



Niagara Frontier Transportation Authority  
*Serving the Niagara Region*

**NIAGARA FRONTIER TRANSPORTATION AUTHORITY**

**REQUEST FOR PROPOSAL**

**FOR**

**LAWSON AND ORACLE UPGRADE AND IMPLEMENTATION**

**NFTA RFP NO. 4273**

The following items are to be included the proposal and made part of any agreement entered into pursuant to this RFP.

**PLEASE SUBMIT 6 COPIES OF PROPOSAL**

Cover Letter  
Description of products/services  
Firm, Management and Staff Qualifications  
References  
Technical Specifications  
Itemized Cost Proposal  
Disclosure of Prior Non-Responsibility Determinations  
Bidder's/Proposer's Affirmation and Certification  
Non-Collusive Proposal Certificate  
W/WBE Forms

PROPOSERS MUST REGISTER AND DOWNLOAD THIS RFP FROM THE NFTA WEB SITE, [WWW.NFTA.COM](http://WWW.NFTA.COM), IN ORDER TO BE NOTIFIED OF SUBSEQUENT AMENDMENTS. ONLY REGISTERED SUPPLIERS WILL RECEIVE NOTIFICATION OF NEW RFP'S AS THEY BECOME AVAILABLE.

**NIAGARA FRONTIER TRANSPORTATION AUTHORITY**

**REQUEST FOR PROPOSAL NO. 4273**

Proposals will be received by the undersigned until 11:00 a.m. on FEBRUARY 21, 2013 for:

**LAWSON AND ORACLE UPGRADE AND IMPLEMENTATION**

in accordance with the attached proposal documents. The Authority reserves the right to reject any or all proposals, or to waive any informality in the proposal. Proposals shall be submitted in a sealed envelope showing Proponent's name and addressed to:

**NIAGARA FRONTIER TRANSPORTATION AUTHORITY**

**Department of Procurement - Fifth Floor**

**Attention: Andrea Herald**

**181 Ellicott Street**

**Buffalo, New York 14203**

**716-855-7356 phone, 716-855-6676 fax**

**Email: Andrea\_Herald@nfta.com**

**www.nfta.com**

**MARK ON LOWER LEFT HAND CORNER OF ENVELOPE:**

**RFP NO: 4273**

**DUE DATE: FEBRUARY 21, 2013 LOCAL TIME**

**FOR: LAWSON AND ORACLE UPGRADE AND IMPLEMENTATION**

**NAME OF PROPONENT:**

PROPOSALS MUST BE RECEIVED AT 181 ELLICOTT STREET, 5TH FLOOR, PROCUREMENT DEPARTMENT, BEFORE THE TIME DESIGNATED FOR OPENING IN ORDER TO BE CONSIDERED.

**All correspondence, communications and/or contact with the NFTA in regard to any aspect of this proposal shall be with the Procurement Official designated above or her designated representative. Prospective proponents, or their representatives, shall not make contact with or communicate with any representatives of the NFTA, including employees and consultants, other than the designated Procurement Official in regard to any aspect of this proposal.**

Andrea Herald  
Procurement Manager

**RFP 4273**  
**SCOPE OF WORK/TECHNICAL SPECIFICATIONS**

**INTRODUCTION**

The Niagara Frontier Transportation Authority (NFTA) has launched an effort to upgrade its installed Lawson 9.0.0.0 Environment and System Foundation applications residing on their IBM pSeries Power 740 (AIX 5.3) that utilizes Oracle 10g. In preparation for the upgrade, Oracle will be upgraded to 11g and the IBM Power 740 server will be upgraded to currently supported release of AIX 7.1. Lawson System Foundation is supported by Websphere. The Neps check printing software, Jetform merge engine may be replaced with Net30™ merge engine or some other checking writing software. The Neps and AIX upgrades will be out of the scope of this project; however the NFTA is seeking guidance in the proper coordination in the implementation of the above technical changes in order to have a successful upgrade. In addition, the NFTA will be implementing the Kronos Workforce Timekeeper version 6.3 with the following components: Absence Manager, Accruals, and Scheduler and TeleStaff Enterprise V2.x applications in a separate project.

The NFTA is looking for a Lawson Business Partner to assist in the upgrade from Lawson 9.0.0.9 (environment) and 9.0.0.6 (applications) to 9.0.1 and upgrade Oracle to 11g. The NFTA is seeking the services of an experienced consultant with expertise the Lawson 9.0.1 environment, and Lawson 9.0.1 System Foundation, and the technical expertise to lead and manage the NFTA through this project. The NFTA currently has Lawson's Human Resources, Benefits, Payroll, Personnel Administration, Time Accrual, and Time and Attendance modules installed. With as little customization as possible, the NFTA intends to upgrade its current Lawson System Foundation 9.0.0.0 to 9.0.1 and Lawson Environment 9.0.0.0 to 9.0.1. The Consultant must perform these tasks in a Development Environment and in a Production Environment.

**Company Background**

The Niagara Frontier Transportation Authority (NFTA) was created by an act of the New York State Legislature to promote the development and improvement of transportation and related services within Erie and Niagara Counties. Businesses include the Metro Bus and Rail system, Buffalo Niagara International Airport, Niagara Falls International Airport and a Boat Harbor.

**APPLICATION BACKGROUND**

The following is a list of Lawson applications installed and release level.

