

THE NEW YORK CITY WATER BOARD

**REQUEST FOR PROPOSALS
FOR
RISK AND INSURANCE CONSULTANT**

DATE OF ISSUE: April 12, 2011

AUTHORIZED WATER BOARD CONTACT

Proposing firms are advised that the Water Board's designated contact person for all matters concerning this Request for Proposals is:

Jason Low
Water Board Counsel
New York City Water Board
59-17 Junction Boulevard, 8th Floor
Flushing, NY 11373-5108
(718) 595-3114
jasonl@dep.nyc.gov

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RFP TIMETABLE

Release Date of the RFP April 12, 2011
Deadline for Question Submission 3:00 P.M. (EDT), April 29, 2011
Proposal Due Date 11:00 A.M. (EDT), May 11, 2011

Proposals are to be delivered to:

Jason K. Low
Water Board Counsel
New York City Water Board
59-17 Junction Boulevard, 8th Floor
Flushing, NY 11373-5108
(718) 595-3114
jasonl@dep.nyc.gov

Oral Presentations (as needed)..... Week of May 23, 2011
Completion of Evaluation May 27, 2011
Completion of Negotiations Approximately June 9, 2011
Commencement of Work..... Approximately July 1, 2011

SECTION I. BACKGROUND

Created by the New York State Legislature in 1984, the New York City Water Board (“the Board”) is a public benefit corporation charged with establishing and collecting water and wastewater rates and charges in an amount sufficient to place the water supply and wastewater systems (the “System”) of the City of New York (the “City”) on a self-sustaining basis. The System is operated and maintained by the City’s Department of Environmental Protection (“DEP”).

In the course of operating and maintaining the System, DEP enters into a large number of contracts with private entities. Indeed, DEP is the largest City construction agency, awarding more than \$1 billion annually in contracts for construction, construction-related services and engineering services. Many of these contracts relate to multi-billion dollar projects, such as DEP’s ongoing construction of a third water tunnel and the Croton Water Filtration Plant.

DEP generally requires each of its contractors to purchase a wide array of insurance policies, in addition to requiring payment and performance bonds for many types of contracts. Construction contractors do so in accordance with the City’s Standard Construction Contract, and services contractors do so in accordance with the City’s General Provisions Governing Contracts for Consultant, Professional, Technical, Human and Client Services. As a general matter, these form contracts set forth certain City-wide requirements, while allowing each agency to determine such matters as the types and limits of insurance each contractor will be required to purchase. Currently, DEP has no risk or insurance unit to provide guidance in this undertaking. As a result, in at least some contracts, DEP may require types of insurance and bonds it does not need or fail to require types of insurance and bonds it does need. Even for types of insurance and bonds it properly requires, DEP may fail to specify types of coverage or protection it needs or impose minimum limits and or requirements that are too high or low. Finally, DEP may fail to take advantage of the discretion provided in the standard contracts for agencies to tailor the terms and conditions of required insurance and bonds to reflect the nature of each contract. In sum, DEP may be incurring significant unnecessary costs or exposure and missing opportunities to introduce more innovative approaches to insurable risk.

In addition to its usual projects and contracting practices (and recurring insurance-related issues), DEP is considering entirely new initiatives relating its operation and maintenance of the System. For example, DEP may enter into public-private partnerships to realize its goal of developing 30-50 megawatts of clean energy supply at its facilities. DEP is also exploring partnerships with the private sector for the performance of significant core functions that it currently manages internally. These potential initiatives raise novel and important issues relating to risk and insurance.

SECTION II. PURPOSE OF THE RFP

In issuing this Request for Proposals (“RFP”), the Board is soliciting competitive, sealed proposals from qualified vendors (“Proposers”) to provide broad-based risk and insurance consulting services to the Board and DEP regarding the insurable risks encountered in many or most DEP projects involving private contractors. The contract that results from this RFP (the

“Contract”) will be a direct fee contract awarded to the firm(s) or company(ies) (the “Consultant”) offering the best combination of merit and price, as determined by the Board.

SECTION III. AGENT FOR NYC WATER BOARD

DEP will be acting for the Board with regard to the Contract by soliciting and evaluating proposals, recommending a contractor for selection, negotiating the Contract with the successful Proposer, administering the Contract, and any other function the Board assigns to DEP during the course of the Contract.

SECTION IV. ANTICIPATED CONTRACT TERM

The Board anticipates the Contract will be for a term of two years from the Board’s notice to proceed. The Contract may also include option(s) to renew, at the Board’s discretion, for up to three additional one-year terms.

The Board reserves the right, prior to award of the Contract, to determine the length of the initial contract term and each option to renew, if any.

SECTION V. ANTICIPATED PAYMENT STRUCTURE

The Board has a strong preference for an hourly billing structure. For further details, see Section VIII, subsection B, paragraph 4 (“Price Proposal”).

The Board expects that the Contract will provide for a maximum level of compensation (including expenses) for the initial two-year term, subject to increase at the discretion of the Board. Similarly, renewal(s), if any, may provide for a maximum level of compensation, subject to increase at the discretion of the Board. To avoid the provision of uncompensated services, the Board expects that the Contract will provide for notice from an Officer of the Board to the Board and Consultant in the event that total compensation paid and payable to the Consultant approaches the Contract’s maximum level of compensation.

The Board currently anticipates that the not-to-exceed level of compensation for the initial two-year term will be \$300,000, although the Board may choose a different number prior to execution of the Contract. Further, as noted above, the Contract’s not-to-exceed level may be increased during the course of its two-year term, at the discretion of the Board. Actual compensation will depend on such factors as the specific services DEP requests of the Consultant and the time Consultant expends in providing such services, consistent with the terms of the Contract.

SECTION VI. SCOPE OF SERVICES

The Board seeks to procure the services of a Consultant that will provide consulting services regarding the insurable risks encountered in DEP’s contracts as defined below (the “Scope of Services”). The Consultant will be expected to perform services including some or all of the following:

1. Review major contracts that DEP is currently planning or considering entering into to determine such things as (a) the nature and dollar value of insurable risks, (b) the types of insurance and bonds appropriate to protect DEP and/or DEP's contractors against such risks, (c) the appropriate minimum limit for each type of insurance and appropriate bonding requirements and (d) the appropriate terms and conditions of required insurance policies.
2. Review types of contracts DEP enters into on a recurring basis to determine, as a general matter, the kinds of issues set forth in paragraph 1 above.
3. Review DEP contracts or contract requirements to estimate the average cost of insurance to DEP, breaking down such estimates as DEP may request (e.g., according to type or size of contract, type of insurance, type of required endorsement, etc.), and compare such average costs with the average costs borne by governmental and/or private entities that enter into similar contracts.
4. Review the insurance provisions in the City's Standard Construction Contract and the City's General Provisions for services contracts to determine revisions that would address the risks inherent in DEP's contracts, adequately protect DEP and the City's interests, and streamline the procurement of insurance and bonding for contractors.
5. Review innovative types of projects DEP may undertake in the future, such as the production of clean energy at its facilities, to (a) determine which risks are uninsurable or insurable only at unreasonably high costs and (b) for the remaining risks, consider the types of issues set forth in paragraph 1 above.
6. Insofar as DEP considers partnerships with the private sector for the performance of core functions that it currently manages internally, (a) analyze the cost of self-insuring the risks of such functions (as DEP currently does) versus the cost of insuring such risks as part of the private parties performance of such functions and, if DEP decides to move forward with any such partnership, (b) determine which risks are uninsurable or insurable only at unreasonably high costs and, for the remaining risks, consider the types of issues set forth in paragraph 1 above.
7. In the event the City's proposed State legislation to permit "wrap-up" insurance programs in City construction projects is enacted, thoroughly review planned and potential DEP construction projects to determine which projects or types of projects would be appropriately structured on a wrap-up basis, considering such issues as (a) cost savings relative to DEP's current practices (requiring each contractor to procure its own insurance), (b) relative advantages of structuring the wrap-up as an OCIP (Owner-Controlled Insurance Program) versus a CCIP (Contractor-Controlled Insurance Program), (c) administrative efficiencies/inefficiencies and burdens, and (d) for the wrap-up, the kinds of issues set forth in paragraph 1 above.
8. Advise DEP concerning all of the foregoing, including (a) consultation, presentations and the submission of written reports and recommendations as

