



CITY OF BUFFALO
NEW YORK

DEPARTMENT OF ADMINISTRATION, FINANCE, POLICY AND URBAN AFFAIRS
DIVISION OF PURCHASE
65 Niagara Square, Room 1901 City Hall
Buffalo, NY 14202
Phone (716) 851-5222, Fax (716) 851-5231

REQUEST FOR PROPOSALS

FOR

DEVELOPMENT OF FIREFIGHTER ENTRY-LEVEL EXAMINATIONS

CITY OF BUFFALO DEPARTMENT OF HUMAN RESOURCES

DATE ISSUED: April 28, 2017

Question submission deadline: May 5, 2017 by 4:00pm

VIA EMAIL TO: dfabian@city-buffalo.com

Answers posted to City of Buffalo website (www.city-buffalo.com): May 12, 2017

PRE-PROPOSAL CONFERENCE: May 19, 2017 at 11:00am

**AT DIVISION OF PURCHASE, 65 NIAGARA SQUARE,
ROOM 1901 CITY HALL BUFFALO, NY 14202**

PROPOSAL SUBMISSION DATE: June 2, 2017 at 11:00am

SECTION 1- GENERAL BACKGROUND

In 1973 and 1974, the United States Department of Justice (“Justice Department”) commenced a discrimination suit against the City of Buffalo (hereinafter “the City”) based upon the City’s entry-level hiring practices in the Police and Fire Departments. In 1978 the United States District Court for the Western District of New York (“the District Court”) found that the City had engaged in a pattern and practice of discrimination against Blacks, Spanish surnamed Americans (hereinafter “Hispanics”), and women in its Fire and Police Departments, in violation of Title VII of the Civil Rights Act of 1964, as amended, and of Section 122(a) of the State and Federal Fiscal Assistance Act of 1972. Specifically, the District Court found that the Police Department, in hiring entry-level police officers, discriminated against women and minorities through the use of written tests, height requirements, physical agility tests, and an absolute bar on the hiring of women. With regard to the hiring of entry-level firefighters, the District Court found that the City had discriminated against minorities and women through the use of written tests, height requirements, high school diploma requirements, and an absolute bar on the hiring of women.

After finding that the City had engaged in unlawful employment discrimination, the District Court in 1979 ordered the City to take a number of steps to remedy that discrimination and to ensure that it did not recur. Among those steps taken between 1979 and 1989 was the requirement that the City make 50% of its police officer appointments and 50% of its firefighter appointments from the pool of qualified Black and Hispanic applicants. A 25% interim hiring goal for women was also established for the Police Department. No specific numerical hiring requirement for women was set for the Fire Department; rather, the City was ordered to take affirmative steps to recruit and to hire women in numbers commensurate with their interest and with their ability to qualify on the basis of performance-related criteria. In September of 1989, these interim hiring goals were modified. Pursuant to those modifications, the City was required to hire Blacks, Hispanics, and women equal to the respective percentages of those groups among the applicants who took the written examination from which the list of eligible candidates was developed (the “applicant flow order”).

Since 1979, the City has revised its entry-level selection procedures for the Police and Fire Departments in order to comply with the District Court’s 1979 Order. Pursuant to a Consent Order entered March 8, 1990, the City has contracted with professional examination developers to develop new selection procedures for entry-level firefighters.

The most recently developed selection procedure was administered in 1999. That examination did not have adverse impact on minority applicants. In an Order dated July 14, 2003, the District Court found that the 1999 examination was valid and lifted the applicant flow order that had been in effect, permitting the City to hire from the list generated by the 1999 exam. Despite finding that the City had used a legally-appropriate selection procedure, the District Court declined to discontinue its oversight of police hiring, based on a finding that the examination might not eliminate adverse impact when administered in the future.

SECTION 2- INTRODUCTION

The City through its Department of Human Resources Division of Civil Service (hereinafter “Civil Service”) is requesting proposals for the development of an entry-level firefighter examination. The development of the examination will occur in two phases. Phase I shall consist of a comprehensive job analysis. The examination developer shall recommend an approach to validation that is supported by the job analysis conducted, and is consistent with professional standards and the Uniform Guidelines in Employee Selection Procedures. In addressing Phase I, proposals shall address the determination and measurement of tasks, work behaviors, responsibilities, demands and restrictions, work environment characteristics, and knowledge areas, skills, abilities, and personal characteristics (hereinafter “KSAPs”) for entry-level firefighters.

The job analysis data must be collected, analyzed, and reported in a manner that qualified professionals can use the data readily for: (1) selection procedure development; (2) performance appraisal and evaluation procedure development; and (3) as the basis for criteria-related validation research studies, if recommended. The final report for the Phase I Job Analysis Study is to be delivered to the City within 5 months after the effective date of the contract.

Phase II shall consist of research and development of an entry-level selection procedure for firefighters. Proposals shall address the development, construction, administration, scoring, and reporting of the examination, and physical ability test.