<b>Lawson Applications</b>	<b>Release Level</b>
Human Resources	9.0.0.4
Personnel	9.0.0.4

Benefits	9.0.0.4
Payroll	9.0.0.4
Time Accrual	9.0.0.4
Time & Attendance	9.0.0.4
Universe Environment	9.0.0.9
Lawson Portal	9.0.0.9.2.10
Lawson Security	9.0
XML Console	3.0.10.1
MS Add Ins	1.0.813
BSI Tax Factory	9.0 L
IBM Websphere	6.1.0.13
Design Studio	3.0
Cobol Compiler	5.0
LSF License	9.0
Process Flow Integrator w/o Websphere	License purchased but not installed

The following is a list of the additional systems installed that are integrated with the Lawson data base:

<b>Application</b>	<b>Function</b>
General Ledger	Lawson payroll transactions feed into GL in Ellipse System
Garnishments	Tracking of Garnishee deductions used in Account Payable. Also generate reports.
Bus Operator Scheduling	Hastus System Bus operator schedules are interfaced into Lawson time records.
Safety & Training	Tracking of employees who require, fire/hazardous comm., training and Bloodborne Pathogen shots.
Personnel and Operating Budget	The files are created that update Lawson personnel and calculate personnel information. Files created in the Ellipse GL system is downloaded in to Lawson to generate the operating budget.
Grievance Database	A database of all union pending and resolved grievances.
Cash management	Manages Investments and cash flow

Existing Interfaces

<b>Data Feed</b>	<b>Function</b>
ACH interface	Lawson to Bank
Positive Pay	Lawson to Bank
Bank Reconciliation	Bank to Lawson
GL	Lawson to Ellipse
Cash management	Lawson to Ellipse
Projects	Ellipse to Lawson
Deferred Comp	Lawson to Deferred Comp file
NYS Retirement	Lawson to NYS Retirement

NYS Taxes	Lawson to NYS taxes
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### New Planned Interfaces

Kronos Workforce Integration Manager will address this interface:

Data Feed	Function
Employee Demographics	To be imported to Kronos Timekeeper
Pay Data Export	Data to be exported to Lawson from Kronos Timekeeper

### **TECHNICAL BACKGROUND**

The technical Lawson environment includes the following:

	Current
Hardware	IBM pSeries Power 740 (AIX 5.3)
Operating System	AIX 5.3 - UNIX
Database	ORACLE 10g
Disk Storage	500 Gb SANS
Lawson Database Size	300 Gb (Prod & Test)
Remote Capabilities	VPN
Environments	2- Production and Test
Number of Users	90

### **REPORTS**

Total Number of custom reports used is 176.

### **SCOPE OF SERVICES/PRODUCT REQUIREMENTS**

This project will address several hardware and software related issues. Scope will include:

#### Lawson Upgrade

1. An upgrade to version 9.0.1 of Lawson Environment.
2. An upgrade to the current Lawson System Foundation.
3. The data migration/upgrade of Lawson system data.
4. Upgrade two Lawson environments (Test and Production).
5. The Consultant must complete the required tasks and be able to do that with minimum interruption to the Lawson production system at the NFTA.
6. Identify any features, programs, database, and input screens that will change because of this upgrade, for example, changes to PR160 (Payment Print), PMTOUT, etc.

7. Assist in determining which custom payroll programs need to be modified to work with new 9.0.1 environment (i.e. job def).
8. Create end user test scripts.
9. Assist with interface programs to ensure functionality with 9.0.1 application.
10. Provide Lawson Administrator, Application Support and End User Training.

### Oracle Upgrade

To implement Lawson Application and Foundation 9.0.1 the NFTA must upgrade its current Oracle 10g database to Oracle 11g. The NFTA is seeking a consultant to implement all phases of the upgrade the Oracle 11g and the latest maintenance release. This phase must occur in conjunction with phase 1. This phase should include at least a minimum the following:

1. Determine the upgrade path to the new Oracle Database 11g release.
2. Oracle 10g database migration to Oracle 11g.
3. Oracle Application Server migration to 11g.
4. Installation/configuration/troubleshooting Oracle database.
5. Monitor and tune application for optimal performance.
6. Resolve application functional issues related to Lawson 9.0.1 modules as it relates Oracle.
7. Develop detailed Project Plan for all phases of the upgrade.
8. Prepare a backup strategy.
9. Documentation and Knowledge Transfer / Training.
10. Consultant must provide one to three references from clients where they have performed a successful migration from Oracle 10g database to Oracle 11g. Must be familiar with Oracle database software on IBM AIX server.
11. Identify any required training to successfully manage the Oracle 11 database.

NOTE: Proponents may propose on one or both upgrades/implementations. NFTA reserves the right to make more than one award.

### **NFTA SUPPORT TEAM FOR IMPLEMENTATION:**

#### **Information Technology Staff**

- MIS Manager/Project Manager
- 2 - Lawson Senior Programmers
- 1- Lawson Software/Hardware

#### **Payroll Employees**

- 2 – Payroll/Accounting Managers

- Sr. Payroll Specialist
- Payroll Accountant

**HR Staff**

- Asst. Dir. HR/Benefits Manager

When preparing staffing proposals, the consulting firms should take into consideration the following minimum anticipated staffing needs and resource requirements by the NFTA:

1. Project Management
2. Environment and Database Expert
3. Technical Lead
4. Analyst-Programmer
5. HR-Payroll Specialist

**SCOPE OF SERVICES/CONSULTANT REQUIREMENTS**

The NFTA requires the consultant to provide the following:

- The strategy for implementation of the Upgrade
- A recommended implementation plan.
- The methodology employed to deliver service and monitor performance
- Data conversion planning and testing process prior to deployment.
- Services throughout the duration of the implementation to ensure quality and accuracy of processes, plans, and procedures. Provide documented confirmation of decisions made, status, results, and next steps.
- Documentation of all system changes. Provide documentation of test script criteria to ensure complete and accurate functionality of the new system and corresponding interfaces.
- User training at all levels.
- Support for the period immediately before, during, and after the go-live.

