

ERIE COUNTY WATER AUTHORITY

VARIOUS LEGAL SERVICES 2019 Request for Information Project No: 201900020



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

**Designated Contact Person:
Terrence D. McCracken
Secretary to the Authority
tmccracken@ecwa.org**

TABLE OF CONTENTS

I. PURPOSE.....	3
II. BACKGROUND.....	3
III. SCOPE OF SERVICES REQUIRED.....	4
IV. PROPOSAL REQUIREMENTS.....	5
V. TERMS AND CONDITIONS.....	6
VI. ADDITIONAL INFORMATION.....	8
VII. TIME TABLE OF EVENTS.....	8
VIII. ATTACHMENTS:	
1. REQUIRED FORMS A, B AND C	8
2. SAMPLE CONTRACT TERMINATION PROVISION	15
3. INSURANCE REQUIREMENTS	16
4. PROPOSER CERTIFICATION	23

This Request for Information (RFI) for Professional Services, to provide Various Legal Services to the Erie County Water Authority, is being conducted pursuant to enacted legislation, New York State Finance Law § 139-J and § 139-K and the Erie County Water Authority's Procurement Disclosure Policy. A copy of the latter is provided with this RFI.

I. Purpose:

The Authority is soliciting proposals and qualifications from interested parties for various legal services, on an ongoing and/or as needed basis.

The Authority is seeking firms that have expert knowledge in specific areas of the law as specified in the scope of services below. The Authority intends to approve several firms to represent it on an as needed and ongoing basis for the two-year period June 1, 2019 through May 31, 2021 at the rates set forth in the responses to this RFI. The scope of each engagement will be confirmed in a retainer letter signed by the Authority and the approved firm.

II. Background:

BACKGROUND INFORMATION:

Organizational Information

The Erie County Water Authority is a public benefit corporation formed in 1949 to provide a potable water supply to the residents of Western New York. The Authority was created by an Act of the State Legislature, codified in Sections 1050 through 1073 of Title 3 (the "Erie County Water Authority Act") of Article 5 of the Public Authorities Law of the State of New York (as amended), to, among other things, finance, construct, operate and maintain a water supply and distribution system to benefit the residents of the County of Erie, New York. The Authority became operational in 1953. The Authority is financially self-sustaining, paying all operating expenses from revenues generated from the sale of water to 170,042 customers.

The Erie County Water Authority is not an agency of New York State, nor an agency of Erie County government. The Authority is completely independent with respect to budgeting, bonding authority, debt management and credit rating.

The Erie County Water Authority is governed by a Board of Commissioners. The Board consists of three members appointed by the Chairman of the Legislature of Erie County, subject to confirmation by a majority of said Legislature. Each Board member is appointed for a three-

year term and continues to hold office until a successor is confirmed. The three-year terms of office are staggered. The enabling State legislation provides that the officers of the Authority shall consist of a Chairman, a Vice-Chairman and a Treasurer who shall be members of the Authority, and a Secretary, who need not be a member of the Authority. The Board establishes policy and is responsible for the overall operations of the Authority.

III. Scope of Services:

The Erie County Water Authority is currently seeking firms that have knowledge and expertise in the following fields:

1. Labor Relations, Employment Law, including Litigation/Discrimination.
2. Bond Counsel and related finance matters.
3. Intellectual Property and Cyber Security Matters.
4. Insurance Coverage Matters and Litigation, including contracts and torts.
5. Authority Compliance (e.g., FOIL/Open Meetings Law, Ethics, Authorities Budget Office issues, Purchasing and Contract compliance)
6. Environmental Compliance.

Please identify the area or areas listed above for which your firm seeks to be considered.

IV. Information Response Requirements:

All respondents are required to send six (6) complete sets of responses (1 original and 5 copies) which should be submitted to the Authority at the following address:

Terrence McCracken
Secretary to the Authority
Erie County Water Authority
295 Main Street, Room 350
Buffalo, New York 14203

Package should be marked: **2019 RFI for Various Legal Services**

Information Responses must be delivered via mail or hand delivery to the Authority at the above location no later than **Friday, April 12, 2019 at 12:00 PM**. Responses delivered prior to the deadline shall remain unopened, so long as the package is properly marked as set forth above. Late responses will not be accepted and will be marked "TOO LATE" and returned to the sender unopened.

