

**THE REGIONAL MUNICIPALITY OF NIAGARA**

**REQUEST FOR PROPOSAL**

**FOR**

**CONSULTING SERVICES FOR THE WATER  
& WASTEWATER REVIEW, NIAGARA REGION**

**PROPOSAL NUMBER 2011-RFP-92**

**ISSUE DATE: JANUARY 04, 2012**

**CLOSING LOCATION:**

**OFFICE OF THE PURCHASING SERVICES  
THE REGIONAL MUNICIPALITY OF NIAGARA  
CAMPBELL WEST BUILDING  
2201 ST. DAVID'S ROAD  
THOROLD, ONTARIO, L2V 4T7**

**CLOSING DATE AND TIME:**

**THURSDAY JANUARY 26, 2012  
2:00 P.M. LOCAL TIME**

**BID IRREGULARITIES**

**RESPONSES FOR ADMINISTERING IRREGULARITIES CONTAINED IN BIDS**

	<u><b>IRREGULARITY</b></u>	<u><b>RESPONSE</b></u>
1.	Late Bids	Automatic rejection. Returned unopened to the bidder.
2.	Unsealed Envelopes	Automatic rejection
3.	<b>Insufficient Financial Security</b>	
	A) No bid deposit, uncertified cheque , or financial security not an original (e.g. a photocopy or a facsimile of a financial security)	Automatic Rejection
	B) Amount of Financial Security is insufficient:	Automatic Rejection
	i. Amount of Security is expressed as a percentage of the total bid sum	Automatic rejection, unless in the opinion of Purchasing Services and Legal Services, the insufficiency in the financial security is de minimus (trivial or insignificant).
	ii. Amount of Security is expressed as a dollar figure	Automatic Rejection
	C) Name, or signature of Supplier, or bonding company are missing or incomplete	Automatic rejection
	D) Failure to provide a letter of agreement to bond (if required)	Automatic rejection
4.	<b>Bid Document – execution</b>	
	A) Bids completed in erasable medium	Automatic rejection
	B) Signature of representative authorized to bind the Supplier missing or incomplete on the Bid Document.	Automatic Rejection
	ii. Electronic signature of representative authorized to bind the Supplier shown on Form of Submission	Two (2) working days to obtain original signature
	C) Form of Proposal or Quotation missing or incomplete	Two (2) working days * to correct to the satisfaction of Purchasing, otherwise automatic rejection
	D) Form of Tender missing or incomplete	Automatic rejection
	E) Signature of witness, if required, missing or incomplete	Two (2) working days * to correct, otherwise automatic rejection
	F) Date of Bid missing or incomplete	Two (2) working days * to correct, otherwise automatic rejection or, if stated in the Bid Solicitation, automatic rejection

	<b><u>IRREGULARITY</u></b>	<b><u>RESPONSE</u></b>
5.	Incomplete, illegible or obscure Bids or Bids which contain information not called for, erasures, overwriting or strike outs (not initialed).	Two (2) working days * to correct to the satisfaction of Purchasing, otherwise automatic rejection
6.	Document, in which all necessary Addenda have not been acknowledged.	Two (2) working days* to confirm Bid to the satisfaction of Purchasing Services or, if stated in the Bid Solicitation, automatic rejection.
7.	Failure to attend mandatory site visit (if required).	Automatic rejection
8.	Bid received on documents other than those provided in the Bid Solicitation	Automatic rejection, unless allowed for in the Bid Solicitation.
9.	Failure to insert the bidder's business name in the space provided in the Bid Solicitation form.	Automatic rejection unless, in the opinion of Purchasing Services and Legal Services, the incomplete nature is trivial or insignificant.
10	Mathematical errors	Two (2) working days * to initial the corrections as made by the Corporation. Unless otherwise stated in the Bid, the unit price shall prevail and the total Bid price shall be adjusted accordingly. The Corporation reserves the right to waive initialing and accept Bid as corrected.
11	Qualified Bids (Bids qualified or restricted by an attached statement).	Automatic rejection
12	Bids containing minor obvious clerical errors.	Two (2) working days * to confirm Bid to the satisfaction of Purchasing Services.
13	Any other irregularities	The Director of Legal Services, or Designate, shall have authority to waive other irregularities or grant two (2) working days to initial such other irregularities considered to be minor.
*Where "working days" specified, this is from the hour the Bidder is notified by Corporation staff of the irregularity		

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(All Being Part of This Request for Proposal)

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## 1. **Introduction & Background**

At the Region's Budget Review Committee of the Whole meeting of January 13<sup>th</sup>, 2011, the following motions were passed by Regional Council;

That the Region pursue a Municipal/Regional Fiscal Service Review that includes the participation of the Area Municipalities;

That the review should include the water and sewer utility opportunity; and

That the effect of this review be reflected in the 2012 Budget.

At the Region's Public Works Committee meeting on April 26, 2011, the following motions carried and were subsequently approved by Regional Council on May 5, 2011;

That the Terms of Reference includes the following basic principles:

- All rate payers will be treated fairly and their investment protected;
- Reserves and reserve funds for each municipality will be used for work in the contributing municipality – maintaining and improving infrastructure and service delivery;
- Review and planning processes focus on future service delivery;
- All service delivery options will be given full consideration until deemed otherwise by the Project Committee and Council;
- Investment in infrastructure will follow a logical process characterized by alignment of Lower Tier and Regional capital project planning – with timelines that respect the budget processes of all project partners;
- Create customer first water and wastewater systems;
- Commit to continuous improvement;
- Terms of Reference will align with Provincial Policy move toward self-funding of water; and
- That all partners be held to the self-funding requirement.

Water and Wastewater Services within Niagara are currently provided by Niagara Region (treatment and transmission) and eleven of its twelve Area Municipalities (distribution and collection). There are only three remaining 'two-tier' municipal water and wastewater systems remaining in Ontario; Waterloo Region, York Region and Niagara Region. The purpose of this Review is to consider the tangible and intangible benefits of moving to an alternative water and wastewater service and delivery system in Niagara Region.

