

REQUEST FOR PROPOSALS

NOTICE IS HEREBY GIVEN; that the Undersigned, on behalf of the Essex County Board of Supervisors, will accept sealed proposals until June 10, 2010 at 2:00 P.M. for Architectural, Mechanical, and Electrical Engineering Services.

Specifications are available by contacting the Office of the Purchasing Agent, Linda M. Wolf, Government Center, 7551 Court St., Elizabethtown, New York 12932 or by calling 518-873-3330. Specifications are also available on the website at www.co.essex.ny.us.

Sealed proposals will be received at the Office of the Purchasing Agent, County Complex, Elizabethtown, New York 12932 until June 10, 2010 at 2:00 P.M.

All proposals submitted in response to this notice shall be marked "SEALED PROPOSAL – HWAY-10-02" clearly on the outside of the envelope.

In addition to the proposal, the proposer shall submit executed non-collusion bid certificates signed by the proposer or one of its officers as required by the General Municipal Law Sec. 103d.

Essex County reserves the right to reject any and all proposals not considered to be in the best interest of Essex County, and to waive any technical or formal defect in the proposals which is considered by Essex County to be merely irregular, immaterial, or unsubstantial.

PLEASE TAKE FURTHER NOTICE that Essex County affirmatively states that in regard to any contract entered into pursuant to this notice, without regard to race, color, sex, religion, age, national origin, disability, sexual preference or Vietnam Era veteran status, disadvantaged and minority or women-owned business enterprises will be afforded equal opportunity to submit bids in response hereto.

Dated: May 19, 2010

Linda M. Wolf, CPA
Purchasing Agent
Essex County Government Center
Elizabethtown, New York 12932
(518) 873-3330

General Information

It is the intent of Essex County DPW to employ, on an as needed basis, a professional engineering firm capable of providing architectural, mechanical and electrical engineering services. Direction will come from the Essex County Superintendent of Public Works or his designee. Payment shall be rendered on a time and material basis for work performed at contracted rates. The majority of the work will be in the area of building design and modification including mechanical and electrical systems. In the course of providing services, the firm shall be asked to provide, at a minimum, the following:

- Bid specifications for customer bid packages
- Architectural layouts for customer review
- Electrical layout drawings
- Plumbing layout drawings
- Material specifications
- Cost estimates
- Attend project updates and reviews
- Conceptual drawings as needed
- “As Built” drawings on an “as needed” basis

The contract will be for a term of one (1) year with the option to renew for an additional two (2) years with mutual consent.

APPENDIX A

1. The Consultant shall provide periodic professional services on an individual “Letter of Authorization” basis in conjunction with the management of Department’s Highway and Buildings and Grounds divisions. It is anticipated that the services provided by the Consultant will be primarily related to buildings from an architectural, mechanical engineering and electrical engineering standpoint. Tasks will be identified by the County from time to time for which certain professional services shall be provided by the Consultant, and the County will pay the Consultant for services rendered in accordance with Appendix B of the Agreement.
2. Each Letter of Authorization shall include the following minimum information:
 - A. Date of Issue, including reference to the Agreement.
 - B. Identification of Task or Project for which the Consultant is to render services.
 - C. Description of services to be rendered by the Consultant, including any subcontractors needed.
 - D. Period of Services (i.e. time schedules, completion dates, etc.).
 - E. A summary of anticipated costs as spelled out in Appendices B & B-1.
 - F. Special Requirements, if any, imposed by the County and/or Regulatory Agencies.

Each Letter of Authorization shall be numbered consecutively (i.e. “Letter of Authorization No. 1”, etc.), and be signed and dated by the County and the Consultant.

Each executed Letter of Authorization shall be attached to and made a part of this Agreement.

3. In connection with the services to be provided, the Consultant shall:
 - A. Provide for the County those professional services described in various Letter of Authorization issued under this Agreement.
 - B. Obtain from the County all data and other information necessary (other than that specifically referenced elsewhere in this Agreement) for the performance of his/her services.
 - C. Perform the services under this Agreement in character, sequence, and timing such that they will be coordinated with the County’s schedule and with the services of other independent Professional Associates and Consultants who may be retained by the County in conjunction with the Essex County Department of Public Works and related projects and efforts.
 - D. Perform his/her services with the understanding that the Essex County Department of Public Works must be administered and operated in full conformance with all New York State Laws, Rules, Regulations, and Permit requirements. Additionally, a value engineered approach, from the standpoint of cost containment, shall be part of the charge to the Consultant under any Letter of Authorization issued under this Agreement.
 - E. Furnish to the County as required for performance of services for the Project, data prepared by or subcontracted services of others in project preparations.
4. The County agrees to furnish the following at no cost to the Consultant:
 - A. Provide in a timely manner all criteria, directives, and information defining its requirements for the Project or other efforts of the Consultant under each specific Letter of Authorization. Included shall be design or performance objectives and constraints, space and capacity requirements, flexibility and expandability, and any construction standards which the County requires to be included in reports, drawings, specifications, or other documents generated as part of the Consultant’s efforts under this Agreement.

- B. Place at the Consultant's disposal reports, drawings, specifications, schedules and other information which were prepared by the County or information by others which is available to the County, and which the County considers pertinent to the Consultant's responsibilities hereunder, on all of which the Consultant may rely in performing services hereunder except as may be specifically noted otherwise in writing.
 - C. Arrange for access to and make all provisions for the Consultant to enter upon public and private property as required for the Consultant to perform services under this Agreement.
 - D. Give prompt written notice to the Consultant whenever the County observes or otherwise becomes aware of any development that affects the scope or timing of the Consultant's services.
 - E. Advise the Consultant of the identity of other independent professional associates or consultants participating in the Project and their general scope of services.
5. The work to be performed pursuant to the terms of this Agreement shall commence promptly on notification from the Superintendent and shall be completed as soon as possible. The Consultant shall properly maintain a detailed daily log relative to the terms of this Agreement, which shall include, but not be limited to, the following:
- A. Date
 - B. Names of Employees Rendering Service
 - C. Nature of Service Rendered
 - D. Required Time Expended.
6. The Consultant shall issue progress reports to the County as the Superintendent may direct and shall immediately inform the Superintendent in writing of any cause for delay in the performance of its obligations under this Agreement.
7. The County, upon ten (10) days prior written notice to the Consultant by personal delivery or Certified Mail, may terminate this Agreement in whole or in part when the County deems it to be in its best interest. In such event, the Consultant shall be compensated and the County shall be liable only for payment for services already rendered under this Agreement prior to the effective date of termination.