The consultant will:

- Work with NFTA project team through implementation and acceptance *to ensure* that the project stays on-track and within the established budget by providing regular updates to the Project Work Plan and Schedule. Work with the NFTA's Project Manager to prepare agendas for project status meetings that highlight plans and major issues.
- Work with the NFTA's Project Team to develop the risk management plan with regards to the time capture, labor management, employee scheduling, and leave

management system replacement, and to lead the effort to assess and mitigate risks.

**SUBMIT THE FOLLOWING WITH YOUR PROPOSAL**

- 1) Provide a detailed project plan with timeline, milestone and resource requirements.
- 2) Indicate the format/how of training will be conducted, length of time for each training session, the recommended number of attendees per session, and indicate if user manuals will be provided.
- 3) Provide detailed implementation cost related to the Lawson Upgrade.
- 4) Provide separate detailed cost for the Oracle upgrade.



## **PROPOSAL EVALUATION**

An NFTA Selection Team will evaluate proposals. The team will select the proponent whose proposal is most advantageous to the NFTA, considering the evaluation criteria.

### **Selection Procedure**

1. The selection team will evaluate and score all proposals received.
2. Proposals not meeting minimum requirements and those, which are not responsive, will not be given further consideration.
3. Proposals in the competitive range will be determined. These proponents may be asked to present their proposal to the selection team.
4. When presentations, discussions and negotiations are concluded, NFTA may request revised proposals and /or best and final offers from responsible proponents in the competitive range.
5. Proposals will be re-evaluated and scored. The selection team will recommend that the proponent with the highest overall score be awarded the contract. The recommendation must be approved by the NFTA Board of Commissioners prior to the execution of a contract.

NOTE: NFTA reserves the right to make the award based upon the initial proposals submitted, without presentations or discussions.

### **Evaluation Criteria (Listed in order of importance)**

#### **1. Qualifications and Experience: 40%**

- a. Demonstrated ability in the industry. Experience in delivering consulting, analysis, design, programming, implementation, and migration services to other firms in similar situations.
- b. Experience in Business System Evaluations that identify areas where process change can improve business efficiency.
- c. Experience in the use of remote access technologies to perform upgrade implementation.
- d. References and overall customer satisfaction on similar projects.
- e. Experience of successfully implementing a minimum of 3 clients with a similar level of complexity, transit related preferred.
- f. Organization of the team and management procedures. Depth of knowledge of key personnel in critical areas.
- g. On-site and off-site availability.

## **2. Technical requirements: 30%**

- a. Compliance with technical requirements. Approach, methodology and tools for planning, migration, and conversion of data to new Lawson release and platform.
- b. Demonstrated core competency with quality assurance procedures, specifically with regard to testing and database tuning.
- c. Ability to work as a part of a joint planning and implementation team with the NFTA.
- d. Project plan including deliverables and milestone dates.

## **3. Cost: 30%**

### **INSURANCE REQUIREMENTS**

The Contractor agrees to procure and maintain at its expense during the term of the Agreement insurance of the kinds and in the amounts hereafter required, with insurance companies authorized to do business in New York State, covering all operations under this Agreement whether performed by it or its sub-contractors. The insurance companies affording coverage must be deemed acceptable to the Authority throughout the term of this contract. If any insurance company is deemed unacceptable to the Authority the Contractor agrees to procure and maintain at its expense coverage with an acceptable insurer as soon as notified by the Authority. The policies shall provide for a 30 day notice to the Authority prior to termination, cancellation or change.

Prior to the execution of the Agreement, the Contractor shall supply the Authority by delivering to the Procurement Manager, 181 Ellicott St., Buffalo, NY 14203, a certificate(s) of insurance providing evidence of insurance coverage for the Contractor for the following coverages:

- Commercial General Liability Insurance including coverage for property damage, bodily injury, personal injury and products/completed operations with a single limit of at least \$1,000,000 per occurrence and \$2,000,000 aggregate. The certificate shall name the Authority as an additional insured.
- Auto Liability Insurance covering bodily injury and property damage with minimum combined single limit of \$1,000,000. The certificate shall name the Authority as an additional insured.
- Workers' Compensation and Employer's Liability in accordance with the applicable laws of the State of New York.
- Excess Liability/Umbrella Form \$1,000,000 per occurrence and aggregate. The certificate shall name the Authority as an additional insured.

The Authority and the Contractor agree to waive all rights against each other for damages to the extent covered by the insurance, except for such rights they may have

to the proceeds of such insurance held by the Authority as trustee. The Contractor shall require similar reciprocal waivers by all sub-contractors and sub-sub-contractors. This policy shall recognize such waivers of recovery by an appropriate Waiver of Subrogation Clause Endorsement, excluding any subrogation rights granted under New York Law to the contrary notwithstanding. Above needed insurance coverages should be provided on a primary and non-contributory basis.

Copies of any required policies shall be provided to the Authority upon request.

## PROPOSAL INSTRUCTIONS

### 1. INTRODUCTION

This Request for Proposal ("RFP") invites proposals for LAWSON AND ORACLE UPGRADE AND IMPLEMENTATION as set forth herein. These services may be modified during contract negotiations between the Proponent and the NFTA.

The Proponent is encouraged to use its previous knowledge and experience to develop a proposal to meet the NFTA's needs and a time schedule for completion within the constraints set forth in the project description and technical requirements.

This RFP does not commit the NFTA to negotiate a contract, nor does it obligate the NFTA to pay for any costs incurred in preparation and submission of proposals or costs incurred prior to entering into a formal agreement.