In support of the Review, a Task Force of elected officials has been created. The Task Force is chaired by Mayor Hodgson of the Town of Lincoln and vice-chaired by Regional Councillor Andy Petrowski. Committee members include Councillor William Steele of the City of Port Colborne,

Regional Councillor John Teal of the Town of Fort Erie, Councillor Grenier of the City of Welland, Councillor Di Leonardo of West Lincoln and Regional Councillor Tim Rigby.

As per “Making Choices: A Guide to Service Delivery Review for Municipal Councillors and Senior Staff”, a service delivery review (Review”) is defined as “an evaluation process in which a specific municipal service is systematically reviewed to determine the most appropriate way to provide it”. In line with this definition, this Review shall outline the current and forecasted fiscal state of water and wastewater infrastructure within Niagara as well as highlight tangible and intangible opportunities as well as potential liabilities of alternative service delivery models for this Review.

Therefore, the Review shall consider the potential for a consolidated service delivery, treatment to frontline customer and return (12 services providers consolidated to 1 service provider servicing approximately 390,000 residents) but must also recognize the potential for alternative models including status quo. Different service delivery models shall be identified and pros/cons and opportunities/restrictions (SWOT analysis format) of each model shall be provided. A recommendation as to a preferred model is not a requirement of the Review.

While the intent of the Review is to target fiscal aspects, the Review shall also give consideration to the infrastructure sustainability, operational efficiency and effectiveness, flexibility, social and legal considerations, planning and growth, system security, customer transparency, service standards and levels regarding water and wastewater municipal service models. Industry Best Practice principles should provide guidance in these assessments.

While combined sewers will be included in the Review, storm sewers and surface drainage are not to be included in the assessment or Review.

**1. Intent of this Request for Proposal**

It is the intent of the Regional Municipality of Niagara (the “Region”) to retain a qualified firm to provide consulting services for the Water & Wastewater Review - Niagara, as detailed below.

**2. Date & Place for Receiving Proposal**

All submissions must be sealed and be received by Purchasing Services, The Regional Municipality of Niagara, Campbell West Building, 2201 St. David's Road, Thorold, Ontario no later than 2 p.m. local time, **Thursday, January 26, 2012.**

Submissions received after this deadline will not be accepted and will be returned unopened to the Proponent. Please note that Proponents are solely responsible to ensure that their submissions are received by Purchasing Services on or before the deadline. Purchasing Services will not accept any submission after this deadline notwithstanding the reason for its late receipt.

Please also note that, in the event of any question regarding the timely receipt of any submission, the time on the clock designated by Purchasing Services will absolutely prevail over any other time piece regardless of any discrepancies between the time on Purchasing Services' designated clock and actual time.

Bids will be opened for REGISTRATION OF BIDS RECEIVED only, at a public meeting at 2:15 p.m. local time, **Thursday, January 26, 2012.**

NO FURTHER INFORMATION WILL BE MADE AVAILABLE AT THIS TIME.

**3. Form of Proposal**

Proposals shall be submitted in one sealed envelope addressed to the Regional Clerk, at the address noted above, which clearly identifies the document(s) enclosed as a Proposal, including the completed “Form of Proposal”, giving note of the Proposal Number and the name and address of the Proponent.

The Region bears no responsibility for any Proposals(s) which are lost, misplaced or are not considered as a result of failure to use these envelopes.

Proponents will be allowed to attach descriptive literature for the sole purpose of amplifying the proposal. Adjustments by fax or letter to a Proposal already submitted will not be considered. The Proposal Form must be properly completed and witnessed in the spaces provided on the Form and signed by the Proponent or responsible official of the firm submitting the proposal.

Catalogues, brochures and bulky documents will be submitted under separate cover and must be clearly identified as being supplementary documents for this Request for Proposal.

**4. Documentation**

Twelve (12) copies of documents are required for each Proposal. At least one set must

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carry original signatures and be marked as “MASTER”. Additional sets may be photocopied and marked as “DUPLICATE”.

## **5. Submission of Proposals**

The Consultant is requested to propose a work plan which is comprehensive in addressing the tasks outlined in the Terms of Reference. Twelve (12) copies of the proposal are required. The proposal should include items which are warranted based on the requirements outlined but may not be necessarily noted.

### **a. Proposal**

The proposal to undertake this assignment shall include the following general items:

- I. The Consultant's interest in carrying out the project and an understanding of the objective of this project
- II. A detailed work plan and a weekly project schedule which will identify all major components of this project and their anticipated start and completion dates
- III. A description of the Consultant's related experience.
- IV. A description of the consulting team, the lead person and the relevant experience and qualifications of each individual.
- V. Identification of all sub-consultants, their qualifications and experience, as well as their specific role in this project.
- VI. Disclosure of any perceived conflict of interest.
- VII. Items/efforts expected to be provided by Regional staff and Local Area Municipal staff.
- VIII. Any significant change in the Consultant Team must be approved by Niagara in advance.

### **b. Proposal Cost and Man-Hour Estimate**

Included in the Proposal, the Consultant shall provide the overall project cost broken down in the following manner:

- I. Fee schedule per diem rate or hourly for each Consultant staff and sub-consultant of the project team.
- II. Intended as a lump sum assignment so submission shall include disbursement costs which may include mileage, telephone charges, printing and reproductions, fax charges, computer services, etc.
- III. Compliance with Niagara Region's insurance requirements.
- IV. Niagara will consider the estimate total service cost for this project as an upset limit unless prior written approval is obtained from the Region.

**6. Additional Recommendations**

Proponents are encouraged to submit any value added recommendations for consideration by the Region.

In the event that a prepared Proposal does not precisely and entirely meet the requirements of this Request for Proposal, the Region reserves the right to enter into negotiations with the selected Proponent(s) to arrive at a mutually satisfactory arrangement with respect to any modifications to the Proposal.

**7. Compliance**

Alternative proposals will not be considered. Proponents are encouraged to offer comments that clarify the content and intent of their Proposal.

**8. Joint Proposals**

In the event that a joint Proposal is submitted on behalf of two or more companies, the name and role of each partner in the joint Proposal must be clearly identified and the document signed by an authorized officer of each company.

If a joint Proposal is to be considered it will be necessary for one of the companies listed in the document to be named as the prime contractor and to accept responsibility for the level and quality of service provided and coordinate services as required by the Region.