requested, (b) assistance in the drafting of DEP policies and procedures, and (c) assistance in drafting RFP or bid specifications relating to insurance coverage or bond protection on DEP contracts.

9. Advise DEP concerning innovative ways it might address the financial risks encountered in its projects and contracts (e.g., through alternative products, different methods of purchasing or packaging insuring, self-insurance, etc.).
10. Provide such additional services relating to risk, insurance and bonding as DEP may request from time to time.

SECTION VII. MINIMUM QUALIFICATION REQUIREMENTS

Within the last five years, the Proposer must have served as a risk consultant, insurance consultant, or insurance broker to the City of New York (including any of its departments or agencies, such as DEP) or any governmental authority with substantial activity in New York City (such as the Metropolitan Transportation Authority, the School Construction Authority, or the Port Authority of New York and New Jersey) or any public benefit corporation affiliated with the City of New York (such as the New York City Economic Development Corporation), or the State of New York, or any large county or other governmental entity (including authorities and public benefit corporations) in New York State, or other comparable public entity.

Proposals that fail to meet this requirement will be rejected.

SECTION VIII. PROPOSAL PROCEDURES AND REQUIREMENTS

A. PROPOSAL EVALUATION PROCEDURES

1. Evaluation Procedures

The evaluation committee shall be comprised of a minimum of three persons qualified to evaluate the components of this solicitation.

2. Evaluation Committee Procedures

- a. All proposals received on or before the proposal due date and time at the location specified herein will be evaluated to determine whether they meet all of the minimum submission requirements set forth herein.
- b. The evaluation committee will make a determination to: (1) recommend award of a contract based on initial proposals (considering both merit and price); or (2) conduct discussions/negotiations with all or a “short list” of Proposers. In the event the evaluation committee decides to conduct discussions/negotiations with all or a “short list” of Proposers:
 - The Board may require Proposers to give oral and/or visual presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein.

- Upon completion of the discussions/negotiations, the evaluation committee may request that all Proposers still under consideration for award submit a best and final offer by a common due date and time.
 - The evaluation committee will evaluate, rate and rank the best and final offers, weighing merit (according to the evaluation criteria set forth below) and price.
- c. Contract award is subject to the approval of the Board or its Executive Director pursuant to the Board's procedures.

3. Evaluation Criteria and Relative Weights

The evaluation committee shall evaluate and rate all proposals meeting the minimum submission requirements by applying the evaluation criteria listed below. The contract award will be based on the best combination of merit and price as determined by the Board.

Merit shall be determined as follows:

- a. Technical Proposal – 40%
- b. Qualifications – 60%

B. PROPOSAL PACKAGE

The proposal package shall contain the following:

1. Proposal Cover Letter

The Proposer shall submit a cover letter transmitting its proposal package to the Board. The cover letter shall be signed and dated by an individual authorized to enter into a contract with the Board on behalf of the Proposer. The cover letter shall include:

- a. The Proposer's name, address and Federal Employer ID Number.
- b. Name, title, telephone number, and email address of the individual who is authorized to commit the Proposer to a contract.
- c. Name, title, telephone number, and email address of the individual who is to be contacted regarding the content of the proposal, if different from above.
- d. The name, address and Federal Employer ID Number of the subcontractor(s), if applicable.
- e. The signature of the individual authorized to commit the Proposer to the proposal.

2. Technical Proposal

The technical proposal is a clear, concise description of how the Proposer intends to provide the services set forth in the Scope of Services. To receive high marks, the technical proposal should reference examples of key issues the Proposer will seek to address in each portion of the Scope of Services. It should also address staffing concerns, including the expertise of key professional staff who will work on this engagement (the “Core Staff”), explanations of how the Core Staff will be organized and work together, and the ability of the Core Staff to draw upon the Proposer’s other professional staff. The technical proposal may also describe any distinctive technologies the Proposer will use on the engagement and how such technologies will provide value to the services to be rendered. The technical proposal may include any other information the Proposer deems relevant.

3. Statement of Qualifications

The statement of qualifications is a presentation of the qualifications and experience of the Proposer’s organization and the staff that will be providing the services. At a minimum, the proposal should include the following:

- A detailed description of the Proposer’s experience in providing the kinds of services described in the Scope of Services. Of particular interest would be the Proposer’s experience in providing such services to any of the following: the City of New York (including any of its departments or agencies); a governmental authority with substantial activity in New York City; a public benefit corporation affiliated with the City of New York; the State of New York; or any large county or other governmental entity (including authorities and public benefit corporations) in New York State.
- The Core Staff for this engagement and, for each such person, the role s/he will play and his/her experience in providing the kind of services described in the Scope of Services. For each member of the Core Staff, attach a resume (in an appendix to the proposal), including professional title and contact information, and provide a statement certifying that s/he will be available to play the designated role for the duration of the Contract. The Proposer may limit this certification to the initial term of the Contract (i.e., not including renewals, if any) if it wishes to do so.
- A list of at least three references for the Proposer who can provide information concerning the Proposer’s experience in providing the kind of services described in the Scope of Services. At least one reference should relate to an engagement that meets the requirements of Section VII – Minimum Qualification Requirements. The list of references should include the name of the reference entity, a brief description of the engagement(s) for such entity for which the Proposer provided services (or other relationship between the Proposer and the reference entity), and the name, title and telephone number of a contact person at the reference entity. For each reference, indicate which member(s) of the Core Staff, if any, worked on the engagement(s) with the reference entity and the role s/he played.

- Whether the Proposer foresees the possibility of any conflict of interest or appearance of conflict of interest, and, if so, how the Proposer will assure that it does not place its own interests or the interests of others with which it has a financial or business relationship (e.g., firms that have or may enter into contracts with the City or insurance companies) above the interests of the Board, DEP and the City. Note that the Proposer will be free to have clients that enter into contracts with the City (for example, providing brokerage services, even with regard to City contracts) so long as the Proposer has adequate protections in place to ensure that it does not place its own interests or the interests of such clients above those of the Board, DEP and the City.
- At its option, the Proposer may submit any other materials that will allow the Board and DEP to better evaluate its qualifications for this engagement (e.g., letters of reference/recommendation, awards, etc.). Such materials may be included in an appendix.