Proposals will be accepted until 11:00 a.m FEBRUARY 21, 2013 at the Office of the Manager, Procurement, Fifth Floor, Metropolitan Transportation Center, 181 Ellicott Street, Buffalo, New York 14203. Proposals should be submitted in an opaque, sealed envelope. Proposals received after the date specified above shall be considered late proposals and, therefore, shall not be opened nor considered for award.

### 2. PROPONENT QUALIFICATIONS

To be considered qualified, the Proponent must demonstrate in its proposal that it has the background, experience, and the technical and management resources required to organize and conduct the services outlined in this RFP. The Proponent shall furnish information documenting its ability to provide and perform all work related to its implementation and ongoing effectiveness of the project, in a timetable acceptable by the NFTA. The NFTA reserves the right to investigate the qualifications of firms under consideration to confirm any part of the information furnished by the Proponent. Anything less than satisfactory performance on a prior NFTA contract may lead to the NFTA concluding that the Proponent is not qualified.

2.1 Joint Venture: Proposals submitted by a joint venture shall not be considered unless the contractual responsibilities of the parties to the joint venture are clearly and specifically identified.

2.2 Validity Period: The proposal shall be considered valid for the period of time it takes to negotiate a contract with the successful Proponent. This may involve a period of up to 90 days following submittal. If a proposal is not valid for this time period, notification of the valid time period must be made in the letter of transmittal.

2.3 Disclosure of Proposal Data: Access to the NFTA's records is governed by Article 6 of the Public Officers Law of the State of New York ("Freedom of Information Law"). Except as otherwise required by the Freedom of Information Law, the NFTA will exempt from disclosure records submitted in the proposal which are trade secrets or are

maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise. Any such records that an Offeror believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as records exempt from disclosure will not assure confidentiality. The specific records must be clearly identified and an explanation submitted as to why they should be exempt. Proposal Forms shall not be designated to be proprietary. The NFTA will disregard any proprietary markings on any Proposal Form.

Upon a request for records from a third party regarding any records submitted with this proposal for which an exemption was sought the NFTA will notify in writing the party involved. The party involved must respond within 10 (ten) business days with a written statement of the necessity for the continuation of such exemption.

2.4 Agreement: The Proponent awarded the contract will be required to execute an Agreement in a form acceptable to the Authority.

### **3. RFP AMENDMENTS/QUESTIONS**

This RFP represents a written statement on the part of the NFTA explaining the requirements, terms, and conditions for submissions of proposals. The RFP covers this material as comprehensively and completely as it can at this time and thus contains all representations of the NFTA with respect to this matter. Any information or understandings, verbal or written, which are not contained within this RFP, or in later written addenda to this RFP, if issued, will be excluded from consideration in evaluating proposals.

**Any questions, objections or requests for revisions which Proponents may have should be submitted in writing to Andrea Herald via e-mail no later than February 13, 2013.** If questions submitted to the NFTA make issuance of addenda to this RFP necessary, such addenda will be distributed to all prospective Proponents. However, it is the responsibility of the Proponent to determine whether addenda have been issued and to acknowledge their receipt in its proposal.

### **4. PROPOSAL PROTEST PROCEDURES**

4.1 Pre-Submittal Opening Protests: If a Proponent can demonstrate that the Contract Documents issued by the NFTA are unduly exclusionary and restrictive or that federal, state or local laws or regulations have been violated during the course of the procurement, then the Proponent may seek a review by the Executive Director or his appointed representative, at 181 Ellicott Street, Buffalo, New York 14203. Protests shall be clearly identified as Protests and submitted in writing as early as possible but no later than five (5) business days before the date specified for proposal submittal. Within four (4) business days after receipt of a pre-submittal protest, the Executive Director shall make one of the determinations listed in paragraph 4.4

4.2 Post-Submittal Protests: A protest to the acceptance or rejection of any or of all proposals for a contract, or to the award thereof, or to any such action proposed or intended by the NFTA, must be received in writing by the Executive Director no later than five (5) business days after the protesting party first learned, or reasonably ought to have learned, of the action or the proposed or intended action to which he/she protests.

4.3 Decision-Makers: In the event the protester alleges that the Executive Director or the representative appointed by the Executive Director to serve as Decision-Maker for the particular protest, engaged in improper conduct during the subject procurement, the General Counsel shall serve as the Decision-Maker. In the event it has been alleged that the General Counsel has engaged in improper conduct during the subject procurement, either the Executive Director or the Chief Financial Officer shall serve as the Decision-Maker.

4.4 Rulings on Protests: Within four (4) business days, the Executive Director shall render one of the following determinations:

- (a) Protest is overruled.
- (b) Protest is substantiated. Executive Director shall issue instructions to remedy issues relating to the protest.
- (c) Procurement activity is suspended until written notification by the Executive Director.

The determination shall be in writing and shall provide at a minimum a general response to each material issue raised in the protest. All documents submitted by the Protester and/or Authority Staff and reviewed by the Decision-Maker in the reaching of a determination shall form and be retained by the Authority as the formal record of the dispute resolution process. The issuance of the foregoing determination is the NFTA's final decision of the dispute.

All interested parties shall be notified of any protests that are filed. The NFTA shall refrain from awarding a contract within five (5) business days of the date of a decision rendered by the Executive Director regarding a protest, unless the NFTA determines that:

- (a) The items to be procured are urgently required.
- (b) Delivery or performance will be unduly delayed by failure to make a prompt award.
- (c) Failure to make a prompt award will otherwise cause undue harm to the NFTA, state government or the federal government.

