



CITY OF BUFFALO
NEW YORK

City of Buffalo Department of Permits and Inspection Services
324 City Hall
65 Niagara Square
Buffalo, NY 14202
PHONE: (716) 851-14202

**REQUEST FOR PROPOSALS
TO MANAGE THE
MORTGAGE IN DEFAULT
REGISTRY ORDINANCE
FOR THE
CITY OF BUFFALO**

Date Issued: July 31, 2019
Question Submission Deadline: August 7, 2019
Via Email To: lpetrucci@city-buffalo.com
Answers will be returned via email no later than: August 14, 2019
PROPOSAL SUBMISSION DATE: August 28, 2019

SECTION 1 – INTRODUCTION

The City of Buffalo (“City”) seeks to create a Mortgage in Default Registry Ordinance (“Ordinance”), and seeks the services of an organization to assist in the development and administration of such Registry.

The project will begin immediately upon acceptance of a bid and passage of the Ordinance by the City of Buffalo Common Council. The Ordinance’s goal will be to hold Mortgagees accountable for the upkeep of properties that they have foreclosed on, to encourage Mortgagees to complete the foreclosure proceedings or renegotiate terms with the Mortgagors, and to ensure code enforcement on these properties in an effort to fight the negative effects vacant and foreclosed properties have on the community.

SECTION 2 – BACKGROUND

The City of Buffalo has over 3,000 residential homes that are currently subject to a private mortgage foreclosure by a bank. The goal of this Registry is to identify who owns each property and to ensure that the property is maintained in accordance with City Codes. The Ordinance will create a bi-annual registration fee for each property to be added to the Registry, and the appointment of a property manager for each property. The City is seeking a company that can administer the Ordinance, ensure code compliance, and collect the registration fee for the City.

SECTION 3 – INSTRUCTIONS TO OFFERORS

3.1 *General Invitation*

The City invites all interested parties to submit proposals for the services described herein. For purposes of this Request for Proposals, the City’s designee shall be Louis J. Petrucci, Assistant Director.

The City will receive proposals in person or via mail by no later than August 28, 2019 at 12:00pm EST. All proposals should be sealed, clearly labeled on the front of the package and delivered to:

City of Buffalo
Department of Permits and Inspection Services
Attention: Louis Petrucci
324 City Hall
65 Niagara Square
Buffalo, NY 14202

The outside of each sealed envelope or package should be labeled:

Proposal Enclosed
Mortgage in Default Registry RFP
Proposals Due: August 28, 2019
Submitted by: _____

The received time of proposals will be determined by the clock at the above noted location. Proposals are solicited in accordance with the terms, conditions, and instructions as set forth in this RFP. Submission of proposals via telephone, facsimile, e-mail or any other method not specifically provided for herein is prohibited. Proposals must be completed in accordance with the requirements of the RFP. No amendments or changes to proposals will be accepted after the closing date and time. No proposals shall be accepted after the stated deadline. The City reserves the right to reject any or all proposals at its sole discretion.

Any material misrepresentation made by an Offeror may void its proposal and eliminate its proposal from further consideration. Any proposal that is based upon violation of federal, state or local law, or is deemed to be non-responsive will be eliminated from consideration.

The City shall not be responsible for any expenses or charges incurred by an Offeror in preparing or submitting a proposal, or in providing any additional information considered necessary by the City in the evaluation of the proposal.

3.2 Schedule

Listed below is the anticipated schedule for all actions related to this RFP. In the event that there is any change or deviation from this schedule, such change will be posted on the City's website at www.city-buffalo.gov.

<u>EVENT</u>	<u>DATE</u>
Issuance of RFP	July 31, 2019
Written Questions from Offerors due	August 7, 2019
Responses to Questions posted on City website	August 14, 2019
Proposals Due by 12:00 pm	August 28, 2019
Target Award Date:	TBD

3.3 RFP Review, Additional Information, and Questions

Each Offeror is responsible for carefully examining all RFP documents and thoroughly familiarizing themselves with each of the City's requirements prior to its submission of a proposal to ensure that its responses are in compliance with the RFP.

Each Offeror is responsible for conducting its own investigations and any examinations necessary to ascertain conditions and requirements affecting the requirements of this RFP. Failure to perform such investigations and examinations shall not relieve the Offeror from its obligation to comply, in every detail, with all of the provisions and requirements contained in the RFP.

Questions regarding the RFP shall be directed to the City's designee only. Any impermissible contact with any other City officer or employee regarding the RFP during the procurement period shall result in the rejection of any such Offeror's proposal. Offerors shall communicate in

writing only. No other communications with the City's designee regarding the RFP are permitted during the procurement period.

All questions, requests for clarification or additional information must be sent by email to Louis Petrucci, lpetrucci@city-buffalo.com, and must be received no later than August 7, 2019 at 5pm. Offerors shall not communicate with the City's designee via any other method or outside of the time period set forth herein.

Questions received from all Offerors will be answered and shared with all Offerors via the City's website at www.city-buffalo.gov. No other representatives of the City are to be contacted regarding this RFP. The City accepts no responsibility for, and the Offeror agrees not to rely upon, any verbal or written statements or representations from any other person, whether or not employed by the City.

The City may, in its sole discretion, also elect to provide both the question(s) and the written answer(s) to all known Offerors via e-mail. Offerors are solely responsible for ensuring that the City has accurate contact information, including an e-mail address for the receipt of such correspondence. The City does not assume any responsibility for undelivered e-mails or for the receipt of any communication sent to any Offeror.

3.4 Addenda and Modifications

The City reserves the right, in its sole discretion, to amend this RFP at any time prior to the deadline for submission of the proposals. In the event that it becomes necessary to revise or expand upon any part of this RFP, all addenda, amendments, and interpretations to this RFP will be made in writing and posted on the City's website at www.city-buffalo.gov. The City may also endeavor to notify all Offerors to whom the RFP has been issued.

All addenda shall be incorporated as part of the RFP documents as though they were originally set forth. The City does not assume any responsibility for the receipt of any addendum sent to any Offeror.

Any information supplied by the City relative to this RFP must be considered in preparing proposals. All other contacts that an Offeror may have had before or after receipt of this RFP with any individuals, employees, subcontractors, consultants or representatives of the City and any information that may have been read in any news media or seen or heard in any communication regarding this RFP should be disregarded in preparing responses.

3.5 Proposal Format

Offerors are advised to adhere to the submittal requirements of the RFP. Failure to comply with the instructions of the RFP may cause a proposal to be rejected. Submission of a proposal in response to this RFP constitutes acceptance of all requirements outlined in the RFP.

Four (4) copies of the proposal, one (1) original and three (3) copies, along with one (1) digital copy (CD or Flash Drive) must be provided. Proposals must be prepared on 8-1/2" x 11" paper

using a font no smaller than 11-point with one-inch margins, printed double-sided, and bound on the long side. Each page of the submission must be numbered in a manner so that it can be uniquely identified. Legibility, clarity, and completeness are required.

The proposal must be signed by each individual Offeror or its authorized representative who shall have the authority to legally bind the Offeror(s). The proposal shall also contain a statement that the proposal, including all proposed prices, contained therein shall remain firm and irrevocable for a period of ninety (90) days following the City's receipt of such proposal and the award of the contract.