The written examination developed under this process will be administered not earlier than 8 months from the effective date of the contract, if any, entered into as a result of the issuance of this RFP.

The physical ability test will be administered after the date of the written examination and, more specifically, will be administered as part of the selection process for each class being processed for hire from the eligible list.

The examination developer shall provide professional and technical services to produce materials, procedures, and reports that will satisfy professional standards and prevailing guidelines in the field of personnel management and selection. The testing instruments and procedures must conform to Title VII of Chapter 42 of the United States Code and the EEOC Uniform Guidelines on Employee Selection Procedures; to this end, they must be free from non-job related factors which might function as biases against any group of the basis of race, color, religion, sex, age, national origin, or any other classification protected by law.

The examination developer must recommend and provide the rationale for the most appropriate strategy for validation of the instruments developed for this project. Proposals should describe the examination developer’s approach to validation, consistent with professional standards and the Uniform Guidelines on Employee Selection Procedures. The proposal should explain why the validation approach was chosen, how the examination developer plans to carry out the approach, and problems the examination developer anticipates (e.g., rating quality,

incumbent unwillingness to participate, etc.), and how the examination developer plans to address those potential problems.

The City desires that the selection process be as valid and reliable as possible. Selection should be based on merit, emphasizing the KSAPs needed for entry-level firefighting duties. It is the City's goal to have developed an entry-level firefighter examination, which will be appropriate for selecting qualified firefighter candidates on a rank order basis. It is not the City's intent to utilize existing selection procedures, nor does it feel it necessary to change existing procedures completely. Proposals should therefore be aimed at providing the best possible overall selection of candidates while complying with the professional standards and guidelines mentioned above, with the written and physical abilities test components.

The City may conduct a pre-employment psychological evaluation of each applicant tendered a conditional offer of employment. This type of selection process is not included in this Request for Proposals.

SECTION 3- INSTRUCTIONS TO OFFERORS

3.1 *General Invitation*

The City invites all interested parties to submit proposals for the services described herein. For purposes of this RFP, the City's designee shall be Douglas Fabian, Director of Personnel.

The Division of Purchase will receive all proposals in person or via mail by no later than **June 2, 2017 at 11:00 am** EST. All proposals shall be sealed, clearly labeled on the front of the package and delivered to:

**City of Buffalo
Gladys Herndon-Hill, Commissioner
Purchasing Division
65 Niagara Square, Room 1901 City Hall
Buffalo, New York 14202**

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

Proposal Enclosed:

“FORMAL PROPOSAL FOR THE DEVELOPMENT OF ENTRY-LEVEL FIREFIGHTERS EXAMINATION”

Proposals Due: June 2, 2017 at 11:00 a.m.

Submitted by: _____

Proposals are solicited in accordance with the terms, conditions and instructions as set forth in this RFP. Submission of proposals via telephone, facsimile, e-mail or any other method not specifically provided for herein is prohibited. Proposals must be completed in accordance with the requirements of the RFP. No amendments or changes to proposals will be accepted after the

closing date and time. No proposals shall be accepted after the stated deadline. The City reserves the right to reject any or all proposals.

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

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

3.2 Schedule

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

| <u>EVENT</u> | <u>DATE</u> |
|---|----------------|
| Issuance of RFP | April 28, 2017 |
| Written Questions from Offerors due | May 5, 2017 |
| Responses to Questions posted on City website | May 12, 2017 |
| Pre-Proposal Conference at 11:00 AM | May 19, 2017 |
| Proposals Due by 11:00 AM | June 2, 2017 |

3.2 Pre-Proposal Conference

Offerors interested in providing these services are strongly encouraged to attend the **pre-proposal conference** to be held on, **May 19, 2017 at 11:00 AM** in room 1901 City Hall, Buffalo, NY 14202. The conference is intended to provide clarification of these specifications, where needed, and to respond to all technical inquiries. Representatives may not appear on behalf of more than one company. A representative from the City of Buffalo Division of Purchase will also be present to answer questions regarding proposal rules and regulations. Questions must be submitted no later than 4:00 PM on May 5, 2017.

3.3 RFP Review, Additional Information and Questions

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

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

Questions regarding the RFP shall be directed to the City's designee only. Any impermissible contact with any other City officer or employee regarding the RFP during the procurement period shall result in the rejection of any such Offeror's proposal. Offerors shall communicate in writing only. No other communications with the City's designee regarding the RFP are permitted during the procurement period.

All questions, requests for clarification or additional information must be sent by email to Douglas Fabian: dfabian@city-buffalo.com with a Cc email to William Sunderlin, Director of Purchase: wsunderlin@ch.ci.buffalo.ny.us, and must be received no later than **4:00pm, May 5, 2017**. The subject line must identify the RFP by title. Offerors shall not communicate with the City's designee via any other method or outside of the time period set forth herein.

The answers to questions received via email and the summary of the pre-proposal conference will be posted on the City's website at www.city-buffalo.com. No other representatives of the City are to be contacted regarding this RFP. The City accepts no responsibility for, and the Offeror agrees not to rely upon, any verbal or written statements or representations from any other person, whether or not employed by the City.