In the event of a dispute as to the value of the services rendered by the Consultant prior to the date of termination, it is understood and agreed that the Superintendent shall determine the value of such services rendered by the Consultant. Such reasonable and good faith determination shall be accepted by the Consultant as final.

In the event the Superintendent determines that there has been a material breach by the Consultant of any of the terms of the Agreement and such breach remains uncured for thirty (30) days after service to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power, and authority to complete the services provided for in this Agreement, or contract for their completion, and additional expense or cost of such completion shall be charged to and paid by the Consultant. Notice hereunder shall be effective on the date of mailing.

8. All records compiled by the Consultant in completing the work described in this Agreement, including, but not limited to, written reports, studies, drawings, blueprints, negatives of photographs, computer printouts, graphs, charts, plans, specifications, and all other similar recorded data, shall become and remain the property of the County. The Consultant may retain copies of such records for its own use.
9. Any purported delegation of duties or assignment of rights under this Agreement without the prior express written consent of the County is void. The Consultant shall not subcontract any part of the

work without the written consent of the County. All subcontractors shall provide that subcontractors are subject to all terms and conditions set forth in this Agreement. All work performed by a subcontractor shall be deemed work performed by the Consultant.

10. The Consultant agrees that it has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the services and duties hereunder. The Consultant further agrees that, in the performance of this Agreement, no person having any such interest shall be employed by it.
11. The services to be furnished and rendered under this Agreement by the Consultant shall be available to Essex County and its political subdivisions.

(TO BE RETYPED ON CONSULTANT'S LETTERHEAD STATIONARY)

Date: _____

LETTER OF AUTHORIZATION NO. _____

TO: Anthony Lavigne, Superintendent
Essex County Department of Public Works
8053 US Route 9
Elizabethtown, NY 12932

RE: Project Identification No. _____

1. AUTHORIZATION REQUEST:

In conformance to your instructions, and in accordance with the basic Agreement between the County of Essex (County) and (Consultant) for providing periodic Professional Services during calendar year _____, we enclose _____ copies of our request for authorization to furnish engineering services in connection with _____.

2. DESCRIPTION OF SERVICES:

_____.

3. OWNER'S RESPONSIBILITIES:

[County's responsibilities shall be as described in "Appendix A" of this Agreement.]

[Consultant's responsibilities in "Appendix A" of this Agreement are modified as follows:

_____]

4. PERIOD OF SERVICES:

[Services are to be performed _____, 20__]

[Services are to be provided in conformance to the following schedule:

_____]

5. PAYMENTS:

[Payments shall be made in accordance with the Cost Reimbursement Payment Method of "Appendix B" of this Agreement, along with hourly rates listed under Appendix B-1.]

6. GENERAL CONSIDERATIONS:

The Consultant designates _____ as the person who will be responsible for coordinating the services rendered by the Consultant for the Project.

7. SPECIAL PROVISIONS:

The following Special Provisions for the Task or Project shall serve to amend affected portions of the Agreement where applicable, the unaltered portions thereof to remain in force:

Your signature, in the space provided below, will signify approval of the terms and conditions of this request, which, together with the Agreement [and Attachments identified below] will constitute Letter of Authorization No. _____.

Please return one (1) copy of this request to our office [together with the executed attachments].

Sincerely,

COUNTY:

CONSULTANT:

(Signature)

(Signature)

By: Linda M. Wolf

By:

Title: Supt. of Public Works

Title:

Dated: _____

Date: _____

ATTACHMENTS

APPENDIX “B”

PAYMENT SCHEDULE

CONSULTANT AGREEMENT FOR PERIODIC PROFESSIONAL SERVICES IN CONJUNCTION WITH ESSEX COUNTY DEPARTMENT OF PUBLIC WORKS PROGRAM

The County shall pay the Consultant for services rendered on an individual Letter of Authorization basis (see “Appendix A”). Reimbursement to the Consultant will consist of two (2) items, namely all out of pocket expenses and cost per hourly rate per job titles basis. The Consultant should consider his overhead costs in his hourly rates. The Consultant shall complete Appendix B-1: Consultant’s Average Hourly Billing Rate Costs by Title.

PAYMENT METHOD: Cost Reimbursement Method

The County shall pay the Consultant the sum of Items I and II as follows:

Item I: Billing Rates of all employees of the Consultant engaged directly on this Project.

Item II: Direct cost reimbursement for expenses incurred by the Consultant in direct connection with the service being provided including, but not limited to mileage, telephone, reproduction, computer time, and cost of outside professional and/or technical services along with out-of-pocket expense at cost, that are not applicable to general overhead. Travel will be reimbursed in accordance with I.R.S. established guidelines.

APPENDIX B-1

[illegible]

APPENDIX "C"