If applicable, a like statement of qualifications of each subcontractor shall be included.

4. Price Proposal

The Price Proposal is a presentation of the details of the Proposer's offering price.

With regard to fees, the Board has a strong preference for an hourly billing structure. Indicate whether an hourly billing arrangement is acceptable and, if so, provide a proposed hourly fee schedule, including the rate(s) at which members of the Core Team and other employees of the firm will be billed. If members of the Core Team will be billed at different hourly rates, specify the rate for each member, as well as the rate(s) of employees not on the Core Team who are called upon to work on the project. For all persons, such rates should be guaranteed for the first year of the Contract. If a Proposer may charge higher rates for future years (including renewals of the Contract), the Proposer should specify a maximum yearly increase in hourly rates, expressed as a percentage of the prior year's hourly rate.

The Board prefers that hourly rates be charged only for the Proposer's professional employees. Non-professional employees should be used on the engagement as needed, but the Board prefers that such employees' time not be separately billed. If the Proposer wishes to bill separately for non-professional employees, specify the rate(s) charged for such employees.

The selected Proposer may be required to provide detailed hourly billing information monthly, sorted by assignment, as a basis for keeping track of costs as they accrue and for planning for workload and costs in subsequent periods. Indicate whether the Proposer has internal accounting and billing systems that would make such detailed invoicing possible.

If an hourly billing structure is not acceptable, provide an alternative price proposal that allows the Board to compare the charges pursuant to that structure with an hourly billing arrangement.

Approved out-of-pocket expenses will be separately payable under the Contract. Please provide an estimate of expenses.

Note: The Price Proposal (a) should be submitted in a separate, sealed envelope, clearly labeled “Price Proposal”, (b) should be irrevocable for one hundred eighty (180) days from the date of the opening of Price Proposal, and (c) should be signed by the Proposer’s authorized representative.

5. Required Board Documents

The following documents shall be completed and submitted by the Proposer and, if applicable, each proposed subcontractor, in conjunction with the proposal package:

- a. Acknowledgment of Addenda (attached as Appendix C). This form serves as the Proposer’s acknowledgment of the receipt of addenda that may have been distributed by the Board prior to the proposal due date.
- b. Certificate of Non-Collusion (Appendix D).
- c. Affidavit of Payment of Taxes (Appendix E).

C. PROPOSAL PACKAGE SUBMISSION REQUIREMENTS

- 1. Proposal packages are due on or before the proposal due date at the location prescribed in the RFP Timetable.
- 2. Proposers shall deliver one (1) original and five (5) copies of the proposal package. To prevent waste, Proposers are strongly encouraged to print and/or copy responses on both sides of the page.
- 3. The price proposal, one (1) original, shall be enclosed in a separate sealed envelope within the proposal package.
- 4. Only one copy of the Acknowledgment of Addenda, Certificate of Non-Collusion, and Affidavit of Payment of Taxes is required.
- 5. Proposers are advised that there is a twenty (20) page limitation for proposals, excluding appendices, and are advised to be concise in the amount of information they submit.
- 6. The outer envelope enclosing any materials submitted in response to this RFP shall be addressed as follows:

FROM: Proposer Name/Address

TO: Jason K. Low
Water Board Counsel
New York City Water Board

59-17 Junction Boulevard, 8th Floor
Flushing, NY 11373-5108
(718) 595-3114
jasonl@dep.nyc.gov

RFP FOR: Risk and Insurance Consultant

7. Proposers shall be responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the information required in item “6” above, appears on the outer envelope used by such service.
8. A full, electronic copy of the proposal package shall also be emailed to jasonl@dep.nyc.gov or delivered on a CD with the hard copy submission.

SECTION IX. GENERAL INFORMATION

1. STATUS OF INFORMATION

- a. The Board shall not be bound by any oral or written information released prior to the issuance of the RFP.
- b. The Board shall not be bound by any oral or written representations, statements, or explanations other than those made herein, in Board written responses to consultant inquiries, or in formal written addenda to this RFP.

2. COMMUNICATION WITH THE AGENCY

Proposers are advised that, from the date this RFP is issued until the award of the Contract, no contact with Board or DEP personnel related to this solicitation is permitted, except as shall be authorized by the Board’s designated contact person.

3. QUESTIONS REGARDING THE RFP

- a. All inquiries regarding this solicitation shall be emailed to the Board’s designated contact person by 3:00 P.M. (EDT) on April 29, 2011, indicating “Risk and Insurance Consultant RFP Question” in the subject line.
- b. To receive responses to any questions submitted, please register the Proposer and the Proposer’s representative contact with the Board by providing an email address to the Board’s designated contact person. Responses will also be posted on the Board’s website: <http://www.nyc.gov/nycwaterboard>.

4. ADDENDA TO THE RFP

- a. The Board shall issue responses to inquiries related to substantive issues and any other corrections or amendments to the RFP that it deems necessary prior to the proposal due date in the form of written addenda. Such addenda will be posted on the Board’s website: <http://www.nyc.gov/nycwaterboard>.

- b. It is the Proposer's responsibility to assure receipt of all addenda. The Proposer should verify with the Board's designated contact person prior to submitting a proposal that all addenda have been received. Proposers shall acknowledge the number of addenda received as part of their proposals.

5. SUBCONTRACTING

If any part of the work covered by the RFP is to be subcontracted, the Proposer shall identify the subcontractor by furnishing its corporate name and the names of its officers. Any subcontracts are subject to approval as set forth in the Board's General Provisions Governing Contracts for Consultants, Professional and Technical Services. (See Appendix A.) The selected Proposer will be responsible for all work covered herein and is the sole contact regarding contractual matters.

6. MODIFIED PROPOSALS

- a. The Proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the proposal due date and time and, if applicable, up until the due date and time set for the submission of best and final offers.
- b. The evaluation committee shall consider only the latest, timely-submitted proposal.

7. WITHDRAWAL OF PROPOSALS

A proposal may be withdrawn in writing only prior to the proposal due date and time or, if applicable, up until the due date and time set for the submission of best and final offers.

8. LATE PROPOSALS, LATE MODIFICATIONS AND LATE WITHDRAWALS

- a. Proposals received after the proposal due date and time are late and shall not be considered.
- b. Modifications and withdrawals received after the proposal due date and time and/or, if applicable, after the due date and time set for the submission of best and final offers are late and shall not be considered.

9. CONFIDENTIAL/PROPRIETARY INFORMATION

- a. The Proposer shall specifically identify those portions of the proposal deemed to be confidential, proprietary information, or trade secrets and provide any justification why such material, upon request, should not be disclosed by the Board.
- b. Such information deemed by the Proposer to be confidential/proprietary shall be easily separable from the non-confidential/non-proprietary sections of the proposal.
- c. The Board is subject to the provisions of the Freedom of Information Law (FOIL), N.Y. Public Officers Law, Sections 84 through 90, relating to public access to agency

records. The Board accepts no responsibility for disclosure of information designated as exempt from disclosure, but the Board does intend to evaluate, on a case by case basis, whether exemption from disclosure applies at such time as a FOIL request is made to the Board for examination of such a proposal.

