

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

Contract: _____ **Project No.:** 202000010
Project Description: Furnish and Deliver Distribution System Pressure Monitoring Sensors

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 Board Authorization to Reject Bids and Readvertise

Approvals Needed:

APPROVED AS TO CONTENT:

<input checked="" type="checkbox"/> Other (if Applicable)	<u><i>Therese Hoffman</i></u>	Date: <u>3/3/20</u>
<input checked="" type="checkbox"/> Chief Operating Officer	<u><i>James J. [Signature]</i></u>	Date: <u>3/3/2020</u>
<input checked="" type="checkbox"/> Executive Engineer	<u><i>Leonard F. Koralik</i></u>	Date: <u>3-4-20</u>
<input checked="" type="checkbox"/> Director of Administration	<u><i>Teranya Lester</i></u>	Date: <u>3/3/2020</u>
<input checked="" type="checkbox"/> Risk Manager	<u><i>Molly O. Musarra</i></u>	Date: <u>3-3-20</u>
<input checked="" type="checkbox"/> Chief Financial Officer	<u><i>Karen A. Brindgast</i></u>	Date: <u>3-4-20</u>
<input checked="" type="checkbox"/> Legal	<u><i>Margaret A. Murphy</i></u>	Date: <u>3-4-20</u>

APPROVED FOR BOARD RESOLUTION:

☒ Secretary to the Authority *[Signature]* Date: 03/04/20

Remarks: Unit price contract.

Resolution Date: _____

Item No: _____



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

March 2, 2020

To: Terrence D. McCracken, Secretary to the Authority

From: Clayton J. Johnson, Production Engineer *CJJ*

Subject: Furnishing of Sodium Hypochlorite to the ECWA for
Use In the Booster Stations For Two Years
February 1, 2020 to January 31, 2022
ECWA Project No. 202000008
Rejection of Bids and Authorization to Re-advertise

On Tuesday, February 11, 2020, the Authority received bids for the above referenced contract. Prior to the bid opening, the Bid Notice was publicly advertised for 27 calendar days and the Authority received responses from two (2) bidders.

The project was advertised as a two-year project and the quantity of sodium hypochlorite used on the bid form represented a one-year supply and not a two-year supply. After reviewing the bids, the Engineering Department consulted with Chief Financial Officer Karen Prendergast regarding the bid submissions. It was decided that due to the incorrect quantity, the project should be rebid.

Pursuant to Public Authorities Law § 1069, ECWA has the authority to reject all bids if it is in the Authority's best interests. Article 10 of the Instructions to Bidders also states the Authority has the right to reject any or all bids, if the Authority deems such action to be in the public interest. The power to reject all bids, as set forth in Public Authorities Law § 1069, is like the power given municipal corporations pursuant to General Municipal Law § 103.

Due to an error in the Bid Item quantities, both the Legal and Engineering Departments recommend the Board rejects all the bids submitted on February 11, 2020 and authorize the advertisement for new bids.

The following documents are attached:

- Blue Authorization Form.
- One copy of Procurement Instructions to Bidders
- Contract Documents

CJJ:jmf

cc: R.Stoll

L.Kowalski

K.Prendergast

L.Lester

M.Murphy

CHEM-834-2001-X-12

Set No:

Project Manual

FURNISHING OF SODIUM HYPOCHLORITE TO THE ERIE COUNTY WATER AUTHORITY FOR USE IN THE BOOSTER STATIONS FOR TWO YEARS FROM APRIL 1, 2020 TO MARCH 31, 2022

Project No. 202000008

February 2020

**Erie County Water Authority
3030 Union Road
Buffalo, New York 14227**



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**ERIE COUNTY WATER AUTHORITY
3030 UNION ROAD
BUFFALO, NEW YORK 14227**

**FURNISHING OF SODIUM HYPOCHLORITE
TO THE ERIE COUNTY WATER AUTHORITY
FOR USE IN THE BOOSTER STATIONS
FOR TWO YEARS FROM APRIL 1, 2020 TO MARCH 31, 2022**

ECWA PROJECT No. 202000008

NOTICE TO BIDDERS

The Erie County Water Authority will receive separate, sealed bids for the **FURNISHING OF SODIUM HYPOCHLORITE TO THE ERIE COUNTY WATER AUTHORITY FOR USE IN THE BOOSTER STATIONS FOR TWO YEARS FROM APRIL 1, 2020 TO MARCH 31, 2022.**

Bids will be received by the Erie County Water Authority until 11:30 a.m. prevailing time, on Tuesday, **February 11**, 2020, at the Service Center Front Desk, 3030 Union Road, Buffalo, New York 14227, and then at that time and place will be publicly opened and read. All attendees must bring a government-issued photo identification (driver's license preferred) and check-in with the ECWA receptionist before being allowed entry to the bid opening.

All bids being mailed (including FedEx, UPS, Priority Mail, etc.) or hand-delivered to the Erie County Water Authority shall be directed to the "SERVICE CENTER FRONT DESK" in a sealed envelope and be clearly marked on the outside of the mailing or hand-delivered envelope "BID ENCLOSED- FURNISHING OF SODIUM HYPOCHLORITE TO THE ERIE COUNTY WATER AUTHORITY FOR USE IN BOOSTER STATIONS FOR TWO YEARS FROM APRIL 1, 2020 TO MARCH 31, 2022". Failure to follow the above instructions could result in rejection of the proposal.

Beginning at 9:00 a.m., on Wednesday, **January 15**, 2020, the Instruction to Bidders, Form of Bid, and form of Contract, Specifications, and Security Bonds may be examined at the above address and may be obtained by writing the Service Center Front Desk at the above address or calling 716-684-1510, between the hours of 9:00 a.m. and 5:00 p.m.

Each Bid shall be accompanied by a certified check or bid bond in the amount of five percent (5%) of the amount of the bid.

In accordance with State Finance Law §§139-j and 139-k, all questions about meaning or intent of the bidding documents shall be submitted to the designated contact person in writing. The designated contact is Clayton J. Johnson, PE, Production Engineer, Erie County Water Authority, 3030 Union Road, Buffalo, NY 14227, telephone 716-685-8218.

The Erie County Water Authority reserves the right to reject any and all bids or to accept any bid deemed to be for the best interest of the Water Authority even though the bid chosen may result in the award of the Contract to a bidder whose bid is not mathematically low.

ERIE COUNTY WATER AUTHORITY

TERRENCE D. McCracken
Secretary to the Authority

ERIE COUNTY WATER AUTHORITY
BUFFALO, NEW YORK

INSTRUCTIONS TO BIDDERS

1. PROPOSALS RECEIVED AND WORK INCLUDED

The Erie County Water Authority (hereinafter called the OWNER) will receive proposals at the time and place, under the conditions stated and for the work and/or material described in the Notice to Bidders.

2. BID SUBMITTAL

A. BID DOCUMENTS

Proposals must be made upon the forms contained herein.