Offerors are solely responsible for ensuring the City has a current address, e-mail address and telephone number on file for the Offeror. It is the responsibility of all Offerors to check the City of Buffalo website for any updates.

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

3.4 Addendums and Modifications

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

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

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

3.5 Proposal Format

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

Five (5) copies of the proposal, one (1) original and four (4) copies, along with one (1) digital copy (CD or Flash Drive) must be provided. Proposals must be prepared on 8-1/2" x 11" paper using a font no smaller than 11-point with one-inch margins, printed double-sided, and bound on the long side. The narrative response portion of the proposal is limited to ten (10) double-spaced pages. Each page of the submission must be numbered in a manner so that it can be uniquely identified. Legibility, clarity and completeness are required.

The proposal must be signed by each individual Offeror or their authorized representative who shall have the authority to legally bind the Offeror(s). The proposal shall also contain a statement that the proposal, including all proposed prices, contained therein shall remain firm and irrevocable for a period of sixty (60) days following the City's receipt of such proposal and the award of the contract, if any.

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

SECTION 4 - SCOPE OF WORK

PHASE I: JOB ANALYSIS

1. The examination developer shall provide the necessary services, facilities, transportation, and materials for conducting a comprehensive job analysis, including data collection, thorough and complete analysis of the data, and preparation of a comprehensive report.
2. Prior to the start of the job analysis, the examination developer shall prepare a preliminary work plan for the job analysis. The work plan shall give a complete explanation of the job analysis methodology proposed, including the data collection strategy, sampling plan, thorough description of questionnaire/instrument content and rating scales to be used, the methodology and procedure for analyzing the data collected, to meet the intended uses of the job analysis, and the methodological details the examination developer deems relevant.
3. On-site observation of the work activities of incumbents will be conducted.

4. A job analysis data collection questionnaire/instrument will be prepared by the examination developer for distribution to incumbents.
5. The job analysis will provide complete data on work tasks, work behaviors, responsibilities, demands and restrictions, work environment characteristics, and KSAPs for all levels of firefighting above that of an entry level Firefighter. The job analysis information should include input from higher-level management ranks, particularly information concerning task and KSAP criticality. A methodology for gathering this input and how it will be used in relation to the rest of the job analysis should be described.
6. The job analysis data will be reported in a manner such that qualified professionals can use the data readily in promotional selection procedure development, performance appraisals and evaluation procedure development, and as the basis for criteria-related validation research studies, if recommended.
7. The examination developer shall provide for the monitoring of the individuals conducting the on-site work activity observations and data collection.
8. It is anticipated that the examination developer will begin work upon formal execution of the contract by both parties and shall deliver the final job analysis report to the City within **5 (five)** months of the effective date of the contract. In the final job analysis report, the examination developer must recommend and provide the rationale for the most appropriate strategy for validation of the instruments developed for this project. If criteria-related validation is recommended to be the most appropriate, the examination developer must provide the rationale for the use of either concurrent or predictive models, and must clearly specify in the proposal how the determination of the feasibility of criteria-related validity will be made. In determining the technical feasibility of a criteria-related validity study, particular attention should be given to these factors: (1) size and representation of available samples; (2) reliability and validity of performance criteria; and (3) problems of restriction of range of either selection instrument or performance criteria. If ratings are to be used as a criteria, the study must address the problem of sorting out variances associated with raters, i.e. individual that rates, estimates or determines a rating for a candidate and that associated with the candidate being rated, especially when there are many different raters with few individuals being evaluated by the same raters.

**PHASE II: RESEARCH AND DEVELOPMENT OF ENTRY LEVEL
SELECTION PROCEDURE**

STAGE I: EXAMINATION DEVELOPMENT

1. Review, in an advisory capacity, material from the previous examinations, including the description of registration procedure and the design of application form. Submit a written report on this review to the City.

2. Develop and submit to the City a test study guide, including an electronic version of the test study guide and develop a plan for conducting test preparation training session(s).
3. Develop and submit to the City for approval, test specifications for the written examination, based on the job analysis data completed in Phase I, that are consistent with the effort to make the examination as job-related as possible, which would be acceptable for the development of examinations that are consistent with accepted professional standards and applicable federal guidelines, and would be acceptable for the development of an examination appropriate for rank order selection. The proposed testing process may assess KSAP's other than those used on previous exams. The City is open to consideration of inclusion of one or more components of the test measuring required personal characteristics, as long as the inclusion is supported by the job analysis and test validation. These may include assessment tools such as personality tests, biographical data instruments, etc.
4. Prepare and submit to the City for approval, a preliminary report describing the procedures and techniques to be used in the research, development and construction of the examination. This report must include evidence of linkage between the job analysis and test specifications and the specific items used in the tests, as appropriate.
5. Assemble preliminary test(s) and submit to the City for review of the appropriateness of individual questions and the test as a whole. Submit an interim report to the City to include those reviews and actions taken to remedy or respond to noted deficiencies.
6. Edit, type and proof all questions for printing and prepare any other examination materials required by the examination design. Submit to the City three (3) unbound copies of the edited final examination for review; receive from the City suggestions for changes, revisions, deletions, or substitutions of questions, and make all changes deemed necessary.

