

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

Contract: _____ **Project No.:** 20190059
Project Description: AUTHORIZATION TO SOLICIT REQUEST FOR PROPOSALS FOR UTILITY AND TELECOMMUNICATIONS AVOID/CONSULTING SERVICES

Item Description:

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

Action Requested:

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

Approvals Needed:

APPROVED AS TO CONTENT:

Department Head Robert J. Leticchio Date: 4-5-19
 Risk Manager [Signature] Date: 04/05/2019
 Director of Administration Jawanna Fester Date: 4/8/2019
 Executive Engineer _____ Date: _____

APPROVED AS TO FORM:

Legal Margaret A. Murphy Date: 4/9/19

APPROVED FOR BOARD RESOLUTION:

Secretary to the Authority [Signature] Date: 4/9/19

Remarks: _____

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



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

April 9, 2019

To: Terrence D. McCracken, Secretary to the Authority
From: Robert J. Lichtenthal, Jr., Deputy Director
Subject: Utility and Telecommunications Billing Audit RFP

Attached is a proposed RFP for Utility and Telecommunications Billing Audit RFP Services.

At the Board of Commissioners meeting of January 24, 2019 a memo from me to the Commissioners discussing this project was presented. I have included a copy of that memo with this memo. Discussion revolved around whether the best course of action to acquire these services would be by "piggybacking" off of a Rockland County contract or for the Authority to issue its own RFP. The matter was referred to the Legal Dept. for them to offer an opinion as to a proper course of action. Legal's opinion to the Board (attached) recommends a RFP be issued for this service. An RFP has been prepared and is attached.

I am asking that this RFP be submitted to the Board of Commissioners for their consideration and approval of a resolution authorizing its issuance. I have included a "Blue Sheet" for inclusion on the April 18, 2019 Board meeting agenda.

ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM



January 14, 2019

To: Commissioners Schad, Carney and Jones

From: Robert J. Lichtenthal, Jr., Deputy Director
Richard Planavsky, Chief Business Office Manager

Subject: Potential Utility Billing Audit

The Authority's Department of Administration was tasked to do a feasibility study of possibly engaging a consultant to conduct an audit of ECWA utility and telecommunications bills. The purpose of the audit is to check for possible refunds available to the Authority due to billing errors. In 2017 Erie County Executive Mark C. Poloncarz reported that his administration, working with an auditing consultant, discovered that Erie County had been overbilled by utilities approximately \$900,000. This money was ultimately refunded to Erie County. The consultant, Troy & Banks, received 24% of the recovered amount, or approximately \$216,000 for its contractually authorized services in recovering the overbillings.

The Department of Administration did a search to find a group of well qualified consultants that might be able to provide this service to the Authority. Attached is a chart showing the search criteria used to identify a list of companies that could potentially provide this service. The minimum years of experience for the companies selected are 20 years. All the companies will do utility and telecommunications except American Utilities Consultants which will do utilities only. In researching this market, firms typically work on a contingent basis with a fixed percentage paid to them of refunds collected. The firms will go back six years to find refunds. The contingent percentage charge varies by firm. The firms also typically request a percentage charge for future savings found based upon initial refunds. The companies won't charge a fee if no savings are found.

ECWA Purchasing Policy and the Procedures and Guidelines outline the process to retain a firm to provide a professional service of this type, namely to do either a Request for Proposal (RFP) or use a State-approved list, created by a governmental unit or purchasing cooperative. The State also has approved the use of a "piggyback" contract. Piggyback guidelines are found in State Finance Law § 163 (10) (e). Staff believes the Authority is eligible to piggyback on a contract between Rockland County, New York ("Rockland") and Troy and Banks of Buffalo, NY. In 2017 Troy and Banks announced that it had recouped more than \$100,000 through an audit of Rockland telecommunications and

utility bills. The audit was implemented through Rockland's Purchasing Department working with Troy and Banks. Troy and Banks was awarded the audit contract through a competitive Request for Proposals (RFP) process. The RFP was sent to companies specializing in telecommunication and utility bill audits. The contract is structured on a contingency basis so Rockland only pays if refunds are received. Rockland received refunds from Orange & Rockland Utilities, Verizon, and Verizon Wireless. Rockland continues to work with Troy and Banks in audits of the payments made by Rockland for the Gross Receipts Tax and water bills from Suez Water Company.