The proposal as submitted, shall not be separated from the volume containing the other Contract Documents which are bound with it. The blank spaces in the proposal must be filled in correctly where indicated for each and every item, and the bidder must state, both in words and in numerals, written or printed in ink, the prices for which he proposes to do each item of the work contemplated. In case of discrepancy between the words and the numerals, the words shall govern. Ditto marks are not considered writing or printing and shall not be used. The bidder shall sign his proposal correctly. If the proposal is made by an individual, his name and post office address must be shown. If made by a firm, partnership or by a corporation, the proposal must be signed and sealed by an official of the firm, partnership or corporation authorized to sign contracts, and must also show the post office address of the firm, partnership or corporation. No person co-partnership, or corporation shall submit more than one proposal, either directly or by agent.

The following original signatures are required to be affixed at the time of bid:

<u>ITEM</u>	<u>PAGE</u>
Proposal *	<u>PS 2-2</u>
Ground for Cancellation of Contract *	<u>PS 3-1</u>
Non-Collusion Bidding Certificate *	<u>PS 3-4</u>
State Finance Law Requirements:	
Form A	<u>PS 3-6</u>
Form B	<u>PS 3-7</u>
Form C	<u>PS 3-9 and 3-10</u>
Section 139 of State Finance Law, Statement relating to Sexual Harassment Policy	<u>PS 3-12</u>

The bidder must also complete the following:

Information required from Bidders PS 3-13 or 3-14 ;
3-15 and 3-16

* Sealed and authorized signature required if bid is by a Corporation.

B. ADDITIONAL REQUIREMENTS

1. Each Bidder must also furnish with his bid the bond or check described in Section 3.
2. Each Bidder must also furnish Material Brochures specified in Section PS5.
3. All bids being mailed (including FedEx, UPS, Priority Mail, etc.) or hand-delivered to the Erie County Water Authority shall be directed to the "SERVICE CENTER FRONT DESK" in a sealed envelope and be clearly marked on the outside of the mailing or hand-delivered envelope "BID ENCLOSED" along with the title of the bid project.
4. Failure to follow the above instructions could result in rejection of the proposal.

3. **BID GUARANTEE**

Each bid must be accompanied by a certified check made payable to the Erie County Water Authority or a bid bond in the sum of five percent (5%) of the amount of the bid. Bid bonds must be in satisfactory form and payable to the order of the OWNER. The bid bond must contain original signatures in ink. Pencil, stamped, Thermofax, Xerox, or any other copies of the signatures will be grounds for voiding the bid.

Bid bonds or checks will be returned to all except the three lowest bidders within three (3) banking days after the formal opening of the bids. The checks or bonds will be returned to the three lowest bidders within five (5) banking days after the execution of the contract and the furnishing of the required security by the successful bidder.

The bid bond shall be approved by the OWNER'S Attorney for the Authority as to form, and by the Comptroller as to sufficiency of the bond. The amount of the certified check or bid bond shall be retained by the OWNER as liquidated damages if the bidder whose bid is accepted shall fail to enter into a contract with the Authority.

4. **EQUIPMENT AND MATERIAL BROCHURES**

The Technical Specifications may require that each bid be accompanied by certain brochures that describe the various types of equipment or material listed in the bid, then the bid must be accompanied by such brochures. Bids not accompanied by the required

equipment and material brochures may be rejected. If brochures are not available, the bidder is required to submit with his bid a letter stating that he has requested four (4) copies of the brochures described in the Technical Specifications and that his bid price is for the equipment or materials as described in these brochures.

5. **IRREGULAR PROPOSALS**

Proposals may be rejected if they show any omissions, alterations of form, additions not called for, conditional or alternate bids other than are provided for in the proposal form, bids containing escalation clauses or irregularities of any kind. Bids that are considered unbalanced or unreasonable as to the amount bid for any lump sum or unit price item may be rejected. If such unbalanced bids are accepted, the unit price or lump sum bids cannot be changed or amended and shall prevail for any amount provided pursuant to the contract. The OWNER further reserves the right to waive any and all informalities in the bidding of this work, if it is deemed to be in the best interest of the OWNER. The Bidder will not be allowed to take advantage of any error or omissions.

6. **INTERPRETATIONS**

If any person contemplating submitting bids is in doubt as to the true meaning of any part of these proposed Contract Documents, he may submit to the Engineer a written request for an interpretation thereof.

No interpretation of the meaning of the Plans, Specifications or other Contract Documents will be made to any Bidder orally. In accordance with State Finance Law §§139-j and 139-k, all questions about meaning or intent of the bidding documents shall be submitted to the designated contact person in writing. The designated contact is Clayton J. Johnson, PE, Production Engineer. Every request for such interpretation must be received at least five (5) days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the Specifications, which, if issued, will be mailed either by Registered or Certified mail, with return receipt requested, to all prospective bidders (at the respective address furnished in the application for Invitation to Bid) not later than three (3) days prior to the date fixed for the opening of bids. Failure of any bidder to receive such addendum or interpretation shall not relieve any bidder from any obligation under his bid submitted. All addenda so issued shall become part of the Contract Documents. All addenda must be submitted with the bid proposal and be properly signed by the Bidder as part of the Bid Documents. The OWNER will not be responsible for any other explanations or interpretations of such documents which anyone presumes to make on behalf of the OWNER before expiration of the time set for the receipt of bids.

7. **COMPETENCY OF BIDDERS**

Proposals will not be considered from bidders on supplies, material or equipment, if the bidder or manufacturer of same is in bankruptcy, or in receivers' hands at the time of

tendering a proposal or at the time of entering into a contract, but the Erie County Water Authority reserves the right to accept or reject such proposals in the best interest of the Authority.

Each bidder shall be experienced in the kind of work to be performed and shall have the necessary equipment and sufficient capital to execute properly the work within the time allowed, and to prosecute and complete the work at the rate of time specified. Bids may be rejected if the bidder is already obligated for the performance of other work which would delay the commencement, prosecution or completion of the work. Each bidder shall include with his bid the form entitled "INFORMATION REQUIRED FROM CONTRACTORS AT THE TIME OF CANVAS OF BIDS" in the proposal. Low bidders may be asked to furnish additional data to demonstrate competency.

8. **WITHDRAWAL OF PROPOSALS**

If a bidder wishes to withdraw his proposal, he may do so before the time fixed for the opening of bids by written communication of his purpose to the OWNER. Upon receipt of such notice prior to the time set for opening of bids the proposal will be returned to him unopened.

9. **BID OPENING**

Bids will be received and opened in the Authority's principal office, as set forth in the Notice to Bidders. Bids shall remain open for 45 days.

Bid results are available on the Erie County Water Authority website, www.ecwa.org (under Doing Business tab, select option Business Opportunities). No bid results will be given over the telephone

10. **RIGHT TO REJECT**

The OWNER reserves the right to reject any/or all proposals and to rebid the Contract when the Authority deems it in the public interest to do so.

11. **MBE REQUIREMENTS**

The successful bidder must comply with the Authority's Women and Minority Business Enterprise Policy, which is set forth in Appendix A. The successful bidder, within one week of the opening of the bids, must also complete and return Part A of the WMBE requirements. Part A should be returned to Director of Equal Employment Opportunity (ECWA), at the Authority's Service Center, 3030 Union Road, Buffalo, New York 14227

12. **BONDS AND INSURANCE**

The successful bidder, before being awarded the contract, shall furnish the Certificate of Insurance as set forth in Appendix B. The successful bidder shall also provide any bonds required by Appendix C.