**9. Withdrawal of Proposal**

A Proposal may be withdrawn unopened after it has been deposited, if such request is received in writing by the Clerk prior to the time specified for the opening of Proposals.

**10. Clarification**

It will be the Proponent's responsibility to clarify any details in question before submitting a proposal. All official correspondence in regard to the specifications should be directed to and will be issued by Dan Augustine, Purchasing Agent, Telephone 905-685-4225 extension 3470, Fax 905-682-8521, or by Email: [dan.augustine@niagararegion.ca](mailto:dan.augustine@niagararegion.ca), Purchasing Office of The Regional Municipality of Niagara, 2201 St. David's Road, Thorold, Ontario. The Region bears no responsibility for any oral communication, instruction or suggestions.

Any questions must be received in writing no later than noon, **January 20, 2012**.

**11. Acceptance or Rejection of Proposals**

The Region reserves the right in its total discretion to accept or reject any Proposal. The lowest or any Proposal will not necessarily be accepted.

**12. Informal Proposals**

Proposals which are incomplete, conditional or obscure, or which contain additives not called for, erasures, alterations or irregularities of any kind may be rejected as informal. The Region reserves the right to waive informalities at its discretion.

**13. Proposal Expiry Date**

Proponents hereby acknowledge that offers contained within their Proposal shall remain open for acceptance by the Region for a period of not less than ninety (90) days from the closing date established for Proposals.

**14. Announcement**

No announcement concerning the successful proposal will be made until a complete report is prepared and approved by the Region.

**15. Project Funding**

Award of this contract is conditional on sufficient funding. If sufficient funding is not available, we reserve the right to cancel this proposal without award.

**16. Progress Payments**

Payments will be made on a monthly basis.

**17. Billing**

Invoicing addresses and other billing information will be supplied to the successful Proponent.

**18. Intent of Scope of Work**

It is the intent of the attached scope of work to describe specific details of services required. It is the responsibility of the successful Proponent to supply any service not described in the scope of work but which may be reasonably implied to discharge the scope of work covered in this Request for Proposal.

**19. Harmonized Sales Tax (HST)**

All base prices shall exclude HST. Payment under the Contract shall be subject to value added taxes in effect at the time of invoicing.

**20. Liability Insurance Policy**

The Proponent and all sub-Proponents shall purchase and maintain at all times during the term of this Agreement, or as otherwise set out in this Agreement, the insurance coverage listed below:

(a) Comprehensive General Liability Insurance

Commercial General Liability insurance insuring the Proponent and covering all Services as described in the Agreement. The policy will be extended to include bodily injury and property damage, personal and advertising injury, products and completed operations, blanket contractual, a severability of interest and cross liability clause to a limit of not less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence. A commercial general liability policy that has an aggregate limit will be acceptable. The policy shall be endorsed to include the Owner as an additional insured. The policy shall include a cross liability clause written as follows:

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The insurance as is afforded by this policy shall apply in respect to any claim or action brought against anyone insured by any other insured. The coverage shall apply in the same manner and to the same extent as though a separate policy had been issued to each insured. Any breach of a condition of this policy by any insured shall not affect the protection given by this policy to the owner.

(b) Non-owned Automobile to a limit of no less than TWO MILLION DOLLARS (\$2,000,000).

(c) Errors and Omissions Liability

Errors and Omissions liability insurance insuring the Proponent in an amount not less than TWO MILLIONS DOLLARS (\$2,000,000) per claim and in the aggregate.

The coverage under the policy shall be maintained continuously during the term of this Agreement and for two (2) years after the termination or expiration of this Agreement and shall cover insurable losses arising out of or in association with an error or omission in the rendering of or failure to render the Services.

(d) Automobile Insurance

Automobile Insurance (OAP1) for both owned and leased vehicles with inclusive limits of not less than TWO MILLION DOLLARS (\$2,000,000).

(e) Other Insurance

Any other type (e.g. Environmental), form or as otherwise may be required from time to time as identified at any time by either party.

All policies of insurance shall: (a) be written with an insurer licensed to do business in Ontario; (b) be non-contributing with, and will apply only as primary and not excess to any other insurance or self-insurance available to the Proponent; and (c) contain an undertaking by the insurers to notify the Owner in writing not less than thirty (30) days before any material change in risk or cancellation of coverage.

If coverage under the Errors and Omissions policy is cancelled within the two (2) year period after the termination or expiration of this Agreement, the Proponent shall provide the Owner with notice within ninety (90) days of cancellation and shall be required to purchase an extended reporting endorsement to confirm that coverage is maintained.

All subsequent policy renewals and certificates of insurance thereafter, during the time

that this Agreement is in force, shall be forwarded to the Owner within sixty (60) days of their renewal date.

Immediately upon Award, the successful Proponent shall provide the Region with a Certificate of Insurance acceptable to the Region and, if requested by the Region, certified copies of the insurance policies. The Certificate of Insurance must comply with the insurance requirements outlined in this Bid Solicitation and must be on the Region's form of Certificate of Insurance, which can be found on the Region's website – [www.niagararegion.ca/business/fpr/cert-insurance.aspx](http://www.niagararegion.ca/business/fpr/cert-insurance.aspx). If the Certificate of Insurance is provided in a non-original form (e.g. a facsimile, photocopy or scanned electronic copy), the Proponent acknowledges and agrees that the Region is fully entitled to treat any such Certificate as an original and that the Proponent will be responsible for the accuracy and validity of the information contained therein.

## 21. **Failure to Perform**

Failure to comply with all terms and conditions of this Proposal, and failure to supply all

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documentation as required herein, within the specified time period, shall be just cause for cancellation of the award. The Region shall then have the right to award to any other Proponent, or call new Proposals.

**22. Disqualification of Proponents**

If more than one Proposal is received from an individual, firm, partnership, corporation or association under the same or different names all such Proposals will be rejected. Any evidence of collusion between Proponents will be sufficient to reject all Proposals so affected.

**23. Error and Correction**

The Region reserves the right in its total discretion to make all necessary corrections to any Proposal which contains mathematical errors and may refer to the unit price in making such corrections.

