

THE NEW YORK CITY WATER BOARD

**REQUEST FOR PROPOSALS
FOR
FINANCIAL ADVISOR**

DATE OF ISSUE: February 2, 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 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

REQUEST FOR PROPOSALS SUMMARY

The New York City Water Board (“the Board”) is soliciting competitive sealed proposals from qualified vendors to provide financial advisory services, as defined in the Scope of Services included herein. The contract will be awarded to the financial advisory firm(s) offering the best combination of merit and price, as determined by the Board. The contract that results from this Request for Proposals (“RFP”) will be a direct fee contract. The term of the contract will be two years, with three additional one-year contract extensions at the Board’s option.

The major objectives of the Board in seeking consulting services are to procure the services of a firm(s) that will:

1. Advise on the financing of complex public-private partnerships (“P3s”) that would capitalize on the existing water and wastewater infrastructure assets of New York City (the “City”);
2. Provide the Board with financial advice on responses from energy developers and financiers interested in building, owning, operating, and financing a third-party district energy system to serve existing energy users on Wards Island and Randall's Island;
3. Provide the Board with financial advice on information gathered from entities interested in designing, building, financing, and/or operating hydroelectric plants on four of the City-owned dams and reservoirs in upstate New York;
4. Collaborate with the Board and DEP staff and counsel in the publication of an ensuing RFP for the projects noted above, if desired; and,
5. Evaluate the financial aspects of additional opportunities for P3 projects as a means for shifting risk from ratepayers to private parties and advise the Board on such opportunities.

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RFP TIMETABLE

Release Date of the RFP February 2, 2011
Deadline for Question Submission 3:00 P.M. (EST), February 9, 2011
Proposal Due Date 11:00 A.M., February 25, 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
Email: jasonl@dep.nyc.gov
Telephone: (718) 595-3114

Oral Presentations (as needed)..... Week of February 28, 2011
Completion of Evaluation March 11, 2011
Commencement of Work Approximately March 21, 2011

SECTION I. BACKGROUND/PURPOSE OF THE RFP

The Board was created by the New York State Legislature in 1984. Its powers and duties are set forth in the New York City Municipal Water Finance Authority Act (the “Act”) constituting Title 2-A of Article 5 of the Public Authorities Law, as amended. The Board is a public benefit corporation whose primary duty under the Act is to establish and collect water and wastewater rates and charges in an amount sufficient to place the water supply and wastewater systems (the “System”) of the City on a self-sustaining basis. The System is operated and maintained by the Department of Environmental Protection of the City (“DEP”).

With substantial System assets ranging from upstate reservoirs to in-City wastewater treatment plants, the Board and DEP seek to maximize the value of such assets and reduce risk for the ratepayers. Financially, one way to accomplish this could be through P3 arrangements. Therefore, to aid in its evaluation of opportunities, the Board seeks to procure the services of a firm(s) that will provide financial advisory services for the consideration and potential procurement of P3s for infrastructure projects and alternative operations.

Two projects under current consideration are energy related. In the operation of the System, energy represents a significant annual expense, and it is the opinion of DEP that there are opportunities to use the unique characteristics and byproducts of the System’s assets that would allow DEP to reduce its demand for external energy, hedge energy costs, and reduce the impact of energy costs on future rate increases.

Both current projects follow the guidelines of PlaNYC, a comprehensive long-term plan launched in 2007 with the goal of achieving an environmentally sustainable New York by 2030. The PlaNYC strategy outlined three main energy goals – to make the City’s energy cleaner, more reliable, and more affordable – and set an overall goal of reducing the City’s total greenhouse gas emissions by 30% by 2017. In the interest of encouraging the development of efficient district energy systems, the development of renewable energy, and the reduction of greenhouse gas emissions as per the goals of PlaNYC, DEP issued two Requests for Expressions of Interest (“RFEI”) on November 22, 2010:

- **Wards Island Cogeneration**

DEP, in collaboration with other City agencies, issued this RFEI to energy developers and financiers interested in building, owning, operating, and financing a third-party district energy system to serve existing energy users on Wards Island and Randall's Island. Some of the municipal facilities on Wards Island are currently served by a district energy system, which was built in 1937 and is scheduled to be shut down at the end of 2012. A new modern district energy system could be developed by replacing, expanding and/or refurbishing the various components of the existing system. Responses to this RFEI are due February 4, 2011. For more information, please see

http://www.nyc.gov/html/dep/html/public_notices/wards_island_cogeneration.shtml.