In the event that an Offeror cannot comply with any term, condition, or requirement of this RFP, such non-compliance must be clearly noted on the Offeror's letterhead and submitted with the proposal. Offerors are cautioned that such non-compliance may result in disqualification of its proposal, at the sole discretion of the City. No allowance will be made for un-noted non-compliance of any kind by the Offeror.

SECTION 4 – REQUIRED CONTENT

Each Offeror is required to prepare and submit a brief description of the Offeror's firm, company, or corporation, which must include:

1. A cover letter signed by CEO or equivalent;
2. The name, mailing address, email address, telephone number and fax number of the primary contact person for the firm;
3. A brief description of the firm, including the number of years in business, major business lines, major markets served, company history, relevant operating segments, primary vision and strategy, number of employees, office locations and any joint venture partners;
4. A copy of any resolution or some other form of authority, signed by a Chief Executive Officer, Corporate Secretary, or managing partners, which lists the specific officers who are authorized to execute agreements on behalf of the Offeror;
5. Financial details demonstrating the firm's financial capacity to undertake and complete the services solicited herein;
6. Program narrative, limited to ten (10) double spaced pages, outlining the firm's experience and qualifications;
7. Brochures, program reports, evaluations, or other evidence of past program experience and performance;

8. List three (3) current customers who are municipalities with a similar number of homes that are going through private mortgage foreclosures, for which Offeror has provided similar services for a minimum of two (2) years. At a minimum, the following information must be included for each client's reference:
 - a. Client name, address, contact person name, telephone, and fax number;
 - b. Description of contract, provided that they are similar to the services outlined in this Request for Proposals;
 - c. Total dollar value of the contract and annual revenue generated for the municipality;
 - d. Contract term (start and expiration).

Each Offeror must provide a summary of its professional qualifications and the experience of all team personnel who will be dedicated to the services described in this RFP. For each person identified, describe the following information:

1. Title and reporting responsibility;
2. Proposed role in this project, including the functions and tasks for which they will have primary responsibility (also indicate areas of secondary responsibility, if appropriate);
3. Pertinent areas of expertise and past experience;
4. Base location (local facility, as applicable);
5. Resume or Curriculum Vitae and corporate personnel profiles which describe their overall experience and expertise;
6. Copies of all required certifications for personnel that will be performing duties under any contract arising from this RFP.

SECTION 5 – SCOPE OF PROPOSAL

5.1 Introduction

The City of Buffalo currently has over 2400 properties that are going through a private mortgage foreclosure process. The City faces significant challenges in identifying and locating the owners of the properties who can maintain the properties that are in the foreclosure process, or that have been foreclosed upon.

In order to address this problem, the City has enacted a Mortgage in Default Property Ordinance. This Ordinance establishes a registry to identify a contact person to address safety and aesthetic

concerns to minimize the negative impacts and blighted conditions that occur as a result of foreclosure.

5.2 *Scope of Work*

The City of Buffalo is looking to retain a qualified company to administer the Mortgage in Default Property Ordinance. Each Offeror must submit a comprehensive and detailed description of the process by which it will perform the services described below. Offerors are free to make recommendations of how their services, software or any additional features may be beneficial to the City in meeting or exceeding its goals.

All responses must include anticipated costs and the anticipated timeline for completion. Each Offeror must provide an estimate of what resources or equipment the City will have to apply to successfully implement their proposed services. This estimate must, at a minimum, identify the reason, type and applied manpower hours that the Offeror expects the City to provide.

The City of Buffalo is looking for the following minimum services:

1. Offeror agrees to provide a City designated website for the registration of each foreclosed property. The website must be designed in such a manner that reflects the City's brand and creates a seamless transition from the City's existing website to the registration portal.
2. Offeror will proactively contact those that file a public notice of default, foreclosure action, and/or take title to real property via foreclosure ("foreclosed properties") or any other legal means, within 30 days of said action and inform them of the need to register their property. Offeror shall create their own tracking system to target these properties.
3. Offeror will provide electronic registration for applicants for foreclosed properties in violation of applicable City ordinances.
4. Offeror will pay for all expenses related to registration of all foreclosed properties, and all administrative costs and fees related thereto, including but not limited to any printing, postage, processing of registrations, etc.
5. Offeror will investigate, report, or take corrective measures monthly to update the status of all foreclosed properties electronically registered and in compliance with City ordinances.
6. Offeror will charge each applicant no more than the amount prescribed by the ordinance (per applicant) to register all properties that are required to be on the registry.
7. Offeror will be entitled to compensation for the services provided, which fees shall consist of a flat rate fee to be deducted from the amounts payable to the City. All amounts due and owing to the City shall be remitted to the City the following business day.
8. Offeror will provide the City with monthly reports listing the properties on the Registry, in addition to those that have been added or taken off since the previous report.

9. The prior month's report is due no later than the 10th day of the following month and shall be delivered to: Louis Petrucci, lpetrucci@city-buffalo.com.
10. Offeror shall have available a contact person for the duration of the term of the contract for the City to contact with questions and concerns.
11. Offeror shall have a team available to speak to the City of Buffalo Common Council about its services, and about any agreement that may be entered into after this RFP.
12. All documents, records, applications, files, and other materials provided in connection with the services rendered under this agreement shall be the property of the City of Buffalo and shall be provided to the City within seven (7) business days upon request of the City, or upon termination of the agreement.
13. The City shall have the right to audit the books, records, and accounts that are related to the agreement upon fifteen (15) days written notice to the Offeror.

5.3 Pricing

Each Offeror shall provide a detailed list of all costs for which the City would be responsible for payment. Any optional features or services recommended by the Offeror, must be separately referenced and include any and all costs attributed to such features and/or Offeror's performance of such services.

Each proposal shall include proposed rates. Rates shall remain constant for the entire term of the proposed contract and shall be inclusive of any and all administrative costs and fees related to the provision of services, including but not limited to, salaries, printing, postage, fees, processing of registrations, travel, investigations, collections, membership fees, etc.

The cost of the services provided shall be paid through the fee collected by the Offeror. The Offeror will collect the entire statutory Registration fee, and will keep a fixed rate per semi-annual registration period. This should be determined on a per-property fee collected basis. This service shall be revenue positive for the City and should not be a cost to the City. Offeror will not be permitted to modify the fees retained for its services, except where such changes have been mutually agreed upon by both parties and shall be subject to the prior approval of the Buffalo Common Council. Offeror will not be entitled to receive any additional fees and/or reimbursements under the terms of any contract arising from this solicitation, except where the City determines the need for additional services.

5.4 Contract Term

The duration of the contract shall be for no less than two (2) years from the date of execution of the agreement. Upon mutual agreement by both parties, the contract may be extended by two (2) additional two (2) year terms.

SECTION 6 – EVALUATION AND SELECTION PROCESS

The process for selecting a successful proposal for this RFP will be an open and competitive process. The professional services sought herein are not subject to New York State competitive

bidding requirements. Therefore, while total costs will be considered in the award of any contract arising from this RFP, it is not the determining factor. The lowest cost of any proposal may not necessarily be selected.

The City intends to award a contract to the Offeror(s) whose proposal it deems to be in the best interests of the taxpayers. The City is under no obligation to award any contract in whole or in part, and it reserves the right, in its' sole discretion, to cancel this RFP at any time before or after closing, without providing reasons for such cancellation. If only one proposal is received, the City reserves the right to reject it.