INSURANCE REQUIREMENTS – PROFESSIONAL SERVICE PROVIDERS

1. The Contractor shall procure and maintain during the entire term of the contract the following required insurance:
 - A. **Workers' Compensation** - Statutory Workers' Compensation and Employers' Liability Insurance for all employees, *except that in the event the Contractor has no employees and is exempt by law from having such insurance coverage, the Contractor may provide an exemption statement.*
 - B. **Professional Liability Insurance** - \$1,000,000 per occurrence or claim / \$2,000,000 aggregate for the negligent or wrongful professional acts of the Contractor.
 - C. **Commercial General Liability Insurance** - \$1,000,000 per occurrence / \$2,000,000 aggregate.
2. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the Contractor hereby agrees (except as to workers' compensation insurance coverage and except as to professional liability coverage if Contractor's insurance cannot add the County as an additional insured on its professional liability policy) to either effectuate:
 - A. The naming of the County as an "additional insured as funding source for contract services" on the Contractor's insurance policies, or
 - B. The inclusion of a contractual liability endorsement covering the Contractor's contract with the County.
3. The policy/policies of insurance furnished by the Contractor shall:
 - A. Be from and A.M. Best rated "A" New York State licensed insurer; and
 - B. Contain a 30-day notice of cancellation.
4. In the event that the Contractor is unable to furnish professional liability insurance other than on a "claims made" basis, the Contractor shall procure and maintain a separate "tail" policy of such insurance providing the required coverage, or furnish proof of continuous coverage under the existing policy, for a period of one year and ninety days following the termination date of this contract.
5. The Contractor agrees to indemnify the County for any applicable deductibles.
6. The Contractor acknowledges that failure to obtain such insurance on behalf of the County constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the County. Prior to the commencement of work or use of facilities, the Contractor shall provide to the County proof that such requirements have been met by furnishing certificate(s) of such insurance and the declarations pages from the policies of such insurance. The failure of the County to object to the contents of the certificate(s) and/or declarations pages, or the absence of same, shall not be deemed a waiver of any and all rights held by the County.

APPENDIX D - STANDARD CLAUSES FOR ESSEX COUNTY CONTRACTS

1. Independent Contractor Status

The parties each acknowledge, covenant and agree that the relationship of the Contractor to the County shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, further covenants and agrees that it:

- (a) will conduct itself in accordance with its status as an independent contractor;
- (b) will neither hold itself out as nor claim to be an officer or employee of the County; and
- (c) will not make any claim, demand or application for any right or privilege applicable to an officer or employee of the County, including but not limited to workers' compensation benefits, unemployment insurance benefits, social security coverage or retirement membership or credits.

2. Contractor To Comply With Laws/Regulations

The Contractor shall at all times comply with all applicable state and federal laws, rules and regulations governing the performance and rendition of the services to be furnished under this agreement.

3. Licenses, Permits, Etc.

The Contractor shall, during the term of this agreement, obtain and keep in full force and effect any and all licenses, permits and certificates required by any governmental authority having jurisdiction over the rendition and performance of the services to be furnished by the Contractor under this agreement.

4. Termination

This agreement may be terminated without cause by either party upon 30 days prior written notice, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and mileage expenses actually incurred prior to such termination. Notwithstanding the foregoing, this agreement may be immediately terminated by the County:

- (a) for the Contractor's breach of this agreement, by serving written notice of such termination stating the nature of the breach upon the Contractor by personal delivery or by certified mail, return receipt requested, and upon such termination either party shall have such rights and remedies against the other as provided by law; or
- (b) upon the reduction or discontinuance of funding by the State or Federal governments to be used in furnishing some or all of the work, labor and/or services provided for under this agreement, and upon such termination neither party shall have any claim or cause of action against the other except for services actually performed and expenses (if the same are to be paid under this agreement) actually incurred prior to such termination.

5. Defense & Indemnification

The Contractor shall defend, indemnify and hold harmless the County to the fullest extent allowed by law from and against any and all liability, suits, judgments, orders, causes of action, and claims, including but not limited to those for bodily injury, property damage, death, and reasonable attorney's fees, arising out of or in connection with the Contractor's negligence and/or its performance or failure to perform this

agreement

6. **Discrimination Prohibited**

The services to be furnished and rendered under this agreement by the Contractor shall be available to any and all residents of Essex County without regard to race, color, creed, sex, religion, national or ethnic origin, handicap, or source of payment; and under no circumstances shall a resident's financial ability to pay for the services provided be considered unless such consideration is allowed by State and/or Federal law, rule or regulation.

7. **Non-Discrimination In Employment**

The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. In the event that this is a contract to be performed in whole or in part within the State of New York for (a) the construction, alteration or repair of any public building or public work, (b) for the manufacture, sale or distribution of materials, equipment or supplies, (c) for building service, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin:

- (1) discriminate in hiring against any citizen who is qualified and available to perform the work; or
- (2) discriminate against or intimidate any employee hired for the performance of work under this contract.

The Contractor agrees to be subject to fines of \$50.00 per person per day for any violation of this paragraph, as well as to possible termination of this contract or forfeiture of all moneys due hereunder for a second or subsequent violation.

8. **Damage/Injury To Persons & Property**

The Contractor shall promptly advise the County of all damages to property of the County or of others, or of injuries incurred by persons other than employees of the Contractor, in any manner relating, either directly or indirectly, to the performance of this agreement.

9. **Records**

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter collectively "the Records") in accordance with the following requirements:

- (a) the Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter;
- (b) the County Auditor, State Comptroller, the Attorney General or any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York, or, if no such office is available, at a mutually agreeable and reasonable

venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

The County shall take reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified and designation of said records as exempt under the statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation.

10. **Claims For Payment**

All invoices or claims for which payment is sought from the County must be submitted in accordance with the following:

- (a) each claim for payment must include
 - (1) an invoice detailing the claim,
 - (2) copies of all documentation supporting the claim,
 - (3) a properly completed County standard voucher, which includes
 - (i) the County contract number under which payment is being claimed, **AND**
 - (ii) the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. *[Failure to include this number or numbers will prevent and preclude payment by the County; except that where the payee does not have such number or numbers, the payee, on the invoice or County voucher, must give the reason or reasons why the payee does not have such number or numbers and such reasons constitute a valid excuse under law.]*
- (b) Unless otherwise provided in this agreement, each claim for payment must be submitted to the County no later than 30 days after the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (c) Notwithstanding any other provision of this agreement, no claim for payment shall be valid, and the County shall not be liable for payment thereof, unless it is submitted to the County within 30 days of the close of the calendar year in which the work, labor, materials, and/or services for which payment is claimed were rendered or furnished.
- (d) Unless otherwise provided in this agreement, the requirements of this paragraph 10, and/or of any other provisions of this agreement which supersede the same, shall constitute conditions precedent to the County's payment obligation, and failure to comply with any or all of said requirements shall entitle the County to deny payment.
- (e) As a further condition of payment, each claim of payment shall be accompanied by a Contractor and Sub-Contractor Progress Payment Waiver, Release and Discharge, and each Final Payment shall be accompanied by a Contractor and Sub-Contractor Final Payment, Waiver and Release form. As well as a Contractor Affidavit relative to Final Payment. Copies of these forms are

attached and made a part hereof.