**24. Firm Prices**

Prices proposed are to be in Canadian Funds, and to include all necessary labour, material and equipment required for the execution of the work, and are to remain firm for acceptance for a period of one-hundred and twenty (120) days after closing date.

**25. Ability and Experience of the Proponents**

Each Proponent shall satisfy the Region, as to their ability and experience in supplying the services offered in their Proposal. The Region will not award a contract to any company that cannot furnish evidence satisfactory to the Region, in its sole discretion that they have the necessary ability, dedication, equipment, capital and experience to provide the services required.

**26. Incurred Costs**

The Region will not be liable nor reimburse any Proponents for costs incurred in the preparation of Proposals, attendance at interviews/meetings/related travel costs, or any other services that may be requested as part of the evaluation process.

**27. Conflict of Interest**

The Proponent shall disclose to the Region prior to award of the agreement, any potential conflict of interest. If such a conflict of interest does exist, the Region may, at its discretion, withhold the award until the matter is resolved or refuse to award.

**28. Access to Information/Confidentiality of Information**

The disclosure of information received relevant to Bid Solicitations or Awards shall be made by the appropriate officers in accordance with the provisions of all relevant privacy legislation including primarily the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended.

All Suppliers who contract with the Corporation shall adhere to or exceed the standards set in the *Municipal Freedom of Information and Protection of Privacy Act* or the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A, or other

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relevant Ontario or federal privacy legislation or common law as may be passed or amended from time to time, as if they were agents of the Corporation as relates to the confidential and secure treatment, including collection, use, disclosure or retention, of personal (health) information, other confidential information of the Corporation, and all records thereof which they come into contact with in the course of performing Services or providing Goods to the Corporation.

**29. Agreement on Internal Trade**

Proponents should note that procurements falling within the scope of Chapter 5, Procurement, of the Agreement on Internal Trade are subject to that chapter but that the rights and obligations of the parties shall be governed by the specific terms of each particular Proposal. For further reference please see the Internal Trade Secretariat website at [www.ic.gc.ca/eic/site](http://www.ic.gc.ca/eic/site).

**30. Proponent Performance**

The Region may, in its sole discretion, reject a Proposal if a Proponent:

- (i) has, at any time, threatened, commenced or engaged in legal claims or litigation against the Region;
- (ii) is involved in a claim or litigation initiated by the Region;
- (iii) previously provided goods or services to the Region in an unsatisfactory manner;
- (iv) has failed to satisfy an outstanding debt to the Region.
- (v) has a history of illegitimate, frivolous, unreasonable or invalid claims;
- (vi) provides incomplete, unrepresentative or unsatisfactory references; or
- (vii) has engaged in conduct that leads the Corporation to determine that it would not be in the Region's best interests to accept the Proposal.

**31. Assignment of Contract**

The Proponent shall not make any assignment, or any sub-contract for the supply of material or the execution of any of the work hereby proposed, nor engage in brokering or franchising or any other such practice, unless the Region, in its' own absolute discretion, expressly consents in writing.

Failure of the Proponent to obtain the express written consent of the Region, prior to engaging in any of the practices noted in the above paragraph, shall constitute a fundamental breach of the contract, and in such circumstance the Region may, in its' own absolute discretion, cancel the contract and award to any other Proponent, or request re-submissions.

Further, the Proponent shall be liable for all damages sustained by the Region as a result of the Proponent's breach of the contract, regardless of whether or not the Region chooses to cancel the contract. Any contract payments outstanding at the time of the Proponent's breach will be forfeited to the Region in full or partial payment of said damages.

Any outside costs associated with making a decision on whether to assign a contract will be the responsibility of the Proponent.

**32. Indemnification**

The successful Proponent shall indemnify and save harmless the Region, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of the negligence, errors, omissions, fraud or willful misconduct of the successful Proponent, its officers, employees, agents and subcontractors, or any of them, attributable to or in connection with the delivery or performance of the goods and services contemplated in this Request for Proposal, except to the extent that same is attributable to or caused by the negligence of the Region, its officers, employees and agents, or any of them. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the successful Proponent in accordance with this Request for Proposal.

**33. Evaluation**

The proposal evaluation shall be undertaken by staff. The selection process will include short-listing of candidates and interviews of those short-listed candidates. The proposal evaluation criterion is as follows:

<b>Criteria</b>	<b>Description</b>	<b>Score (1-10)</b>	<b>Weight</b>	<b>Total</b>
Applicable Experience and Resources	Relevant experience with the fiscal, technical, operational and service delivery aspects of providing municipal water and wastewater services is required.		10	
Team Strength and Leadership	Strength of Project Manager and support personnel allocated to the project. A multi-discipline group is envisioned due to the scope of the Terms of Reference.		15	
Same or Similar Project Experience	Same or Similar Project Experience.		10	
Past Performance Record (budget, schedule, & project success)	Relates to the feasibility of the Project Team to deliver the Work Plan within an acceptable timeline.		10	
Project Understanding	The ease with which the Proposal can be understood. Proposal is concise and to the point.		10	
Methodology (work plan, innovation, client administrative input, workload, schedule, etc.)	The Consultant is required to address all issues within the TOR. The Work Plan presented will be a prime consideration in the award of this Proposal. The detailed breakdown of each Task/Activity necessary in completing the Review shall be provided.		20	

Local Experience Factor	Knowledge of Niagara municipalities will be of benefit.		5	
Interview	Interview Result		5	
Quality	Quality Assurance Program		5	
Cost Factor	Maximum rating of 10 for lowest cost and pro-rated proportionally to highest cost with no points for costs exceeding 1.5 times of low cost.		10	
TOTAL	Total Points	10	100	1,000

**34. Award**

Negotiations, if any, must be successfully concluded and documented before a final recommendation is made. The first ranked proponent, having acceptable terms and conditions, will be recommended for award. If approved, the Regional Municipality of Niagara will notify the successful proponent in writing of the acceptance of its proposal. The successful proponent shall be bound to execute an agreement with the Region within fourteen (14) days of contract award in the form attached as Appendix “A”. The date of the contract award shall be taken as the date on which the proponent is notified of the acceptance of its proposal.