- **Upstate Hydroelectric Generation**

DEP, in conjunction with the City, issued this RFEI to gather information from entities interested in designing, building, financing, and/or operating hydroelectric plants on four of the City-owned dams and reservoirs in upstate New York. Water released from the reservoirs, along with water that would spill, is available for hydroelectric energy production. The City holds a preliminary permit issued by the Federal Energy Regulatory Commission (“FERC”) to allow it, in conjunction with DEP, to further evaluate the development of hydroelectric facilities. Consistent with the general City policy of encouraging collaboration between government and the private sector, DEP is investigating the potential for a private developer to become involved in the project. Responses to this RFEI were due January 14, 2011. For more details, please see http://www.nyc.gov/html/dep/html/public_notices/upstate_hydroelectric_generation.shtml.

The Board seeks a financial advisor(s) to assist in the evaluation and review of options for both the Wards Island cogeneration and upstate hydroelectric generation projects. Specifically, the advisor(s) will be asked to evaluate responses to RFEIs noted above, aid in the preparation of any ensuing RFP, and evaluate project finance options.

In addition to these two current evaluations, the financial advisor(s) retained may be asked to assist in the evaluation and procurement of additional infrastructure projects and/or alternative operations for other System assets.

SECTION II. SCOPE OF SERVICES

The Board seeks to procure the services of a firm(s) that will provide financial advisory services for the consideration and potential procurement of P3s for infrastructure projects and alternative operations.

Two projects under current consideration include hydroelectric development on the dams of several upstate reservoirs and the potential for a third-party district energy system on Wards Island as mentioned above. The Board seeks a financial advisor(s) to assist in the evaluation and review of options for both of these projects. Specifically, the advisor(s) will be asked to evaluate responses to RFEIs noted herein, aid in the preparation of any ensuing RFP, and evaluate project finance options. Future P3 considerations may include other infrastructure projects and/or the alternative operation of System assets.

The firm(s) may be retained for all of the projects considered or only a portion. Additionally, the Board may request that the selected firm(s) provide any or all of the services listed below.

1. Provide financial analysis and advice in connection with the evaluation of initiatives submitted in response to the RFEIs noted herein, and assist in the preparation of any ensuing RFP;
2. Model and analyze alternative financing mechanisms and provide advice on project finance options, comparing options to traditional municipal funding sources and collaborating with counsel, including the New York City Municipal Water Finance Authority's bond and tax counsel, and other parties to consider any tax implications for the existing debt associated with System assets;
3. Assist in developing the business case for alternatively funded project(s): analyze procurement options, model prospective cash flows, compare financings to funding through municipal bonds, consider risk/return profiles, and perform other analyses that might be needed in the evaluation of P3 opportunities;
4. Assist in the evaluation and procurement of project funding through a P3 or other alternative mode of financing; among other tasks, advise on the development of evaluation criteria and methodology, model financial proposals, independently evaluate terms and pricing, structure any transaction, support negotiations, and prepare a financing summary;
5. Assist the Board, DEP, and counsel with the preparation of related documents; and,
6. Present analysis and recommendations to the Board and DEP.

SECTION III. 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. Only those proposals meeting all of the minimum submission requirements will be evaluated, rated and ranked by applying the evaluation criteria set forth herein.
- c. The evaluation committee will make a determination to: (1) recommend award of a contract based on initial proposals; or (2) conduct discussions/negotiations with all or a “short list” of proposing firms (“proposers”). In the case that the determination is made 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 by applying the evaluation criteria set forth herein.
- d. Contract award is subject to Board approval.

3. Minimum Submission Requirements

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 the minimum submission requirements set forth herein. Proposals failing to meet all of the minimum submission qualification requirements listed below shall not be considered further for award.