The evaluation criteria that the City will utilize will be based upon, but not limited to, the Offerors demonstrating their prior proven experience, costs, and any other factor deemed to be in the best interest of the City. All proposals will be evaluated upon, but not necessarily limited to, the following criteria:

- The Offeror's experience and qualifications as demonstrated in the narrative response to this RFP [10%];
- Demonstrated ability to fulfill the requirements of the proposal and the Ordinance [20%];
- Success of past awards regarding aligned or similar projects [10%];
- Success of past awards with municipalities that have similar needs as the City [20%];
- Competitiveness of the administrative fee [10%];
- Other factors which the City considers relevant [10%];
- Diversity Practices [20%].

All proposals must contain the required information, along with the proposed fee, including but not limited to all expenses, hourly staff rates, payment terms, and contract terms required by Offerors and conditions and options.

6.1 City's Reservations of Rights

Upon submission of a proposal in response to this RFP, each Offeror acknowledges and consents to the following conditions relative to the submission and review and consideration of its proposal:

1. All costs incurred by the Offeror in connection with responding to this RFP and for participating in this procurement process shall be borne solely by the Offeror.
2. The City reserves the right, in its sole discretion, to reject for any reason any and all responses or components thereof and to eliminate any and all Offerors responding to this RFP from further consideration for this procurement.
3. The City reserves the right, in its sole discretion, to reject any Offeror that submits incomplete responses to this RFP, or a proposal that is not responsive to the requirements of this RFP.

4. The City reserves the right, without prior notice, to supplement, amend, or otherwise modify this RFP, or otherwise request additional information.
5. All proposals in response to this RFP shall become the property of the City and will not be returned.
6. All proposals in response to this RFP shall constitute public records subject to public disclosure.
7. The City may request that Offerors personally attend or send representatives to the City for interviews and a demonstration of Offeror's proffered services.
8. Any and all proposals in response to this RFP that are not received by the Department of Permit and Inspection Services by August 28, 2019 at 12:00 pm will be rejected.
9. Neither the City, nor its officers, officials nor employees shall be liable for any claims or damages resulting from the solicitation or preparation of the proposal in response to this RFP.
10. The City of Buffalo's name, logo, crest, etc. shall not be used without prior, expressed, written consent of the City of Buffalo.

The City reserves that it may, in its sole discretion, exercise the following rights and options with regard to this RFP and the procurement process in order to obtain the most advantageous offer for the City:

1. To waive irregularities and/or minor non-compliance by any Offeror with the requirements of this RFP;
2. To request clarification and/or further information from one or more Offerors after closing without becoming obligated to offer the same opportunity to all Offerors; and
3. To enter into negotiations with one or more Offerors without being obligated to negotiate with, or offer the same opportunity, to all Offerors;
4. To reject any or all proposals or parts of proposals, to accept part or all of proposals on the basis of considerations other than lowest cost and to create a project of lesser or greater expense and reimbursement than described in this RFP or the Offeror's proposal based on the component prices submitted;
5. To determine that any proposal received in response to this RFP complies or fails to comply with the terms set forth herein;
6. To determine whether any perceived or actual conflict of interests exists that would affect or impair the award of any contract arising from this RFP to a Offeror(s);

7. To waive any technical non-conformance with the terms of this RFP;
8. To change or alter the schedule for any events called for in this RFP;
9. To conduct investigations of any or all of the Offerors, as the City deems necessary or convenient, to clarify the information provided as part of the proposal and to request additional information to support the information included in any proposal;
10. To suspend or terminate the procurement process described in this RFP at any time. If terminated, the City may determine to commence a new procurement process without any obligation to the Offerors;

Offerors are advised to submit a complete offer as their proposal. Any waiver, clarification or negotiation will not be considered an opportunity for Offerors to correct errors contained in their proposals.

SECTION 7 - AWARD OF CONTRACT

It is anticipated, pending final grant funding approval, that the successful Offeror will be awarded a two (2) year non-exclusive contract, with the option to renew upon the mutual agreement of the parties for up to two (2) consecutive two-year periods. Such renewals being dependent upon performance during the previous term and the amount of revenue generated. Any extension of the agreement must be in writing. Any modifications of the agreement must be in writing and agreed upon by both parties.

The City reserves the right to contract any services awarded under this RFP to other firms at its sole discretion whenever it deems necessary.

The contract with the successful Offeror (if any) shall include the terms of this RFP together with those terms of the Offeror's proposal, which are not inconsistent with the RFP, and which have been specifically accepted by the City of Buffalo. Consideration for renewing the contract will be determined by the Department of Permit and Inspection Services following its analysis of the Offeror's performance.

SECTION 8 - INDEMNIFICATION/HOLD HARMLESS

For any contract awarded pursuant to the issuance of this RFP, the successful Offeror shall defend, indemnify and save harmless the City, and its officers and employees from all claims, suits, actions, damages, losses, and costs of every name, nature, and description to which the City, may be subjected or put by reason of any injury to the person or property of another, or the property of the City, resulting from the negligence or carelessness, active or passive, of the Offeror, its employees, agents or subcontractors, in the performance of any work under the contract. In addition to and in furtherance of the foregoing indemnity, the insurance coverage described herein must include language that states that the insurance carrier will defend the City, for any and all claims arising or resulting from the contract. Furthermore, the whole, or so much

of the money to become due under the contract as shall be considered necessary by the City, may be retained by it until all suits or claims for damages shall have been settled or otherwise disposed of, and evidence to that effect furnished to the satisfaction of the City.

SECTION 9 - INSURANCE COVERAGE REQUIREMENTS

The City of Buffalo requires insurance coverage as listed below for this work. Note: The term "Offeror" shall also include their respective agents, representatives, employees or subcontractors; and the term "City of Buffalo" (hereinafter called the "City") shall include their respective officers, agents, officials, employees, volunteers, boards and commissions. The insurance required shall be written for not less than the scope and limits of insurance specified hereunder, or required by applicable federal, state and/or local law, regulation or requirement, whichever coverage requirement is greater. It is agreed and understood that the scope and limits of insurance specified hereunder are minimum requirements and shall in no way limit or exclude the City from additional limits and coverage provided.

Minimum Scope and Limits of Insurance

9.1 Workers' Compensation Insurance and Disability Insurance:

With respect to all operations the Offeror performs, the Offeror shall carry Workers' Compensation Insurance and Disability Insurance in accordance with the requirements of the laws of the State of New York. Evidence of Workers' Compensation Insurance and Disability Insurance must be provided on the New York State approved form. The Accord form is not acceptable. Each certificate of insurance evidencing such coverages shall be submitted by the Offeror and must name the City of Buffalo as certificate holder.

9.2 Commercial General Liability:

With respect to all operations the Offeror performs, the Offeror shall carry Commercial General Liability insurance providing for a total limit of not less than one million dollars (\$1,000,000.00) per occurrence. Each annual aggregate limit shall not be less than two million dollars (\$2,000,000.00). A certificate of insurance evidencing such coverage shall be submitted by the Offeror and must name the City of Buffalo as additional insured and certificate holder under said policy of insurance. The City shall also be named as additional insured and certificate holder under Offeror's excess or umbrella policies.