The successful proponent must submit the following to the Region within **fourteen (14) days** of the Contract award:

- (a) A fully executed agreement in triplicate;
- (b) A Certificate of Insurance which complies with the insurance requirements set out in Clause 20 of this Section.

**35. Negotiations**

In the event that a prepared Proposal does not precisely and entirely meet the requirements of this Request for Proposal, the Region reserves the right to enter into negotiations with the selected proponent(s) to arrive at a mutually satisfactory arrangement with respect to any modifications to the Proposal.

**36. Performance Unsatisfactory**

The contract will be deemed to be in default when the Proponent fails to:

- Perform any specification, term or requirement included herein, in a good and proper manner.
- Provide any deliverable(s) in accordance with the requirements incorporated in the contract.
- Adhere to specified delivery requirements and/or dates.

**37. Force Majeure**

Neither party shall be responsible for delays or non-performance of this Agreement resulting directly or indirectly from impediments beyond its reasonable control (other than financial inability or by application of Applicable Law), including, without limitation, any delay caused by fire or other impediment beyond the reasonable control of such party and not caused by an act or omission of such party, provided in the event of such delay or non-performance, the party continues to act reasonably to resolve such delay or non-performance.

**38. Purchasing By-Law**

Submissions will be solicited, received, evaluated, accepted and processed in accordance with the Region's Purchasing By-law as amended from time to time. In submitting a proposal in response to this solicitation, the Proponent agrees and acknowledges that it has read and will be bound by the terms and conditions of the Region's Purchasing By-law.

The Purchasing By-Law can be viewed on the Region's website, [www.niagararegion.ca](http://www.niagararegion.ca).

**39. De-briefing**

After the selection has been made, an unsuccessful firm may request a debriefing session to discuss their submission by contacting the project manager. The project manager will conduct a debriefing, by telephone, for the purpose of explaining the evaluation process, discussing only the firm's submission, its ranking, and explaining why they were not selected. The following is the project manager contact information:

Name: Betty Matthews-Malone, Director of Water and Wastewater  
Phone Number: 905-685-4225, extension 3640

All other inquiries are to be in accordance to Clause 10, page 9.

**40. Exclusion**

Except as expressly and specifically permitted herein, no Proponent shall have any claim for any compensation of any kind whatsoever, as a result of participating in this RFP, and by submitting a proposal each Proponent shall be deemed to have agreed that it has no claim.

**41. Minor Non-Compliance**

Proposals which fail to conform to the requirements of this invitation in form or content may be disqualified as non-compliant. However, the Region may, in its sole discretion, waive minor non-compliance and retain, for consideration and possible award, proposals which do not conform to the requirements of the invitation in form or content, where such proposals appear to offer the best value to the Region. Proponents are cautioned that any such retention of non-conforming proposals for evaluation and possible award will be a rare event and solely at the Region's discretion. Proponents are urged to ensure their proposal is fully compliant with all requirements of the invitation.

**42. Accessibility Regulations for Contracted Services**

Contracted employees, third party employees, agents and others that provide customer service on behalf of the Region are legally responsible with the provisions outlined in Section 6 of the Ontario Regulation 429/07 with respect to training. The Contractor shall ensure that such training includes, without limitation, a review of the purposes of the Act and the requirements of the Regulation, as well as instruction regarding all matters set out in Section 6 of the Regulation. By signing the Form of Proposal, the Contractor has agreed to be in full compliance with this regulation. For further information please go to [www.niagararegion.ca/business/tenders](http://www.niagararegion.ca/business/tenders).

**43. Unbalanced or Unreasonable Cost Estimates**

Proposals that contain costs which appear to be unbalanced or unreasonable that are likely to adversely affect the interests of the Owner may be rejected.

**44. Proposal Presentation and Proponent Interview**

The Region will review each proposal based on the Evaluation criteria outlined in clause 33 of this section. A short-list will be created through this evaluation. The Region may require each short-listed proponent to participate in an interview to discuss their proposal and to exhibit or otherwise demonstrate the information contained therein. Questions will be posed to each Proponent. Regional staff will grade these interviews and these grades will be used, in part, to score the Proponent's Proposal.

The Region shall issue a letter to each short-listed Proponent as to details (time, location etc.) of the interview.

The Scope of the Review shall include, but not be limited to Financial Review and Operational Review, as per details below.

## 1. Financial Review

- a. Consolidation of current financial position of Municipal water and wastewater systems (Region plus 11 Local Area Municipalities (LAM)). Shall include assets, liabilities, debt, revenues (rate, levy, fees and charges, recoveries), reserves (reinvestment/capital, rate stabilization, development charges, others), investments and expenditures. Shall include the review of existing and available data: Safe Drinking Water Act Financial Plans (including any available Sewage Financial Plans), Financial Information Returns (FIR's), Ontario Municipal Benchmarking Initiative (OMBI), Municipal Performance Measurement Program (MPMP), PSAB reports and any additional information that may be available or provided.
- b. Financial consolidation analysis of all (Regional and LAM) assets, liabilities and reserves. Report the value of consolidated assets, debts and reserves related to Niagara's water and wastewater system.
- c. Profit and Loss analysis: provide historical 3-5 year income statements with detailed expense information. In addition, forecast income statement for next 6 years based on current models and potential alternative models.
- d. Direct and indirect operating costs including chargebacks.
- e. What water and wastewater costs could be eliminated, transferred or would be left unchanged by consolidating service to an alternative service delivery model(s)? Outline economies of scale or alternatively the potential for increased costs due to administrative, technical, social, legal considerations. Examples would include impact of enhanced levels of service or capital reinvestment and negotiated union contracts. If costs to be transferred, such as from rate to levy to offset chargeback or cost sharing, identify impact to relevant Stakeholder.
- f. The comparative financial sustainability of each municipality shall be outlined in the Review, as well as the impact to each municipality in each alternative service delivery model. Consideration as to how the existing reserve and reserve funds, debt, revenue and capital needs of each municipality should be provided.
- g. Identify the potential initial cost of transitioning from the current state to any potential alternative service delivery model.
- h. For costs not directly attributed to water and wastewater such as facilities, roads, drainage, parks, cemeteries and administration and assuming no change in level of service for those activities, what costs would be anticipated to remain unchanged within each of the municipalities, outline where these costs could potentially be recovered (example: moved to the levy). Examples would include consideration of inter-functional transfers, shared overhead, staff and equipment as well as chargeback's such as Financial, Legal and information technology and stormwater management and collection (recourse/budget). The financial impact to the general levy or other shall be identified in the Review.
- i. Assess non-revenue water (real and apparent losses value) and the cost recovery options, including fire protection cost allocation, recovery from levy and rates, and/or other options or opportunities for consideration.