10. COSTS INCURRED BY PROPOSERS

The Board shall not be liable for any costs incurred by Proposers in the preparation of proposals or for any work performed in connection therewith.

11. ORAL PRESENTATIONS AND/OR INTERVIEWS

Proposers ranking highly according to the criteria established in Section VIII may be invited to give oral and/or visual presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein. Such conference calls or presentations would be held during the week of May 23, 2011. The Board's designated contact person will schedule the time and location of these presentations.

12. DISCUSSIONS/NEGOTIATIONS/BEST AND FINAL OFFERS

- a. The Board reserves the right to award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Proposer's best terms from a technical and cost standpoint.
- b. The Board reserves the right to enter into discussions/negotiations with one or more Proposers and to request the submission of best and final offers from those Proposers, who after the conclusion of such discussions/negotiations, are still under consideration for award. No Proposer shall have any rights against the Board arising from an invitation to enter into discussions/negotiations or to submit a best and final offer.

13. PROPOSER ACCEPTANCE OF RFP & CONTRACT PROVISIONS

The submission of a proposal signifies that the Proposer (a) understands and accepts the terms and conditions in this RFP, (b) intends to compete for the award of the contract described herein, and (c) understands and accepts that the final contract will take substantially the form of Appendix B hereto (with such changes as the Board may make in its discretion) and include Appendix A hereto (the Board's General Provisions Governing Contracts for Consultants, Professional and Technical Services).

14. CONTRACT AWARD

- a. The Board reserves the right to award the contract to other than the Proposer offering the lowest overall cost.
- b. The contract(s) resulting from this solicitation shall be awarded to the qualified Proposer(s) whose proposal(s) offers the best combination of merit and price as determined by the Board, based on the evaluation factors set forth herein.

15. RFP POSTPONEMENT/CANCELLATION

The Board reserves the right to postpone or cancel this RFP and to reject all proposals.

16. COMPLIANCE INFORMATION AND EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

The successful Proposer shall comply with the equal employment opportunity requirements contained in Appendix A. Non-compliance with any of the provisions will result in the disqualification or rejection of a proposal at the Board's sole discretion.

The Board will only contract with firms that do not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions. The Board encourages proposals from women-owned and minority-owned businesses and from small and City-based businesses.

17. LIMITATIONS OF LIABILITY

The issuance of this RFP does not commit the Board to award a contract or to pay any costs incurred by Proposers in the preparation and submission of proposals. The Board reserves the right to:

- Reject any or all proposals received in response to this RFP;
- Award contracts to more than one vendor;
- Not award a contract;
- Award a contract without any discussion with Proposers;
- Retain a successful Proposer for only a portion of the Scope of Services;
- Accept a proposal other than the proposal offering the lowest price;
- Waive or modify any irregularities in proposals received after prior notification to the Proposers;
- Adjust any proposed prices for the purpose of evaluation, based upon a determination that selection of the proposal will incur additional costs to the Board;
- Consider proposals or modifications received at any time before the award is made, if such is in the best interest of the Board;
- Request clarification and/or additional information from the Proposers during the evaluation process; and,

- Utilize any and all ideas submitted in the proposals received, unless those ideas are covered by legal patent or proprietary rights and the patent or those rights are indicated by the Proposers.

18. AFFIDAVIT OF PAYMENT OF TAXES

All Proposers shall file with their proposals an affidavit, which affirms that the Proposer has paid all applicable City income, excise, and other taxes, charges and fees for every year in which it has conducted business activity in the City. (See Appendix E.)

All Proposers shall also affirm and declare that they are not in arrears to the City of New York upon any debt, tax or contract, and are not in default, as a surety or otherwise, upon any obligation to the City or State of New York, or to any public authority, and have not been declared not responsible or disqualified by any agency of the City or the State of New York, or by any public authority, and that there is no proceeding pending against the Proposer relating to the responsibility or qualification of the Proposer to receive public contracts.

19. CERTIFICATE OF NON-COLLUSION AND INDEPENDENT PRICE DETERMINATION

All Proposers shall file with their proposals a certificate of non-collusion, which affirms that the Proposer has made an independent price offering without any collusion from competing Proposers (see Appendix D).

20. EXCEPTIONS TO RFP

Any deviation from the legal or technical requirements contained herein must be stated in the proposal and separately listed and referenced on a separate sheet attached to the proposal and entitled "Exceptions". Failure to list exceptions separately in the "Exceptions" attachment shall be deemed to constitute consent to all such terms and conditions herein and shall constitute a binding waiver by the Proposer of all exceptions not listed. A general exception or reservation to the legal or technical terms and conditions shall be deemed a nullity and may also result in the Board rejecting the proposal as non-responsive.

The contract to be entered into shall take substantially the form of Appendix B hereto (with such changes as the Board may make in its discretion) and include Appendix A hereto (the Board's General Provisions Governing Contracts for Consultants, Professional and Technical Services). Submission of a proposal constitutes consent to these terms and conditions. Any exceptions must be explicitly stated in the proposal and separately listed in the attachment entitled "Exceptions."

21. CONTRACT NEGOTIATIONS

Upon selection, the successful Proposer will be invited to negotiate a contract with the Board. At the Board's discretion, the contents of the selected proposal, together with the RFP, may be incorporated into and made part of the final contract. Should negotiations

fail to result in a signed contract within a reasonable period of time as defined by the Board, the Board reserves the right to terminate negotiations and select another Proposer, issue a new RFP, or take any other action consistent with the best interests of the Board.

The Board expects that the final contract will take the form of Appendix B hereto (with such changes and additions as the Board may make in its discretion) and Appendix A. The Board will not consider execution of any Proposer's standard contract.

22. TAXES

Sales to the Board are exempt from the payment of State and City sales and compensating use taxes. Therefore, cost proposals should exclude such taxes.

23. PUBLICITY AND COMMUNICATIONS

News releases, public announcements or communications revealing material terms and conditions of a proposal, or made for the purposes of restricting competition, are prohibited.

APPENDIX A

GENERAL PROVISIONS GOVERNING CONTRACTS FOR CONSULTANTS, PROFESSIONAL AND TECHNICAL SERVICES

ARTICLE 1. DEFINITIONS

As used throughout this Agreement, the following terms shall have the meanings set forth below:

- A. "Board" shall mean the New York City Water Board.
- B. "City" shall mean the City of New York, New York.
- C. "Consultant" shall mean _____.
- D. "DEP" shall mean the New York City Department of Environmental Protection.
- E. "Executive Director" shall mean the Executive Director of the Board or his duly authorized representative. The term "duly authorized representative" shall include any person or persons acting within the limits of his authority.
- F. "Law" or "Laws" shall mean any Federal, State or Local Law, Ordinance, Rule or Regulation having the force of Law.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.1 PROCUREMENT OF AGREEMENT

- A. The Consultant represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Consultant further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Consultant makes such representations and warranties to induce the Board to enter into this Agreement and the Board relies upon such representations and warranties in the execution hereof.
- B. For a breach or violation of such representations or warranties, the Executive Director shall have the right to annul this Agreement without liability, entitling the Board to recover all monies paid hereunder and the Consultant shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the Board for the falsity or breach, nor shall it constitute a waiver of

the Board's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Agreement.