13. **AWARD OF CONTRACT**

All contracts, or change orders, for work, materials or supplies performed or furnished in connection with construction shall be awarded by the Authority pursuant to resolution.

If the Authority shall not deem it for the interest of the Authority to reject all bids, it shall award the contract to the lowest bidder, unless the Authority shall determine that it is in the best interest of the public to award a bid even though the proposal chosen may result in the awarding of a contract to a bidder whose bid is not mathematically low.

14. **EXECUTION OF THE CONTRACT**

The party to whom the contract is awarded or his authorized representative will be required to execute the contract within five (5) banking days from the date of the award, and, in case of his failure or neglect to do so, the OWNER may, at its option, determine that the bidder has abandoned the contract, and thereupon the proposal and acceptance shall be null and void, and the security accompanying the proposal shall be forfeited to the OWNER. At its option, the OWNER may also elect to accept the bid security and sue for damages for breach of contract, delay, etc.

15. **EXEMPTION FROM SALES AND/OR USE TAXES**

The CONTRACTOR is advised that the OWNER, a public benefit corporation created by the State of New York, is exempt from payment of all State and Local sales and compensating use taxes of the State of New York and cities and counties on the purchase of all materials and supplies incorporated in and becoming an integral component part of the work, structures, buildings or real property, pursuant to the provisions of this contract. Such taxes are not to be included in the contract price, bid or costs to be reimbursed, as the case may be. This exemption does not, however, apply to tools, machinery, equipment or other property purchased by or leased to the SUPPLIER or a subcontractor or to supplies, machinery, equipment and materials which, even though they are consumed in the performance of the contract, are not incorporated into the completed permanent work. The SUPPLIER and his subcontractors shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on such tools, machinery, equipment or other property and upon all such unincorporated supplies and materials.

The OWNER will supply the necessary exemption certificates to the SUPPLIER.

SUPPLIER and his subcontractors and materialmen shall be solely responsible for obtaining or delivering any and all exemption or other certificates and for furnishing a CONTRACTOR Exempt Purchase Certificate or other appropriate certificates to all persons, firms or corporations from whom they purchase supplies, materials and equipment for the performance of the work covered by this contract.

ERIE COUNTY WATER AUTHORITY

BIDDER'S PROPOSAL

FOR

**FURNISHING OF SODIUM HYPOCHLORITE
TO THE ERIE COUNTY WATER AUTHORITY
FOR USE IN THE BOOSTER STATIONS
FOR TWO YEARS FROM APRIL 1, 2020 TO MARCH 31, 2022**

ECWA PROJECT No. 202000008

The Bidder agrees to perform all the following work described in the Documents for the following unit prices or lump sums. The Bidder also agrees that the unit price or lump sum price bid shall be full compensation for furnishing all labor, materials, tools, profit, and equipment necessary to perform the work as shown and specified.

NOTE: the Quantities for the unit price items are unpredictable and the OWNER has inserted certain quantities in the proposal to be used solely for purpose of comparison of bids. The Bidder will not be entitled to any adjustment in the unit price bid as a result of changes in any of these items ranging from zero to any quantity. The Bidder shall make no claims for anticipated profits, for loss of profits, or for other damages as the result of changes in the quantities purchased.

In case of discrepancy, written unit figures shall govern.

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>COMPUTED TOTALS</u>
ITEM 1 For furnishing a solution of 12.5% Sodium Hypochlorite, all in accordance with the Specifications, for the unit price of: _____ Dollars and _____ Cents (\$ _____) per 5-Gal Carboy	1,700 Carboys	\$ _____

COMPUTED TOTAL FOR ITEM 1:

_____ Dollars

and _____ Cents \$ _____

ATTENTION OF THE BIDDERS IS CALLED TO THE FOLLOWING:

SECTION 2875 & 2878 OF THE PUBLIC AUTHORITIES LAW WHICH REQUIRES A BIDDER'S CERTIFICATE OF NON-COLLUSION. SUCH CERTIFICATE IS PART OF THE BID OR PROPOSAL FORM, AND UNLESS COMPLIED WITH SUCH BID WILL NOT BE ACCEPTED.

Bidder certifies that he is not in arrears to the Erie County Water Authority or the County of Erie upon any debt or contract, nor is he a defaulter as surety or otherwise upon any obligation of the Erie County Water Authority or the County of Erie.

Contracting Company

Per: _____

Date: _____

(SEAL)

State Delivery (if applicable):

SECTION 2875 OF THE PUBLIC AUTHORITIES LAW

Section 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 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 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 or 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 waive of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract with the state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, when called before a grand jury, head of a state department, temporary state commission, or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath.

(Name of Individual, Partnership or Corporation)

By _____
(Person authorized to sign)

(SEAL)

SECTION 2876 OF THE PUBLIC AUTHORITIES LAW**Section 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 title.

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.

SECTION 2878 OF THE PUBLIC AUTHORITIES LAW

Section 2878. Statement of non-collusion in bids or proposals to public authority.

(1) Every bid or proposal hereafter made to a public authority or to any official, any public authority created by the state or any public subdivision, where competitive bidding is required by statute, rule, regulation or local law, 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 penalties of perjury:

NON-COLLUSIVE BIDDING CERTIFICATION

(a) By submission of this bid, 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 to the best of his knowledge and belief: (1) The prices in this bid 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 or with any competitor; (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with; provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with a bid a signed statement which sets forth in detail the reasons therefore. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made of the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering jobs to be procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).

The undersigned CERTIFIES, under penalty of perjury, that he is authorized to make this bid and execute this statement of non-collusion; that each of the statements contained in (1), (2) and (3) of paragraph (a) are true; that he is familiar with the statements and restrictions contained in paragraph (b) and the paragraph regarding the publication of price lists, etc. and such statements and restrictions are true and have been complied with by the bidder.

(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 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**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 no later than when the Offerer submits its proposal.

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

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

Address:

Name and Title of Person Submitting this Form:

Contract Procurement Number:

Date:

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

If yes, please answer the next questions:

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

Governmental Entity:

Date of Finding of Non-Responsibility:

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

FORM C (Continued)

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

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding:

(Add additional pages as necessary)

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

By: _____ Date: _____
Signature

Name: _____

Title: _____

CONTRACT TERMINATION PROVISION

Instructions:

A Contract Termination Provision will be included in each procurement pontract 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 (the “Authority”), as a governmental entity, is required to include a statement in the procurement record describing the basis for any action taken under the termination provision.

Sample Contract Termination Provision

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

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 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)

**INFORMATION REQUIRED FROM CONTRACTORS
AT TIME OF CANVASS OF BIDS**

(INDIVIDUALS OR PARTNERSHIPS)

Official Name: _____

Official Business Address: _____

Business Telephone: _____

For Partnerships and Assumed Names Only:

Has Certificate been filed with County Clerk in which business is carried out? Yes () No ()

Date of Filing Certificate: _____

Names and Addresses of Individuals included in Certificate:

List Financial References including at least one Bank and one Supplier

Have you ever failed to complete any project or been terminated from a contract? _____

Were you ever denied a contract after being the low bidder? _____

List any lawsuits involving breach of contract in which you are a party _____

List on separate sheet and attach any additional information that may be of benefit to Water Authority. Successful Bidder will be required to file with Erie County Water Authority a certified copy of latest Assumed Name Certificate.