STAGE II: EXAM ADMINISTRATION

1. The City and the examination developer shall work together to administer the examination in accordance with the procedures developed by the examination developer and approved by the City to ensure maximum security of the examinations and examination content.
2. The City shall be responsible for providing, seating, environmental controls, comfort facilities, and rest breaks.
3. In coordination with the examination developer, the City shall provide exam center supervisors and staff, with comprehensive training material concerning the receipt, storage and return of all exam material as well as other exam security procedures. The examination developer will be responsible for transporting and disposing of all exam material, used and unused.

4. If a study guide is required to assist applicants in preparing for any portion of the examination, the Department of Civil Service will recruit the trainers. The examination developer will train the trainers on the study guide and supply all training material for the trainers and study guides for applicants. The examination developer will issue checks for payment to the trainers and should include payment of trainers in its proposal. Civil Service will calculate the amount that trainers will be paid.
5. Civil Service will recruit monitors for the written portion of the exam. The examination developer will issue checks for payment to the monitors and should include payment of monitors in its proposal. Civil Service will calculate the amount that monitors will be paid.
6. The examination developer will be responsible for the following regarding the Physical Ability Test” Consultation for construction, identification of resources/materials needed for administration, and development of candidate orientation and training.

STAGE III: SCORING AND REPORTING

The examination developer shall prepare, check, and test the data, as required to produce the reports and analysis detailed below:

1. Conduct preliminary analysis and clear final scoring keys/methods with the City.
2. For each segment of the examination, obtain for each applicant tested the number of questions answered correctly, number answered incorrectly, and the number omitted. Using this data, obtain a formula score for each examinee.
3. Prepare appropriate frequency distribution of scores for applicants on each of the subjects tested on and prepare an analysis of scores in relation to subgroup data on each subject.
4. Submit a written report to the City of the statistical characteristics of the examination, including, but not limited to, frequency distribution of raw scores, frequency distribution of scaled scores, tables of percentile ranks of scaled scores for each subject tested on, reliability co-efficient for each subject tested on, standard error of measurement for each subject tested on, inter-correlations between subjects tested on, and indices of speediness. All statistics shall be derived to indicate the fairness of the examination.
5. Submit a written report recommending the appropriate pass point for the examination and/or the different subjects tested on, including a rationale for the pass point that is consistent with professional standards, the Uniform Guidelines on Employee Selection Procedures, and the City of Buffalo for the Classified Civil Service.
6. Submit a written report regarding the appropriateness of using the examinations on a rank order basis.

7. The examination developer will prepare a computational review of scores, and prepare all material needed for the review by the City. The examination developer will send the examination scores to the City's Civil Service Department and the Department of Civil Service shall create the eligible list.
8. Submit a final validation report and transportability study, if appropriate.

SECTION 5 - REQUIRED CONTENT

Each Offeror's proposal must address the following sections:

- a. Technical – Describe the approach to be taken in addressing the scope of work, including, but not limited to, the discussion of the following:
 - i. A complete explanation of the job analysis methodology proposed, including the data collection strategy, sampling plan, thorough descriptions of questionnaire/instrument content and rating scales to be used, the methodology and procedure for analyzing the data collected, procedure for tailoring the data to meet the intended uses of the job analysis information specified above, and other methodological details the examination developer deems relevant.
 - ii. A complete explanation of the procedure and techniques to be used in the research, development and construction of the selection procedure, including the proposed validation strategy, methodology and procedure for developing a rank order examination, limitations in developing a rank order examination, strategies in limiting adverse impact and other methodological details the examination developer deems relevant.
- b. Management and Staffing – Describe the plan to be used in managing and completing the tasks set forth in the scope of work. This description must include the following:
 - i. A time-line plan specifying for each stage of work, all essential operations and indicating the proposed starting dates, significant milestones, and completion dates.
 - ii. Any requirements for City-furnished personnel, materials or facilities for each operation.
 - iii. Identification of the individuals who will carry out the project, delineation of their roles and estimation of individuals allocated time by task (including their hourly rate and total time allocated).

- iv. Job descriptions and/or resumes of the personnel who will carry out the essential work of the project.
- c. Qualifications – Describe your organization’s past experience in similar or comparable projects. Copies of validation reports prepared in similar or comparable projects would be of particular interest.
- d. Cost Proposal – Itemized costs of the proposed project and cost estimates for each major stage of development. The cost proposal should also estimate the cost for developing alternate forms of the examination, which may be administered in subsequent years.