2.2 CONFLICT OF INTEREST

The Consultant represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Consultant further represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it. No officer or employee of the Board shall participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof. It shall not be deemed a conflict of interest if the Consultant or any director, officer or employee of the Consultant has a water and sewer account with NYCWB and payments made on such account are covered by this Agreement.

2.3 FAIR PRACTICES

The Consultant and each person signing on behalf of any Consultant represent and warrants and certifies, under penalty of perjury, that to the best of its knowledge and belief:

- A. The prices in this Agreement 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;
- B. Unless otherwise required by Law, the prices which have been quoted in this Agreement and on the proposal submitted by the Consultant have not been knowingly disclosed by the Consultant prior to the proposal opening, directly or indirectly, to any other bidder or to any competitor; and
- C. No attempt has been made or will be made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

The fact that the Consultant (a) has published price lists, rates, or tariffs covering items being 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 the above.

ARTICLE 3. AUDIT BY THE BOARD

- 3.1 All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the Board and by the Comptroller's Office of the City in accordance with applicable Law.
- 3.2 The Consultant shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be reasonably required by the Board so that it may evaluate the reasonableness of the charges and shall make its records available to the Board as the Board considers necessary.
- 3.3 All books, vouchers, records, reports, cancelled checks and any and all similar material directly or solely related to this Agreement may be subject to periodic inspection, review and audit by the Board. Such audit may include examination and review of the source and application of all funds whether from the Board, the City, any State, the Federal Government, private sources or otherwise.
- 3.4 The Consultant shall not be entitled to final payment under the Agreement until all requirements have been satisfactorily met.

ARTICLE 4. COVENANTS OF THE CONSULTANT

4.1 EMPLOYEES

- A. All experts or consultants or employees of the Consultant who are employed by the Consultant to perform work under this Agreement are neither employees of the Board nor under contract to the Board and the Consultant alone is responsible for their work, direction, compensation and personal conduct while engaged under the Agreement. Nothing in this Agreement shall impose any liability or duty on the Board for the acts, omissions, liabilities or obligations of the Consultant, any person, firm, company, agency, association, corporation or organization engaged by the Consultant as expert, consultant, independent Consultant, specialist, trainee, employee, servant, or agent, or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm, or corporation.
- B. The Consultant shall be solely responsible for all physical injuries or death to its agents, servants or employees or to any other person or damage to any property sustained during its operations and work on the project under this Agreement to the extent resulting from any negligent or wrongful act of omission or commission or error in judgment of any of its officers, trustees,

employees, agents, servants, or independent Consultants, and shall hold harmless and indemnify the Board, the City, and DEP from liability upon any and all claims for damages on account of such injuries or death to any such person or damages to property on account of any negligent act, error, or omission of the Consultant, its officers, trustees, employees, agents, servants or independent Consultants. The Consultant shall be solely responsible for the safety and protection of all of its employees while they are engaged in the performance of this Agreement. The Board shall provide the Consultant with prompt notice of any such claims, full cooperation in the defense of any such claims, and the assignment of the right to defend and/or settle any such claims.

C. Workers' Compensation and Disability Benefits

If this Agreement is of such character that the employees engaged thereon are required to be insured by the provisions of Chapter 615 of the Laws of 1922, known as the "Workers' Compensation Law" and acts amendatory thereto, the Agreement shall be void and of no effect unless the Consultant shall secure compensation for the benefit of, and keep insured during the life of this Agreement, such employees in compliance with the provisions of said law, inclusive of Disability Benefits; and, shall furnish the Board with two (2) certificates of these insurance coverages.

D. Unemployment Insurance

Unemployment Insurance shall be obtained and provided by the Consultant for its employees.

E. Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Section 220 of the Labor Law of the State of New York, all persons employed by the Consultant in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by law, not less than the minimum wage as prescribed by law. Any breach or violation of the foregoing shall be deemed a breach or violation of a material provision of this Agreement.

4.2 INDEPENDENT CONSULTANT STATUS

The Consultant and the Board agree that the Consultant is an independent Consultant and not an employee of the Board, and that in accordance with such status as independent Consultant, the Consultant covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the Board, by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Board, including, but not limited to,

Workers' Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership credit.

4.3 INSURANCE

A. During the performance of the Services under this Agreement, the Consultant shall maintain the following insurance:

- (1) General Liability Insurance, with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate.
- (2) Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- (3) Workers' Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance, with a limit of \$500,000 for each occurrence.
- (4) Professional Liability Insurance, with a limit of \$1,000,000 annual aggregate.

Such policy or policies of insurance shall be obtained from a company or companies, duly licensed to do business in the State of New York and the General Liability and Automobile Liability insurance policies shall name the Board as an additional insured thereunder. Such policies shall provide that in the event of cancellation thereof the Board shall be notified at least fifteen (15) days in advance thereof. Two (2) certificates of insurance shall be delivered to the Board for approval as to form prior to the effective date of this Agreement.

B. In the event that any claim is made or brought against the Board arising out of negligent or careless acts of an employee of the Consultant, within the scope of his employment, or arising out of the Consultant's negligent performance of this Agreement, then the Board shall have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the said claim or action to the extent that the claim is not covered by insurance. The rights and remedies of the Board provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

4.4 PROTECTION OF BOARD PROPERTY

A. The Consultant assumes the risk of, and shall be responsible for, any loss or damage to Board or DEP property, including property and equipment leased by the Board or DEP, used in the performance of this Agreement and to the extent caused, whether directly or indirectly, by the acts, conduct, omissions

or lack of good faith of the Consultant, its officers, managerial personnel and employees, or any person, firm, company, agent or others engaged by the Consultant as expert, consultant, specialist, or subconsultant hereunder.

- B. In the event that any such Board or DEP property as described in subsection A immediately above is lost or damaged, except for normal wear and tear, then the Board shall have the right to withhold further payments hereunder for the purpose of set-off, in sufficient sums to cover such loss or damage.
- C. The Consultant agrees to indemnify the Board or DEP and hold it harmless from any and all liability or claim for damages due to any such loss or damage to any Board or DEP property described in subsection A above.
- D. The rights and remedies of the Board provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

4.5 CONFIDENTIALITY

All of the reports, images, information or data, furnished to or prepared, assembled or used by the Consultant under this Agreement are to be held confidential, and prior to publication, the Consultant agrees that the same shall not be made available to any individual or organization without the prior written approval of the Board. This section shall survive termination of this Agreement.

4.6 BOOKS AND RECORDS

The Consultant agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

4.7 RETENTION OF RECORDS

The Consultant agrees to retain all books, records, and other documents relevant to this Agreement for six years after the final payment or termination of this Agreement, whichever is later, with said materials to be offered to DEP or destroyed at DEP's discretion at such time. Officers and employees of the Board and any other persons duly authorized by the Board shall have full access to and the right to examine any of said materials during said period at reasonable times.

4.8 COMPLIANCE WITH LAW

Consultant shall render all services under this Agreement in accordance with the applicable provisions of any Laws set forth in effect at the time such services are rendered.