ID Number:: (complete one)

Federal Employer Identification Number: _____

Social Security Number: _____

**INFORMATION REQUIRED FROM CONTRACTORS
AT TIME OF CANVASS OF BIDS**

(CORPORATIONS)

Official Corporate Name: _____

Official Business Address: _____

Business Telephone: _____

Incorporated Under Laws of the State of: _____

Certificate of Incorporation filed in the office of the Clerk of the County of: _____

Date of incorporation: _____

Names, Address and Official Title of Principle Officers of Corporation and Stockholders with Ten Percent (10%) or more of stock:

List Financial References including at least one Bank and one Supplier

Have you ever failed to complete any project or been terminated from a contract? _____

Were you ever denied a contract after being the low bidder? _____

List any lawsuits involving breach of contract in which you are a party _____

List on separate sheet and attach any additional information that may be of benefit to Water Authority. Successful Bidder will be required to file with Erie County Water Authority a certified copy of latest Assumed Name Certificate.

ID Number:: (complete one)

Federal Employer Identification Number: _____

Social Security Number: _____

INFORMATION REQUIRED FROM BIDDERS

EXPERIENCE

1. How many years has your organization been in business under your present name? _____
2. What projects similar to this one has your organization completed? Include all projects done in the last three years and all projects done for the ECWA in the last five years. (A)
3. What projects has your organization completed under a different name? (B)
4. List the name of the organization referred to in Question 3 and the names of the officers of that organization _____

CLASS OF WORK	CONTRACT AMOUNT	WHEN COMPLETED	NAME & ADDRESS OF ENGINEER OR OWNER
A.			
B.			

INFORMATION REQUIRED FROM BIDDERS**OSHA INFORMATION**

List all Occupational Safety and Health Administration Citations for the last three years, including date, subject matter, and penalty.

Attach copies of all determined Citations and Notification of Penalty, Form OSHA 2.

Describe all pending cases, giving pertinent information such as apparent violations, location of project, type of project, and present status.

List any additional information on a separate sheet and attach.

ERIE COUNTY WATER AUTHORITY

BUFFALO, NEW YORK

SUPPLY CONTRACT

AGREEMENT

**FURNISHING OF SODIUM HYPOCHLORITE
TO THE ERIE COUNTY WATER AUTHORITY
FOR USE IN THE BOOSTER STATIONS
FOR TWO YEARS FROM APRIL 1, 2020 TO MARCH 31, 2022**

ECWA PROJECT No. 202000008

THIS AGREEMENT IS made this _____ day of _____ in the year _____, between the ERIE COUNTY WATER AUTHORITY hereinafter called the OWNER, party of the first part, and _____, hereinafter called the SUPPLIER, party of the second part.

1. **COVENANT**

The parties to this agreement, in consideration of the mutual undertakings, promises and agreements contained herein do hereby undertake, promise and agree to bind themselves and their successors and assigns to the obligations set forth herein.

2. **CONTRACT DOCUMENTS**

The Contract Documents shall consist of: the Notice To Bidders; Instructions for Bidders; the Proposal, this Agreement; the Detailed Specifications; all Appendices, Addenda and Contract Drawings, and Insurance Certificates and bonds.

3. **MATERIALS TO BE SUPPLIED**

SUPPLIER will furnish and deliver the materials described in the Specifications. SUPPLIER must transfer a good and incontrovertible title to all materials furnished hereunder, free and clear of all liens and encumbrances of whatever name and nature. Title to the material will not pass to the Authority until delivery to the site designated by the Authority.

4. **DELIVERY DATE AND EXTENSION OF TIME**

Upon receipt of an order, SUPPLIER will deliver the materials within the time specified in the Technical Specifications. No extensions of time will be granted except in writing by the OWNER, in its sole discretion. The parties agree that time is of the essence of this contract.

5. **COMPLIANCE WITH ENVIRONMENTAL LAWS**

SUPPLIER agrees to abide by all environmental laws and regulations in the sale and transport of the materials and agrees to hold the OWNER harmless for any liabilities arising therefrom.

6. **PAYMENT**

The OWNER agrees to pay the SUPPLIER the unit prices set forth in the Proposal for all Materials delivered.

The OWNER shall make payments as follows:

- (a) On not later than the fifth day of every month, the SUPPLIER shall present to the OWNER an invoice covering the total quantities that have been supplied from the start of the contract up to and including the last day of the preceding month together with such supporting evidence as may be required by the OWNER.
- (b) On not later than the 15th day of the following month after the invoice is submitted, the OWNER shall, after deducting previous payments made, pay to the Contractor 100% of the amount of the invoice.
- (c) Final payment of all monies due on the contract shall be made within thirty (30) days of completion and acceptance of the contract for the materials, supplies or equipment supplied.

7. **ACCEPTANCE AND FINAL PAYMENT**

The acceptance by the SUPPLIER of the Final Payment shall be and shall operate as a release to the OWNER of all claims and of liability, to the SUPPLIER for all things done or furnished in connection with this work, and for every act and neglect of the OWNER and other relating to or arising out of this work, if this payment be improperly delayed. No payment, however, final or otherwise, shall operate to release the SUPPLIER from his sureties from any obligations under the contract or any warranties or bonds.

8. **WARRANTY**

Notwithstanding anything to the contrary herein contained, the SUPPLIER agrees that the warranties as prescribed by the Laws of the State of New York are and will remain in effect: that this warranty and the time to exercise said warranty in effect at the time of the breach, if any, caused by any breach or by any hidden or latent defect will be as prescribed by the Laws of the State of New York. The obligations of the SUPPLIER herein are independent of any other obligations.

9. **INDEMNIFICATION**

The SUPPLIER agrees that he will indemnify and save the OWNER harmless from all claims whether direct or arising from a third party claim costs disbursements and reasonable attorneys' fees growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, power tools and all supplies including commissary, incurred in the furtherance of the performance of this contract. The SUPPLIER shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature herein above described have been paid, discharged or waived. If the SUPPLIER fails so to do, then the OWNER may, after having served written notice on the said SUPPLIER, either pay unpaid bills, of which the OWNER has written notice, direct, or withhold from the SUPPLIER'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the SUPPLIER shall be resumed, in accordance with the terms of this contract, but in no event shall the provisions of this sentence and payment be construed to impose any obligations upon the OWNER to either the SUPPLIER or his Surety. In paying any unpaid bills of the SUPPLIER, the OWNER shall be deemed the agent of the SUPPLIER, and any payment so made by the OWNER shall be considered as a payment made under the contract by the OWNER to the SUPPLIER and the OWNER shall not be liable to the SUPPLIER for any such payments made in good faith.

10. **ROYALTIES AND PATENTS**

The SUPPLIER shall pay all royalties, fees required under patent grants, and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the OWNER and its officers, agents and representatives harmless from loss on account thereof.

11. **ASSIGNMENT AND SUBCONTRACTING**

No SUPPLIER shall assign, transfer or otherwise dispose of the within contract, or any part thereof, or any rights, title or interest thereunder, without the prior written consent of the Authority. Any such purported action without such consent shall be null and void.

