies and procedures.
- B. The Engineer 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 Engineer submitted and signed Forms A, B, and C, a copy of which is attached to, and incorporated in, this Agreement as Appendix C.
- C. By executing this Agreement, the Engineer affirms under the penalties of perjury that there was no collusion in the proposal submitted to the Authority, upon which forms the basis of this Agreement.
- D. The Engineer shall comply with the provisions of State Finance Law § 139-L of the laws of the State of New York. In response to the Authority's Request for Proposals, the Engineer submitted and signed the Sexual Harassment Bidding Certification, a copy of which is attached to, and incorporated in, this Agreement, as Appendix C.
- E. The Engineer 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.
- F. The Authority shall provide the Engineer in writing any and all Authority policies and procedures applicable to the Engineer's performance of services under this Agreement. The Engineer agrees to comply with such policies and procedures to the extent compliance is not inconsistent with professional practice requirements.
- G. If the Engineer, 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 Engineer's employees, representatives and engineers shall comply with the specific applicable security and access rules established by the Authority's Security Officer.

**2.03 Health Screening Questionnaire.** The State of New York (the "State") has declared a state of emergency due to the COVID-19 pandemic. The Authority is currently operating under a

Declaration of Emergency. While the Authority continues to operate under the Declaration of Emergency, the Consultant, its employees, and agents shall comply with all health safety rules and regulations adopted by the State or the Authority including, but not limited to, completing a health screening questionnaire before entering any Authority worksite.

**2.04 Unknown Conditions.** The Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. The Authority agrees not to make resolution of any dispute with the Engineer for payment on any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.

### **ARTICLE 3 – SCOPE OF SERVICE**

**3.01 Kick-off Meeting.** Prior to rendering any professional services, the Engineer will conduct a kickoff meeting with Authority personnel to take place at the same time as the site walkthroughs referenced in § 3.02 of this Agreement.

**3.02 Preliminary Investigation and Due Diligence.** The Engineer shall provide all engineering services necessary to design and install the Project improvements including, but not limited to, the following:

**A. *Basis of Design (“BOD”):***

1. In contemplation of the basis of design, the Engineer shall:
  - a. Review reports, drawings, specifications, and other records furnished by the Authority.
    - i. Conduct project kick-off meeting with Authority personnel and provide associated meeting minutes. Provide meeting minutes to the Authority within 5 business days of the meeting date.
  - b. Verify site conditions each location.
    - i. Complete a site walkthrough and conduct meetings with operating staff to discuss current operational strategies and challenges.
    - ii. Review applicable operating records.
    - iii. Determine the condition of critical assets and document the need for rehabilitation, remaining life, and required replacement.
    - iv. Specifically note the condition of equipment to remain in relation to the improvements described in § 1.01 of this Agreement.

- c. Identify locations of possible hazardous materials (e.g., lead paint, asbestos, etc.) or concerning environmental conditions, based on known/assumed age and type of construction at each location.
  - i. If material sampling and testing becomes necessary, such sampling and testing would be considered a Special Service, subject to the provisions of paragraph B of this Section.
- d. Prepare preliminary design documents for the new pump station. Preliminary design documents should include:
  - i. Final design criteria including but not limited to equipment selection, pump capacity, and hydraulic analysis.
    - (a) The hydraulic analysis will be performed based on information and data provided by the Authority for present and future demand conditions as well as the current and future configuration of the transmission mains.
  - ii. Include preliminary design drawings including:
    - (a) Process Flow Diagram
    - (b) Process and Instrumentation Drawing
    - (c) Plan view of the pump stations
    - (d) Elevations/Sections/Details required to relay the design intent
  - iii. Include an equipment/motor list for all electrical equipment and identify code compliance requirements for electrical components.
  - iv. Include product information including manufacturer's cut sheets, dimensional information, and installation guidance.
  - v. Include a process control narrative for operation and monitoring of both pumping systems.
  - vi. List the required technical specifications for final design.
  - vii. Describe the construction sequencing (maintenance of pump station and treatment plant operations).
  - viii. State an opinion of probable project costs.