Before the Authority goes to the effort and expense of issuing an RFP I would like to have the Legal Department determine if the Authority can "piggyback" off of the Rockland contract to engage Troy and Banks to conduct a utility billing audit of the Authority's relevant accounts. If the Authority can piggyback, I would then like to present an agreement to the Board for its consideration. If "piggybacking" is not applicable, then staff will propose the issuance of an RFP for these services.

Vendor Name	Troy & Banks	American Utility	TRI Utility	Utilty Audit Solutions	Tri Stem
Years in Business	20	28	30	27	40
Audit Utilities	YES	YES	YES	YES	YES
Audit Telecommunication	YES	NO	YES	YES	YES
Work on Contingency	YES	YES	YES	YES	YES
Additional Fee if no Savin	No	No	No	No	No



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM

February 1, 2019

To: Jerome D. Schad, Chair
Mark S. Carney, Vice Chair
E. Thomas Jones, Treasurer

Cc: Terrence D. McCracken, Secretary
John Mye III, Executive Director
Robert J. Lichtenthal, Deputy Director
Jacqueline Mattina, Associate Attorney
Richard Planavsky, Chief Business Office Manager

From: Margaret A. Murphy, Attorney

Subject: Professional Service Agreements Relating to Utility Savings Audits

At the last Board meeting, Deputy Director Robert J. Lichtenthal placed on the agenda a Staff Memorandum regarding the Erie County Water Authority (the "Authority") entering into a professional service agreement with "Troy & Banks of Buffalo."¹ According to the memorandum, Erie County and Rockland County had entered into professional service agreements with Troy & Banks to conduct a utility refund audit. Press releases obtained from the internet indicate Verizon and Verizon Wireless overbilled Erie County more than \$900,000 and Rockland County more than \$100,000, as discovered by audits conducted by Troy & Banks in 2017. According to the press release issued by Erie County, Troy & Banks collected 24% of the recovered amount.

In his memorandum, Mr. Lichtenthal makes the following request:

Before the Authority goes to the effort and expense of issuing an RFP I would like to have the Legal Department determine if the Authority

¹ I have checked the Secretary of State website for the entity known as "Troy & Banks of Buffalo." There are two entities on the website, which may be the entities referenced in Mr. Lichtenthal's memorandum: "Troy & Banks, Inc." and "Troy & Banks Consultants, LLC."

can “piggyback” off of the Rockland contract to engage Troy and Banks to conduct a utility bill audit of the Authority’s relevant accounts.

In my opinion, the Authority does not need to piggyback off the Rockland professional service contract.²

The Authority’s power to enter into a certain contract is restricted by state statutes. For example, the Authority’s enabling statute set forth the following provision within Public Authorities Law § 1069:

All contracts, or orders, for work, material or supplies performed or furnished *in connection with construction* shall be awarded by the authority pursuant to resolution. *Such contracts*, or orders, for work, material or supplies needed for any particular purpose *involving an expenditure for more than five thousand dollars shall be awarded only after inviting sealed bids or proposals therefor.* (Emphasis added)

Section 1069 would only apply to professional services rendered in connection with construction. A professional service contract relating to auditing services would not fall within the provision of § 1069.

Another state statute, applicable to all public authorities, restricting the power to contract is Public Authorities Law § 2881. That section allows a public authority to procure “apparatus, materials, equipment or supplies, or to contract for services related to the installation, maintenance or repair of apparatus, materials, equipment, and supplies” from vendors who have entered into contracts with federal, state or local governmental entities. Again, this statutory section would not be applicable to professional auditing services.