9.3 Automobile Liability:

With respect to any owned, non-owned, or hired vehicles the Offeror shall carry Automobile Liability insurance providing not less than one million dollars (\$1,000,000.00) per accident for bodily injury and property damage. A certificate of insurance evidencing such coverage shall be submitted by the Offeror and must name the City of Buffalo as additional insured and certificate holder under said policy of insurance.

9.4 Errors & Omissions/Cyber Liability Insurance:

With respect to any damage caused by an error, omission or any negligent acts of the Offeror performed under this contract the Offeror shall maintain Network Security and Privacy coverage with a policy limit of not less than five million dollars (\$5,000,000) in the aggregate. A certificate of insurance evidencing such coverage shall be submitted by the Offeror and must name the City of Buffalo as additional insured and certificate holder.

9.5 Commercial Crime Liability:

Offeror shall maintain Commercial Crime coverage with a policy limit of not less than five million dollars (\$5,000,000) in the aggregate. The insurance certificate evidencing this coverage shall also include evidence of a third-party theft endorsement, also in amount of not less than five million dollars (\$5,000,000) in the aggregate, all running to the benefit of the City.

9.6 "Tail" Coverage:

If any of the required liability insurance is on "claims made basis, tail" coverage will be required at the completion of this contract for a duration of 24 months, or the maximum time period reasonably available in the marketplace. Offeror shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of the pertinent Contract. If continuous "claims made" coverage is used, Offeror shall be required to keep the coverage in effect for a duration of not less than 24 months from the end of the Contract.

9.7 Acceptability of Insurers:

All of Offeror's insurance policies shall be written by insurance companies admitted in New York and licensed to do business in the State of New York or otherwise acceptable to the City's Corporation Counsel in his sole discretion.

9.8 Subcontractors:

The Offeror shall require subcontractors to provide the same "minimum scope and limits of insurance" as required herein, with the exception of Errors and Omissions/Professional Liability Insurance unless Errors and Omissions /Professional Liability insurance is applicable to the work performed by the subcontractor. All Certificates of Insurance shall be provided to Corporation Counsel's office as required herein and are subject to approval as to form by the Corporation Counsel and are subject to approval as to sufficiency by the City Comptroller.

9.9 Aggregate Limits:

Any aggregate limits must be declared to and approved by the City. It is agreed that the Offeror shall notify the City when fifty percent (50%) of the aggregate limits are eroded during the contract term. If the aggregate limit is eroded for the full limit, the Offeror agrees to reinstate or purchase additional limits to meet the minimum limit requirements stated herein. The premium shall be paid for by the Offeror. Deductibles and Self-Insured Retentions: Any deductible or

self-insured retentions must be declared to and approved by the City. All deductibles or self-insured retentions are the sole responsibility of the Offeror to pay and/or to indemnify.

9.10 Notice of Cancellation or Nonrenewal:

Each insurance policy required shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits except upon 30 days prior written notice by certified mail, return receipt requested, given to the City.

9.11 Waiver of Governmental Immunity:

Unless requested otherwise by the City, the Offeror and his insurer shall waive governmental immunity as a defense and shall not use the defense of governmental immunity in the adjustment of claims or in the defense of any suit brought against the City.

9.12 Certificate of Insurance:

As evidence of the required insurance coverage, the Offeror shall furnish Certificate(s) of Insurance to the City of Buffalo prior to the award of the Contract and prior to the Offeror's commencement of work under the awarded contract. The Certificate(s) will specify all parties who are endorsed on the policy as Additional Insureds (or Loss Payees). The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. Renewals of expiring certificates shall be filed thirty (30) days prior to expiration. The City reserves the right to require complete, certified copies of all required policies at any time.

All insurance documents required should be mailed to both of the following Departments:

City of Buffalo		City of Buffalo
Department of Permits and Inspection Services		Department of Law
324 City Hall	&	1100 City Hall
65 Niagara Square		65 Niagara Square
Buffalo, NY 14202		Buffalo, NY 14202
PHONE: (716) 851-4927		PHONE: (716) 851-4343

SECTION 10 – GENERAL REQUIREMENTS

10.1 Non-Discrimination

The successful Offeror(s) shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affection preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer,

recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

The successful Offeror(s) shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth this nondiscrimination clause. In addition, the Offeror(s) shall, in all solicitations or advertisements for employees placed by or on behalf of the Offeror(s), state that all qualified applicants will receive consideration for employment without regard to race, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or status as disabled veteran or veteran of the Vietnam era, and comply in all other aspects with the requirements the Buffalo City Code and Ordinances.

10.2 Americans with Disabilities Act Compliance Provisions

Any Offeror(s) awarded a contract pursuant to an RFP are required to abide by the regulations of the Americans with Disabilities Act of 1990 (ADA) which prohibits discrimination against individuals with disabilities. The Offeror will not discriminate against any employee or applicant for employment because of their disability and will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, discharge, compensation and fringe benefits, classification, referral and training. The ADA also requires Offerors associated with the City of Buffalo to provide qualified applicants and employees with disabilities with reasonable accommodation that do not impose undue hardship. Offeror(s) also agree to post in a conspicuous place, accessible to employees and applicants, notices of their policy on non-discrimination.

In the event of the Offeror's noncompliance with the non-discrimination clauses of the contract, the contract may be canceled, terminated, or suspended, in whole or in part, and the Offeror may be declared ineligible by the Buffalo Common Council from any further participation in City contracts in addition to other remedies as provided by law.

10.3 General Compliance

The successful Offeror(s) agrees to comply with all applicable federal, state and local laws and regulations governing funds provided under this contract.

10.4 Performance Monitoring

The City will monitor the performance of the successful Offeror(s) against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with the contract. If action to correct such substandard performance is not taken by the Offeror within a reasonable period of time after being notified by the City, contract termination procedures will be initiated. All work submitted by Offeror shall be subject to the approval and acceptance by the City or its designee(s). The City or its designee(s) shall review each portion of the work when certified as complete and submitted by the Offeror and

shall inform the Offeror of any apparent deficiencies, defects, or incomplete work, at any stage of the project.

10.5 Independent Contractor

Nothing contained in the agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The successful Offeror shall at all times remain an independent contractor with respect to the services to be performed under the contract. Any and all employees of Offeror or other persons engaged in the performance of any work or services required by Offeror under the contract shall be considered employees or sub-Offerors of the Offeror only and not of the City; and any and all claims that might arise, including Worker's Compensation claims under the Worker's Compensation Act of the State of New York or any other state, on behalf of said employees or other persons while so engaged in any of the work or services to be rendered herein, shall be the sole obligation and responsibility of Offeror.

10.6 Accounting Standards

The successful Offeror agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices to properly account for expenses incurred under the contract. Each payment transaction, including but not limited to, the fees retained by the successful Offeror, shall be subject to post-audit by the City Comptroller, or by his or her duly authorized designee. Offeror shall maintain an accurate set of books, accounts, records, worksheets, correspondence, etc., in hard-copy and/or electronic form evidencing the transactions associated with each payment transaction. The successful Offeror shall permit the same to be inspected by the City and audited by its Comptroller or his duly authorized designee upon reasonable notice thereof. Document or record destruction shall be conditioned upon the express written consent of the City Records Retention Officer who shall coordinate such consent with the City Comptroller to facilitate audit requirements. The books and records discussed herein relative to the services performed on behalf of the City shall be kept separate and exclusive from any books and records maintained by the successful Offeror.