11. **Consent**

In the event that State or Federal law requires the recipient of services to be furnished and rendered under this agreement to give his/her prior consent thereto, the contractor shall obtain such person's consent and furnish proof thereof to the County.

12. **Executory Clause**

The County shall have no liability under this contract to the Contractor or to anyone else beyond the funds appropriated and available for this contract.

13. **Public Work & Building Service Contract Requirements**

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof:

- (a) neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department; and
- (b) the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

14. **Public Work Contracts – Hazardous Substances**

If this is a contract for public work, the Contractor agrees as follows:

- (a) the Contractor acknowledges that the County uses and/or produces various substances which may be classified as hazardous under OSHA's Hazard Communication Standard;
- (b) the Contractor recognizes the use of said substances by the County and acknowledges that the County has provided, or upon request will provide, the Contractor with a description of such substances which may be present in the area of the County's facility/facilities to which the Contractor may have accessed during the performance of this contract;
- (c) the Contractor acknowledges that the County has provided, or upon request will provide, suggestions for appropriate protective measures which should be observed when the Contractor is in the area of any such hazardous substances;
- (d) the Contractor agrees to be solely responsible for providing training and information to its employees regarding any such hazardous substances, as well as of any protective measures suggested by the County;
- (e) the Contractor agrees to be solely responsible to ensure that the Contractor's employees observe protective measures during the performance of their duties in the performance of the contract, and that all such protective measures will be at least as stringent as those suggested or which would have been suggested by the County;

- (f) in the event that the Contractor's performance of the work under this contract requires the use of any hazardous substances, the Contractor shall notify the County in advance of bringing in and/or using such substances in or upon County property and suggest to the County appropriate measures to be observed by the County, its officers and employees, and/or the public; and
- (g) in the event the Contractor fails in whole or in part to comply with the terms of this paragraph, the County shall have the right to interrupt the Contractor's work and/or terminate this contract, and the Contractor shall be prohibited from renewing such work until all applicable safety and health procedures and practices are implemented by the Contractor.

15. **Disputes**

Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction within the State of New York.

16. **Non-Assignment**

This agreement may not be assigned, subcontracted, transferred, conveyed, sublet or otherwise disposed of in whole or in part, by the Contractor, without the prior written consent of the County, and any attempts to assign the contract without the County's written consent are null and void.

17. **No Collusion**

If this contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that:

- (a) its bid was arrived at independently and without collusion aimed at restricting competition; and
- (b) at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on Contractor's behalf.

18. **International Boycott**

In accordance with Section 220-f of the Labor Law, if this contract exceeds \$5,000.00, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation, has participated, is participating, or shall participate in an International boycott in violation of the federal Export Administration Act of 1979, or regulations thereunder. If such contractor, or any of the aforesaid affiliates of Contractor, is convicted, or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the County Manager within five (5) business days of such conviction, determination or disposition of appeal.

19. **County's Rights of Set-Off**

The County shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the County's option to withhold for the purposes of set-off any moneys due to the Contractor under this agreement up to any amounts due and owing to the County with regard to this contract, any other contract with any County department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the County for any other reason, including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The County shall exercise its set-off rights in accordance with normal County practices, including, in cases of set-off pursuant to an audit, the acceptance of such audit by the County Board of Supervisors or its designated representative.

20. **Contractor Defined**

Whenever the term "Contractor" is used in this agreement, such term shall include and apply to all employees, all officers, directors and agents, if any, of the Contractor.

21. **Amendment**

This agreement may not be amended, modified or renewed except by written agreement signed by the Contractor and the County.

22. **Ownership Of Work Products**

All final and written or tangible work products completed by the Contractor shall belong to the County. In the event of premature discontinuance of performance, the Contractor agrees to deliver all existing products and data files to the County.

23. **Executive Order Debarment/Suspension**

In the event that this contract involves the Contractor furnishing goods and services in excess of \$100,000.00, or constitutes a subaward to subrecipients, under any Federal program, grant or other funding source, then by executing this agreement the Contractor certifies that neither it nor any of its principals are suspended or debarred within the scope or meaning of Executive Orders 12549 and 12689, any Federal or State regulation implementing or codifying the same, or any other Federal or State law, rule or regulation.

24. **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

In the event that this contract involves the use or disclosure of protected health information within the meaning or application of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the regulations thereunder, the following provisions of this paragraph shall apply.

- (a) **Definitions.** The terms used, but not otherwise defined, in this Agreement shall have the same meaning as given such terms in 45 CFR §160.103 and §164.501, as the same may be amended from time to time, including but not limited to the following.

- (1) "Business Associate" shall mean the Contractor, its officers, employees, agents and subcontractors.
- (2) "Covered Entity" shall mean Essex County (the "County"), its departments, agencies, officers and employees.
- (3) "Individual" shall have the same meaning as given such term in 45 CFR §164.501 and shall also include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- (4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.
- (5) "Protected Health Information" shall have the same meaning as given such term in 45 CFR §164.501, limited to the information created or received by Contractor from or on behalf of the County.
- (6) "Required by law" shall have the same meaning as given such term in 45 CFR §164.501.
- (7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

(b) Obligations and Activities of Contractor. Contractor agrees to:

- (1) not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law;
- (2) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement;
- (3) mitigate, to the extent practicable, any harmful effect that is known, should have been known, and/or discovered to/by Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement;
- (4) report to the County any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware;
- (5) ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of the County agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information;
- (6) provide access, at the request of the County, and in the time and manner designated by the County or the Secretary, to Protected Health Information in a Designated Record Set, to the County or, as directed by the County, to an Individual in order to meet the requirements under 45 CFR §164.524;
- (7) make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to pursuant to 45 CFR §164.526 at the request of the County or an Individual, and in the time and manner designated by the County or the Secretary;
- (8) make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, the County available to the County, and/or to the Secretary, in a time and manner designated by the County or by the Secretary,

for purposes of the Secretary determining the County's compliance with the Privacy Rule;

(9) document such disclosures of Protected Health Information and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528;

(10) provide to the County or an Individual, in time and manner designated by the County or the Secretary, information collected in accordance with the above subparagraph (b)(9) of this Agreement, to permit the County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(c) Permitted Uses and Disclosures by Contractor.