4.5 Protester's Appeal to Federal or State Agencies: In the event that the NFTA fails to have written protest procedures or fails to abide by the protest procedures set forth above, and federal or state funds are participating in the procurement, then the protester may seek a review by the appropriate funding agency. Protesters shall file such a protest in accordance with the requirements set forth below, not later than five (5) business days after a final decision is rendered under the NFTA's protest procedure. In instances where the protester alleges that the NFTA failed to make a final

determination on the protest, protesters shall file a protest with the appropriate agency not later than five (5) business days after the protester knew or should have known of the NFTA's failure to render a final determination on the protest.

## **5. PROPOSAL**

The Proponent shall submit 6 copies of their proposal.

5.1 Format: The proposal must be in compliance with the format described herein. The proposal shall be prepared on 8-1/2" x 11" paper bound on the long side. All pages are to be sequentially numbered. Unnecessarily elaborate proposals are not desired. Proposals should be concise, particularly with respect to past experience on other projects and the resumes of key personnel. Related experience is essential. Be specific on past and current assignments. Define the firm's involvement and responsibilities in each project.

The Proponent's technical proposal shall be prepared using the following format to facilitate evaluation. If a Proponent fails to provide the information requested in one or more sections, the proposal may be considered nonresponsive.

5.2 Content: The proposal shall contain the following items:

Cover Letter

Project Implementation

Project Organization

Key Personnel

Related Projects

Background Experience

Itemized Cost Proposal

Proposal forms completed as appropriate with supplemental data

5.2.1 Cover Letter: The proposal shall be submitted with a cover letter summarizing key points in the proposal. Any introductory remarks may also be placed in the cover letter. Provide a contact name, address, phone number and email address. The cover letter should not exceed three pages in length.

5.2.2 Project Implementation: The Proponent shall describe its plans to provide the requested services. This section should include a narrative description of the proposed methodology to accomplish the required tasks, as well as any innovations used on similar projects which may be applicable to the project.

5.2.3 Project Organization: This section of the proposal should be used to provide information on the Proponent's organization and staffing of the project. It should briefly describe the Proponent's personnel and pertinent qualifications.

5.2.4 Key Personnel: A list of key personnel for this project must be submitted along with a resume for each person.

5.2.5 Related Projects: A list of other contracts entered into by your firm that are similar to this project should be provided. Each should include the degree of involvement by your firm.

5.2.6 Background Experience: This section should contain a brief history of your firm, names of principals, concise description of the types of work accomplished, indication of current staff size and location and other relevant background information.

This section should also contain information demonstrating that your firm has a good working relationship with its clients, including a list of references, copies of letters of commendation and a discussion of how problems arising during the course of project are addressed. Indicate if your firm has ever defaulted on a contract; describe the circumstances and outcome.

5.2.7 Project Cost Proposal: Submit an Itemized Cost Proposal.

5.2.8 Proposal Forms: All forms requiring Proponent responses must be completed and submitted with the proposal.

## **6. EXECUTORY CLAUSE**

The Contractor specifically agrees that this contract shall be deemed executory only to the extent of monies available and no liability shall be incurred by the NFTA beyond the monies available for this contract.

## **7. PERMITS AND COMPLIANCE WITH LAWS**

The NFTA, in the construction, installation and operation of transportation facilities, is not required to obtain licenses or permits from any municipal or political subdivision of the State of New York. The Contractor, therefore, will not be required to obtain licenses or permits from any county, city, town or village agency or department. The Contractor shall, however, secure and pay for all permits, fees and licenses necessary to comply with applicable federal or state laws. Except as provided above, the Contractor shall comply with all federal, state, county and municipal laws, codes and regulations in connection with the prosecution of the work.

The Contractor shall protect, indemnify and hold harmless the NFTA and all of their officers, agents and employees against any and all claims and liabilities arising from or based on the violation of any such requirement or law whether by the Contractor, its employees, agents or subcontractors.

## **8. DISADVANTAGED BUSINESS ENTERPRISE POLICY STATEMENT**

In accordance with the requirements of 49 CFR, Part 26, dated March 4, 1999 entitled, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs," the Niagara Frontier Transportation Authority (NFTA), is committed to the



development and implementation of an effective Disadvantaged Business Enterprise (DBE) Program.

The NFTA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the NFTA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the NFTA to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the policy of the NFTA:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE program.

The Director of Equal Opportunity/Diversity Development has been delegated as the DBE Liaison Officer. In that capacity, the Director of Equal Opportunity/Diversity Development is responsible for implementing all aspects of the DBE Program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the NFTA in its financial assistance agreements with the Department of Transportation.

The NFTA has disseminated this policy statement to the Board of Commissioners and all the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for the NFTA on DOT-assisted contracts by inclusion in bid specifications, Requests for Qualifications and Requests for Proposals.

## **9. NEW YORK STATE SUBCONTRACTORS AND SUPPLIERS**

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from Empire State Development, Procurement Assistance Unit, Phone: (518) 292-5220, or email to [esd\\_smallbus@empire.state.ny.us](mailto:esd_smallbus@empire.state.ny.us).

A directory of certified minority and women-owned business enterprises is available from Empire State Development, Division of Minority and Women's Business Development Div., 30 South Pearl St., Albany, NY 12245, Phone: (518) 292-5250, Fax: (518) 292-5803.

Bidders located in foreign countries are hereby notified that New York State may seek to obtain and assign or otherwise transfer offset credits created by this procurement contract to third parties located in New York State. The successful contractor shall agree to cooperate with the State in efforts to get foreign countries to recognize offset credits created by the procurement contract.