SECTION 6 - EVALUATION AND SELECTION PROCESS

The City intends to award a contract to the Offeror whose proposal offers the best overall value. However, the City is under no obligation to award any contract, in whole or in part, and it reserves the right in its sole discretion to cancel this RFP process with or without cause at any time before or after closing and has no express or implied obligation to provide reasons for such cancellation.

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

- The Offeror’s experience and qualifications as demonstrated in the narrative response to this RFP;
- Demonstrated ability to fulfill the requirements of the proposal as listed in the Scope of Work;
- Success of past awards regarding aligned or similar projects;
- Resumes of key members of the team;
- References; and other factors which the City considers relevant.

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

6.1 Basis of Selection

The process for selecting a winning proposal for this RFP will be an open and fair solicitation process. While total costs will be considered in the award of this RFP, it is not the only factor to be considered. The professional services sought herein are not subject to NYS competitive bidding requirements. Therefore, the lowest cost of any proposal may not necessarily be accepted. The City is under no obligation to award any contract, in whole or in part, and it reserves the right in its sole discretion to cancel this RFP at any time before or after the deadline

for receipt of the proposals, without providing reasons for such cancellation. If only one proposal is received, the City reserves the right to reject it

Representatives of the City of Buffalo Department of Human Resources/Civil Service and Division of Purchase shall oversee this project and evaluate Offerors' responses.

6.2 City's Reservations of Rights

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

1. All costs incurred by the Offeror in connection with responding to this RFP and for participating in this procurement process shall be borne solely by the Offeror.
2. The City reserves the right, in its sole discretion, to reject for any reason any and all responses or components thereof and to eliminate any and all Offerors responding to this RFP from further consideration for this procurement.
3. The City reserves the right, in its sole discretion, to reject any Offeror that submits incomplete responses to this RFP, or a proposal that is not responsive to the requirements of this RFP.
4. The City reserves the right, without prior notice, to supplement, amend, or otherwise modify this RFP, or otherwise request additional information.
5. All proposals in response to this RFP shall become the property of the City and will not be returned.
6. All proposals in response to this RFP shall constitute public records subject to public disclosure.
7. The City may request that Offerors personally attend or send representatives to the City for interviews and a demonstration of Offeror's proffered services.
8. Any and all proposals in response to this RFP that are not received by the Division of Purchase by 11:00 a.m. on June 2, 2017 will be rejected.
9. Neither the City, nor its officers, officials nor employees shall be liable for any claims or damages resulting from the solicitation or preparation of the proposal in response to this RFP.
10. The City of Buffalo's name, logo, crest, etc. shall not be used without prior, expressed, written consent of the City of Buffalo.

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

1. To waive irregularities and/or minor non-compliance by any Offeror with the requirements of this RFP;
2. To request clarification and/or further information from one or more Offerors after closing without becoming obligated to offer the same opportunity to all Offerors; and
3. To enter into negotiations with one or more Offerors without being obligated to negotiate with, or offer the same opportunity, to all Offerors;
4. To reject any or all proposals or parts of proposals, to accept part or all of proposals on the basis of considerations other than lowest cost and to create a project of lesser or greater expense and reimbursement than described in this RFP or the Offeror's proposal based on the component prices submitted;
5. To determine that any proposal received in response to this RFP complies or fails to comply with the terms set forth herein;
6. To determine whether any perceived or actual conflict of interests exists that would affect or impair the award of any contract arising from this RFP to a Offeror(s);
7. To waive any technical non-conformance with the terms of this RFP;
8. To change or alter the schedule for any events called for in this RFP;
9. To conduct investigations of any or all of the Offerors, as the City deems necessary or convenient, to clarify the information provided as part of the proposal and to request additional information to support the information included in any proposal;
10. To suspend or terminate the procurement process described in this RFP at any time. If terminated, the City may determine to commence a new procurement process without any obligation to the Offerors;

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

SECTION 7 - AWARD OF CONTRACT

It is anticipated pending final approval, that the successful Offeror will be awarded a one (1) year contract, with the option to renew upon the mutual agreement of the parties for up to three (3) one (1) year renewal years in the event that subsequent alternative tests are requested by the

City. Any extension of the agreement must be in writing and the only condition that shall be permitted to be altered or changed in any extension is the sum to be paid the Offeror and the method of computing the same.

The contract with the successful Offeror (if any) shall include the terms of this RFP together with those terms of the Offeror's proposal, which are not inconsistent with the RFP, and which have been specifically accepted by the City of Buffalo.

SECTION 8 - INDEMNIFICATION/HOLD HARMLESS

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

SECTION 9 - INSURANCE COVERAGE REQUIREMENTS

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

Minimum Scope and Limits of Insurance

9.1 Worker's Compensation Insurance and Disability Insurance:

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

9.2 Commercial General Liability:

With respect to all operations the Vendor performs, the Vendor shall carry Commercial General Liability insurance providing for a total limit of not less than one million dollars (\$1,000,000) per occurrence for each job site or location for all damages arising out of bodily injury, personal injury, property damage, products/completed operations, and contractual liability coverage for the indemnification provided under the contract. Each annual aggregate limit shall not be less than two million dollars (\$2,000,000). A certificate of insurance evidencing such coverage shall be submitted by the Offeror and must name the City of Buffalo as additional insured and certificate holder under said policy of insurance. The City shall also be named as additional insured and certificate holder under Offeror's excess and umbrella policies.