Except for the provisions of the Public Authorities Law cited above, the Authority has no state statutory provisions restricting its powers to enter into professional service agreements. As the Office of the State Comptroller, Division of State and Local Government and School Accountability has noted in its management guide,

² In his memorandum, Mr. Lichtenthal expressed the view that State Finance Law § 163(10)(e) would allow the Authority to piggyback on the Rockland County agreement. Section 163 of the State Finance Law, however, relates to state procurement contracts for goods and services and would not be applicable to procurement agreements entered by a county, such as Rockland County. County and other municipal corporations have separate statutory provisions, allowing other entities to piggyback on their procurement contracts. See County Law § 408-a(2); Gen. Mun. Law §§ 103(3), 104. However, such procurement contracts are subject to strict restrictions before other government entities may piggyback on them. In 2016, the Office of the State Comptroller issues a bulletin, outlining these restrictions. I have provided you with a hyperlink to this [Bulletin](#). The Legal Department has been unable to obtain enough information to determine whether the Rockland County professional service agreement was written in such a manner to allow other public entities to piggyback on its terms and conditions.

“Seeking Competition in Procurement:”

One of the most prominent exceptions to competitive bidding is professional services. Professional services generally include services rendered by attorneys, engineers, and certain other services requiring specialized or technical skills, expertise or knowledge, the exercise of professional judgment or a high degree of creativity. In addition, insurance coverage (e.g., health, fire, liability, and workers' compensation) is also not subject to competitive bidding requirements.

Professional services can involve significant dollar expenditures, and ***localities generally must include in their procurement policies and procedures a proposal or quotation process to ensure that these procurements are made on the most favorable terms and conditions.*** Seeking competition for professional services and insurance coverage may be an opportunity to generate cost savings for your locality. Your policy should describe the methods and procedures for promoting competition in the procurement of professional services. (Emphasis added).

The Authority's Purchasing Guidelines and Procedures does nothing to set forth the methods or procedures to procure professional services on “the most favorable terms and conditions.” This current Board has already directed the Comptroller and the Legal Department to propose changes to these Purchasing Guidelines and Procedures, for which the Board ultimately has the duty and responsibility to establish the internal control over the procurement of goods and services. Pub. Auth. Law §§ 2930-2932. That continues to be a work in progress.

While purchasing through extended State, county and other government contracts may be advantageous under some circumstances, it is not required, and does not guarantee a lower price and/or suitable services. For this reason, I would recommend the Board issue a request for proposal directed not only to the companies listed in Mr. Lichtenthal's memorandum, but also to other companies that may be found by diligently searching the internet. For example, searching the internet, I found the New York State Conference of Mayors has partnered with Computel Consultants to perform “utility savings audits” for cities and villages. This consultant should be added to the RFP list. Without issuing a request for proposal, the Board will not know whether the 24% charged by Troy & Banks is competitive with other companies charging to do the same type of audits.

ERIE COUNTY WATER AUTHORITY

Request for Proposal (RFP)
for

Utility and Telecommunication Audit/Consulting Services
Project No. 201900059



Erie County Water Authority
295 Main Street, Room 350
Buffalo NY 14203-2494

Contact:
Richard Planavsky
Chief Business Office Manager
Telephone: 716-849-8495
Email: rplanavsky@ecwa.org

TABLE OF CONTENTS

1. Introduction	3
2. Background	3
3. Scope of Services Required.....	3
4. Tasks and Deliverables.....	4
5. Proposal Requirements.....	5
6. Estimated Proposal Timetable.....	5
7. Submission of Proposals	6
8. Evaluation/Selection Process	7
9. Terms and Conditions	7
10. Acceptance/Rejection.....	8

Attachments:

- A State Finance Law Requirements, Forms A, B, and C
Section 139-L of the State Finance Law, Statement relating to Sexual Harassment Policy
- B Proposer Certification
- C Insurance Requirements

The Request for Proposal (RFP) for Utility and Telecommunication Audit/Consulting Services is being conducted pursuant to the newly enacted legislation, New York State Finance Law Sections 139j and k and the Erie County Water Authority's Purchasing Guidelines, Policies and Procedures.

1. Introduction

The Erie County Water Authority (the Authority) seeks proposals from qualified firms or teams to provide Consulting Services to include auditing of invoices for electric, sewer, and heating fuels, such as natural gas, propane, oil, or other fuels and invoices for telecommunication.