The Omnibus Procurement Act requires that by signing this bid proposal, contractors certify that whenever the total bid amount is greater than \$1 million:

1. The successful contractor shall document efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this project, and has retained the documentation of these efforts to be provided upon request to the State.
2. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has:
  - a. Solicited bids, in a timely and adequate manner, from New York State business enterprises including certified minority and women-owned businesses, or
  - b. Contacted the Empire State Economic Development to obtain listings of New York State business enterprises, or
  - c. Placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York State, or
  - d. Participated in bidder outreach conferences.
  - e. If the Contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the Contractor shall provide a statement indicating the method by which such determination was made.
  - f. If the Contractor does not intend to use subcontractors on the contract, the Contractor shall provide a statement verifying such intent.
3. The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261) as amended;
4. The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Community Services Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request.

## **10. FEDERAL AND STATE LABOR LAW REQUIREMENTS**

Each laborer, workman or mechanic employed by the Contractor or subcontractor about or upon the work to be performed under this Agreement, shall be paid not less than once a week and not less than the prevailing minimum wages required by the U.S.

Department of Labor for federally and federally-assisted construction. Prevailing wage rates for laborers, workmen and mechanics have also been determined by the New York State Department of Labor. See the Prevailing Wage Rates set forth herein. In the event of difference between federal and state wage rates, the Contractor will be required to pay laborers, workmen and mechanics not less than the highest applicable rate established by either the U.S. Department of Labor or the Department of Labor of the State of New York. The Contractor shall comply with all federal laws, rules and regulations in regard to its employment of laborers, workmen and mechanics, including but not limited to the Davis-Bacon Act, the Copeland Act, the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3), the Contract Work Hours and Safety Standards Act and 29 CFR Parts 5 and 1926. The Authority is obligated to report all disputes concerning payment of prevailing wage rates or classifications promptly to the Department of Transportation for its referral to the Department of Labor.

## **11. SUSPENSION AND DEBARMENT**

This Article applies to contracts for amounts in excess of \$25,000.00.

The Consultant certifies by execution of this Agreement that neither the Consultant nor its principals or affiliates are excluded or disqualified as defined at 49 CFR Part 29.

The Contractor also agrees to include these requirements in each subcontract exceeding \$25,000.00.

## **12. DRUG AND ALCOHOL TESTING**

This clause is applicable to all contracts for safety-sensitive functions, which are defined as (1) operating a revenue service vehicle, including when not in revenue service; (2) operating a non-revenue service vehicle, when required to be operated by a holder of a commercial driver's license; (3) controlling dispatch or movement of a revenue service vehicle; (4) maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service; (5) carrying a firearm for security purposes.

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the New York State Department of Transportation, or Metro to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 655 before April 1 and to submit the Management Information System (MIS) reports before March 1 to the Project Manager. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

## **13. FLY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

#### **14. FEDERAL CHANGES**

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the NFTA and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The Contractor’s failure to so comply shall constitute a material breach of this Agreement.

#### **15. NO FEDERAL OBLIGATIONS TO THIRD PARTIES**

The NFTA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the NFTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **16. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

This Agreement includes provisions relating to certain Standard Terms and Condition required by the Department of Transportation (DOT), whether or not expressly set forth. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NFTA requests which would cause the NFTA to be in violation of the FTA terms and conditions.

#### **17. INDIVIDUALS WITH DISABILITIES**

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et. seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, 49 U.S.C. appl. § 1612 and the following regulations: 49 C.F.R. Subpart 101-19; 29 C.F.R. Part 1630 and 47 C.F.R. Part 64.

## 18. EQUAL OPPORTUNITY CLAUSE

During the performance of this Agreement, the Contractor agrees as follows:

**Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements that FTA may issue.

**Equal Employment Opportunity.** The following equal employment opportunity requirements apply to this Agreement:

**Race, Color, Creed, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. Such action 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**Age.** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**Disabilities.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulation to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **19. LOBBYING**

Permissible contacts during the procurement process are governed by section 139-j of the State Finance Law. Submission of a proposal in response to this Request for Proposals constitutes the proposer's written affirmation that the proposer understands and agrees to comply with section 139-j of the State Finance Law.

## **20. NEW YORK STATE BUY AMERICA PROVISIONS**

All purchase contracts for supplies, material or equipment involving an estimated expenditure in excess of fifty thousand dollars shall require with respect to materials, supplies and equipment made of, fabricated from, or containing steel components, that such steel components be produced or made in whole or substantial part in the United States, its territories or possessions. The provisions of this paragraph shall not apply to motor vehicles and automobile equipment assembled in Canada in conformity with the United States - Canadian trade agreements known as the "Automotive Products Trade Act of 1965," or any amendments thereto.

## **21. MWBE REQUIREMENTS**

This section is applicable to all contracts for a total expenditure in excess of \$25,000 of funding from New York State.

The NFTA goals for this procurement are:

Non-construction related professional and non-professional services industries for certified minority-owned business enterprises 20%

Non-construction related professional and non-professional services industries for certified women-owned business enterprises 20%

Commodities industries for certified minority-owned business enterprises 20%

Commodities industries for certified women-owned business enterprises 20%

The goals are only applicable to that portion of the procurement that is being funded by New York State.

The successful Proposer must document good faith efforts to provide meaningful participation by MWBEs as sub-consultants or suppliers in the performance of the Agreement and agrees that the NFTA may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://www.esd.ny.gov/mwbe.html>. For guidance on how the NFTA will determine the successful Bidder's "good faith efforts" refer to 5 NYCRR section 142.8.

In accordance with 5 NYCRR section 142.13, the successful Proposer acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Agreement, such finding constitutes a breach of the Agreement and the NFTA may withhold payment from the successful Proposer as liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payments to MWBEs had the

successful Proposer achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Agreement.