10.7 Retention of Records

The successful Offeror shall retain all records pertinent to expenditures incurred under the contract for a period of three years after the resolution of all audit findings. Records for non-expendable property acquired with funds under the contract shall be retained for three years after final disposition of such property.

10.8 Inspection of Records

All records with respect to any matters covered by the contract shall be made available to the City or its designees at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data

10.9 Applicable Law

The laws of the State of New York shall govern all interpretations of this contract, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Erie, State of New York, regardless of the place of business, residence or incorporation of the Offeror. Each party agrees that all claims and matters shall be heard and determined in any such court and each party waives any right to object to such filing on venue, forum non-convenient or similar grounds. No such actions shall be commenced or maintained against the City unless the contractor shall, not less than sixty (60) days before the commencement or filing of such action(s), submit to the City via certified mail to the address for notices contained herein, an informal complaint specifically detailing each and every perceived allegation or grievance and that the City shall be afforded a reasonable amount of time within which to resolve any such claims.

10.10 Conflict and Priority

In the event that a conflict is found between provisions in any contract arising from this Request for Proposals, the successful Offeror's Proposal or the City's Request for Proposals, the provisions in the following rank order shall take precedence: 1) Contract; 2) Request for Proposals; and 3) Offeror's Proposal.

10.11 Ownership of Materials

All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials resulting from any contract arising from this RFP shall constitute the property of the City. The City may use, extend, or enlarge any document produced under the contract without the consent, permission of, or further compensation to the Offeror.

10.12 Termination

The City shall have the unilateral right to terminate any contract awarded hereunder, without cause, upon thirty (30) days written notice to the Offeror.

If termination shall be without cause, the Offeror shall be entitled to all compensation earned up to the date of termination. If the termination shall be for breach of this contract by the successful Offeror(s), the City shall pay all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach.

Notwithstanding the above, the Offeror shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of the contract by the Offeror. The City may, in such event, withhold payments due to the Offeror for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein shall not limit the City, in case of any default by the Offeror, from asserting any other right or remedy allowed by law, equity, or by statute.

10.13 Assignment

In accordance with General Municipal Law §109, the Offeror is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of any contract awarded pursuant to the issuance of this RFP, or of any right, title, or interests therein, or the power to execute such contract, to any other person or corporation without the previous consent in writing of the City.

If any Offeror, to whom any contract is let, granted or awarded, as required by law, shall without the previous written consent of the City, assign, transfer, convey, sublet or otherwise dispose of this contract, or any right, title or interest therein, or the power to execute such contract, to any other person or corporation, the City shall have the unilateral right to revoke and annul such contract, and the City shall be relieved and discharged from any and all liability and obligations growing out of such contract to such Offeror, and to the person or corporation to which such contract shall have been assigned, transferred, conveyed, sublet or otherwise disposed of, and such Offeror, and his assignees, transferees or sub-lessees shall forfeit and lose all moneys, theretofore earned under such contract, except so much as may be required to pay his employees. The provisions of this section shall not hinder, prevent, or affect an assignment by any such Offeror for the benefit of his creditors made pursuant to the laws of the State of New York.

10.14 Prime Contractor Responsibility

All sub-contractors will be subject to prior approval by the City. Prior to contract execution, the successful Offeror(s) will be required to furnish the corporate or company name and the names of the officers and principals of all sub-contractors. Notwithstanding any such approval by the City, the successful Offeror(s) shall itself be solely responsible for the performance of all work set forth in any contract resulting from the RFP and for compliance with the price and other terms provided in the contract. The successful Offeror(s) shall cause the appropriate provisions of its proposal and the contract to be inserted in all subcontracts.

The City's consent to or prior approval of any subcontract or subcontractor proposed by an Offeror shall not create or purport to create any obligation of the City to any such subcontractor, or any form of contractual relationship or relationship of privity between the City and the subcontractor. Any Offeror who obtains such approval or consent of the City shall be required to insert a clause so providing in all subcontracts.

10.15 Disclaimer

This RFP and the process it describes are proprietary to the City and are for the sole and exclusive benefit of the City. This RFP is not binding on the City. No other party, including any Offeror to this RFP or further Offerors to any RFP that may be issued by the City, is intended to be granted any rights hereunder. Any response to this RFP, including written documents and verbal communication, with the exception of materials marked as trade secrets or confidential, may be subject to public disclosure by the City, or any authorized agent of the City. Any materials submitted or ideas elicited in response to this RFP shall be the sole and absolute property of the City with the City having title thereto and unrestricted use thereof.

10.16 Publicity

All publicity (including, but not limited to, news releases, news conferences, and commercial advertising) relating to this RFP and/or the services or products sought by this RFP and/or any contract awarded pursuant to this RFP shall require the prior written approval of the City.

10.17 Offerors Restricted

No proposal shall be accepted from or contract awarded to any City employee or official, or any firm in which a City employee or official has a direct or indirect financial interest. No Offeror may be the prime contractor or prime Offeror for more than one proposal submitted pursuant to this RFP. Entities that are legally related to each other or to a common entity may not submit separate proposals as prime contractors or prime Offeror. Any proposal may be rejected that, in the City's sole judgment, does not comply with these conditions. Nothing contained in this RFP is intended to preclude a proposal by a system integrator that proposes to perform the substantive work proposed through sub-contractors.

10.18 New York State Executory Clause

Any contract(s) arising from this RFP shall be deemed executory only to the extent of monies appropriated and available for the purpose of the contract, and no liability on account thereof shall be incurred by the City beyond the amount of such monies. Neither the full faith and credit nor the taxing powers of the City of Buffalo are pledged to the payment of any amount due or to become due under such contract. It is understood that neither the contract nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the contract.

10.19 Copyright and Patent Rights

The successful Offeror(s) warrants that there are no existing claims of violation and Offeror has no knowledge of any potential claims of violation of copyrights or patent rights in products being proposed in this Request for Proposals as of the date of proposal submittal. Offeror(s) shall indemnify and defend the City in any claim or action brought against the City based upon a claim that the software or hardware provided by the Offeror violated any copyright or patent rights.

10.20 Confidentiality

The Offeror recognizes that it will have confidential information relating to individual employees and/or employee's dependents, as well as confidential information relating to the business and management affairs of the City, (collectively referred to as "Information"). The Offeror agrees that neither it nor its employees will at any time or in any manner, either directly or indirectly, use any Information for their own benefit, or divulge, disclose or communicate in any manner any Information to any third party without the prior written consent of the individuals involved, the City, or as may be required by law or the contract. The Offeror will protect the Information

and treat it as strictly confidential. The confidentiality provisions shall remain in full force and effect after the termination of any contract formed as a result of this RFP.