The Authority reserves the right to accept or reject any and/or all proposals or any part thereof, to waive any formality in the process, and to accept the proposal(s) considered to be in the best interest of the Authority. The Authority reserves the right to cancel this request at any time for any reason.

2. Background

The Erie County Water Authority is an independent public benefit corporation created in 1949 by a special act of the New York State Legislature. The Authority's mission is to ensure a safe and plentiful water supply for the people and industry of Erie County, New York.

3. Scope of Services Required

The utility audits should concentrate on rates and services and not the amount of energy consumed. The utility audits will include Authority utility billings for electric, sewer, and heating fuels, such as natural gas, propane, oil, or other fuels. The telecommunication audits will include Authority telecommunication billings. The audits will cover the 72 months immediately preceding the date the audit is performed. Proposer is to provide quantitative and narrative reports that indicate work accomplished and results, including refunds recovered from utility companies. Proposer shall identify tasks and deliverables utilized to accomplish reviews.

For the Utility Audit (electric, sewer, and heating fuels, such as natural gas, propane, oil, or other fuels):

- Audit/analyze utility billings for all types of utilities.
- Perform a comprehensive analysis of billing information.
- Review contracts.
- Examine multiple billings for the same location and utility type.
- Recalculate a sample of representative bills.
- Determine that accounts are being billed under the correct rate.
- Recalculate bills, if applicable, to determine if charges would be lower.
- Identify future cost reduction items, including, but not limited to:
 - Power factor penalty correction.
 - Combining or splitting of meters for billing purposes.
 - Contract negotiations to eliminate punitive rate clauses.
 - Produce an information database for accounts over \$1,000.00 per month.

For the Telecommunication Audit:

- Audit/analyze telecommunication billings.
- Perform a comprehensive analysis of local exchange carrier monthly basic service charges.

- Verify services and features contained on the customer service record for each location.
- Determine that accounts are being billed under the correct rate.
- Inventory lines, trunks, and circuits.

There shall be a phased approach:

- Phase I – Audit Set-up.
- Phase II – Detailed Audit.
- Phase III – Refund Claim Negotiations and Cost Savings Implementations.

The Authority will provide the awarded firm the following items:

- Copy of a summary account listing by vendor which will include account numbers and addresses in electronic format or one bill from each account.
- An executed Client Agreement and Letter of Authorization form(s).

If it is in the best interest of the Authority, it may be determined to separately award the utility services from the telecommunications services.

4. Tasks and Deliverables

The awarded vendor shall:

- Obtain from the Authority account numbers from utility and communications vendors, if online information is not available, then obtain one (1) monthly copy of all invoices.
- Obtain from the Authority all contracts executed with the utility and communications vendors.
- Collect Customer Service Recorders and historical transcripts from the designated vendors.
- Organize all invoices and data into firms specialized software.
- Conduct a physical inventory (if necessary) of all services at the Authority's facilities. This visit would be coordinated with the proper Authority personnel.
- Awarded firm shall perform a detailed audit of the Authority's utility and communication accounts. Awarded firms analysts shall review all monthly charges rendered by utility and telecommunication providers for potential savings or billing discrepancies. Awarded firms software shall be designed to check for billing errors in present tariff rates, discounts, contract, or vendors. If over-billing has occurred, firm shall prepare a claim letter documenting the findings.
- Report any errors awarded firm finds to the appropriate vendors with supporting evidence and requests for reimbursement. These reports shall be given simultaneously to the appropriate customer contact for the Authority.
- Negotiate any refund claims (including applicable interest) directly with the utility and telecommunication vendors as provided by law and regulation and consistent with the time periods established by applicable statutes of limitation. Confirm that all erroneous charges are removed from future billings. The service providers will prepare a statement of the amounts of each credit and an estimated date of receipt of the credit or refund.
- Report any future reduction recommendations to the appropriate Authority contact for acceptance or rejection.

- Report to utility and communications vendors any future savings recommendations accepted and approved by the Authority.