4.9 INVESTIGATIONS

- A. The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the State of New York or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry.
- B. (1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State of New York, or;
- (2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or New York State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract or license entered into with the City, New York State, or any political subdivision thereof or any local development corporation within the City, then;
- C. (1) The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days' written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- (2) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph E below without the Board incurring any penalty or damages for delay or otherwise.

- D. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:
- (1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the Board; and/or
 - (2) The cancellation or termination of any and all such existing Board contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the Board incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the Board.
- E. (1) The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:
- (a) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony are sought.
 - (b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
 - (c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the Board.
 - (d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under D above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in C(1) above gives notice and

proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

- F. (1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as matter of right.
 - (2) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
 - (3) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or Board or otherwise transacts business with the City or Board.
 - (4) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.
- G. In addition to and notwithstanding any other provision of this Agreement the commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three (3) days written notice in the event Consultant fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Agreement by the Consultant, or affecting the performance of this Agreement.

4.10 ASSIGNMENT

- A. The Consultant shall not assign, transfer, convey or otherwise dispose of this Agreement or of Consultant's rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest in it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, unless prior written consent of the Executive Director shall be obtained. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.
- B. Failure of the Consultant to obtain any required consent to any assignment shall be cause for termination for cause, at the option of the Executive Director; and if so terminated, the Board shall thereupon be relieved and discharged from any further liability and obligation to the Consultant, its assignees or transferees, and all monies that may become due under the

Agreement shall be forfeited to the Board except so much thereof as may be necessary to pay the Consultant's employees.

- C. The provision of this clause shall not hinder, prevent, or affect an assignment by the Consultant for the benefit of its creditors made pursuant to the Laws of the State of New York.
- D. This Agreement may be assigned by the Board to any corporation, agency or instrumentality having authority to accept such assignment.

4.11 SUBCONTRACTING

- A. The Consultant agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this Agreement without the prior approval of the Executive Director. Such approval shall not be unreasonably withheld. Two copies of each such proposed subcontract shall be submitted to the Executive Director with the Consultant's written request for approval. All such subcontracts shall contain provisions specifying:
 - (1) that the work performed by the subconsultant must be in accordance with the terms of the Agreement between the Board and the Consultant;
 - (2) that nothing contained in such Agreement shall impair the rights of the Board;
 - (3) that nothing contained herein, or under the Agreement between the Board and the Consultant, shall create any contractual relation between the subconsultant and the Board; and
 - (4) that the subconsultant specifically agrees to be bound by the confidentiality provision set forth in this Agreement between the Board and the Consultant.
- B. The Consultant agrees that it is fully responsible to the Board to the extent of the wrongful acts and omissions of the subconsultants and of persons either directly or indirectly employed by them as it is for the negligent or wrongful acts and omissions of persons directly employed by it.
- C. The aforesaid approval is required in all cases other than individual employer/employee contracts.
- D. The Consultant shall not in any way be relieved of any responsibility under this Contract by any subcontract.

4.12 PUBLICITY

- A. The prior written approval of the Board is required before the Consultant or any of its employees, servants, agents, or independent Consultants may, at any time during or after completion or termination of this Agreement, make any statement to the press or issue any material for publication through any media of communication bearing on the work performed or data collected under this Agreement.
- B. If the Consultant publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, the Board shall have a royalty free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

4.13 PARTICIPATION IN AN INTERNATIONAL BOYCOTT

- A. The Consultant agrees that neither the Consultant nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.
- B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Consultant or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Board may, at its option, render forfeit and void this Agreement.
- C. The Consultant shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

4.14 EQUAL EMPLOYMENT OPPORTUNITY

- A. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY § 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Consultant agrees that it:
 - 1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training,

rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

2. Will not discriminate unlawfully in the selection of subconsultants on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;
 3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Consultant that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;
 4. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;
 5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services ("DLS"); and
 6. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- B. The Consultant understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:
1. Disapproval of the Consultant; and/or
 2. Suspension or termination of the Agreement; and/or
 3. Declaring the Consultant in default; and/or
 4. In lieu of any of the foregoing sanctions, imposition of an employment program.

- C. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Board declaring the Consultant to be non-responsible.
- D. The Consultant agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subconsultant or vendor. The Consultant will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Consultant needed to produce the item contracted for shall not be considered a subconsultant or vendor for purposes of this Paragraph.
- E. The Consultant further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subconsultant who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Consultant needed to produce the item contracted for shall not be considered a subconsultant for purposes of this Paragraph.
- F. Nothing contained in this Section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

4.15 INVENTIONS, PATENTS AND COPYRIGHTS

- A. Any discovery or invention arising out of or developed in the course of performance of this Agreement shall be promptly and fully reported to the Board, and if this work is supported by a federal grant of funds, shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.
- B. No report, document or other data produced in whole or in part with contract funds shall be copyrighted by the Consultant nor shall any notice of copyright be registered by the Consultant in connection with any report, document or other data developed for this Agreement.

- C. In no case shall subsections A and B of this section apply to, or prevent the Consultant from asserting or protecting its rights in any report, document or other data, or any invention which existed prior to or was developed or discovered independently from the activities related to this Agreement.

4.16 INFRINGEMENTS

The Consultant shall be liable to the Board and hereby agrees to indemnify and hold the Board harmless for any damage or loss or expense sustained by the Board from any infringement by the Consultant of any copyright, trademark or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Consultant in the performance of this Agreement.

4.17 ANTI-TRUST

The Consultant hereby assigns, sells and transfers to the Board all right, title and interest in and to any claims and causes of action arising under the anti-trust Laws of the State of New York or of the United States relating to the particular goods or services purchased or procured by the Board under this Agreement.

ARTICLE 5. SUSPENSION OR TERMINATION OF PERFORMANCE

- A. The Executive Director may at any time, and for any reason, direct the Consultant to stop any work under the Agreement for a period of time. Such direction shall be given by at least ten (10) days notice, in writing, which shall specify the period during which the work shall be stopped. The Consultant shall resume the work upon the date specified in such direction, or upon such other date as the Executive Director may thereafter specify, in writing. The period during which the work shall have been stopped shall be deemed an extension of time for the performance of the Agreement. Stoppage of work under this Article shall not give rise to any claim against the Board or the City for damages or for extra remuneration.
- B. If the Consultant, through any cause, fails to perform any of the terms, covenants, or provisions of the Agreement on his part to be performed, or if he for any cause fails to progress its work called for hereunder in a manner the Executive Director considers reasonable, or if in the opinion of the Executive Director the conduct of the Consultant is such that the interests of the City or the Board are likely to be impaired or prejudiced, or if the Consultant has become or is likely to become in the reasonable judgment of the Board insolvent, or if the Consultant has commenced or is likely to commence in the reasonable judgment of the Board any proceeding under the Bankruptcy Act, or if the Consultant violates any of the terms, covenants, or provisions of said Agreement, then the Executive Director, acting for and in behalf of the Board and the City shall have the right to terminate said Agreement by giving notice in writing of the fact and date of termination (the "Termination Date") to the Consultant.