9.3 Automobile Liability:

With respect to any owned, non-owned, or hired vehicles the Vendor shall carry Automobile Liability insurance providing at least one million dollars (\$1,000,000) per accident for bodily injury and property damage. A certificate of insurance evidencing such coverage shall be submitted by the Offeror and must name the City of Buffalo as additional insured and certificate holder under said policy of insurance.

9.4 Professional Liability:

With respect to any damage caused by an error, omission or any negligent acts of the Vendor performed under this contract the Vendor shall carry Professional Liability insurance providing at least one million dollars (\$1,000,000) per claim for any wrongful act. The certificate of insurance evidencing such coverage shall be submitted by the Offeror and must name the City of Buffalo as certificate holder and additional insured under said policy of insurance.

9.5 "Tail" Coverage:

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

9.6 Acceptability of Insurers:

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

9.7 Subcontractors:

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

9.8 Aggregate Limits:

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

9.9 Notice of Cancellation or Nonrenewal:

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

9.10 Waiver of Governmental Immunity:

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

9.11 Additional Insured:

The liability insurance coverage, except for Workers Compensation and Disability Insurance, required for the performance of the Contract shall include the City of Buffalo as additional insured and certificate holder but only with respect to the Vendor's activities to be performed under the contract. Coverage shall be primary and non-contributory with any other insurance.

9.12 Certificate of Insurance:

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

All insurance documents required should be mailed to:

Department of Human Resources
City of Buffalo
65 Niagara Square, Room 1001 City Hall
Buffalo, New York 14202
Attention: Doug Fabian

SECTION 10 – GENERAL REQUIREMENTS

10.1 Non-Discrimination

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

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

10.2 Americans with Disabilities Act Compliance Provisions

Any Offeror(s) awarded a contract pursuant to an RFP are required to abide by the regulations of the Americans with Disabilities Act of 1990 (ADA) which prohibits discrimination against individuals with disabilities. The Offeror will not discriminate against any employee or applicant

for employment because of their disability and will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, discharge, compensation and fringe benefits, classification, referral and training. The ADA also requires vendors associated with the City of Buffalo to provide qualified applicants and employees with disabilities with reasonable accommodation that do not impose undue hardship. Offeror(s) also agree to post in a conspicuous place, accessible to employees and applicants, notices of their policy on non-discrimination.

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

10.3 General Compliance

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

10.4 Performance Monitoring

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

10.5 Independent Contractor

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

10.6 Accounting Standards

The successful Offeror(s) agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices to properly account for expenses incurred under the contract.

10.7 Retention of Records

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

10.8 Inspection of Records

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

10.9 Living Wage Policy

The Buffalo Living Wage ordinance applies to City contracts for services of more than \$50,000 value when the City contracts with a contractor employing more than ten people. The attached City of Buffalo Living Wage Commission Application For Contract with the City of Buffalo must be completed and accompany your response to this Request for Proposals.

10.10 Applicable Law

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

10.11 Conflict and Priority

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

10.12 Ownership of Materials

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

10.13 Termination

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

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

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

10.14 Assignment

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

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

10.15 Prime Contractor Responsibility

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

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

10.16 Disclaimer

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

10.17 Publicity

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

10.18 Offerors Restricted

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

10.19 New York State Executory Clause

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

10.20 Copyright and Patent Rights

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

10.21 Confidentiality

All documents, data, or other forms of information collected or received during the development, administration and scoring of the various firefighter promotional examinations, included but not limited to, notes, memoranda, reports, electronic information including information contained on CD's or USB drives, are to be the exclusive property of the City.

All reports, including preliminary findings, interim reports, final recommendations and the work product thereof, shall be the exclusive property of the City, and any duplication, publishing or other use thereof by any person, including the Offeror, without the express authorization of the City, is strictly prohibited.

Any documents prepared by the examination developer, such as training and testing material, should be printed in the jurisdiction of the Offeror, or in a place other than the City of Buffalo or Erie County

The Offeror agrees that neither it nor its employees will at any time or in any manner, either directly or indirectly, use any information for their own benefit, or divulge, disclose or communicate in any manner any information to any third party without the prior written consent of the City, or as may be required by law or the contract. The Offeror will protect the Information and treat it as strictly confidential. The confidentiality provisions shall remain in full force and effect after the termination of any contract formed as a result of this RFP.