Except as otherwise limited in this Agreement, Contractor may use or disclose Protected Health Information on behalf of, or to provide services to, the persons entitled to services under this Agreement:

(1) solely for the purposes of performing Contractor's obligations under this Agreement, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by the County or the minimum necessary policies and procedures of the County; or

(2) provided that such use or disclosures are required by law; or

(3) Contractor

(A) obtains written authorization(s) from the individual to which the information pertains permitting the specific uses or disclosures of such information to third persons,

(B) represents and agrees in writing with such individual that the information to be used and/or disclosed will remain confidential and used or further disclosed only as required by law or for the purposes specified in the written authorization(s), and

(C) such third persons agree in writing to notify the County as soon as practicable and in writing of any instances of which such third person(s) is/are aware in which the confidentiality of the information has been breached; or

(4) provide Data Aggregation services to the County as permitted by 42 CFR §164.504(e)(2)(i)(B); or

(5) report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

(d) County To Inform Contractor of Privacy Practices and Restrictions.

The County agrees to notify the Contractor of any

(1) limitation(s) in its notice of privacy practices of the County in accordance with 45 CFR §164.520, to the extent that such limitation may affect the Contractor's use or disclosure of Protected Health Information;

(2) changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect the

Contractor's use or disclosure of Protected Health Information; and/or
(3) restriction to the use or disclosure of Protected Health Information that the County has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Contractor's use or disclosure of Protected Health Information.

(e) Permissible Requests by County.

The County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the County; except that in the event that the services to be furnished by the Contractor under this Agreement requires data aggregation by the Contractor, the Contractor may use or disclose protected health information for such data aggregation or management and administrative activities of Contractor.

(f) Survival of Provisions.

The obligations of the Contractor under this paragraph 24 shall survive the expiration of the term of this Agreement and/or the termination of this Agreement, and said obligations shall remain effective and shall not terminate until all of the Protected Health Information provided by the County to Contractor, or created or received by Contractor on behalf of the County, is destroyed or returned to the County, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in subparagraph (g) below.

(g) Return or Destruction of Protected Health Information.

Except as otherwise provided below, upon termination of this Agreement for any reason, Contractor shall return or destroy all Protected Health Information received from the County, or created or received by Contractor on behalf of the County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.

In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to the County notification of the conditions that make return or destruction infeasible. Upon determination by the County that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

(h) Termination for Cause.

Upon the County's knowledge of a material breach of this paragraph by Contractor, the County shall:

- (1) either: (A) provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement within the time specified by the County, or

- (B) immediately terminate this Agreement if cure is not possible; and
 - (2) report the violation to the Secretary.
- (i) Miscellaneous.
 - (1) Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
 - (2) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
 - (3) Survival. The respective rights and obligations of Contractor under this paragraph 24 of this Agreement shall survive the termination of this Agreement.
 - (4) Interpretation. Any ambiguity in this Agreement shall be resolved to permit the County to comply with the Privacy Rule.

25. **Severability**

If any term or provision of this agreement or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and every other term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

26. **Entire Agreement**

This agreement is the entire agreement between the parties, and the same shall be construed in accordance with the laws of the State of New York.

CONTRACTOR PROGRESS PAYMENT WAIVER, RELEASE AND DISCHARGE

PROJECT:

OWNER: ESSEX COUNTY

CONTRACTOR:

WITNESSETH:

The above-named Contractor, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its' successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrant, covenant and agree as follows:

1. Releasor is/was a Contractor relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.

2 Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above-named Contractor, its, successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor, including but not limited to subcontractors and suppliers; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).

3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Owner, its' successors and assigns; (b) the Project Architect/Engineer; and (c) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a) and (b).

4. For and in consideration of the sum of \$ _____, and other good and valuable consideration, which sum is acknowledged as being the full and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.

5. The Releasor hereby agree to defend, indemnify, and hold harmless the

Releasees from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or which should have been so furnished or performed, or incorporated or to be incorporated in said Project, as of the date hereof, by the Releasor or by any other party claiming any interest or right through the Releasor.

6. The Releasor hereby certifies and warrants that it has fully paid for all work, labor, services, materials and/or equipment provided to it in connection with the Project and/or any contract relating thereto.

7. The Releasor hereby grants to the Releasees the right to review and audit any and books and records of the Releasor at any time for verification.

IN WITNESS WHEREOF this instrument has been executed this ____ day of _____, 20__.

Releasor

By:_____

(Print Name)

(Title)

STATE OF NEW YORK)
) SS:
COUNTY OF _____)

I, _____, being duly sworn, depose and say that: I reside at _____, and I hereby sign this instrument under penalty of perjury; I am the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of the Releasor; and I hereby affirm that the statements contained in this instrument are true and correct.

Sworn to before me this _____
day of _____, 20__.

Notary Public

CONTRACTOR FINAL PAYMENT WAIVER, RELEASE AND DISCHARGE

PROJECT:

OWNER: Essex County

CONTRACTOR:

WITNESSETH:

The above-named Contractor, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its' successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrants, covenants and agrees as follows:

1. Releasor is/was a Contractor relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.
2. Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above-named Contractor, its, successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor, including but not limited to subcontractors and suppliers; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).
3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Owner, its' successors and assigns; (b) Essex County, its agencies and departments (including but not limited to its Office for the Aging); and (c) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a) and (b).
4. For and in consideration of the sum of \$_____, and other good and valuable consideration, which sum is acknowledged as being the full, final and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.
5. The Releasor hereby agree to defend, indemnify, and hold harmless the Releasees from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or

indirectly relating to any claim for compensation by any other party for work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or which should have been so furnished or performed, or incorporated or to be incorporated in said Project, as of the date hereof, by the Releasor or by any other party claiming any interest or right through the Releasor.