All six (6) copies of each response should be arranged as follows:

1. **Title Page:** Showing RFI name and respondent's name, address, telephone number and contact person.
2. **Letter of Introduction:** One page, introducing the respondent and manually signed by the person(s) authorized to sign on behalf of, and bind the company to, statements made in response to this RFI.
3. **Firm Profile:** The following will be required in a overview/profile as part of each response:
 - a. Brief (one or two paragraphs) description of the respondent's business, its history and its ability to provide the requested services, including number of years in business.
 - b. Information pertinent to the respondent's background and experience.
 - c. Identify principals and/or officers of the respondent firm.
 - d. Firm name.
 - e. Firm address.
 - f. Telephone numbers and e-mail addresses.
 - g. Contact person.
 - h. Respondent's size and organizational structure.
 - l. Three references that respondent may wish to provide with contact name and telephone number.
4. **Compensation:** Provide a two-year prospective rate sheet for these services.
5. **Certifications and Insurances:** All attached required NYS Finance Law Certifications Forms A, B, C, Proposer Certification and Insurance certificates must be submitted.
6. **Additional Information:** If additional services are provided by your firm that are not specified in the SCOPE OF SERVICES, please include those services in your firm's response.

V. Terms and Conditions:

- All responses become the property of the Authority.
- The Authority shall have no financial responsibility for any costs assumed by the Firms submitting the RFI.
- Each proposal shall be prepared simply and economically, and should provide straightforward and concise responses that satisfy the requirements of the RFI.
- The Authority reserves the right to request additional information from any and all Responders to assist in the evaluation process. It is the responsibility of each responding Firm to inquire about and clarify any aspect of the RFI that is not

understood.

Acceptance/Rejection

The Authority reserves the right to accept or to reject any or all of the respondent(s) and to select the Firm proposal(s) which, in the opinion of the Authority, will be in the Authority's best interest. The Authority specifically may choose other than the lowest cost proposal in order to provide the requisite experience and background which are deemed to be most appropriate for the Authority.

THE ISSUANCE OF THIS RFI CONSTITUTES ONLY AN INVITATION TO PRESENT PROPOSALS. THE AUTHORITY AND THE RFI EVALUATION COMMITTEE RESERVE THE RIGHT TO DETERMINE, IN THEIR SOLE DISCRETION, WHETHER ANY ASPECT OF THE PROPOSAL SATISFACTORILY MEETS THE CRITERIA ESTABLISHED IN THE RFI. THE AUTHORITY AND THE RFI EVALUATION COMMITTEE RESERVE THE RIGHT TO SEEK ADDITIONAL INFORMATION AND/OR CLARIFICATION FROM ANY RESPONDENT, THE RIGHT TO NEGOTIATE WITH ANY RESPONDENT SUBMITTING A RESPONSE, AND THE RIGHT TO REJECT ANY OR ALL RESPONSES, WITH OR WITHOUT CAUSE. IN THE EVENT THAT THE RFI IS WITHDRAWN BY THE AUTHORITY FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, THE FAILURE TO OCCUR OF ANY OF THOSE THINGS OR EVENTS SET FORTH HEREIN, THE AUTHORITY SHALL HAVE NO LIABILITY TO ANY RESPONDENT FOR ANY COSTS OR EXPENSES INCURRED IN CONNECTION WITH THE RFI OR OTHERWISE.

Selection/Evaluation Process

1. An RFI evaluation committee will review all accepted proposals. It is anticipated that this process may be completed by April 24, 2019.
2. The RFI evaluation committee will report to the Board of Commissioners, and it is anticipated that the committee will recommend a firm(s) by May 1, 2019. After acquiring the Board of Commissioners consent, the selected firm(s) will be notified.
3. The successful firm(s) will enter into a retainer agreement with the Authority to memorialize the rates for the services that may be provided during the two year period covered by this RFI. Each time the Authority engages an approved firm for a matter during the period covered by this RFI a Retainer Letter shall be entered into at the agreed-to rates describing the scope of services.
4. All proposals must state the period for which the Firm's response shall remain in effect, with a minimum of 120 days from the due date of the response.

5. Respondents, agents and/or associates are prohibited from contacting or soliciting any other Erie County Water Authority official, including Authority members, during the restricted period from March 26, 2019 through the award date.

6. Any changes to the request for proposal will be communicated in writing to all firms who receive this RFI.

VI. Additional Information:

All questions and requests for clarification should be addressed in writing to the designated contact person, Terrence McCracken, at tmccracken@ecwa.org. All questions and requests for clarifications will be answered and distributed via e-mail to all firms eligible to submit a response to the RFI.

VII. Time Table of Events

- | | |
|----------------|---|
| March 26,2019 | - Distribute Request for Proposal (RFI) |
| April 5,2019 | - Deadline for submitting questions due by 12:00 PM, EDT |
| April 12,2019 | - RFI Responses due by 12:00 PM |
| April 12,2019- | The review process begins and respondents may be requested to provide additional information or requested to make oral presentations. |
| April 24, 2019 | - RFI Evaluation Committee brings recommendation to Board of Commissioners as a staff item and asks for authorization to negotiate. |
| May 1, 2018 | - RFI Evaluation Committee to seek Board of Commissioners authorization to enter into a contract. |

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 §§ 39-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 Policy 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.

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(1).

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

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

Sample Contract Termination Provision

<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 terms 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)