- C. The Executive Director shall have the right to terminate the work for which the Consultant is engaged hereunder at any time for any reason deemed to be in the Board's interest. In such event, the Consultant shall be paid any fees as shall have been earned by it, in the reasonable opinion of the Executive Director. Such postponement, delay, suspension, or termination shall not give rise to any cause of action against the Board or the City for damages or for extra remuneration.
- D. Upon termination of this Agreement the Consultant shall comply with the following close-out procedures:
- (1) Accounting for and refund to the Board, within thirty (30) days of the Termination Date, any unexpended funds which have been paid to the Consultant pursuant to this Agreement.
 - (2) Furnishing within thirty (30) days of the Termination Date, an inventory to the Board of all equipment, appurtenances and property purchased through or provided under this Agreement carrying out any Board directive concerning the disposition thereof.
 - (3) Not incurring or paying any further obligation pursuant to this Agreement beyond the Termination Date except for reasonable termination costs. Any obligation necessarily incurred by the Consultant on account of this Agreement prior to receipt of notice of termination and falling due after such date shall be paid by the Board in accordance with the terms of this Agreement. In no event shall the word "obligation", as used herein, be construed as including any lease agreement, oral or written, entered into between the Consultant and its landlord.
 - (4) Turn over to the Board or its designees within thirty (30) days of the Termination Date, all drawings, specifications, books, records, documents and material specifically relating to this Agreement.
 - (5) Submit, within ninety (90) days of the Termination Date, a final statement and report relating to this Agreement. The report shall be made by a certified public accountant or a licensed public accountant. The Consultant shall receive equitable compensation for the work which in the Executive Director's reasonable opinion have been satisfactorily performed by the Consultant up to the Termination Date, such compensation to be fixed by the Executive Director, subject to audit by the Board and post-audit by the Comptroller, and provided further that the Board may take over the work to be done and complete the work by Agreement or otherwise, the Consultant being liable to the Board for any reasonable excess cost occasioned to the Board thereby.

- E. In the event the Board shall terminate this Agreement, in whole or in part, as provided by this Article, the Board may procure, upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and the Consultant shall continue the performance of this Agreement to the extent not terminated hereby.
- F. Notwithstanding any other provisions of this Agreement, the Consultant shall not be relieved of liability to the Board for damages sustained by the Board by virtue of Consultant's breach of this Agreement, and the Board may withhold payments to the Consultant for the purpose of set-off until such time as the exact amount of damages due to the Board from the Consultant is determined.
- G. The rights and remedies of the Board provided in this article shall not be exclusive and are in addition to all other rights and remedies provided by law or under this Agreement.

ARTICLE 6. MISCELLANEOUS

6.1 CONFLICT OF LAWS; FORUM

- A. This Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Consultant, and shall be governed by and construed in accordance with the Laws of the State of New York.
- B. The parties agree that any and all claims asserted by or against the Board arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Agreement and intent, the Consultant agrees:
 - (1) If the Board initiates any action against the Consultant in Federal Court or in New York State Court, service of process may be made on the Consultant either in person, wherever such Consultant may be found, or by registered mail addressed to the Consultant at its address as set forth in this Agreement, or to such other address as the Consultant may provide to the Board in writing; and
 - (2) With respect to any action between the Board and the Consultant in New York State Court, the Consultant hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

(3) With respect to any action between the Board and the Consultant in Federal Court located in New York City, the Consultant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

(4) If the Consultant commences any action against the Board in a court located other than in the City and State of New York, upon request of the Board, the Consultant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Consultant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

C. If any provision(s) of this Section is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

6.2 GENERAL RELEASE

The acceptance by the Consultant or its assignees of the final payment under this Agreement, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a general release to the Board from any and all claims of and liability to the Consultant arising out of the performance of this Agreement.

6.3 CLAIMS AND ACTIONS THEREON

A. No action at law or proceeding in equity against the Board shall lie or be maintained upon any claim based upon this Agreement or arising out of this Agreement or in any way connected with this Agreement unless the Consultant shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

B. No action shall lie or be maintained against the Board by the Consultant upon any claims based upon this Agreement unless such action shall be commenced within six (6) months after the date of filing in the Office of Executive Director of the certificate for the final payment hereunder, or within six (6) months of the termination or conclusion of this Agreement, or within six (6) months after the accrual of the Cause of Action, whichever first occurs.

C. In the event any claim is made or any action brought in any way relating to the Agreement herein, the Consultant shall use all reasonable efforts to render to the Board any and all assistance which the Board may require of the Consultant. The Consultant may request payment for such work at the rates specified herein. The Board shall not unreasonably withhold such payment.

D. The Consultant shall report to the Board in writing within three (3) working days of the initiation by or against the Consultant of any legal action or proceeding in connection with or relating to this Agreement.

6.4 NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

No claim whatsoever shall be made by the Consultant against any officer, agent or employee of the Board working within the scope of his or her employment for, or on account of, anything done or omitted in connection with this Agreement. No claim whatsoever shall be made by the Board against any officer, agent or employee of the Consultant working within the scope of his or her employment for, or on account of, anything done or omitted in connection with this Agreement.

6.5 WAIVER

Waiver by the Board or the Consultant of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless and until the same shall be agreed to in writing by the Board and the Consultant as required and attached to the original Agreement.

6.6 NOTICE

The Consultant and the Board hereby designate the business addresses hereinbefore specified as the places where all notices, directions or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Actual delivery of any such notice, direction or communication to a party at the aforesaid place, or delivery by certified mail shall be conclusive and deemed to be sufficient service thereof upon such party as of the date such notice, direction or communication is received by the party. Such address may be changed at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified above. Nothing in this section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by law, including the Civil Practice Law and Rules.

6.7 ALL LEGAL PROVISIONS DEEMED INCLUDED

It is the intent and understanding of the parties to this Agreement that each and every provision of Law required to be inserted in this Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the application of either party be amended by such insertion

so as to comply strictly with the Law and without prejudice to the rights of either party hereunder.

6.8 SEVERABILITY

If this Agreement contains any unlawful provision not an essential part of this Agreement and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from this Agreement without affecting the binding force of the remainder.

6.9 POLITICAL ACTIVITY

There shall not be partisan political activity or any activity to further the election or defeat of any candidate for public, political or party office as part of or in connection with this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

6.10 MODIFICATION

No waiver or modification of any of the terms of this Agreement shall be valid unless in writing and approved by the opposing party.

6.11 PARAGRAPH HEADINGS

Paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement and in no way affect this Agreement.

6.12 NO REMOVAL OF RECORDS FROM PREMISES

Where performance of this Agreement involves use by the Consultant of Board or DEP papers, files, data or records at Board or DEP facilities or offices, the Consultant shall not remove any such papers, files, data or records, therefrom without the prior approval of the Board's or DEP's designated official.

6.13 INSPECTION AT SITE

The Board shall have the right to have representatives of the Board present at the site of the engagement to observe the work being performed.

ARTICLE 7. MERGER

This written Agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto, or to vary any of the terms contained herein.