- a. The proposer shall:
 - 1) Have a minimum of three years of experience in providing comparable financial advisory services on P3s and energy transactions. This may include company experience and management and staff experience.
 - 2) Demonstrate past engagements with a scope similar to that described herein.
 - 3) Provide at least three business or governmental references.
 - 4) Meet the qualifications noted herein.
- b. The proposal shall be responsive to the following minimum submission requirements:
 - 1) Cover Letter
 - 2) Technical Proposal
 - 3) Statement of Qualifications
 - 4) Price Proposal
 - 5) Acknowledgment of Addenda
 - 6) Certificate of Non-Collusion
 - 7) Affidavit of Payment of Taxes

4. 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 – 55%
- b. Statement of Qualifications – Experience and Capability – 45%

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 narrative that addresses the proposer's overall concept and incorporates all requirements specified in SECTION II - SCOPE OF SERVICES. At a minimum, the following information shall be included:

- a. A description of the services to be provided.
- b. A description of how the proposer will meet the Board's goals.

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 following shall be included:

- a. List P3 projects with which the proposer has served in an advisory capacity during the last three years, at a minimum, and note which projects were water and sewer or energy-focused. Please describe the proposer's role in the financing and provide specific examples of the expertise and experience related to evaluating financing options, preparing requests for proposals, and developing alternative financial

structures. Please note which individuals from the team proposed below were involved with each project. Also include detailed case studies for three such projects; the case studies may be included in an appendix.

- b. List energy-related projects with which the proposer has served in an advisory capacity during the last three years, at a minimum. Please describe the proposer's role in the financing and note whether the development was private, public or a P3. Also include the type, scale and location of energy infrastructure developed, specifically noting any experience related to hydro, cogeneration, or renewables assets. Please note which individuals from the team proposed below were involved with each project. Also include detailed case studies for three such projects; the case studies may be included in an appendix.
- c. Show a chart of the project organization with names and titles, including the name of the day-to-day project manager. Please designate the individual(s) who would have primary responsibility for day-to-day financial advice; the individual(s) who would provide primary backup; and the individual(s) responsible for quantitative analysis.
- d. List personnel to be assigned to the project, including each person's function on the project and a brief description of his/her qualifications and professional experience as applicable for specific tasks in SECTION II - SCOPE OF SERVICES. A detailed resume of each individual shall be submitted and may be included in an appendix.
- e. Provide at least three references for clients who have worked with the primary individuals who will work for the Board. Include issuer name and contact person, with phone number and email address.
- f. Discuss the proposer's organizational structure and stability and any characteristics or other substantive information that would distinguish the proposer's ability to serve the Board in relation to SECTION II - SCOPE OF SERVICES.
- g. State whether the proposer maintains its headquarters, or other offices, in the City of New York and the number of the proposer's employees who are employed in the City.
- h. Describe the proposer's professional relationships with the City.
- i. Disclose any conflict of interest:
 - (i) Any material financial relationships that the proposer or any firm employee has with any financial advisory firms, investment banks or law firms or other persons or entities that may create a conflict of interest or the appearance of a conflict of interest in acting as financial advisor to the Board;
 - (ii) Any family relationship that any employee of the proposer has with the Board (or officer, employee or member thereof) that may create a conflict of interest or the appearance of a conflict of interest in acting as financial advisor to the

Board; and

- (iii) Any other matter that the proposer believes may create a conflict of interest or the appearance of a conflict of interest in acting as a financial advisor to the Board.

Please describe any procedures the proposer either has, or would adopt, to assure the Board that a conflict of interest would not exist for the proposer in the future.

- j. State whether or not, in the past ten years, the proposer or any of its partners, directors, officers or employees or anyone acting on its behalf, has ever been indicted or otherwise charged in connection with any criminal matter, which is still pending, or has ever been convicted of any crime or offense arising directly or indirectly from the conduct of the proposer's business, or whether any of the proposer's partners, directors, officers or employees or persons exercising substantial policy discretion has ever been indicted or otherwise charged in connection with any criminal matter, which is still pending, or has ever been convicted of any crime or offense involving financial misconduct or fraud, and, if so, please describe any such indictments, charges or convictions and surrounding circumstances in detail.
- k. State whether or not any legal proceedings are pending to which the proposer is a party, as well as any such proceedings known to be contemplated by government authorities or private parties (including, without limitation, whether the proposer has received a "Wells Notice" relating to a matter in which charges have not yet been brought) and, if so, a description of each such proceeding.
- l. Describe any pending administrative proceedings, investigations and civil suits against the proposer or any individual employed by the proposer relating to the proposer's or such individual's performance of its professional duties.
- m. Identify all adverse determinations against the proposer or any of its partners, directors, officers or employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints concerning violations of Federal, State or City equal opportunity laws or regulations and a statement that the proposer is in compliance with all applicable Federal, State or City equal opportunity laws or regulations.
- n. Describe any litigation or administrative proceedings to which the proposer is a party, which, if decided in an adverse manner, would either materially impair the proposer's ability to perform the services enumerated herein and for which this RFP was issued or materially affect the proposer's financial condition.