10.22 Freedom of Information Law

The City of Buffalo is subject to the provisions of Article 6 Section 89 of New York State Public Officer's Law, entitled the Freedom of Information Law. All proposals, in their entirety, submitted in response to this Request for Proposal shall constitute a record subject to public

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

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

REGULATIONS

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

1. METHOD OF TENDERING PROPOSALS.

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

(B) **All Offerors must submit with their proposal a statement indicating that they will work toward a minority workforce goal of 25%, and woman workforce goal of 5%. In addition, a statement must be submitted indicating that the Offeror will work toward a business utilization goal for minority business enterprise of 25% and woman business enterprise of 5%.**

Form EEO-2 is enclosed along with the Living Wage Statement. Both must be completed and returned with your proposal, together with the signed Non-Collusion Certification.

2. QUALIFICATIONS FOR OFFEROR.

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

3. CONTRACT.

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

4. PAYMENT.

Payment for material, supplies or equipment called for herein shall be made within thirty (30) days after approved completion of contract and the rendition of proper invoice to the Division of Accounting, 65 Niagara Square, Room 1214 City Hall, Buffalo, New York 14202.

5. PATENT INFRINGEMENT.

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

6. GENERAL.

(A) The Offeror will not be allowed to take advantage of any errors or omissions. The Director of Purchase reserves the right to reject any and all proposals on any or all items in the proposal and to waive any informalities. In case of error, unit price governs.

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

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

(D) The Division of Purchase reserves the right to award by item, or as a whole, or to reject any or all proposals.

7. TAXES.

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

8. TITLE.

Offeror must transfer a good and incontrovertible title to all equipment furnished hereunder free and clear of all liens and encumbrances of whatever name and nature.

9. ASSIGNMENT AND SUBCONTRACTING

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

10. SUBCONTRACTOR LIST.

The successful Offeror shall submit a list of proposed subcontractors to the Director of Purchase for his approval and obtain his written consent thereto prior to the execution of the contract.

11. NATIONALLY KNOWN CORPORATIONS.

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

12. DELIVERY DATE, PENALTIES AND EXTENSIONS OF TIME.

The promised delivery date shall be considered by the City in making the award. Such delivery date shall be of the essence of the contract.

If the contractor and/or supplier fails to complete the contract work within the specified delivery date or within any extensions thereof granted in accordance with this section, the City may elect to permit

the contractor and/or supplier to proceed with and complete the contract, provided, however, that in any such case such permission shall not be deemed a waiver in any respect by the City of the contractor's and/or supplier's liability for damages or expenses thereby incurred by the City as a result of the failure to complete delivery within the specified time, but such liability shall continue in full force against the contractor and/or supplier as if such permission had not been granted.

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

No extension of time for completion of this contract shall be granted unless the contractor and/or supplier shall make written application to the City no later than five (5) calendar days prior to the specified delivery date for an extension of time to complete delivery and the City shall have granted such extension in writing no later than the date upon which delivery was to have been made. The granting of any such extension and the length of time thereof shall be in the sole discretion of the City.

13. NON-COLLUSIVE PROPOSAL CERTIFICATION.

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

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

14. CONFLICTS OF INTEREST

Confidentiality and lack of potential conflicts of interest is vital to maintaining the integrity of every investigation and the data gathered therein. **Therefore, the Company must disclose any potential conflicts of interests and/or relationships/connections by Principals and all employees who would have access to our account.** Such relationships may include, but are not limited to, connections to persons and organizations within the City of Buffalo through:

- a. Professional or Political associations
- b. Political donations
- c. Blood or Marriage
- d. Friendships

- e. City of Buffalo employees who currently work for your company, or come to work for your company during the RFP process, and after (should you receive a contract from the City of Buffalo) as employees or consultants
- f. Union Affiliations/Memberships
- g. Board Member

15. INQUIRIES

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

All inquiries during the question and answer period only should be directed **via e-mail only** to:
Douglas Fabian dfabian@city-buffalo.com
With a Cc email to William Sunderlin, Director of Purchase
wsunderlin@ch.ci.buffalo.ny.us

The subject line must identify the RFP by title

16. SECTION 220-E, Labor Law.

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

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

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

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

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

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

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

PRICING TO BE PAID ONLY FOR SERVICES PROVIDED

This proposal must be returned to the Division of Purchase, 65 Niagara Square, Room 1901 City Hall, Buffalo, N.Y. 14202 on or before 11:00 A.M., Local Time, June 2, 2017, at which time all proposals will be publicly opened. In addition to the itemized costs of the proposed project and cost estimates for each major stage of development requested in the RFP. The Offeror must also, list below, an estimate of the cost for developing alternate forms of the examination, which may be administered in subsequent years.

OPTIONAL RENEWAL YEARS- ALTERNATIVE EXAMINATION DEVELOPMENT

2ND YEAR
\$ _____

3RD YEAR
\$ _____

4TH YEAR
\$ _____

THE UNDERSIGNED SUBMITS THE FOLLOWING PROPOSAL WHICH IS IN COMPLETE CONFORMITY WITH THE INTENT OF THE SPECIFICATIONS.