ARTICLE 8. CERTIFICATION REGARDING BUSINESS DEALINGS WITH NORTHERN IRELAND

- A. Pursuant to the provisions of Section 6-115.1 of the Administrative Code of the City of New York, the Consultant and any individual or legal entity in which the Consultant holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Consultant certify that either: (a) they have no business operations in Northern Ireland, or (b) they shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.
- B. For purpose of this section, "MacBride" Principles shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:
1. increase the representation of individuals from under-represented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
 2. take steps to promote adequate security for the protection of employees for underrepresented religious groups both at the workplace and while traveling to and from work;
 3. ban provocative religious or political emblems from the workplace
 4. publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
 5. establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
 6. abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
 7. develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups;
 8. establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
 9. appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.
- C. The Consultant agrees that the warranties and representations in paragraph A are material conditions of this Agreement. If the Board receives information that the Consultant is in violation of paragraph A the Board shall review such information

and give the relevant party opportunity to respond. If the Board finds that such a violation has occurred, the Board may declare the Consultant in default, and/or terminate this Agreement. In the event of any such termination, the Board may procure the supplies, services or work from another source in any manner the Board deems proper. The Consultant shall pay to the Board, the difference between the contract price for the uncompleted portion of this Agreement and the cost to the Board of completing performance of this Agreement either by itself or by engaging another Consultant. If this is a requirements contract, the Consultant shall be liable for the difference in price, if this is a construction contract, the Board shall also have the right to hold the Consultant in partial or total default in accordance with the default provision of this Agreement. In addition, the Consultant may be declared not to be a responsible bidder or proposer for up to three (3) years, following written notice to the Consultant, giving the Consultant the opportunity for a hearing at which the Consultant may be represented by counsel. The rights and remedies the Board hereunder shall be in addition to, and not in lieu of, any rights and remedies the Board has pursuant to this Agreement or by operation of law or in equity.

APPENDIX B

AGREEMENT FOR SERVICES OF RISK AND INSURANCE CONSULTANT

AGREEMENT, dated as of _____, 20__ by and between the New York City Water Board (the "Board"), a corporate municipal instrumentality of the State of New York (the "State"), and _____ (the "Consultant"), a _____ located at _____.

WHEREAS, pursuant to Section 1045-g(8) of the New York City Municipal Water Finance Authority Act, the Board is authorized to enter into contracts and to retain consultants on a contract basis for the purpose of obtaining professional or technical services; and

WHEREAS, the Board at its meeting held on _____, 20__, authorized the retention of the Consultant as Risk and Insurance Consultant to the Board; and

WHEREAS, the Board adopted a resolution authorizing the Executive Director to enter into an agreement with the Consultant to serve as Risk and Insurance Consultant to the Board for a two-year term, with the option of up to three one-year extensions at the Board's discretion, and upon such other terms and conditions as the Executive Director may deem reasonable and appropriate, provided however that the total compensation for services performed during the two-year term shall not exceed \$_____, unless increased at the discretion of the Board, and total compensation for any extension shall not exceed the sum approved for that extension by the Board, unless increased at the discretion of the Board; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein, the Board and the Consultant hereby agree as follows:

A. General Provisions – Appendix A

The Consultant shall comply with the covenants and agreements set forth in Appendix A, attached hereto, which is hereby incorporated and made a part hereof. If any provision of this Agreement is found to be inconsistent with any provision of Appendix A, the provisions of this Agreement will govern. [Note to Proposers: Appendix A to this Agreement will be the same as Appendix A to the RFP.]

B. Scope of Services

The Consultant shall provide some or all of the services described in and set forth in the "Scope of Services", attached hereto as Appendix B and incorporated and made a part hereof. [Note to Proposers: Appendix B to this Agreement will substantially similar to the Scope of Services section of the RFP.]

C. Term

This Agreement shall commence on _____ 1, 20__ and continue to the date of expiration, _____, 20__.

D. Agent for the Board

The New York City Department of Environmental Protection (“DEP”) shall act as agent for the Board with regard to the administration of the Agreement and such other functions the Board assigns to DEP during the course of the Agreement.

E. Compensation

The Board shall compensate the Consultant for its services hereunder in accordance with the tables below, setting forth the hourly rates of each member of Consultant’s Core Team for the engagement and the hourly rate(s) of other Consultant employees who may work on this engagement.

The Board shall compensate the Consultant based upon the submission of monthly invoices in a form acceptable to the Board. Each invoice shall detail the actual number of labor hours expended during the month for which reimbursement is sought and the details of out-of-pocket expenses incurred by the Consultant. Labor costs shall identify the individual providing services, the number of hours charged and the hourly billing rates as described below. Payment shall be made by the Board within 30 days of its receipt of an invoice.

Total compensation to the Consultant for services provided during the two-year term of this Agreement shall not exceed \$_____, unless increased at the discretion of the Board. Total compensation during the one-year extension(s) of this Agreement, if any, shall not exceed the amount approved for that extension by the Board, unless increased at the discretion of the Board. If at any time during the term of this Agreement the Consultant comes to believe that total compensation approved by the Board may be insufficient to compensate the Consultant for the services requested by DEP (whether or not performed at that time), the Consultant shall so advise DEP, to allow DEP to reduce the scope of the work it has requested or take other action it deems appropriate.

The Board shall compensate the Consultant for its services hereunder at the following rates:

Core Team Members

<u>Name</u>	<u>First Year Hourly Rate(\$)</u>	<u>Second Year Hourly Rate(\$)</u>
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Other Consultant Employees

<u>Name or Title</u>	<u>First Year Hourly Rates(\$)</u>	<u>Second Year Hourly Rates(\$)</u>
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IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year below written,

THE NEW YORK CITY WATER BOARD

By: _____ Dated:
[name]
[title]

State of New York) ss.:
County of Queens)

Sworn before me this ___ Day of _____, 20__, _____ appeared before me and duly acknowledged execution of the foregoing instrument.

NOTARY PUBLIC

[name of Consultant]
By: _____ Dated:
[name]

State of _____) ss.:
County of _____)

Sworn before me this ___ Day of _____, 20___, before me personally came
_____ to me known to be a _____ of the firm
described in the foregoing instrument and acknowledged that he/she subscribed the name
of said firm thereto on behalf of said firm for the purposes therein mentioned.

NOTARY PUBLIC

APPENDIX D

CERTIFICATE OF NON-COLLUSION

Pursuant to New York State Public Authorities Law, Article 9, Title 4, Section 2878, the undersigned proposer hereby subscribes and affirms as true, under the penalties of perjury, the following statement of non-collusion:

“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/her 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.”

DATE: _____/_____/_____

PROPOSER NAME: _____

PROPOSER SIGNATURE: _____

PROPOSER FIRM: _____

APPENDIX E

AFFIDAVIT OF PAYMENT OF TAXES

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York or the New York City Water Board upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York or the New York City Water Board, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contracts except

_____.

Full name of Proposer or Bidder _____

Address _____

City _____ State _____ Zip Code _____

CHECK ONE AND INCLUDE APPROPRIATE NUMBER:

_____ A Individual or Sole Proprietorship*
SOCIAL SECURITY NUMBER

_____ B Partnership, Joint Venture or other
unincorporated organization
EMPLOYER IDENTIFICATION NUMBER

_____ C Corporation
EMPLOYER IDENTIFICATION NUMBER

By: _____
Signature

Title

Must be signed by officer or duly authorized representative.
If a corporation, place seal here.

* Under the Federal Privacy Act the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws as well as to provide the City a means of identifying of businesses which seek City contracts.