10.21 Freedom of Information Law

The City of Buffalo is subject to the provisions of Article 6, Section 89 of New York State Public Officer's Law, entitled the Freedom of Information Law. All proposals, in their entirety, submitted in response to this Request for Proposal shall constitute a record subject to public disclosure pursuant to the Freedom of Information Law. It is the sole responsibility of each Offeror to this Request for Proposal to identify those portions deemed to constitute a "trade secret" or proprietary information of the commercial enterprise. Any such information shall be clearly marked "CONFIDENTIAL". The phrase trade secret is more extensively defined to include a formula, process, device or compilation of information used in one's business which confers a competitive advantage over those in similar businesses who do not know it or use it. The subject of the trade secret must not be of public knowledge or of a general knowledge in the trade or business. A corresponding letter, on company letterhead, must be provided describing the factors and extent to which the disclosure of the "CONFIDENTIAL" information would cause substantial injury to the competitive position of the commercial enterprise. The entire proposal shall not be marked "CONFIDENTIAL". Any portion of the proposal that is not clearly identified as "CONFIDENTIAL" may be disclosed pursuant to the Freedom of Information Law. **THE CITY OF BUFFALO DOES NOT ASSUME ANY RESPONSIBILITY WHATSOEVER TO ANY OFFEROR IN THE DISCLOSURE OF RECORDS PURSUANT TO THE FREEDOM OF INFORMATION LAW, COURT ORDER, OR ANY OTHER METHOD OF DISCLOSURE PROVIDED FOR UNDER THE LAW.**

**DIVERSITY PRACTICES FOR CITY OF BUFFALO PROFESSIONAL SERVICES
RFPs PER MAYOR BROWN'S EXECUTIVE ORDER # 17-04**

Minority and Female Employment and Business Opportunities

Pursuant to the Mayor's Executive Order #17-04, each Offeror shall provide any relevant information with respect to any program or action taken to attract, recruit, retain and promote minority and female employees, partners and associates as well as actions taken to subcontract with Minority or Women Owned Business Enterprises (M/WBEs).

1. The factors to be considered include, but are not limited to, the following:
 - a. **Workforce**: Offerors should describe any programs or actions they undertake to attract, recruit, train, retain and promote minority and female employees, partners and associates, including direct hire programs, youth hiring programs or mentorship programs, and current representation of minority and female employees.
 - b. **Community Involvement**: Offerors should describe any programs or initiatives they sponsor or support that further the development of minority or women-owned business enterprises or increased minority/female workforce in the City of Buffalo.
 - c. **Offeror Policies**: Offerors should describe any procurement policies or practices they have adopted that provide M/WBE suppliers or services business opportunities. The City maintains a goal of contracting with firms that subcontract to minority-owned businesses in the amount of 25% of total contract price or more and female-owned businesses in the amount of 5% of total contract price or more.

1. Evaluation and Selection Process
Evaluation Process

The review and selection team will consider, but may not be limited to, the following factors:

CRITERIA	ESTIMATED WEIGHT
<i>Minority employment and business opportunities</i>	<i>15%</i>
<i>Female employment and business opportunities</i>	<i>5%</i>

**CITY OF BUFFALO
DEPARTMENT OF ADMINISTRATION, FINANCE & URBAN AFFAIRS
DIVISION OF PURCHASE
65 NIAGARA SQUARE, ROOM 1901 CITY HALL
BUFFALO NY 14202**

REGULATIONS

FOR ENTERING FORMAL PROPOSALS FOR MATERIALS, SUPPLIES, EQUIPMENT AND SERVICES

1. METHOD OF TENDERING PROPOSALS.

(A) No person, co-partnership, or corporation, shall submit more than one proposal, either directly or by agent. Each Offeror shall sign said proposal with his/her full name, in his/her own handwriting, and, if a partnership, each partner must sign; if a corporation, the corporate name shall be signed, and signed and acknowledged by a duly authorized officer thereof.

2. QUALIFICATIONS FOR OFFEROR.

Ordinarily, proposals are not considered from Offerors on supplies, material or equipment, if the Offeror or manufacturer of same is in bankruptcy, or in the hands of a receiver at the time of tendering a proposal or at the time of entering into a contract, but the Director of Purchase reserves the right to accept or reject such proposals in the best interest of the City. No proposal shall be accepted from any person or corporation that is in arrears to the City upon any debt or contract.

3. CONTRACT.

The successful Offeror will be required to enter into a contract on the City's form.

4. PATENT INFRINGEMENT.

The Offeror shall agree to indemnify and save harmless the City of Buffalo, its servants, agents and employees from any and all suits or action at law or in equity, which may hereafter be brought against them or either of them, for, or on account of, the infringement, or alleged infringement, of any patent or patent rights upon or pertaining to any of the articles described herein or supplied as a result of this RFP.

5. GENERAL.

(A) The Offeror will not be allowed to take advantage of any errors or omissions. The City reserves the right to reject any and all proposals on any or all items in the proposal and to waive any informalities.

(B) Should there be any question concerning these specifications, or the intent of these specifications, the prospective Offeror shall apply to the City for such information.

(C) These regulations, specifications, invitation for proposals, and the proposal are deemed to be incorporated in the contract.

(D) The City reserves the right to award as a whole, or to reject any or all proposals.

6. TAXES.

Quotations shall not include any New York Sales Tax as municipalities of New York State are not subject to this tax. No federal tax of any kind shall be included unless the federal law specifically levies such tax against purchases made by the political subdivisions of a State.

7. ASSIGNMENT AND SUBCONTRACTING

No Offeror awarded a contract pursuant to this RFP shall assign or subcontract any part of such contract to any person, firm or corporation by whom a proposal was submitted to the City for the same contract. Further, no contractor shall assign, transfer or otherwise dispose of any contract awarded as a result of this RFP, or any part thereof, or any right, title or interest there under, without the prior written consent of the City. Any such purported action without such consent shall be null and void.

8. SUBCONTRACTOR LIST.

The successful Offeror shall submit a list of proposed subcontractors, if applicable, to the City for approval and obtain written consent thereto prior to the execution of the contract.

9. NATIONALLY KNOWN CORPORATIONS.

The City reserves the right to determine which corporations are to be designated as nationally known, and his decision will be final.

10. PENALTIES AND EXTENSIONS OF TIME.

In order to avoid all controversy in the determination of actual damages or expenses to the City for the delay in completion of the contract by reason of the City's election not to terminate the right of the contractor and/or supplier to proceed with the completion of the contract, the Offeror and/or their surety shall be liable for and shall pay or allow to the City a sum equal to one percent (1%) of the total amount of the contract per day as fixed and agreed liquidated damages for each and every calendar day, Sundays and holidays included, after the date fixed for delivery during which time the contract shall remain incomplete, and any such damages and expenses may be deducted by the City from any payment or payments then due or thereafter to fall due to the contractor and/or supplier.

11. NON-COLLUSIVE PROPOSAL CERTIFICATION.

If the Offeror is a corporation, the execution of the non-collusive certification in the form of proposal shall be deemed to include the signing to non-collusion as the act and deed of the corporation.

No proposal shall be considered for an award nor will any award be made to a Offeror where the proposal does not include the statements as to non-collusion as set forth in the form of proposal herein, provided however, that if in any case the Offeror cannot make the foregoing certification, the Offeror shall so state and furnish with the proposal a signed statement which sets forth in detail the reasons therefore. In such event the proposal shall not be considered for award nor shall any award be made unless the City determines that such disclosure was not made for the purpose of restricting competition. In this connection, it should be noted that the fact that a Offeror has published price lists, rates or tariffs covering items being procured or has informed prospective customers of the proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price as being proposed, does not constitute, without more, a disclosure to any other Offeror or to any competitor within the meaning of the non-collusive certification included in the form of proposal.