By submitting a proposal the Proposer agrees to submit the following documents and information:

- A. Proposers are required to submit an MWBE Utilization Plan in the form set forth below with the bid. Any modifications to the MWBE Utilization Plan after award of the Agreement must be reported on a revised MWBE Utilization Plan and submitted to the NFTA.
- B. The NFTA will review the MWBE Utilization Plan and advise the Proposer of acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, the Proposer agrees that it shall respond to the notice of deficiency within five business days of receipt by submitting to the NFTA a written remedy in response to the notice of deficiency. If the written remedy is found by the NFTA to be inadequate, the NFTA shall notify the Proposer and direct the Proposer to submit, within three business days, a request for a partial or total waiver of MWBE participation goals in the form set forth below.
- D. The NFTA shall disqualify a Proposer as non-responsive under the following circumstances:
  1. If a Proposer fails to submit an MWBE Utilization Plan;
  2. If a Proposer fails to submit a written remedy to a notice of deficiency;
  3. If a Proposer fails to submit a request for waiver; or
  4. If the NFTA determines that the Proposer has failed to document good faith efforts.

The successful Proposer shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan during the performance of the Agreement. Requests for a partial or total waiver of established goal requirements may be made at any time during the term of the Agreement but no later than submission of a request for final payment.

The successful Proposer is required to submit an MWBE Contractor Compliance and Payment Report to the NFTA by the 10<sup>th</sup> day following the end of each month over the term of the Agreement documenting the progress made toward achievement of the MWBE goals of the Agreement.

### M/WBE UTILIZATION PLAN

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Offeror's Name:  
 Address:  
 City, State, Zip Code:  
 Telephone No.:  
 Region/Location of Work:

Federal Identification No.:  
 Solicitation No.:  
 Project No.:  
 M/WBE Goals in the Contract: MBE      %    WBE      %

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/ Supplies/Services and intended performance dates of each component of the contract.
A.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

**6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (M/WBE 104).**

<p><b>PREPARED BY (Signature):</b>  <b>DATE:</b></p> <p><b>NAME AND TITLE OF PREPARER (Print or Type):</b>                  SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p>	<p><b>TELEPHONE NO.:</b></p> <p><b>EMAIL ADDRESS:</b></p> <p style="text-align: center;"><b>FOR M/WBE USE ONLY</b></p> <p><b>REVIEWED BY:</b> _____ <b>DATE:</b> _____</p> <p><b>UTILIZATION PLAN APPROVED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____  <b>Contract No.:</b> _____ <b>Project No. (if applicable):</b> _____</p> <p><b>Contract Award Date:</b> _____  <b>Estimated Date of Completion:</b> _____  <b>Amount Obligated Under the Contract:</b> _____  <b>Description of Work:</b> _____</p> <p><b>NOTICE OF DEFICIENCY ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p> <p><b>NOTICE OF ACCEPTANCE ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____</p>
<p>M/WBE 103 (Revised 11/08)</p>	



### REQUEST FOR WAIVER FORM

<b>INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.</b>	
<b>Offeror/Contractor Name:</b>	<b>Federal Identification No.:</b>
<b>Address:</b>	<b>Solicitation/Contract No.:</b>
<b>City, State, Zip Code:</b>	<b>M/WBE Goals: MBE      %      WBE      %</b>
<b>By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.</b>	
<b>Contractor is requesting a:</b>	
1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial 2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial 3. <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.)      Date of such filing with Empire State Development: _____	
<b>PREPARED BY (Signature):</b>	<b>Date:</b>
<b>SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.</b>	
<b>Name and Title of Preparer (Printed or Typed):</b>	<b>Telephone Number:</b>
	<b>Email Address:</b>
<b>***** FOR M/WBE USE ONLY *****</b>	
<b>Submit with the bid or proposal or if submitting after award submit to:</b>  Niagara Frontier Transportation Authority Linda Seay, Director EEO/Diversity Development Department 181 Ellicott Street Buffalo, NY 14203	<b>REVIEWED BY:</b>
	<b>DATE:</b>
<b>Waiver Granted: <input type="checkbox"/> YES      MBE: <input type="checkbox"/> WBE: <input type="checkbox"/></b> <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____ <b>*Comments:</b> _____	

M/WBE 104 (Revised 11/08)

## REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

**When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:**

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of application receipt issued by Niagara Frontier Transportation Authority (NFTA).

Note:

**Unless a Total Waiver has been granted, the Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by the NFTA, to determine M/WBE compliance.**

**M/WBE 104 Instructions (11/08)**

### WORK FORCE EMPLOYMENT UTILIZATION

<b>Contract No.:</b>	<b>Reporting Entity:</b> <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	<b>Reporting Period: Monthly</b>
<b>Contractor's Name:</b>		<b>Report includes:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force
<b>Contractor's Address:</b>		

Enter the total number of employees in each classification in each of the EEO-Job Categories identified.

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification								Disabled		Veteran			
		Male (M)	Female (F)	White		Black		Hispanic		Asian		Native American		(M)	(F)	(M)	(F)
				(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)				
						<u>0</u>											
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary /Apprentices																	
Is																	

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b>	<b>DATE:</b>
	<b>EMAIL ADDRESS:</b>	
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>	Submit completed form to: NFTA, Linda Seay, Director, EEO/Diversity Development Dept., 181 Ellicott St, Buffalo, NY 14203 M/WBE 102 (Revised 11/08)	

## **New York State Finance Law Sections 139-j and 139-k (“Lobbying Law”) – Disclosure Statement**

### **General Information**

All procurements by the Niagara Frontier Transportation Authority or Niagara Frontier Transit Metro System, Inc. (collectively, “NFTA/Metro”) in excess of \$15,000 annually, are subject to New York State’s State Finance Law Sections 139-j and 139-k, (“Lobbying Law”).