6. The Releasor hereby certifies and warrants that it has fully paid for all work, labor, services, materials and/or equipment provided to it in connection with the Project and/or any contract relating thereto.

7. The Releasor hereby grants to the Releasees the right to review and audit any and books and records of the Releasor at any time for verification.

IN WITNESS WHEREOF this instrument has been executed this ____ day of _____, 20__.

By_____

STATE OF NEW YORK, COUNTY OF ESSEX)ss:

I, _____, being duly sworn, depose and say that: I reside at _____, _____, and I hereby sign this instrument under penalty of perjury; I am the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of the Releasor; and I hereby affirm that the statements contained in this instrument are true and correct.

Sworn to before me this _____
day of _____, 20__.

Notary Public

CONTRACTORS AFFIDAVIT RELATIVE TO FINAL PAYMENT

PROJECT:

OWNER: Essex County

CONTRACTOR:

W I T N E S S E T H :

The herein below designated representative of the Contractor being duly sworn deposes and states:

1. He is duly authorized to sign this Affidavit on behalf of the Contractor.
2. That all payrolls, bills for materials and equipment, and other indebtedness connection with the work for which the County or the County's property might be responsible or encumbered have been paid or otherwise satisfied and there remain no further indebtedness or bills outstanding.
3. Attached hereto and made a part hereof is a valid certificate of insurance evidencing that insurance required by the contract documents will remain in full force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the owner.
4. Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the contract documents.
5. Attached hereto and made a part hereof at Schedule B is a detailed list of all sub-contractors and material suppliers.
6. Contractor warrants and represents that all sub-contractors, material suppliers and fringe benefit trust funds for employees of contractor and sub-contractors on the portion of the project encompassed by the work, as well as all workers and persons employed in connection therewith have been paid in full for all labor and work and materials furnished.
7. Contractor releases and waives any and all public improvement lien rights which contractor has against the County.

IN WITNESS WHEREOF, deponent has executed this document on ____ day of ____
_____, ____.

Contractor

By: _____

(Print Name)

(Title)

STATE OF NEW YORK)

) SS:

COUNTY OF _____)

I, _____, being duly sworn, depose and say that: I reside at _____
_____, and I hereby sign this instrument under penalty of perjury; I am the of the
Releasor identified herein; I am fully authorized to execute this instrument on behalf of the Releasor; and I
hereby affirm that the statements contained in this instrument are true and correct.

Sworn to before me this _____
day of _____, 20__.

Notary Public

SUBCONTRACTOR/SUPPLIER PROGRESS PAYMENT
WAIVER, RELEASE AND DISCHARGE

PROJECT:

OWNER: ESSEX COUNTY

CONTRACTOR:

SUBCONTRACTOR/SUPPLIER:

W I T N E S S E T H :

The above-named Subcontractor/Supplier, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its, successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrants, covenants and agrees as follows:

1. Releasor is/was a subcontractor/supplier to the Contractor above-named relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.
2. Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above-named Subcontractor/Supplier, its' successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).
3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Contractor and all of its, sureties and other guarantors on any payment, performance, labor and/or material bond or other undertaking; (b) the abovenamed Owner, its, successors and assigns; (c) the Project Architect/Engineer; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).
4. For and in consideration of the sum of \$_____, and other good and valuable consideration, which sum is acknowledged as being the full and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.
5. The Releasor hereby agree to defend, indemnify, and hold harmless the Releasees from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or which should have been so furnished or performed, or incorporated or to be incorporated in said Project, as of the date hereof, by the Releasor or by any other party claiming any interest or right through the Releasor.
6. The Releasor hereby certifies and warrants that it has fully paid for all work, labor, services, materials and/or equipment provided to it in connection with the Project and/or any contract relating

thereto.

7. The Releasor hereby grants to the Releasees the right to review and audit any and books and records of the Releasor at any time for verification.

IN WITNESS WHEREOF this instrument has been executed this ____ day of _____, 2006.

Releasor

By:_____

(Print Name)

(Title)

STATE OF NEW YORK)

) SS:

COUNTY OF _____)

I, _____, being duly sworn, depose and say that: I reside at _____, and I hereby sign this instrument under penalty of perjury; I am the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of the Releasor; and I hereby affirm that the statements contained in this instrument are true and correct.

Sworn to before me this _____
day of _____, 2006.

Notary Public

SUBCONTRACTOR/SUPPLIER FINAL WAIVER, RELEASE AND DISCHARGE

PROJECT:

OWNER: _____

CONTRACTOR:

SUBCONTRACTOR/SUPPLIER:

W I T N E S S E T H :

The above-named Subcontractor/Supplier, hereinafter referred to as the "Releasor", does, for and on behalf of itself, its, successors, assigns and all parties claiming any interest or right through the Releasor, hereby warrants, covenants and agrees as follows:

1. Releasor is/was a subcontractor/supplier to the Contractor above-named relative to the above-referenced Project pursuant to a contract or other relationship for the performing and/or furnishing of work, labor, services, materials and/or equipment at the Project site or to be incorporated in said Project.

2. Whenever the term "Releasor" is used in this instrument such term shall mean: (a) the above-named Subcontractor/Supplier, its' successors and assigns; (b) any and all sureties and all other guarantors of the Releasor on any payment, performance, labor and/or material bond or other undertaking; (c) all parties claiming any interest or right through the Releasor; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).

3. Whenever the term "Releasees" is used in this instrument such term shall mean: (a) the above-named Contractor and all of its, sureties and other guarantors on any payment, performance, labor and/or material bond or other undertaking; (b) the abovenamed Owner, its, successors and assigns; (c) the Project Architect/Engineer; and (d) the respective officers, directors, principals, shareholders, agents, employees and attorneys of (a), (b) and (c).