12. CONFLICTS OF INTEREST

Confidentiality and lack of potential conflicts of interest is vital to maintaining the integrity of every the RFP process. **Therefore, the Offeror must disclose any potential conflicts of interests and/or relationships/connections by Principals and all. Such relationships may include, but are not limited to, connections to persons and organizations within the City of Buffalo through:**

- a. Professional or Political associations
- b. Political donations
- c. Blood or Marriage
- d. Friendships
- e. City of Buffalo employees who currently work for the firm, or come to work for the firm during the RFP process, and after (should you receive a contract from the City of Buffalo) as employees or consultants
- f. Union Affiliations/Memberships
- g. Board Member

13. INQUIRIES

The City of Buffalo adheres to Article 9, State Finance Law Section 139. No Offeror may contact, lobby or otherwise discuss the RFP with any employee, union leader or elected official of the City of Buffalo or other government official, until an award has been officially made. Any contact regarding the RFP, other than allowed contact such as to discuss current business with the City of Buffalo, or during the question and answer period (via email ONLY) with the person/s identified below, may result in a Offeror's immediate disqualification. All Offerors will be required to submit a Contract Certification Statement if awarded a contract.

All inquiries during the question and answer period only should be directed **via e-mail only** to:

Louis Petrucci
Assistant Director
lpetrucci@city-buffalo.com

The subject line must identify the RFP by title.

14. SECTION 220-E, Labor Law.

PROVISIONS IN CONTRACTS PROHIBITING DISCRIMINATION ON ACCOUNT OF RACE, CREED, COLOR OR NATIONAL ORIGIN IN EMPLOYMENT OF CITIZENS UPON PUBLIC WORKS.

Every contract for or on behalf of the state or a municipality for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies shall contain provisions by which the contractor with the state or municipality agrees:

(a) That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the state of New York who is qualified and available to perform the work to which the employment relates;

(b) That no contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color , disability, sex or national origin;

(c) That there may be deducted from the amount payable to the contractor by the state or municipality under this contract a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

(d) That this contract may be canceled or terminated by the state or municipality, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract; and

(e) The aforesaid provisions of this section covering every contract for or on behalf of the state or municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

NAME OF BIDDER _____ PHONE NO. _____

ADDRESS _____ EMAIL _____

REMIT TO ADDRESS _____

This form must be completed and submitted as stipulated in the specifications, either TYPEWRITTEN OR PRINTED IN INK.

CASH DISCOUNT (IF ANY) TO BE DEDUCTED _____ % IN THIRTY (30) DAYS.

THIS PROPOSAL IS FAIR IN EVERY RESPECT AND NO OFFICER OF THE CITY OF BUFFALO IS DIRECTLY OR INDIRECTLY INTERESTED IN SAID PROPOSAL, OR IN THE WORK TO WHICH IT RELATES, OR IN ANY PORTION OF THE PROFITS, excluding profits which may accrue as a stockholder, provided that as such stockholder he does not have supervision, control, or direction of said corporation and that he did not participate in the calculation, submission or preparation of this bid.

THIS PROPOSAL IS TENDERED BY (A) (AN) CORPORATION _____ PARTNERSHIP
_____ INDIVIDUAL _____

PARTNERS CONSTITUTING _____
PARTNERSHIP _____

INCORPORATED IN WHAT STATE, IF CORPORATION?

IF FOREIGN CORPORATION, STATE IF AUTHORIZED TO DO BUSINESS IN NEW YORK STATE _____

* CORPORATE OFFICERS' NAMES TITLES ADDRESSES

* PRINCIPAL STOCK HOLDERS
NAMES ADDRESSES NAMES ADDRESSES

* Note: This information is not required from nationally known corporations.

NON-COLLUSION CERTIFICATION

By submission of this bid, each Offeror and each person signing on behalf of any Offeror 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 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 Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly or indirectly, to any other Offeror or to any competitor;
- (3) No attempt has been made or will be made by the Offeror to induce any other person, partnership or corporation to submit a bid for the purpose of restricting competition.

FIRM OR CORPORATION NAME _____

PRINCIPAL ADDRESS _____
STREET _____
CITY STATE ZIP CODE _____

SIGNATURE OF INDIVIDUAL, PARTNERS OR OFFICERS

TITLE (TYPE OR PRINT NAME ABOVE)

TITLE (TYPE OR PRINT NAME ABOVE)

STATEMENT OF COMPLIANCE and CONFLICTS OF INTEREST

Your signature below denotes that your organization, company or corporation and /or the officers, directors, employees or agents thereof have reviewed and agreed to comply with Article 9, State Finance Law Section 139. No past or present lobbyist, employee, officer or board member of your organization, company or corporation may contact any past or present City of Buffalo Employee, Union Leader, Elected Official (City or otherwise) in an attempt to influence the outcome of the RFP decision.

Additionally, any potential or identified conflicts of interest are to be disclosed below. As conflicts are discovered, they must be disclosed in writing, to the designated contact person identified in the RFP, during the entire RFP, award, contract negotiation, ratification and execution process and even after contract award.

Conflict or potential conflict:

Signature: _____

Company: _____

Title: _____

Date: _____



CITY OF BUFFALO

DEPARTMENT OF MANAGEMENT INFORMATION SYSTEMS
65 Niagara Square, 1201 City Hall
Buffalo, New York 14202
(716) 851-4836



CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement is entered into as of this ____ day of the month of _____ in the year _____ between the City of Buffalo, a municipal corporation with offices located at 65 Niagara Square, Buffalo, New York 14202, hereinafter referred to as the “City” and _____ a company/individual/corporation, with offices located at _____, hereinafter referred to as the “Contractor”.

WHEREAS, the City has expended substantial resources in developing its business operations, products and relationships with suppliers, manufacturers, customers and others in the United States and/or other countries; and

WHEREAS, New York State Public Officers Law permits the City to deny access to records that if disclosed, would jeopardize the capacity of the City or any entity that has shared information with the City to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures; and

WHEREAS, the City and Contractor are desirous of entering into a governmental relationship and/or transaction, which may include the City’s granting of access to records and information that are not generally available to the public and that may properly be withheld from public disclosure where such records and information may include but not be limited to the disclosure of the City’s critical infrastructure, including but not limited to, its operations, products, systems, assets, and information technology and/or details thereof; and

WHEREAS, the City has expressed to the Vendor its concerns over the disclosure and unauthorized re-dissemination to third parties of records, information, or details whether general or specific relative to the City’s critical infrastructure, including its information technology, some of which may be proprietary and subject to copyright protection; and

WHEREAS, the City has expressed to the Contractor its concerns over the disclosure and unauthorized re-dissemination to third parties of such records or information relative to the City's critical infrastructure configuration, including its information technology, which, if disclosed, could jeopardize the health, safety, welfare or security of the City, its residents or its economy; and

WHEREAS, the City has conditioned its willingness to disclose or allow access to its critical infrastructure configuration, including its information technology, to the Contractor based upon the Contractors' agreement that the its' agents, employees, and/or representatives shall (i) keep confidential all records and information disclosed by the City, (ii) limit the use of all such records and information disclosed by the City for the sole purpose of activities related to the potential or actual governmental relationship between the Contractor and the City.