- ix. Set forth a Project schedule identifying the duration of final design, bid, and construction phases.
2. The Engineer shall prepare a draft BOD Report, setting the factors considered by the Engineer including, but not limited to, those specifically identified in paragraph A, subparagraph 1 of this section. The Engineer shall supply the Authority with four (4) copies of the draft BOD Report with supporting documentation, along with a digital .pdf file of the draft BOD Report with supporting documentation.
3. The Engineer shall meet with the Authority to review the draft BOD Report and will incorporate all comments into a final version. The Engineer shall supply the Authority with an electronic (pdf) file and three hard copies of the final BOD Report with supporting documentation, along with a digital .pdf file of the final BOD Report with supporting documentation.
4. The Engineer will conduct at least two (2) review meetings with the Authority. Provide meeting minutes to the Authority within ten (10) calendar days.

**B. *Special Services:***

1. The Engineer may employ one or more of the following special services in carrying out the Project, subject to the Authority's approval:
  - a. Soils investigations including test borings, pavement cores, and the related analysis;
  - b. Detailed mill, shop and/or laboratory inspection of materials and equipment;
  - c. Land surveys, maps, plates, descriptions and title investigations which may be required to acquire lands, easements, and rights-of-way for the proposed facilities;
  - d. Obtain field topographic survey data for the preparation of construction plans required for final design of the project. Survey data is to be according to NAD83 and NGCD29 standards.
  - e. Air, water, and/or soil sampling, testing, and/or analysis;
  - f. Hazardous material testing and assessment;
  - g. Wetlands investigations, delineation, and mitigation;
  - h. Technical assistance with operation and maintenance manuals;



- i. Start-up services relating to equipment to be installed by the contractor;
  - j. Assistance with permit and other applications with the New York State Department of Environmental Conservation (DEC);
  - k. Assistance with grant research, completion of grant applications, and reporting/documentation after award;
  - l. Laboratory testing, jar testing, and pilot testing;
  - m. Extra travel and subsistence for the Engineer and its staff beyond that normally required under ordinary circumstances, when authorized by the Authority;
  - n. Legal services, as deemed necessary and approved by the Authority's General Counsel, for acquiring lands, easements and rights-of-ways or other Project-related services; or
  - o. Other services, as deemed necessary by the Authority's Chief Operating Officer and Chief Financial Officer.
2. **Reliance on Others.** Subject to the standard of care set forth in § 2.01, paragraph A, the Engineer and its special services consultants may use or rely upon design elements and information ordinarily or customarily furnished by others including, but not limited to, specialty contractors, manufacturers, suppliers and the publishers of technical standards.
3. **Expert Witness Assistance.** The Engineer agrees to assist the Authority as an expert witness in litigation arising from the project development and construction, even if such assistance is requested by the Authority after the expiration or termination of this Agreement.

**3.03 Service Timeframe.** Unless otherwise extended by mutual agreement of the parties, the Engineer will render professional services relating to this Project within the following timeframe:

- A. All services under § 3.02, paragraph A of this Agreement, Basis of Design, shall be completed and delivered to the Authority within 90 days of the issuance of the Authority's notice to proceed. The Basis of Design is complete when the Final Basis of Design Report is submitted to the Authority;
- B. All other services should be completed by the end of the project with an estimated completion date of < date to be inserted based on consultant's proposal >.



## ARTICLE 5 – GENERAL PROVISIONS

**5.01 Subcontract and Assignments:** The Engineer may not subcontract or delegate any of the work, services, and/or other obligations of the Engineer without the express written consent of the Authority. The Authority and the Engineer bind themselves and their successors, administrators and assigns to the terms of this Agreement. The Engineer shall not assign, sublet or transfer its interest in the Agreement without the written consent of the Authority.

**5.02 Amendments:** No modification or variation from the terms of this Agreement shall be effective unless it is in writing and authorized by a resolution of the Board of Commissioners of the Authority and signed by all parties.