4. For and in consideration of the sum of \$_____, and other good and valuable consideration, which sum is acknowledged as being the full, final and total amount due or allegedly due or owing from the Releasees to the Releasor as of the date hereof, and the receipt of such payment being hereby acknowledged, the Releasor does waive, release and discharge the Releasees from any and all causes of action, suits, debts, claims, liens, accounts, bonds, contracts, damages, encumbrances, judgments and demands whatsoever and of every kind and nature, in law or in equity, which against the Releasees, jointly and/or severally, the Releasor ever had, now has, or might hereafter have, relating directly or indirectly to the work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or incorporated or to be incorporated in said Project, as of the date hereof, including but not in any manner limited to the right of the Releasor to assert, file or claim any lien or other security interest in or upon the real and/or personal property of the Releasees.

5. The Releasor hereby agree to defend, indemnify, and hold harmless the Releasees from any and all damages, costs, expenses, demands, suits, liens and legal fees, directly or indirectly relating to any claim for compensation by any other party for work, labor, services, materials and/or equipment furnished and/or performed at the Project site, or which should have been so furnished or performed, or incorporated or to be incorporated in said Project, as of the date hereof, by the Releasor or by any other party claiming any interest or right through the Releasor.

6. The Releasor hereby certifies and warrants that it has fully paid for all work, labor, services, materials and/or equipment provided to it in connection with the Project and/or any contract relating thereto.

7. The Releasor hereby grants to the Releasees the right to review and audit any and books and records of the Releasor at any time for verification.

IN WITNESS WHEREOF this instrument has been executed this ____ day of ____

_____, _____.

Releasor

By: _____

(Print Name)

(Title)

STATE OF NEW YORK)
) SS:

COUNTY OF _____)

I, _____, being duly sworn, depose and say that: I reside at _____
_____, and I hereby sign this instrument under penalty of perjury; I am
the of the Releasor identified herein; I am fully authorized to execute this instrument on behalf of
the Releasor; and I hereby affirm that the statements contained in this instrument are true and
correct.

Sworn to before me this ____
day of _____, 20__.

Notary Public

PROPOSAL REQUIREMENTS

A. General Requirements

1. **Inquiries** – Inquiries concerning the request for proposals and the subject of the request for proposals must be made to:

Linda M. Wolf, CPA
7551 Court Street, P.O. Box 217
Elizabethtown NY 12932
518-873-3330
2. **Time and Acceptance** - Each proposal must state that it is a firm proposal that may be accepted within a period of sixty (60) days. Although the contract is expected to be awarded prior to that time, the sixty (60) day period is requested in order to allow for unforeseen delay.
3. **Safeguarding of "Confidential" Information** – Any trade secrets or other data which the proposer does not wish disclosed to other than County personnel involved in the evaluation or contract administration will be kept confidential if identified as follows: Each page shall be identified in boldface at the top and bottom as "Confidential"; and any section of the proposal, which is to remain confidential, should, in addition, be so marked in boldface on the title page of that section. Net cost information may not be deemed confidential.
4. **Cost for proposal preparation** – Any costs incurred by a proposer in preparing or submitting proposals are the proposer's sole responsibility. The County will not reimburse any proposer for any costs incurred prior to award.
5. **Declination to Submit Proposal** – Any organization which receives a copy of this RFP but which declines to submit a proposal is requested to notify the County by phone or in writing of such declination.
6. **Exceptions** – Any exceptions to terms, conditions, or other requirements in any part of the RFP must be clearly pointed out in a distinct section of the appropriate cost proposal or technical proposal. Otherwise, the County will consider that all items proposed are in strict compliance with the RFP, and the successful proposer will be responsible for compliance.
7. **Advertising** – In submitting its proposal, the proposer agrees not to use the results there from as a part of any news release or commercial advertising without written approval of the County.
8. **Confidentiality of Proposals** – In submitting a proposal, the proposer agrees not to discuss or otherwise reveal his technical or cost information to any other sources, government or private, until after the award of the contract. Proposers not in compliance with this provision may be disqualified, at the option of the County, from contract award. Only discussions authorized by the County are exempt from this provision.
9. **Right to Submitted Materials** – All responses, inquiries, or correspondence relating to or in reference to this RFP, and all other reports, charts, display, schedules, exhibits and other documentation submitted by the proposers, will become the property of the County when received.

10. Legal Compliance – Under penalty of perjury, the signer of any proposal submitted in response to this RFP thereby certifies that this proposal has not been arrived at collusively or otherwise in violation of any Federal or State laws, rules or regulations.

11. Proposer's Representatives - Proposers shall submit the name, address, and telephone number of the person(s) with the authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.

12. Submission of Proposals - The following material is required to be received by June 10, 2010 for a proposing firm to be considered:

- a. Three (3) copies of the "Technical" proposal to include the following:
 - (i) *Title Page* – Title page showing the request for proposals subject; the firm's name; the name, address, and telephone number of the contract person; and the date of the proposal.
 - (ii) *Table of Contents*
 - (iii) *Transmittal Letter* – A signed letter of transmittal briefly stating the proposer's understanding of the work to be done, the commitment to perform the work within the time period, a statement why the firm believes itself to be best qualified to perform the engagement, and a statement that the proposal is a firm and irrevocable offer.
 - (iv) *Detailed Proposal* – The detailed proposal should follow the order set forth in Section B (Technical Proposal) of this request for proposals.
- b. The proposer should send three (3) copies of its "Cost" proposal as set forth in Schedule B.
- c. Proposer's should send the completed "Technical" and "Cost" proposals under separate cover to the following address:

Linda M. Wolf, CPA, 7551 Court Street, P.O. Box 217 Elizabethtown, NY 12932

B. Technical Proposal

1. **General Requirements** – The purpose of the proposal is to demonstrate the qualifications, competence and capacity of the proposers in conformity with the requirements of this request for proposals. As such, the substance of proposals will carry more weight than their form or manner of presentation. The proposal should demonstrate the qualifications of the company. It should also specify a project approach that will meet the request for proposals requirements.

The proposal should address all the points outlined in the request for proposals. The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the request for proposals. While additional data may be presented, the following subjects, item Nos. 2 through 5, must be included. They represent the criteria against which the proposal will be evaluated.

2. **Company Overview & Qualifications** – Proposor must have extensive experience in engineering services. The Vendor must provide a brief, general background description of the organization. An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice in New York State.