NOW THEREFORE, in consideration of the promises and agreements herein contained, the parties agree as follows:

That the purpose of this Agreement is to grant the Contractor limited conditional access to the City's critical infrastructure configuration, including its information technology, and such information that is not generally available or required to be made available to members of the public pursuant to applicable law.

ARTICLE 1 DEFINITIONS

Section 1.01 Definitions

As used in this Agreement, the words or phrases listed below shall have the meanings indicated:

(a) "Critical infrastructure" shall mean the systems, assets, places or things, whether physical or virtual, so vital to the City that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the City, its residents or its economy.

(b) "Confidential Information" means any data or information that is relative to the City's critical infrastructure, including its information technology, some of which may be proprietary and subject to copyright protection and not generally known or available to the public, , including, but not limited to, any plans, operations, specifications information, any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method; any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets; and any other information that should reasonably be recognized as confidential information of the

City that if disclosed would jeopardize the security of its critical infrastructures and information technology assets, such assets encompassing both whether in tangible or intangible forms.

(1.) Notwithstanding anything in the foregoing to the contrary, confidential information shall not include information which: (a) was known by the Contractor prior to receiving the confidential information from the City; (b) becomes rightfully known to the Contractor from a third-party source not known (after diligent inquiry) by the Contractor to be under an obligation with the City to maintain confidentiality; (c) is or becomes publicly available through no fault of or failure to act by the Contractor in breach of this Agreement; (d) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation.

ARTICLE II COVENANTS AND AGREEMENTS

Section 2.01. Confidentiality of Information; Duty of Non-Disclosure

Contractor acknowledges that the dissemination or unauthorized re-dissemination to third parties of the City's confidential information could jeopardize the security of the City's critical infrastructures, including its' information technology, assets, tangible and intangible, electronic and physical infrastructures.

Contractor shall not disclose to any person or entity except as necessary to in good faith conduct its investigation of a potential contractual relationship with the City, or use for its own personal or commercial gain any confidential information disclosed by the City or otherwise learned by reason of Contractors' contractual relationship with the City.

Section 2.02. Use of Confidential Information

Contractor agrees to use the confidential information solely in connection with the current or contemplated contractual relationship between the parties and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the City. No other right or license, whether expressed or implied, in the confidential information is granted to the Contractor hereunder. All rights and title to the confidential information shall remain solely with the City. All use of the confidential information by the Contractor shall be for the benefit of the City and any modifications and improvements thereof by the Contractor shall be the sole property of the City.

Section 2.03. Compelled Disclosure of Confidential Information

Notwithstanding anything in the foregoing to the contrary, the Contractor may disclose confidential information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or similar method, provided that the Contractor promptly notifies, to the extent practicable, the City in writing of such demand for disclosure so that the City, at its' sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the confidential information. The Contractor agrees that it shall not oppose and shall cooperate with efforts by, to the extent practicable, the City with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if the City is unable to obtain or does not seek a protective order and the Contractor is legally requested or required to disclose such confidential information, disclosure of such confidential information may be made without liability.

Section 2.04. Term

This Agreement shall remain in effect until the latter of such time as the City provides to the Contractor thirty (30) days written notification of its termination of this contract, or one (1) year following the disclosure of the confidential information as described under subsection (b)(1) of Section 1.01 entitled Definitions.

Section 2.05. Remedies

Both parties acknowledge that the confidential information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of the confidential information would result in a significant security risk to the City. The damages to City that would result from the unauthorized dissemination of the confidential information would be impossible to calculate. Therefore, both parties hereby agree that the City shall be entitled to injunctive relief preventing the dissemination of any confidential information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. The City shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

Section 2.06. Return of Confidential Information

Contractor shall immediately return and redeliver to the other all tangible material embodying the confidential information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials ("Notes") (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any confidential information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination of the dealings between the parties contemplated hereunder or (ii) the termination of this Agreement. Alternatively, the Contractor, with the written consent of the City may (or in the case of Notes, at the Contractor's option)

immediately destroy any of the foregoing embodying confidential information (or the reasonably non-recoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Contractor supervising the destruction).

Section 2.07. Notice of Breach

Contractor shall notify the City in writing immediately upon discovery of any unauthorized use or disclosure of confidential information by Contractor or its representatives, or any other breach of this Agreement by Contractor or its representatives, and will cooperate with efforts by the City to help the City regain possession of confidential information and prevent its further unauthorized use.

Section 2.08. Severability

Although the restrictions contained in this Agreement are considered by the parties to be reasonable for the purpose of protecting the confidential information, if any such restriction is found by a court of competent jurisdiction to be unenforceable, such provision will be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement will be enforced as if such provision was not included.

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and this Agreement shall read and be enforced as though it were included herein. If through mistake or otherwise, any such provision is not inserted, or is not properly inserted, then upon written application of either party, this Agreement shall be forthwith physically amended to make such insertion or correction.

Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

Section 2.09. Prior Agreements

This Agreement constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by the party against whom enforcement of such modification is sought.

Section 2.10. Jurisdiction

The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of New York State applicable to contracts made and

to be wholly performed within such state, without giving effect to any conflict of law provisions thereof. The Federal and state courts located in New York State shall have sole and exclusive jurisdiction over any disputes arising under the terms of this Agreement.

Section 2.11. Notices

Any notices or communications required or permitted to be given hereunder may be delivered by hand, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other party first indicated above (or such other addressee as may be furnished by a party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (a) in the case of personal delivery or electronic-mail, on the date of such delivery, (b) in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch and (c) in the case of mailing, on the seventh business day following such mailing.

For City of Buffalo:

Louis Petrucci
Deputy Commissioner
Department of Permits and Inspection Services
324 City Hall
65 Niagara Square
Buffalo, New York 14202

For Vendor:

Section 2.12. Assignment

This Agreement is personal in nature, and neither party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other party, which consent will not be unreasonably withheld. All obligations contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors, assigns and designees.

Section 2.13. Miscellaneous

Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this date.

Date: _____

Date: _____

ACKNOWLEDGMENTS

State of New York)
County of Erie) ss.

On the day of _____, in the year 2019, before me, the undersigned, a notary public in and for said state, personally appeared _____, the _____ of _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity as _____ of said Company/Corporation/legal entity, and that by his/her signature executed the instrument.

Notary Public/Commissioner of Deeds

State of New York)
County of Erie) ss.

On the day of _____, in the year 2019, before me, the undersigned, a notary public in and for said state, personally appeared _____, Director of City of Buffalo Department of Management Information Systems, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Director of said Department, and that by his signature executed the instrument.

Notary Public/Commissioner of Deeds

FORM 2A – BIDDER’S AFFIRMATIVE ACTION STATEMENT

The _____
(Company Name)

hereby states that we will make good faith efforts to ensure a diverse workforce and minority business participation for this proposal/bid in accordance with the City of Buffalo Charter, Chapter 96, Bonds and Contracts.

We will work toward a minority workforce goal of 25%, and woman workforce goal of 5%. In addition, we will work toward a business utilization goal for minority business enterprise of 25% and woman business enterprise of 5%.

(Signature of Authorized representative of Bidder)

Date _____

BIDS/PROPOSALS FAILING TO INCLUDE OR COMPLETE ANY OF THE ABOVE ITEMS WILL BE CONSIDERED NON-RESPONSIVE AND WILL NOT BE ACCEPTED.

EEO-2