5. Proposal Requirements

Selection will be based on a review of qualifications provided in response to this RFP. Firms submitting a proposal submission package are asked to provide the following information in their Proposal. Failure to include the items as specified may result in disqualification:

- A full description of the firm and job description of those responsible for the coordination of the service to be provided.
- The names of current and past accounts of similar size and configuration.
- Three (3) references the firm has provided audit services for similar to the Authority, list complete contact information.
- The type(s) of computer analysis software used in the auditing process should be outlined.
- A narrative of the contractor’s understanding of the project and proposed approach to the scope of services, including information related to, but not limited to, the following:
 - Ability to audit all utilities used.
 - Knowledge of applicable New York State Public Service Commission rules and regulations and local “government” rate structures.
 - Ability to provide assistance in development of programs to improve monitoring of utility and telecommunication charges.
 - Ability to provide quantitative and narrative reports.
 - Utilization of a project team that consists of qualified utility and telecommunication billing auditors or persons with appropriate training and proven related experience.
 - A sample Client Agreement and Letter of Authorization form as referenced in section 3, page 4.

It is the responsibility of the contractor to be aggressive and diligent in obtaining all refund credits due. Mere identification of incorrect rate schedules is not considered an aggressive and diligent audit program.

6. Estimated Proposal Timetable

April 18, 2019	Distribute Request for Proposals (RFP)
May 9, 2019	Deadline for submitting questions for RFP or Insurance Requirements clarification(s) – due by 5:00 p.m. local time
May 14, 2019	RFP Responses due by 10:00 a.m. local time
May 21, 2019	Evaluation and selection process to be completed by Review Committee
May 30, 2019	Presentation and recommendation to the Authority’s Board of Commissioners

The consultant selected will be notified after the Authority’s Board of Commissioners has made an award of contract.

7. Submission of Proposal

The original and five additional copies of your response must be submitted in a sealed envelope, along with one certification (see Attachment B of the RFP). All proposals must bear on the outside the following:

Proposal for: Utility and Telecommunication Audit/Consulting Services

Submitted to: ERIE COUNTY WATER AUTHORITY

All responses to the RFP must be submitted no later than 10:00 a.m. (local time) on May 14, 2019 to the following:

Erie County Water Authority
295 Main Street, Room 350
Buffalo, New York 14203-2494
Attn: Richard Planavsky

Submitted by: RESPONDENT'S NAME
RESPONDENT'S ADDRESS
CITY, STATE, ZIP CODE
RESPONDENT'S PRIMARY CONTACT PERSON
RESPONDENT'S TELEPHONE NUMBER
DATE SUBMITTED

All responses to the RFP become the property of the Erie County Water Authority.

The Authority reserves the right to reject any and all responses to the RFP. The award will be made to the firm whose appointment as Utility and Telecommunication Audit/Consultant is deemed to be in the best interest of the Authority in its sole discretion.

The Respondent to whom the contract is awarded shall be required to enter into a written agreement with the Authority on a form approved by the Authority's legal counsel and comply with the Authority's insurance requirements (see Attachment C). The RFP and the response to the RFP, or any part thereof, may be incorporated into and made a part of the final contract. The Authority shall have the right to terminate the contracted services without cause by specifying the date of termination in a written notice to the firm at least thirty (30) working days before the commencement of audit work. In this event, the firm shall be entitled to just and equitable compensation for any work completed.

The firm shall not assign any interest in this agreement and shall not transfer any interest in the same without prior written approval of the Authority.

The Authority reserves the right to negotiate the terms and conditions of the contract with the selected Respondent.

The Authority reserves the right to request additional information from any and all Respondents to assist it in its evaluation process.

Any questions regarding the RFP should be addressed in writing and submitted by email to rplanavsky@ecwa.org no later than May 9, 2019 at 5:00 p.m. (local time).

Any changes to the RFP will be communicated in writing to all individuals (firm) who receive this RFP.

Respondent, its agents, and/or associates shall refrain from contacting or soliciting any other Erie County Water Authority official, including Commissioners and employees of the Authority, regarding the selection of an Utility and Telecommunication Audit/Consultant during the RFP process. Failure to comply may disqualify the respondent, at the option of the Authority.