3. **Project Team Staffing** -Include biographies and relevant experience of key staff and management personnel. List the personnel who would work on this project along with their qualifications and relevant experience.
4. **Prior Projects with the County** List separately all projects within the last three (3) years for the County by type of project. Indicate the scope of work, date and the name and telephone number of the principal client contact.
5. **Similar Projects With Other Entities** List the most significant engagements (minimum-3) performed in the last five (5) years that are similar to the project described in this request for proposal. Indicate the scope of the project, date and the name and telephone number of the principal client contact.

NO DOLLARS SHOULD BE INCLUDED IN THE TECHNICAL PROPOSAL

C. Sealed Dollar Cost Bid

1. **Cost Reimbursement Method** – The dollar cost bid should conform with Appendix B-1.

The County will not be responsible for expenses incurred in preparing and submitting the technical proposal or the dollar cost bid. Such costs should not be included in the proposal.

The first page of the dollar cost bid should include the following information:

- a. Name of Company.
- b. Certification that the person signing the proposal is entitled to represent the company, empowered to submit the bid, and authorized to sign a contract with the County.
- c. Billing Rates of all employees of the Consultant engaged on this project.

2. **Manner of Payment** – Payments will be made in accordance with the deliverables described in the letter of authorization.

EVALUATION PROCEDURES

A. Review of Proposals

The Selection Committee will review qualifications of the proposals. Companies with unacceptably low technical qualifications will be eliminated from further consideration.

After the qualifications for each firm has been established, the dollar cost bid will be examined.

The County reserves the rights to retain all proposals submitted and use any idea in a proposal regardless of whether that proposal is selected.

B. Evaluation Criteria

Proposals will be evaluated using three sets of criteria. Firms meeting the mandatory criteria will have their proposals evaluated and scored for both technical qualifications and price. The following represent the principal selection criteria that will be considered during the evaluation process.

1. Mandatory Elements

- The firm is licensed to practice in New York State.
- The firm adheres to the instructions in this request for proposal on preparing and submitting the proposal.
- The firm has at least five years of experience with Public Works Construction Contracts.

2. Firm's Experience and Background:

- | | |
|--|----|
| ○ The Organization has completed work of a similar type. | 20 |
| ○ Qualifications of individuals assigned to the project. | 20 |
| ○ The Firm has the ability to perform the necessary range of services. | 20 |
| ○ Reference responses. | 20 |

3. Price 20

Cost will not be the primary factor in the selection process.

The proposed price will be graded based upon the following formula

$$\frac{\text{Average Bid}}{\text{Your Bid}} = \% \text{ (not to exceed 100\%)}$$

$$\% \times 20 = \text{points earned}$$

Maximum Points	100
----------------	-----

C. Oral Presentations

During the evaluation process, the Selection Committee at their discretion may request any one or all firms to make oral presentations. Such presentations will provide firms with an opportunity to answer any

questions that the Committee may have on a firm's proposal. Not all firms may be asked to make such oral presentations.

D. Final Selection

The County will select a firm based upon the recommendation of the Selection Committee.

It is anticipated that a firm will be selected by July 1, 2010. Following notification of the firm selected, it is expected that a contract will be executed between both parties by July 1, 2010.

E. Right to Reject Proposals

Submission of a Proposal indicates acceptance by the firm of the conditions contained in this request for proposal unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the County and the firm selected.

The County reserves the right without prejudice to reject any or all proposals.

NON-COLLUSIVE BIDDING CERTIFICATION

1. By submission of this bid, the undersigned bidder and each person signing on behalf of such bidder certifies – and in the case of a joint bid each party thereto certifies as to its own organization – UNDER PENALTY OF PERJURY, that to the best of the undersigned's knowledge and belief:

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

2. The undersigned acknowledges and agrees that a bid shall not be considered for award nor shall any award be made where any of the above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where one or more of the above has/have not been complied with, the bid shall not be considered for award nor shall any award be made unless the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

3. The undersigned also acknowledges and agrees that the fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph 1 above.

4. The undersigned further acknowledges and agrees that any bid hereafter made to any political subdivision of the state or any public department, agency or official thereof by a bidder which is a corporation or a limited liability company for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in paragraph 1 of this certificate, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation or limited liability company.

Name of Bidder: _____
(print full legal name)

Date Signed: _____

Signature: _____

Name of Person Signing Certificate: _____
(print full legal name of signer)

Bidder is (check one): ☐ an individual

☐ a limited liability partnership

☐ a limited liability company

☐ other entity (specify): _____

CONTRACTOR'S ACKNOWLEDGEMENT

(If a Corporation)

STATE OF NEW YORK)
COUNTY OF)

On this _____ day of _____, 20____, before me personally came _____
to me known, and known to me to be the _____ of _____
_____, the Corporation described in and which executed the within instrument, who being duly sworn by
me and did depose and say that the said _____ resides at _____
_____ and that he is the _____ of said corporation; that
the seal affixed to the within instrument is such corporate seal and that it was so affixed by order of the
Board of Directors of said Corporation, and that he signed his name hereto by like order.

Notary Public

CONTRACTOR'S ACKNOWLEDGEMENT

(If an Individual)

STATE OF NEW YORK)
COUNTY OF)

On this _____ day of _____, 20____, before my personally came _____
_____ to me known, and known to me to be the same person described in and who executed the within
instrument and he duly acknowledged to me that he executed the same for the purpose herein mentioned
and, if operating under any trade name, that the certificate required by the New York State Penal Law,
Section 440 and 440-b has been filed with the County Clerk of Essex County.

Notary Public

CONTRACTOR'S ACKNOWLEDGEMENT

(If a Co-Partnership)

STATE OF NEW YORK)
COUNTY OF)

On this _____ day of _____, 20____, before me personally came _____
_____ to me known, and known to me to be a member of the firm of _____
and the person described in, and who executed the within instrument on behalf of said firm, and he
acknowledged to me that he executed the same on behalf of, and as the act of said firm for the purposes
herein mentioned and that the certificate required by the New York State Penal Law, Section 440 and 440-
b has been filed with the County Clerk of Essex County.

Notary Public