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

**5.04 Indemnification:**

- A. To the fullest extent permitted by law, the Engineer 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 Engineer's performance of professional services provided under this Agreement and those of its subcontractors or anyone for whom the Engineer is legally liable.
- B. To the fullest extent permitted by law, the Authority agrees to indemnify and hold the Engineer 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.

**5.05 Confidential Information:**

- A. In order to assist the Engineer in the performance of this Agreement, the Authority may provide the Engineer with confidential information including, but not limited to information relative to the services to be performed. All information received by the Engineer in any fashion and under any conditions resulting from the rendering of the services in consideration of this agreement, are considered confidential. The Engineer shall hold in confidence and not disclose to any person or any entity, any information regarding information learned during the performance of services including but not limited to information relative to the services to be performed.
- B. The Engineer shall use at least the same degree of care to protect and prevent unauthorized disclosure of any confidential information as it would use to protect and

prevent unauthorized disclosure of its own proprietary information. The Engineer shall use confidential information only in the performance of this Agreement. No other use of the confidential information whether for the Engineer's benefit or for the benefit of others shall be permitted.

- C. In no event is the Engineer authorized to disclose confidential information without the prior written approval of the Authority. The Engineer may provide such information to its subcontractors for the purpose of performing the services; or disclose such information, with notice to the Authority, if such information is required to be disclosed by law or court order.
- D. The terms of this section shall be binding during and subsequent to the expiration or termination of this Agreement.

**5.06 Insurance:**

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

**5.07 Copyrights, Trademarks and Licensing:** All materials produced under this Agreement, whether produced by the Engineer alone or with others, and regardless of whether produced during regular working hours, shall be considered work made for hire and the property of the Authority. The Engineer shall, during and subsequent to the terms of this Agreement, assign to the Authority, without further consideration, all right, title and interest in all material produced under this Agreement. All material produced under this Agreement shall be and remain the property of the Authority whether registered or not.

**5.08 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 Engineer 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.

**5.09 Conflicts of Interest:** The Engineer 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 Engineer from carrying out the terms of this Agreement or which would present a significant opportunity for the disclosure of confidential information. The Engineer 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 Engineer. So long as the Engineer reports such a conflict as required by this section, the Engineer will have no further obligations for completing the scope of services under the terms of this Agreement.

**5.10 Additional Conditions:** The Engineer 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.

**5.11 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.

**5.12 Independent Status:**

- A. Nothing contained in the Agreement shall be construed to render either the Authority or the Engineer, 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 Engineer shall remain an independent contractor responsible for its own actions. The Engineer is retained by the Authority only for the purpose and to the extent set forth in this Agreement.
- B. The Engineer 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 4.
- C. Neither the Engineer 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 Engineer 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 Engineer agrees

to furnish copies of documentation to the Authority evidencing its compliance with such laws. The Engineer further represents and warrants that any income accruing to the Engineer and its employees from the Agreement shall be reported as such to the appropriate taxation authorities.

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

**5.14 Force Majeure:** Engineer shall not be liable to the Authority for any failure to perform the Services if any such failure is caused by forces beyond Engineer's reasonable control, including without limitation, actions or inactions of any governmental agencies, changes in law, strikes, lockouts, or other industrial disturbances, acts or omissions of third-parties, civil disturbances, fires, floods, earthquakes, acts of God, acts of a public enemy or terrorism, epidemics or pandemics, including issues arising out of the COVID-19 pandemic, which may include without limitation, workforce shortages, lack of necessary supplies or Personal Protective Equipment, travel restrictions, and other restrictions resulting from public guidance and emergency orders.

**5.15 Gratuities:** The Engineer 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 Engineer 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.

**5.16 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 6 – SEVERABILITY**

**6.01** 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 7 – TERMINATION**

**7.01** The Authority reserves the right to terminate this Agreement in the event it is found that the Certification filed by the Engineer 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 Engineer in accordance with the written notification terms of this Agreement.