8. Evaluation/Selection Process

A Review Committee will review all accepted responses and will have the option of short listing firms for oral presentation. The Authority will notify the firm if an oral presentation is required.

Responses to the RFP will be ranked by a Review Committee and a recommendation will be made to the Board of Commissioner. The Review Committee or its representative may contact a respondent for additional information.

Should the Authority be unable to negotiate a satisfactory contract with the first firm, negotiations with that firm shall be formally terminated. The Authority shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Authority shall terminate negotiations with that firm. The Authority's representative(s) shall then undertake negotiations with the third most qualified firm.

Should the Authority be unable to negotiate a satisfactory contract with any of the selected firms, the Authority's representative may select additional firms with which to continue negotiations, even if the firm did not reply to the RFP.

**THE ERIE COUNTY WATER AUTHORITY IS UNDER NO OBLIGATION
TO AWARD A PROFESSIONAL SERVICE CONTRACT TO THE
LOWEST COST RESPONDENT OR ANY RESPONDENT.**

9. Terms and Conditions

- All proposals become the property of the Authority.
- The Authority shall have no financial responsibility for any costs assumed by the Proposer in submitting the RFP.
- Each proposal shall be prepared simply and economically, and should provide straightforward and concise responses that satisfy the requirements of the RFP.

- The Authority reserves the right to request additional information from any and all Proposers to assist in the evaluation process. It is the responsibility of the Proposer to inquire about and clarify any aspect of the RFP that is not understood.

10 Acceptance/Rejection

The Authority reserves the right to accept or to reject any or all of the proposal(s) and to select the proposal(s) which, in the opinion of the Authority, will be in the Authority's best interest. The Authority also reserves the right to reject the response of any respondent who has previously failed in the proper performance of any agreement with the Authority. 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 RFP CONSTITUTES ONLY AN INVITATION TO PRESENT PROPOSALS. THE AUTHORITY AND THE RFP REVIEW COMMITTEE RESERVE THE RIGHT TO DETERMINE, IN THEIR SOLE DISCRETION, WHETHER ANY ASPECT OF THE PROPOSAL SATISFACTORILY MEETS THE CRITERIA ESTABLISHED IN THE RFP. THE AUTHORITY AND THE RFP REVIEW 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 RFP 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 RFP OR OTHERWISE.

ATTACHMENT A
STATE FINANCE LAW REQUIREMENTS
FORMS A, B, AND C

FORMS A, B, and C

STATE FINANCE LAW REQUIREMENTS

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

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

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

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

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

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

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

FORM A

**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)

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

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

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

Sample Contract Termination Provision

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

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

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

SEXUAL HARASSMENT BIDDING CERTIFICATION

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

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

(Name of Individual, Partnership or Corporation)

By _____
(Person authorized to sign)

(SEAL)

ATTACHMENT B
PROPOSER CERTIFICATION

PROPOSER CERTIFICATION

I have carefully examined the Request for Proposal and any other documents accompanying or made a part of this Request for Proposal.

I hereby propose to furnish the goods or services specified in the Request for Proposals at the prices or rates quoted in my response. I agree that my response to the RFP will remain firm for a period of up to 120 days after receipt by the Authority in order to allow the Authority adequate time to evaluate all responses.

I agree to abide by all conditions of this RFP.

I certify that all information contained in my response to the RFP is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this response on behalf of my firm as its act and deed and that my firm is ready, willing and able to perform if awarded the contract.

I further certify, under oath, that this response to the RFP is made without prior understanding, agreement, connection, discussion, or collusion with any other person, firm or corporation submitting a response to the RFP for the same product or service; and that the undersigned executed this Respondent's Certification with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

NAME OF BUSINESS

BY:

SIGNATURE

NAME & TITLE, TYPED OR PRINTED

MAILING ADDRESS

CITY, STATE, ZIP CODE

()
TELEPHONE NUMBER

ATTACHMENT C
INSURANCE REQUIREMENTS