12. **CUSTOM, USAGE AND MODIFICATION**

This agreement constitutes the entire agreement between the parties and supersedes all prior or other agreements and representations, oral or in writing, regardless of custom and usage in the trade, industry, etc. in this locality or elsewhere. Neither this agreement nor any term, covenant, provision, or condition may be changed, waived, discharged or terminated orally or in any manner other than an instrument in writing executed and acknowledged by the party against whom the enforcement of the change, waiver, discharge or termination is sought.

It is understood and agreed by the parties hereto that no single person can act on behalf of the Erie County Water Authority as the Authority can only act pursuant to resolution properly adopted.

13. **BONDS AND INSURANCE**

The SUPPLIER agrees to obtain and keep in force and effect the insurance required by Appendix B and all bonds required by Appendix C.

14. **EXECUTION OF CONTRACT**

IN WITNESS WHEREOF, the said parties hereto have caused this instrument to be signed by their respective duly constituted officers, attested and sealed pursuant to proper resolutions.

15. **GROUND FOR RENEWAL OF CONTRACT**

If the Erie County Water Authority and SUPPLIER mutually agree to continue this Contract after the 31st day of January, 2022, it shall be extended for the term of one (1) year on the same terms and conditions provided for herein. Supplier shall provide written notification to the Erie County Water Authority of the contract extension prior to the expiration of the initial term of this Contract.

ATTEST:

ERIE COUNTY WATER AUTHORITY

By: _____

(Title)

(Title)

ATTEST:

SUPPLIER

By: _____

(Title)

By: _____

(Title)

(Seal if bid is by a
corporation)

Acknowledgment of Authority

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

On this _____ day of _____, _____
before me personally came _____, to me
known and known to me to be the _____ of the Erie
County Water Authority, who, being by me duly sworn, did depose and say that he is the _____
_____ of the Erie County Water Authority, the body
described in and which executed the foregoing contract; that he knows the seal of said Authority;
that the seal affixed to said contract was such seal; that by virtue of authority conferred upon him he
subscribed his name to the foregoing contract and that he executed the same as _____
_____ for the purposes therein mentioned.

(SEAL)

Notary Public

Acknowledgment if the Supplier is an Individual

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

On this _____ day of _____, _____
before me personally came _____, to me
known and known to me to be the person described in and who executed the foregoing contract, and
who acknowledged to me the execution thereof for the purposes therein mentioned.

Notary Public

TECHNICAL SPECIFICATIONS
for
FURNISHING OF SODIUM HYPOCHLORITE
TO THE ERIE COUNTY WATER AUTHORITY
FOR USE IN THE BOOSTER STATIONS
FOR TWO YEARS FROM APRIL 1, 2020 TO MARCH 31, 2022

ECWA PROJECT No. 202000008

1. WORK INCLUDED:

The intent and purpose of this specification is for the SUPPLIER to furnish sodium hypochlorite solution for the use in the production of potable water throughout the OWNER's booster stations. Sodium hypochlorite shall be in accordance with the American Water Works Association's (AWWA's) Standard B300- latest revision for Hypochlorites, except as modified or supplemented herein, to the Erie County Water Authority (ECWA).

2. PRODUCT MATERIAL REQUIREMENTS:

Hypochlorite supplied under this purchase order shall be tested and certified as meeting the Specification, the AWWA Standard B300- latest revision and those of the American National Standards Institute/National Sanitation Foundation Standard 60 (ANSI/NSF Standard 60), Drinking Water Treatment Chemicals Health Effects.

It is the responsibility of the vendor to inform ECWA that NSF or UL certification has been revoked or lapsed within 24 hours of the time the supplier receives verbal or written notification. Loss of certification shall constitute sufficient grounds for immediate termination of the purchase order from OWNER.

Liquid sodium hypochlorite delivered under this Specification shall have a minimum of 125 Grams per Liter (GPL) available chlorine equivalent (a.k.a., 12.5 Trade Percent Available Chlorine) and shall be consistent as determined by chemical analysis.

Product shall be a clear straw-colored liquid with no visible cloudiness, impurities, or sediment. It shall contain no soluble materials or organic substances in quantities capable of producing deleterious or injurious effects on the health of those consuming water treated with the liquid sodium hypochlorite.

Liquid sodium hypochlorite delivered under this Specification shall have a minimum of 0.10 percent by weight sodium hydroxide and a maximum of 1.5 weight percent sodium hydroxide.

3. **PICK-UP LOCATIONS:**

SUPPLIER shall refill ECWA containers, which will consist of 5-gallon carboys. Pickup location shall be within 20 miles of the ECWA Service Center (3030 Union Road, Buffalo, NY 14227).

4. **SITE INSPECTION – NOT APPLICABLE**

5. **SUPPLYING AND UNLOADING:**

SUPPLIER shall have quantities available for refill Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m. on dates as scheduled by the OWNER. If requested, shipments must be available within 24 hours after the SUPPLIER is notified that a refill is required. It shall be the responsibility of the SUPPLIER to prevent any contamination of the sodium hypochlorite during the loading process.

General assistance to the SUPPLIER will be provided. However, it shall be the responsibility of the SUPPLIER to provide all the necessary hose and adaptor fittings so that they can properly offload the sodium hypochlorite into the 5-gallon carboys. The transporting equipment shall be clean and free of residue that may contaminate the SUPPLIER's product or impede the unloading process. It is the SUPPLIER's responsibility to verify the cleanliness of the transporting equipment before loading. The SUPPLIER is also required to clean up any spills which are caused during the unloading operation.

6. **SAFETY DATA SHEET:**

The Supplier is to furnish one (1) copy of the Safety Data Sheet (SDS) with each shipment delivered.

7. **SAMPLING AND TESTING:**

All Sampling and Testing shall be in accordance with EPA and AWWA B300- latest revision and in accordance with the documents titled: "The Weight Percent Determination of Sodium Hypochlorite, Sodium Hydroxide, And Sodium Chlorate in Liquid Bleach" and "Suspended Solids Quality Test for Bleach Using Vacuum Filtration", distributed by Powell Fabrication and Manufacturing, Inc. and available at <http://www.powellfab.com>.

Sampling and Test of Shipment after Unloading. OWNER reserves the right to subject samples of the liquid sodium hypochlorite to complete analyses to ensure that it meets EPA specifications, AWWA B300- specifications, latest revision, and the Specification. Three failures during any period of this purchase order shall constitute automatic termination of the vendor's purchase order from OWNER.

Sampling and testing of sodium hypochlorite shall be paid for by the OWNER, if required.

Certified Documentation: Vendor shall supply documentation, from the chemical

manufacturer (source supplier), certifying that the liquid sodium hypochlorite furnished by the chemical manufacturer, complies with applicable requirements of AWWA B300-latest revision and NSF/ANSI Standard 60 Certification.

8. **METHOD OF PAYMENT:**

The sodium hypochlorite will be purchased by the 5-gallon carboy.

9. **PAYMENT:**

The sodium hypochlorite will be paid per 5-gallon carboy.