**ERIE COUNTY WATER AUTHORITY**

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

< *insert name of Engineer* >

By \_\_\_\_\_

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

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2020, 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 NEW YORK     ) ss:**

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2020, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he resides in \_\_\_\_\_, New York, that he is the \_\_\_\_\_ of the Corporation described in the above instrument; and that he signed his name thereto by order of the Board of Directors of said Corporation.

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



**APPENDIX A**

**FIXED RATES FOR SPECIAL SERVICES**

<b>Grade</b>	<b>Hourly Billing Rate</b>

## APPENDIX B

### INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACT FOR CONSULTING ENGINEERING SERVICES

#### VAN DE WATER RAW WATER AND HIGH SERVICE PUMPING SYSTEM IMPROVEMENTS

ECWA Project No. 202100014

#### Insurance Specs:

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
- Per Project/Job Aggregate Limit Required
- 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. Umbrella Liability:**

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

**f. Professional Liability:**

- \$2,000,000 Per Claim
- \$2,000,000 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](mailto: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, or If you have any questions you can contact Ms. Musarra by e-mail or phone (716) 849-8465.

**APPENDIX C**  
**RESPONSE TO RFP**  
**STATE FINANCE LAW REQUIRED FORMS**

*< Consultant's RFP response including the following required forms to be inserted here >*

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

### STATE FINANCE LAW REQUIREMENTS

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

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

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

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

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

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

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

**FORM A**

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

**Instructions:**

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

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

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

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

**FORM B**

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

**Instructions:**

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

**Offerer Certification:**

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

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

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

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

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

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

\_\_\_\_\_

\_\_\_\_\_

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

The Erie County Water Authority (the "Authority") is a government entity, as that term is defined in State Finance Law §§ 139-j(1)(a) and 139-k(1)(a). New York State Finance Law §139-k(2) obligates the Authority to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j; or (b) the intentional provision of false or incomplete information to a Government Entity.

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

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and the Offerer is the only source capable of supplying the required Article of Procurement, as that term is defined in State Finance Law §§ 139-j(1)(b) and 139-k(1)(b), within the necessary timeframe. See State Finance Law §139-j(10)(b) and §139-k(3).

**Instructions:**

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



**FORM C (Continued)**

**Offerer's Disclosure of Prior Non-Responsibility Determinations**

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

\_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_

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

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

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

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle):  
No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle) No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

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

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

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)



## **CONTRACT TERMINATION PROVISION**

### **Instructions:**

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

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

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

### **Sample Contract Termination Provision**

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

SECTION 139-L OF THE STATE FINANCE LAW  
STATEMENT RELATING TO SEXUAL HARASSMENT POLICY

1. "Bidder" has the same meaning as the term, "Offerer," as that term is defined in State Finance Law § 139-k(1)(h), and includes anyone who submits a bid or proposal.
2. Every proposal or bid hereafter made and submitted to the Erie County Water Authority, where competitive bidding or a sealed proposal is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the Bidder and affirmed by such Bidder as true under penalty of perjury:

SEXUAL HARASSMENT BIDDING CERTIFICATION

- (a) "By submission of this bid/proposal, EACH BIDDER AND EACH PERSON SIGNING ON BEHALF OF ANY BIDDER CERTIFIES, AND IN THE CASE OF A JOINT BID EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, under penalty of perjury, that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all its employees. Such policy shall, at a minimum, meet the requirements of Section two hundred one-g of the Labor Law."
3. A bid/proposal shall not be considered for award nor shall any award be made to a Bidder who has not complied with subdivision one of this section; provided, however, that if in any case the Bidder cannot make the foregoing certification, the Bidder shall so state and shall furnish with the bid/proposal a signed statement which sets forth in detail the reasons therefore.

The undersigned CERTIFIES, under penalty of perjury, that he is authorized to make this bid/proposal and execute this statement on sexual harassment; that he is familiar with the statements contained in ¶2(a) of this document, as well as the provisions of State Finance Law §139-L and Labor Law §201-g, and such statements are true and have been complied with by the Bidder.

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

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

(SEAL)