j. Capital Investment Outlook

- i. Short, medium and long term capital requirements. Identify capital works as approved (budgeted), pending approval (forecasted) or unapproved (tangible capital asset reinvestments). Highlight, where possible, growth related works and accumulated infrastructure deficits, estimated based on current condition, remaining useful life or other best management practice approach.
- ii. Identify valuation of assets and report on remaining useful life and funding gaps. Use PSAB and/or other industry standards and/or best management practices to determine if assets are being adequately depreciated. State estimate useful life: thus, capital investment outlook identifying approaches used by Stakeholder Municipalities. Condition assessment of the infrastructure is not a requirement of the Review. Attempts shall be made to gather existing, known condition assessment and the reinvestment needs from the Municipalities and/or available data (PSAB, Financial Plans, etc.). Note any significant deviation in approaches used by Stakeholders in development of this information, i.e. have significantly different application of PSAB been employed, e.g. capitalization thresholds or useful lives? Note potential impact of these deviations in the Review.
- iii. Outline projected future costs and nature of costs for required capital investment (i.e. sustainable reinvestment, risk mitigation, growth planning and growth capital investment requirements, compliance, partnerships between municipalities, other) taking into consideration the guiding principles;

“Reserves and reserve funds for each municipality will be used for work in the contributing municipality – maintaining and improving infrastructure and service delivery.”

- k. Provide a consolidations impact; Financial Information Return (FIR's), Ontario Municipal Benchmarking Initiative (OMBI), PSAB reports (short, mid and longer term).

Where data is insufficient it may be necessary, based on relevant experience, industry standards and benchmarks, literature review and/or best management practices to estimate these inputs for this Review. Best efforts must be made with each of the Municipalities to gather the required information prior to making any estimates or assumptions. All estimates and assumptions must be reviewed with the affected Municipality and Task Force prior to inclusion in the report. For background purposes, known water and wastewater asset inventories for each of the Local Municipalities will be included for reference from the Region to assist with the Review but shall be confirmed by the relevant Municipality. The Consultant shall facilitate meetings with Local Area Municipal and Regional staff to verify or supplement the information to be contained in the Review. The Consultant shall also provide for a minimum of Task Force, Public works and Area Treasurer's meeting as outlined in Item #6 of "Preparation & Submission of Proposals".

Note: at its Budget Review Committee of the Whole meeting of March 3, 2011 the following motions were passed:

“That in the spirit of full disclosure and transparency and clarity; and

That in an effort to understand the eleven different local impacts of our Regional water rate decisions;

That Regional Council request all local councils share with Regional Council, their staff’s interpretation of the impact of the Region’s Water and Wastewater rates on their local water billings; and

That the request for information from the local municipalities include relevant data, as follows;

- a) 2010 retail price (/m3)
- b) Water and wastewater reserves/household
- c) Water and wastewater capital needs/household from 10 year capital forecasts
- d) Annual water losses as % of total volume purchases
- e) Estimated % of annual operating costs for water and for wastewater recovered through rates
- f) PSAB asset valuations for water and wastewater infrastructure; and

That Regional Staff request that this information be received from local municipalities within three months.”

This request was made March 4, 2011. Information received will be made available to the Consultant and will be available for viewing prior to submission.

Stakeholder Municipalities were also requested to comment on the original Terms of Reference for the Review. While their comments have been incorporated in the Terms of Reference, this previous feedback has been appended for background information (Appendix B).

In addition, the findings of the BMA Municipal Study 2010, which includes Niagara municipalities and provides information of water and wastewater such as operating surpluses and operating surplus ratios (calculated using the accrual basis of accounting), will be made available.

## **2. Operational Review**

- a. Administrative/organizational structures of each municipality including direct staffing levels as well as identification of indirect support services and associated chargebacks. The Review shall include an overview of resources as well as recruitment and retention status and outlook. Shared resources, such as other activities within the municipalities, e.g. storm water management, roads, parks, etc. should be identified.

- b. Existing service levels for each of the Municipalities and any identified customer expectations; i.e. prescribed or implied. Service level comparisons and differences shall be identified as potential implementation considerations. Customer service and/or community outreach programs shall be included in the service level review.
- c. Operating budget reviews with consideration for operational and business management efficiencies and/or innovations and potential outcomes, i.e. right of way coordination, conservation, alternative service delivery such as contracting out, others.
- d. Billing, i.e. internal or out-sourced. Review to include an overview and analysis of the billing and collection service models currently in use and potential for alternative approaches as well as associated costs.
- e. Potential Regulatory Impacts (orders or outstanding compliance issues) and outstanding Claims, e.g. Lead Service replacements, compliance with statutes and other legal requirements, basement flooding, etc.
- f. Resource Impacts, i.e. service provided, potential to eliminate duplication and/or requirement to supplement in order to achieve a higher level of service. The Review shall include an overview of resources (internal staff and contracted services) as well as specialty equipment and operations yards. Are emergency works performed by internal staff with municipal equipment, contracted out or combination thereof? Known out-sourced activities and existing internal Union contracts, obligations and limitations shall be identified. Identified recruitment and retention staffing impacts as well as consideration of training requirements, licensing, vacation relief and seasonal demands shall also be identified.
- g. Technology status and approach including system control, computer models, SCADA operation and operational logistics such as maintenance programs and work order controls.
- h. Identification of related impacts such as interface with local and Regional land use and economic development and related infrastructure investment requirements.
- i. While not a specific requirement of the Review, the Consultant should identify any opportunities for continuous improvement, best management practices or shared services.
- j. Scan of potential operating models with Strength/ Weaknesses/Opportunities/Threats (SWOT) analysis and potential barriers to implementation. Shall include an overview of direct, indirect, tangible and intangible impacts as well as potential benefits. SWOT shall also identify how restructuring would impact all stakeholders to the Review.