APPENDIX A

WOMEN AND MINORITY BUSINESS ENTERPRISE POLICY

ERIE COUNTY WATER AUTHORITY

APPENDIX A
WOMEN AND MINORITY BUSINESS ENTERPRISE POLICY
ERIE COUNTY WATER AUTHORITY

It is the policy of the Authority to foster and encourage minority business enterprise participation in the construction contracts of the Authority. Through the setting of Minority Business Enterprise goals and careful monitoring of CONTRACTOR compliance, the Authority will ensure the fullest possible participation in construction activities by qualified minority and women-owned firms.

Some of the federal and state laws that provide the basis for Equal Employment Opportunity and Affirmative Action are:

1. Title VII, Civil Rights Act of 1964 (as amended by the Equal employment Opportunity Act of 1972): Prohibits employment discrimination because of race, color, sex, religion or national origin.
2. Executive Order 11246 (as amended by the Executive Order 11375): Requires Affirmative Action by all Federal CONTRACTORS and subcontractors and requires that all firms with Contracts over \$50,000.00 and 50 or more employees develop and implement written programs.
3. Equal Act of 1963: Requires employers to provide equal pay for men and women performing similar work.
4. New York State Human Rights Law: Prohibits discrimination based on race, color, sex, age, creed, disability, national origin and marital status in employment matters.
5. Flynn Act: Guarantees disabled citizens protection against discrimination in housing, employment, public accommodations, training programs and non-sectarian education due to mental, physical or medical disability.
6. Title VI, Civil Rights Act of 1964: Prohibits discrimination based on race, color or national origin in all programs which receive Federal aid.
7. Title IX, Education Amendments Act of 1972: Prohibits sex discrimination against students of any educational institution receiving Federal financial aid.

A. MINORITY BUSINESS UTILIZATION COMMITMENT

The Erie County Water Authority has established the following business utilization rules which requires all prime CONTRACTORS awarded construction contracts let by the Erie County Water Authority to exemplify Affirmative Action to sub-contract to minority business enterprise (MBE). For the purpose of these regulations, the term "Minority Business Enterprise" refers to a business at least fifty-one percent (51%) of which is owned and controlled by minority group members. Minority group members are citizens of the United States who are Women, Blacks, Hispanics and Native Americans. MBE's must demonstrate current certification of a government agency.

The Authority has determined that a goal of ten percent (10%) of the total contract value represents a fair share of minority business utilization on each construction contract awarded.

Recipients of Authority construction Contracts must utilize minority-owned business sources for supplies, services and professional services, allowing these sources the maximum feasible opportunity to compete for Contracts, Subcontracts and third-tier Contracts to be performed, All prime CONTRACTORS awarded Authority Contracts estimated to exceed \$100,000.00 must take positive steps to “afford fair opportunities to MBE’s”. Positive steps shall include, but not be limited to, (a) utilizing a source list of bona fide minority business enterprises, (b) solicitations of bids from MBE’s particularly of those located in Erie County, (c) giving minority firms sufficient time to submit proposals in response to solicitations and (d) maintaining records showing minority business enterprises and specific efforts to identify and award Contracts to these Companies.

Each CONTRACTOR bidding on an Erie County Water Authority contract is to contact MBE’s and solicit bids for various aspects of each project. The CONTRACTOR is to supply the Authority with information regarding contracts for services and products with minority business enterprises and the dollar amount of each contract on the Minority Business Utilization Report.

The Successful Bidder shall submit to the Authority the Minority Business Enterprise Utilization Report - Part A within one week of the bid opening. Part A includes a list of MBE’s from whom the CONTRACTOR has solicited bids, or with whom the CONTRACTOR has signed a binding contractual agreement. The Authority will not consider a CONTRACTOR’s bid where the CONTRACTOR fails to submit this report or where an examination of the report evidences failure by the CONTRACTOR to comply with the affirmative action requirements of the Contract.

In the event of a joint venture participating in this MBE Program, the Joint Venture Disclosure Affidavit must be submitted with Part A by all parties involved. Only to the extent that a minority business enterprise contributes to and is paid for its participation in a joint venture will that dollar be credited towards the 10% goal of minority participation in the Erie Country Water Authority MBE Program.

MBE’s must be approved by the Erie County Water Authority before their participation may be credited toward the 10% goal. Where the proposed MBE is not approved by the Authority, an Authority MBE/Disclosure Affidavit must be filed with the Contract Compliance office. Forms and lists of certified MBE’s can be obtained by calling Lavonya Lester, Director of Equal Employment Opportunity (ECWA) at (716) 685-8223.

A Minority Business Enterprise Utilization Waiver Request may be completed and submitted with the Minority Business Enterprise Utilization Report - Part A to the Authority within one week of the bid opening. Waivers shall be granted only where the availability of MBE’s in the market area of the project is less than the 10% goal.

Sufficient information must be provided on the Minority Business Enterprise Utilization Waiver Request to ascertain whether a waiver should be approved, conditionally approved or rejected by advice of the Equal Opportunity Office.

A waiver approval limits the CONTRACTOR’s obligation to solicit MBE’s for this particular project. It does not relieve the CONTRACTOR of MBE utilization for any other Erie County Water Authority project on which he submits a bid.

Conditional approval of the waiver request makes it necessary for the CONTRACTOR to continue soliciting MBE’s for contracting purposes, after he has been declared the low bidder.

A MBE Utilization Waiver Request will be rejected if the CONTRACTOR:

1. fails to provide information on the Minority Business Enterprise Utilization Report with his bid.
2. provides fraudulent information of the MBE reports.
3. fails to make an honest good faith effort to recruit and contract with MBE's or
4. takes any other action which is contrary to the spirit and intent of the law.

THE INFORMATION PROVIDED ON THE MBE WAIVER REQUEST AND THE MBE UTILIZATION REPORT WILL BE CONSIDERED CONCURRENTLY TO DETERMINE IF A WAIVER SHOULD BE APPROVED, CONDITIONALLY APPROVED OR REJECTED.

The low bidder shall submit to the Authority, within one week of the bid opening, a schedule for minority business enterprise participation, with whom the CONTRACTOR intends to Subcontract, specifying the agreed price to be paid for such work, and identifying in detail the Contract item(s) or parts to be performed by each minority business enterprise. A letter of intent to enter into a Subcontract or purchase agreement, signed by the minority business, contingent upon the contract award, indicating the agreed upon price and scope of work, shall be provided, signed by both the CONTRACTOR and the minority business enterprise. The prime CONTRACTOR shall not substitute or delete the listed minority business enterprise without the written consent of the Erie County Water Authority.

In the event that the MBE goal for the contract is not met, the CONTRACTOR shall provide sufficient documentation to establish that every positive effort was made to identify, solicit and negotiate with MBE's in pursuit of the goal. Such documentation includes, but is not limited to, advertisement in minority-focused media, written contract with minority businesses indicating sufficient bidder's price along with evidence showing the work to be performed is the same, and not a reduced portion thereof.

The CONTRACTOR shall provide to the Erie County Water Authority copies of all subcontracts and/or purchase agreements with minority business enterprises within one week of the bid opening. A notice to proceed with construction shall not be issued until acceptable documentation is received.