Pursuant to the Lobbying Law, all “contacts” (defined as oral, written or electronic communications with NFTA/Metro intended to influence NFTA/Metro’s conduct or decision regarding a procurement) during a procurement must be made with one or more designated Point(s) of Contact only. Exceptions to this rule include written questions during the bid/proposal process, communications with regard to protests, contract negotiations and RFP conference participation. Nothing in the lobbying Law inhibits any rights to make an appeal, protest or complaint under existing administrative or judicial procedures.

Violations of the policy regarding permissible contacts must be reported to the NFTA/Metro Ethics Officer and investigated accordingly. The first violation may result in a determination of non-responsibility and ineligibility for award to the violator and its subsidiaries, affiliates and related entities. The penalty for a second violation within four (4) years is ineligibility for bidding/proposing on a procurement and/or ineligibility from being awarded any contract for a period of four (4) years. The NFTA/Metro will notify the New York State Office of General Services (“OGS”) of any determinations of non-responsibility or debarments due to violations of the Lobbying Law. Violations found to be “knowing and willful” must be reported to the NFTA/Metro Executive Director and OGS.

Moreover, the statutes require the NFTA/Metro to obtain certain affirmations and certifications from bidders and proposers. This Disclosure Statement contains the forms with which to comply, together with additional information and instructions.

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### **Instructions**

New York State Finance Law §139-k(2) obligates the NFTA/Metro to obtain specific information regarding prior non-responsibility determinations. In accordance with New York State Finance Law §139-k, an offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any governmental entity due to: (a) a violation of New York State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a governmental entity.

As part of its responsibility determination, New York State Finance Law §139-k (3) mandates consideration of whether an offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any offerer that fails to timely disclose accurate or complete information under this section, unless the factual elements of the limited waiver provision can be satisfied on the written record.

**Disclosure of Prior Non-responsibility Determinations**

Name of Bidder/  
Proposer: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Name/Title of Person  
Submitting Form: \_\_\_\_\_

Has any governmental entity<sup>1</sup> made a finding of non-responsibility regarding the Bidder/Proposer in the previous four years?  
\_\_\_\_\_Yes \_\_\_\_\_No

If yes: Was the basis for the finding of the Bidders/Proposer's non-responsibility due to a violation of State Finance Law §139-j?  
\_\_\_\_\_Yes \_\_\_\_\_No

Was the basis for the finding of Bidder's Proposer's non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?  
\_\_\_\_\_Yes \_\_\_\_\_No

If yes, please provide details regarding the finding or non-responsibility below:

Governmental Entity: \_\_\_\_\_

Year of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-responsibility:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

Has any governmental entity terminated a procurement contract with the Bidder/Proposer due to the intentional provision of false or incomplete information?  
\_\_\_\_\_Yes \_\_\_\_\_No

<sup>1</sup> A "governmental entity" is (1) any department, board, bureau, commission, division, office, council, committee or officer of New York State, whether permanent or temporary; (2) each house of the New York State Legislature; (3) the unified court system (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as member by virtue of holding a civil office of the state; (6) a municipal agency, as that term is defined in paragraph (ii) of subdivision(s) of section one-c of the Legislative Law; or (7) a subsidiary or affiliate of such a public authority. (SFL §139-j, paragraph 1.a.)

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**Bidder's/Proposer's Affirmation and Certification**

By signing below, the Bidder/Proposer:

- a) Affirms that the Bidder/Proposer understands and agrees to comply with the policy regarding permissible contacts in accordance with New York State Finance Law Sections 139-j and 139-k.
- b) Certifies that all information provided to the NFTA/Metro with respect to New York State Finance Law §139-j and §139-k is complete, true and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Person Certifying)

Print Name and  
Title: \_\_\_\_\_ Title: \_\_\_\_\_

Bidder/Proposer or Contractor/Consultant (Full Legal Name): \_\_\_\_\_  
\_\_\_\_\_

Address of Bidder/Proposer or Contractor/Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Business Telephone Number: \_\_\_\_\_

**NFTA/Metro's Right  
To Terminate**

**The NFTA/Metro reserves the right to terminate a Contract in the event it is found that the certification filed by the Bidder/Proposer, in accordance with New York State Finance Law §139-k, was intentionally false or intentionally incomplete. Upon such finding, the NFTA/Metro may exercise its termination right by providing written notification to the Bidder/Proposer in accordance with the written notification terms of the Contract.**

## NON-COLLUSIVE PROPOSAL CERTIFICATION

By submission of this proposal, each Proponent and each person signing on behalf of any Proponent certifies, and in the case of a joint proposal each party thereto certifies as to his or her own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

- a) The prices in this proposal 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 Proponent or with any competitor;
- b) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the Proponent and will not knowingly be disclosed by the Proponent prior to opening, directly or indirectly, to any other Proponent or to any competitor, and
- c) No attempt has been made or will be made by the Proponent to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

The undersigned submits the following proposal, which is in complete conformity with the intent of the proposal documents. The Proponent agrees that should it be awarded a contract on the proposal through the issuance of a contract or purchase order from the Niagara Frontier Transportation Authority, it will provide the materials, supplies, equipment or services in strict compliance with the contract documents for the compensation stipulated herein. The Proponent agrees that its proposal shall remain effective for a period of 90 days from the formal proposal receipt date.

\_\_\_\_\_  
Proponent

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date