NAME OF BIDDER _____ PHONE NO. _____

ADDRESS _____ EMAIL _____

REMIT TO ADDRESS _____

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

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

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

PARTNERS CONSTITUTING _____
PARTNERSHIP _____

INCORPORATED IN WHAT STATE, IF CORPORATION? _____

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

| <u>* CORPORATE OFFICERS' NAMES</u> | <u>TITLES</u> | <u>ADDRESSES</u> |
|------------------------------------|---------------|------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |

| <u>* PRINCIPAL STOCK HOLDERS</u> | | | |
|----------------------------------|------------------|--------------|------------------|
| <u>NAMES</u> | <u>ADDRESSES</u> | <u>NAMES</u> | <u>ADDRESSES</u> |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

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

STATEMENT OF COMPLIANCE and CONFLICTS OF INTEREST

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

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

Conflict or potential conflict:

Signature: _____

Company: _____

Title: _____

Date: _____

NON-COLLUSION CERTIFICATION

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

(1) The prices in this 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 Offeror or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly or indirectly, to any other Offeror or to any competitor;

(3) No attempt has been made or will be made by the Offeror to induce any other person, partnership or corporation to submit a proposal for the purpose of restricting competition.

FIRM OR CORPORATION NAME _____

PRINCIPAL ADDRESS _____

STREET _____

CITY STATE ZIP CODE _____

SIGNATURE OF INDIVIDUAL, PARTNERS OR OFFICERS

TITLE (TYPE OR PRINT NAME ABOVE)

TITLE (TYPE OR PRINT NAME ABOVE)

REFERENCE SHEET

Please provide below at least three (3) references whereby your company has engaged in a contract similar in scope and number of employees. We reserve the right to check reference listed.

1. COMPANY: _____

CONTACT PERSON: _____

ADDRESS: _____

CITY/STATE: _____

PHONE: _____

2. COMPANY: _____

CONTACT PERSON: _____

ADDRESS: _____

CITY/STATE: _____

PHONE: _____

3. COMPANY: _____

CONTACT PERSON: _____

ADDRESS: _____

CITY/STATE: _____

PHONE: _____

FORM 2A – OFFEROR’S AFFIRMATIVE ACTION STATEMENT

The _____
(Company Name)

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

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

(Signature of Authorized representative of Offeror)

Date _____

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



City of Buffalo *Living Wage Commission*

APPLICATION FOR CONTRACT WITH THE CITY OF BUFFALO

The City's Living Wage Ordinance applies to contracts for services in which the City pays – or receives – more than \$50,000 per year, and the contractor employs more than ten people. If you are bidding, responding to an RFP, or otherwise planning to make a contract with the City, you must complete this form, a copy of which will be forwarded to the City's Living Wage Commission. Your subcontractors need not file a separate Application, but they must pay a living wage. If you win the contract, you and your subcontractors will file quarterly reports with the Living Wage Commission.

You must certify that you will pay at least the hourly wages mandated by the Ordinance. The 2017 hourly rates are \$11.64 with health insurance and \$13.07 without health insurance. There will be an automatic cost-of-living adjustment each January 1.

There are two exceptions to the Ordinance. Professional contracts such as legal, architectural, or engineering services are not covered by the Ordinance. Also, persons employed in construction work covered by prevailing wage laws are exempt from the Ordinance.

The City department responsible for the contract should forward the completed Application for Contract of the employer chosen for the contract to: Living Wage Commission, c/o Cornell University ILR, 237 Main St, Suite 1200, Buffalo, NY, 14203

1. Company Information

| | |
|--------------------------------|--|
| Company Name: | |
| Executive Officer: | |
| Address: | |
| City, State, Zip: | |
| Phone No.: | |
| Total No. of Employees: | |

2. Please describe the specific project or service for which the contract is sought:

| |
|--|
| |
| |

3. Contract Information

| | |
|--|--|
| Dollar Value of Your Bid/Contract: | |
| Identifying City Contract or Project Number: | |
| Start and End Dates of Contract: | |

4. If you answer "Yes" to any of these, you need not complete parts 5, 6, and 7

| | | |
|---|------------------------------|-----------------------------|
| A) Are <i>all</i> persons who will work under the contract construction workers covered by federal or state prevailing wage laws? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| B) Is this a contract for professional services such as legal, architectural, or engineering? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| C) Do you employ less than ten people? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| D) Is the total value of the contract less than \$50,000 per year? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

5. Please describe the employees who will work on this contract. Attach additional sheets as needed.

| Job Title | Duties to be Performed | Hourly Wage | Receives Health Benefits? |
|-----------|------------------------|-------------|---------------------------|
| | | | |
| | | | |
| | | | |
| | | | |

6. Subcontractors

| | | |
|--|------------------------------|-----------------------------|
| Will there be subcontractors? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| If yes, please provide name address, and phone for each subcontractor. Attach additional sheets as needed. | | |

7. Please provide a signature by an official of your company with the legal authority to make binding commitments.

I certify that if awarded a City contract I will fully comply with the Living Wage Ordinance.

Signature: _____

Print: _____

Title: _____

Date: _____