When the project is thirty (30%) percent complete, the CONTRACTOR shall submit to the Authority the Minority Business Enterprise Utilization Report - Part B. Part B lists the MBE's on the project, the dollar amounts paid to that date and the estimated amount remaining to be spent.

The Minority Business Enterprise Utilization Report - Part C certifies the actual dollar amount expended to MBE's. Part C must be completed by the prime CONTRACTOR and submitted at the seventy-five (75%) percent payment level.

The Minority Business Enterprise Utilization Report - Part D certifies the total dollar amount expended to MBE's. Part D is to be submitted with the request for final payment.

In the event a CONTRACTOR fails to comply with these provisions the Authority may:

1. Summon the CONTRACTOR to a hearing
2. Withhold progress payments in part or in full
3. Cancel the contract.
4. Bar award of future Contracts until the CONTRACTOR can demonstrate that he will comply.

It is hereby the Erie County Water Authority's commitment to assure that on all contracts awarded, prime CONTRACTORS expend a fair share of the contract with bona fide minority businesses in accordance with the goals set forth by the Authority. Failure to comply with these provisions shall disqualify the bidder and shall constitute a breach of contract subject to all remedies available to the Authority.

The Prime CONTRACTOR and all minority Subcontractors are bound by all requirements as put forth in the Erie County Water Authority standard General Conditions and all modifications thereto contained in these Contract Specifications.

Listing of **AFFIRMATIVE ACTION FORMS ATTACHED:**

<u>NAME OF FORM</u>	<u>PAGE NUMBER(S)</u>
Minority Business Utilization Report- Part A	6 & 7
Waiver Request	8
Erie County Water Authority Minority Business Enterprise Joint Venture Disclosure Affidavit	9
Erie County Water Authority Minority Business Enterprise Utilization Report - Part B	10 & 11
Minority Business Enterprise Utilization Report - Part C	12
Minority Business Enterprise Utilization Report - Part D	13

**ERIE COUNTY WATER AUTHORITY
MINORITY BUSINESS ENTERPRISE
UTILIZATION REPORT - PART A**

This information must be submitted by the successful bidder within one week of bid opening.

COMPANY _____

AUTHORIZED REPRESENTATIVE _____

ADDRESS _____

TELEPHONE NUMBER _____

PROJECT NAME _____

PROJECT NUMBER _____

I. List actions taken to identify, solicit, and contact Minority Business Enterprises (MBE) to bid on subcontracts on this project.

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

II. List all bona fide Minority Business Enterprise, subcontractors, professional personnel, solicited, contracted, or presently negotiating a contract in accordance with the minority business utilization goal set forth by the Erie County Water Authority. (Attach additional sheets if necessary.)

MINORITY OWNED FIRM	SUPPLY/ SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTI- FICATION	CONTRACT EXECUTED	REASON NOT AWARDED
NAME: _____ ADDRESS: _____ TELE NO. _____ IRS NO. _____				YES _____ NO _____	
NAME: _____ ADDRESS: _____ TELE NO. _____ IRS NO. _____				YES _____ NO _____	
NAME: _____ ADDRESS: _____ TELE NO. _____ IRS NO. _____				YES _____ NO _____	
NAME: _____ ADDRESS: _____ TELE NO. _____ IRS NO. _____				YES _____ NO _____	

PART A CONTINUED

III. Assistance offered by CONTRACTOR to MBE's as to bonding, union requirements, obtaining work capital etc...

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

IV. Total Dollar Amount to be subcontracted to Minority Business Enterprise(s): \$ _____

V. Total Amount of Bid: \$ _____

VI. MBE Percent (%) of project bid: _____

VII. **YOU MUST ATTACH COPIES OF RELEVANT CORRESPONDENCE AND DOCUMENTS INCLUDING RETURN RECEIPTS.**

DATE

SIGNATURE OF AUTHORIZED
REPRESENTATIVE

Note: Within one week of the bid opening, this original form, together with a letter of intent to enter into a subcontract or purchase agreement, contingent upon the contract award, indicating the agreed upon price and scope of work, signed by both the CONTRACTOR and the Minority Business Enterprise, must be submitted to:

Lavonya Lester, Director of Equal Employment Opportunity (ECWA)
Erie County Water Authority
3030 Union Road
Cheektowaga, New York 14227

WAIVER

COMPANY _____

ADDRESS _____

TELEPHONE NUMBER _____
(AREA CODE) (NUMBER)

1. CONTRACTOR has made a good faith effort to adopt subcontracting on this project to those trades, professions, supplies, etc. for which minority business enterprises bids could be solicited; and
2. The total percentage of the bids which could be Subcontracted in trades, professions, supplies, etc. for which minority business enterprises bids could be solicited is less than 10%.

A waiver, as provided for by the Erie County Water Authority is hereby requested on the grounds that there are no/insufficient (circle the appropriate term) minority business enterprise in the market area of this project which do subcontracting in the following fields (list all trades, professions, supplies, etc. which could be subcontracted on this project):

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

(use additional sheets if necessary)

If a partial waiver is granted the CONTRACTOR will make a good faith effort to meet the reduced goal.

DATE

SIGNATURE OF AUTHORIZED
REPRESENTATIVE OF COMPANY

Granted in whole

Granted in part _____

Comments _____

_____/_____
 EQUAL OPPORTUNITY OFFICIAL TITLE DATE

LETTING DEPARTMENT REPRESENTATIVE	TITLE	DATE
--------------------------------------	-------	------

**ERIE COUNTY WATER AUTHORITY
MINORITY BUSINESS ENTERPRISE
JOINT VENTURE DISCLOSURE AFFIDAVIT**

To Be Submitted With Part A
Where Applicable

Joint Ventures: _____
Name: _____
Address: _____
Principal Office: _____
Office Phone: _____
Home Phone: _____

Percent of minority ownership in terms of profit and loss sharings:

Capital contributions by each joint venture and accounting therefore:

Equipment and supply contributions by each joint venturer and accounting therefore:

Any ownership options for ownership or loans between the joint venturers - identify terms thereof:

How and by whom the on-site work will be supervised and administered:

I, _____, as
representative of _____ Company,
do hereby swear or affirm that I am authorized to act on its behalf and that in this capacity and to
the best of my knowledge and belief, the information provided herewith relevant to the joint
venture of _____
is accurate, complete and current, and fairly represents the joint venture; further, that I have
personally reviewed the material and assured myself of its accuracy. It is recognized and
acknowledged that the statements herein are being given under oath and any material
misrepresentation will be grounds for terminating any contract which may be awarded in reliance
hereon.

SIGNATURE

**ERIE COUNTY WATER AUTHORITY
MINORITY BUSINESS ENTERPRISE UTILIZATION REPORT - PART B**

CONTRACTOR _____ CONTRACT NAME _____

- I. List all bona fide minority business enterprises, Subcontractors, suppliers, professional personnel, or joint venture firms, with whom you have entered into a binding agreement in accordance with the Minority Business Utilization Goal set forth by the Erie County Water Authority. Include minority trucking firms that will be utilized and included and estimated dollar amount. This information must be submitted to the Erie County Water Authority when the project is 30% complete.