The above Financial and Operational Reviews shall not limit nor exclude any other relevant and pertinent details necessary for the analysis. The above list is intended as a guide only.

**Deliverables:**

- i) The Review deliverable will include a report detailing these administrative/organizational and implementation considerations. It shall also identify potential governance structures for that model, identifying pros/cons and opportunities/restrictions through a SWOT analysis for these alternatives. Allowances shall be included in the proposed work plan to review the draft report with Local Area Municipalities as well as the Task Force prior to completion and consideration by Regional and Local Councils.

- ii) Areas for potential savings or additional costs must be identified and timelines estimated. For example, what would anticipated savings be at start of consolidation and six years later (or some other mid to longer term timeframe)? The potential to phase in the consolidation shall also be given consideration, i.e. if only a portion of the municipalities consolidate would benefits exist?
- iii) The Review shall give consideration to the principles to the Government of Ontario's "Making Choices, Building Strong Communities, A Guide to Service Delivery Review for Municipal Councillors and Senior Staff, March 2010" and "A Guide to Service Delivery Review for Municipal Managers, August 2004". It shall also give consideration to "WATERTIGHT: The case for change in Ontario's Water and Wastewater Sector" as well as similar single tier delivery structures and past amalgamations or attempts at amalgamations of upper and lower tier water and wastewater systems. A copy (confidential) of the Proctor & Redfern Limited, Water & Sewer Service Delivery Review (Regional Niagara) undertaken for the Region in 1997 will also be provided to the successful Consultant(s) for background reference.
- iv) It is anticipated that the Review may identify the need for further, in-depth review and analysis prior to consideration of implementation. These necessary 'future' reviews and studies must be adequately scoped as 'next steps' for Phase 2 and explained in the final report. Examples include;
  - a. How would existing debt for each municipality be treated?
  - b. How will residents be billed? Would uniform rates be appropriate?
  - c. Customer service delivery? Who, where & how?

### **Preparation & Submission of Proposals**

- i) The Consultant work program shall identify the tasks involved in the delivery of documentation and analysis specifically addressing the issues raised in the Terms of Reference. The work program shall also identify the anticipated duration of the undertaking.
- ii) Upon award of the assignment, the Consultant shall provide a pro forma document to each municipality for the compilation of the information required to undertake the Review. The required information of this pro forma shall be outlined in the submission of proposal.
- iii) The Consultant shall attempt to gather all required information from the Municipalities. The proposal shall outline the approach to be used with each of the participating Municipalities and include the anticipated number of meetings, approximately timing and duration with each of the Stakeholders. Best efforts shall be undertaken to gather the required information from the Stakeholders but should any the Local Area Municipalities be unable to provide any or all of the information requested within an acceptable time frame the Consultant shall be prepared to estimate, based on benchmarks and best management practices, the pro forma documents. All estimates shall be provided for review to the participant Municipality for review and comments prior to inclusion in the Report. Water distribution and wastewater collection sizes and lengths, as well as serviced population shall be requested of or confirmed by each Municipality. The Region will provide information pertaining to Local Area Municipal networks but the Consultant shall attempt to confirm with the Local Municipality the quality and validity of the inventories provided. The Consultant may have to provide estimates based on relevant experience and design standards for the related appurtenances, subject to revision based on approach (budget and timeline).

- iv) Within the proposal, the Consultant is encouraged to make suggestions on items which may be more appropriately delivered by the municipalities or others.
- v) The Consultant shall develop criteria necessary to evaluate the data gathered to guide the rationalizing of the realignment of services. In addition, the Consultant will undertake the analysis on the results and overview possible service delivery models outlining potential cost savings.
- vi) In addition to meetings with each of the Stakeholders, the Consultant shall provide for a minimum of five (5) presentations to the Task Force as well as three (3) meetings to each of the Public Works Officials and Area Treasurers prior to finalizing the Review.
- vii) Reports. All reports will be prepared in Microsoft Word. The Consultant will be required to provide twenty-five (25) copies of all reports prepared in association with the Review.

I/We, the undersigned, having the authority to bind the company, certify that I/We have examined all Sections of this Request for Proposal (Introduction, Information to Proponents & General Conditions, Scope of Work, Form of Proposal, and all Appendices), do hereby submit a proposal to enter into an Agreement with the Regional Municipality of Niagara, in accordance with the Terms and Conditions specified in this Request for Proposal document, subject to amendment by any addendum/addenda which are acknowledged below:

**ADDENDUM/ADDENDA** (If applicable **must** be filled in by proponent.)

I/We, the undersigned, acknowledge that I/We have received addendum/addenda Numbers \_\_\_\_\_\* to \_\_\_\_\_\* inclusive, and that all changes specified therein have been included in the prices submitted.

<b>COMPANY:</b>	<b>CONTACT NAME:</b>
(Must Show Correct Legal Company Name)	(please print)
<b>ADDRESS:</b>	<b>SIGNATURE:</b>
	(I/We have the authority to bind the Corporation)
	<b>TITLE:</b>
	<b>WITNESS:</b>
<b>POSTAL CODE:</b>	<b>SIGNATURE:</b>
<b>TELEPHONE NUMBER:</b>	<b>TITLE:</b>
<b>FAX NUMBER:</b>	<b>DATE:</b>
<b>E-MAIL ADDRESS (Must supply if available):</b>	

**APPENDIX "A"**  
**SAMPLE AGREEMENT**

**THIS AGREEMENT** made in triplicate this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

- **BETWEEN** -

**THE REGIONAL MUNICIPALITY OF NIAGARA**

2201 St. David's Road, P. O. Box 1042  
Thorold, Ontario, L2V 4T7

Hereinafter called the "Region" (of the first part)

- **AND** -

**CONSULTANT NAME**

Address

Hereinafter called the "Consultant" (of the second part)