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

In addition, the proposer may submit any other materials that will allow the Board to better evaluate the organization (e.g., letters of reference/recommendation, awards, etc.). Such materials, as well as items “h” through “n” above may be included in an appendix.

4. Price Proposal

The price proposal is a presentation of the details of the proposer's offering price. These costs shall be shown for the full contract term.

With regard to fees, the Board has a strong preference for an hourly billing structure. Indicate whether such a fee arrangement is acceptable and provide a fee schedule and hourly estimate for each activity related to the project.

If an hourly billing structure is not acceptable, provide an alternative price proposal. The price proposal must contain the cost for the entire project and cost breakdowns by task or major activity related to the project.

Please include an estimate of expenses relative to total fees.

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

The Price Proposal shall be submitted in a separate, sealed envelope, clearly labeled “Price Proposal.”

The price proposal shall be irrevocable for one hundred eighty (180) days from the date of the opening of price proposal.

The proposer’s authorized representative must sign the price proposal.

5. Required Board Documents

The following documents, attached as Appendices B through D, shall be completed and submitted by the proposer and, if applicable, each proposed subcontractor, in conjunction with the proposal package:

- a. Acknowledgment of Addenda (See Appendix B. 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 (See Appendix C.)
- c. Affidavit of Payment of Taxes (See Appendix D.)

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 four (4) 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

RFP FOR: Financial Advisor

7. Proposer 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 IV. 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. (EST) on February 9, 2011, indicating "FA 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: 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 III A 4. 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 February 28, 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 intends to compete for the award of the particular contract and that the proposer understands and accepts that the terms and conditions specified herein, and the General Provisions Governing Contracts for Consultants, Professional and Technical Services attached in Appendix A shall become part of the final contract.

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, which 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. COMPLIANCE WITH VENDEX REQUIREMENTS

The selected proposer(s) will be required to complete a VENDEX Questionnaire or an affidavit stating that a VENDEX Questionnaire was submitted in the prior twelve (12) months. For more information on VENDEX, please visit www.nyc.gov/vendex.

18. 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.

19. 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 D.)

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.

20. 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 C.)

21. 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 incorporate the terms in the Board's General Provisions Governing Contracts for Consultants, Professional and Technical Services. (See Appendix A.) Submission of a proposal constitutes consent to these standard terms and conditions. Any exceptions must be explicitly stated in the proposal and separately listed in the attachment entitled "Exceptions."

22. CONTRACT NEGOTIATIONS

Upon selection, the successful proposer will be invited to negotiate a contract with the Board. 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 will not consider execution of the proposer's standard contract. The Board will review the proposer's standard contract and provide the initial draft of the contract it expects to negotiate with the proposer. If the proposer believes that negotiation of a contract will be difficult because of the proposer's corporate policy or for other reasons, then the Board should be contacted prior to the preparation of the response to this RFP.

23. 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.

24. PUBLICITY

News releases or other public announcements relating to this RFP shall not be made by any party receiving this RFP without the prior written approval of the Board.

**NEW YORK CITY WATER BOARD
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

ACKNOWLEDGEMENT OF ADDENDA

RFP TITLE: The New York City Water Board Request for Proposals for Financial Advisor

DIRECTIONS: Complete Part I or Part II, whichever is applicable.

PART I: LISTED BELOW ARE THE DATES OF ISSUE FOR EACH ADDENDUM RECEIVED IN CONNECTION WITH THIS RFP:

ADDENDUM # 1: DATED _____, 20__

ADDENDUM # 2: DATED _____, 20__

ADDENDUM # 3: DATED _____, 20__

ADDENDUM # 4: DATED _____, 20__

ADDENDUM # 5: DATED _____, 20__

ADDENDUM # 6: DATED _____, 20__

PART II: _____

NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS RFP

DATE: ____/____/____

PROPOSER (NAME): _____

PROPOSER (SIGNATURE): _____

Appendix C

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 D

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.