(USE REVERSE SIDE IF MORE SPACE IS NEEDED) MINORITY OWNED FIRMS	TYPE OF WORK	DATE CONTRACT EXECUTED	TOTAL EXPENDED TO DATE	AMOUNT REMAINING
NAME: _____ ADDRESS: _____ _____ IRS #: _____				
NAME: _____ ADDRESS: _____ _____ IRS #: _____				

*Erie County Water Authority reserves the right to require documentation including, but not limited to, canceled checks to verify these amounts:

- II. Total Dollar Amount to be Subcontracted to minority Business Enterprise(s):
\$ _____
- III. Total dollar amount expended to date: \$ _____
- IV. Total amount of bid: \$ _____
- V. MBE Percent (%) of project bid: \$ _____

I, _____ as an official representative of _____
_____, do hereby certify that the information listed above is correct and complete.

NAME

TITLE

DATE

PART B CONTINUED

(USE REVERSE SIDE IF MORE SPACE IS NEEDED) MINORITY OWNED FIRMS	TYPE OF WORK	DATE CONTRACT EXECUTED	TOTAL EXPENDED TO DATE	AMOUNT REMAINING
NAME: _____ ADDRESS: _____ _____ IRS #: _____				
NAME: _____ ADDRESS: _____ _____ IRS #: _____				
NAME: _____ ADDRESS: _____ _____ IRS #: _____				
NAME: _____ ADDRESS: _____ _____ IRS #: _____				
NAME: _____ ADDRESS: _____ _____ IRS #: _____				
NAME: _____ ADDRESS: _____ _____ IRS #: _____				
NAME: _____ ADDRESS: _____ _____ IRS #: _____				
NAME: _____ ADDRESS: _____ _____ IRS #: _____				
NAME: _____ ADDRESS: _____ _____ IRS #: _____				

MINORITY BUSINESS ENTERPRISE UTILIZATION REPORT - PART C
CERTIFICATION OF EXPENDITURES TO MBE's

(To be completed by the prime CONTRACTOR and
submitted at the 75% payment level)

CONTRACTOR _____

CONTRACT: _____

MBE	PART B CONTRACT AMOUNT OF ESTIMATE	TOTAL EXPENDED TO DATE	ESTIMATED AMOUNT REMAINING

* Erie County Water Authority reserves the right to require documentation including, but not limited to, canceled checks to verify these amounts.

I, _____

_____ as an official representative of _____,

do hereby certify that the information listed above is correct and complete.

NAME

TITLE

DATE

MINORITY BUSINESS ENTERPRISE UTILIZATION REPORT - PART D

FINAL CERTIFICATION OF EXPENDITURES TO MBE's

(to be completed by the prime CONTRACTOR and submitted with
the request for final payment)

CONTRACTOR: _____

CONTRACT: _____

MBE	TOTAL AMOUNT EXPENDED

TOTAL OF ALL MBE
SUB-CONTRACTS \$ _____

AMOUNT OF
CONTRACT _____

FINAL MBE
PERCENTAGE _____

I, _____, as an official
representative of _____,
do hereby certify that the information listed above is correct and complete.

NAME

TITLE

DATE

ACCOUNTABILITY

The CONTRACTOR shall be fully accountable for its performance under this contract and agrees to answer under oath all questions relevant to the performance thereof and to any transaction, act, or omission had, done or omitted in connection therewith if called before the Erie County Water Authority, any Judicial, County or State Officer or agency empowered to investigate the Contract or its performance.

APPENDIX B
INSURANCE REQUIREMENTS
ERIE COUNTY WATER AUTHORITY

**FURNISHING OF SODIUM HYPOCHLORITE
TO THE ERIE COUNTY WATER AUTHORITY
FOR USE IN THE BOOSTER STATIONS
FOR TWO YEARS FROM APRIL 1, 2020 TO MARCH 31, 2022**

ECWA PROJECT No. 202000008

Insurance Specs:

The following minimum insurance requirements shall apply to vendors providing services to the Erie County Water Authority (ECWA). If a service or project, in the opinion of ECWA, represents an unusual or exceptional risk, ECWA may establish additional insurance requirements for that service or project. All insurance required herein shall be obtained at the sole cost and expense of the contractor, including deductibles and self-insured retentions, and shall be in full force and effect on the contract commencement date and for the duration of the contract. These requirements include but are not limited to the minimum insurance requirements.

Insurance Requirements:

a. Workers Compensation:

Part 1: Workers Compensation: Statutory

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

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

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

c. Commercial General Liability:

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

d. Automobile Liability:

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

e. Umbrella Liability:

- \$5,000,000. Each Occurrence
- \$5,000,000. Aggregate
- Erie County Water Authority to be scheduled as an Additional Insured
- Per project aggregate shall apply

f. Pollution Liability

- \$5,000,000 Per Claim
- \$5,000,000 Aggregate
- Per project aggregate shall apply

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

ACORD 25 (Item a-e) including copy of Additional Insured Endorsement Note: If coverage provided for NYS domiciled employees require Forms C 105.2 and DB 120.1 for Workers Compensation and NYS DBL.

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

Certificates of Insurance and renewals, on forms approved by the New York State Department of Insurance, must be submitted to ECWA prior to the award of contract. Each insurance carrier issuing a Certificate of Insurance shall be rated by A. M. Best no lower than “A-” with a Financial Strength Code (FSC) of at least VII. The professional service provider shall name ECWA, its officers, agents and employees as additional insured on a Primary and Non-Contributory Basis, including a Waiver of Subrogation endorsement (form CG 20 26 11 85 or equivalent), on all applicable liability policies. Any liability coverage on a “claims made” basis should be designated as such on the Certificate of Insurance.

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

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

Certificates of Insurance should be e-mailed to mmusarra@ecwa.org or mailed to Ms. Molly Jo Musarra, ECWA Claims 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

BID BOND

PERFORMANCE BOND (NOT REQUIRED)

PAYMENT BOND (NOT REQUIRED)

ERIE COUNTY WATER AUTHORITY

BID SECURITY FORM

BIDDER (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER:

Erie County Water Authority
295 Main Street, Room 350
Buffalo, New York 14203

BID

BID DUE DATE: _____

PROJECT:

Furnishing of Sodium Hypochlorite to the Erie County Water Authority
for use in the Booster Stations
for the Period of Two Years, April 1, 2020 to March 31, 2022
Project No: 202000008

BOND

BOND NUMBER: _____

DATE: (Not later than Bid due date): _____

PENAL SUM: _____ (Words) _____ (Figures)

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

SURETY

_____(Seal)
Bidder's Name and Corporate Seal

_____(Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

Attest: _____

1.01 Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to OWNER upon default of Bidder the penal sum set forth on the face of this Bond.

2.01 Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents.

3.01 This obligation shall be null and void if:

- A. OWNER accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents, or
- B. All Bids are rejected by OWNER, or
- C. OWNER fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 5.01 hereof).

4.01 Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from OWNER, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5.01 Surety waives notice of and any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by OWNER and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.

6.01 No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4.01 above is received by Bidder and Surety and in no case later than one year after Bid due date.

7.01 Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8.01 Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9.01 Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative, who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

10.01 This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11.01 The term "Bid" as used herein includes a Bid, offer or proposal as applicable.

END OF BID BOND