**WHEREAS** on (date), the Region issued Request for Proposal # (insert number) (if applicable and Addendum # (insert number) dated (date) [repeat for each Addendum] ) for (enter the description of work) (the "RFP");

**AND WHEREAS** on (enter date of Consultant's proposal) the Consultant submitted a bid in response to the RFP (the "Bid");

**AND WHEREAS** the Region wishes to enter into an agreement with the Consultant for the services, as more particularly described in the RFP and the Bid, attached hereto as Schedule "A" and forming part of this Agreement (the "Services");

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises and other good and valuable consideration, the sufficiency whereof is acknowledged hereby by the parties, the parties hereto agree with each other as follows:

1. The Consultant shall provide the Services pursuant to all the terms and specifications set out in Schedule "A". If there should be any conflict between the provisions of this Agreement and the provisions of Schedule "A", the provisions of this Agreement shall prevail.
2. The term of this Agreement shall commence \_\_\_\_\_.
3. The Region shall pay the Consultant for Services as outlined in Schedule "A".
4. If either party, acting reasonably, determines that the other party has failed to perform its obligations pursuant to this Agreement, then such party may terminate this Agreement upon giving at least thirty (30) days' written notice to the other party.
5. The Consultant shall indemnify and save harmless the Region, its elected officials, officers, employees and agents from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest, or damages of every nature and kind whatsoever arising out of the negligence, errors, omissions, fraud or willful misconduct of the Consultant its officers, employees, agents and subconsultants, or any of them, attributable to or connected with the performance, non-performance or purported performance of the Consultant obligations pursuant to this Agreement, except to the extent that same is attributable or caused by the negligence of the Region, its officers, employees and agents, or any of

them. Further, this indemnity shall survive the expiration or early termination of this Agreement and continue in full force and effect.

6. This Agreement together with its schedule constitutes the entire understanding between the parties. Any change, addition to, or waiver of the terms hereof must be specifically agreed upon, in writing, and signed by both parties. Failure on the part of either party to insist upon the strict observance of any of the terms and/or conditions herein shall not operate as a waiver of such party's right to require the future observance of any such terms or conditions.

7. This Agreement shall not be assigned, in whole or in part, by either party hereto without the prior written consent of the other party. This Agreement, all its covenants, promises and conditions shall ensure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

8. Either party may terminate this Agreement at any time, without notice, for just cause which shall include, without limitation, dishonesty, fraud, willful deceit or failure to properly fulfill the obligations hereunder where such failure is not remedied within ten (10) days after notice of same is given.

9. This Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario, Canada.

**IN WITNESS WHEREOF** the parties hereto have duly executed this Agreement.

**(CONSULTANT NAME)**

Per: \_\_\_\_\_

Name:

Position:

Per: \_\_\_\_\_

Name:

Position:

I/We have authority to bind the Corporation.

**THE REGIONAL MUNICIPALITY OF NIAGARA**

Per: \_\_\_\_\_

Name:

Position:

Per: \_\_\_\_\_

Name:

Position:

I/We have authority to bind the Corporation.

**APPENDIX "B"**

**EXECUTIVE SUMMARY JUNE 20, 2011**

**VERBAL OVERVIEW PROVIDED TO TASK FORCE**

## Appendix B

Executive Summary June 20, 2011 – Verbal overview provided to Task Force

Consolidated comments from Local Area Municipalities regarding Terms of Reference (TOR):

- Most indicate that they are opposed to the TOR
- Impact to workloads – onerous & unexpected. Hint of request for funding/subsidy to assist at local level
- Request for Review Teams – at staff level and political level. Four offers to be on Task Force – Fort Erie, Welland, Port Colborne, West Lincoln (name pending)
- Timelines should be set with input from LAM's
- Displacement of multi-faceted staff – how will they be accounted for in a cost savings analysis? Financial benefit is incomplete without knowing how reallocated shared costs will affect general levy. Financial benefit analysis will be incomplete without consideration of reallocated shared resources to general levy
- Financial and technical state of infrastructure – will 'proactive' municipalities subsidize 'less proactive' municipalities? Will rates change to allow this subsidization? Include in review to ensure financially sustainable municipalities not compromised (BMA Municipal Study 2010 referenced). Should look at 'significant investments' within each of the areas in the 10-20 year horizon
- Caution against using FIR information as inconsistency in information to be expected but don't 'estimate' as estimates could significantly impact findings
- Customer service – how will it change? Would it diminish as a larger service provider? Comments include that the most advanced customer service system should be incorporated into the review
- Concern that 'local' "Council may no longer have the authority to set rates for delivery of services or control how those services are provided to the end user"
- Should not ignore condition assessment as a requirement of the review. Concern expressed that accounting for assets not uniform through the financial statements and a need to look at methodologies each municipality has used for PSAB
- Concern that there will be a loss of control over local land use, economic development and local infrastructure investment decisions
- Triple majority vote should be implemented. Suggested that triple majority should be requested prior to undertaking any study
- Preservation of reserves and reserve funds to specific municipalities should be expanded to include infrastructure, rate and development charge reserves

- Use of estimates could significantly impact results of the review. Concerned that conceptual review will not reflect nuances of a particular operation (“no two municipalities systems are comparable” “there is much variation in systems across local Municipalities”)
- Do not believe that significant savings to the average customer would be realized through a new service delivery model
- Concern that similar conclusion to 1998 exercise – consensus will not be reached at end of process either conceptual or detailed
- “what has changed from 1997/1998 report that warrants another comprehensive review?”
- Why only looking at consolidation? Should be a detailed analysis of all possible service delivery options including status quo. Concern expressed that there is a perceived outcome as it is ‘upper tier focused’

THE REGIONAL MUNICIPALITY OF NIAGARA

NOTICE OF NO BID

DOCUMENT NUMBER 2011-Q-92

**TITLE: CONSULTING SERVICES FOR THE WATER & WASTEWATER REVIEW, NIAGARA REGION**

It is important to the Municipality to receive a reply from all invited bidders. There is no obligation to submit a bid however, should you choose not to bid completion of this form will assist the Region in determining your interest in future bids.

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INSTRUCTIONS

If you are unable, or do not wish to bid on this proposal, please complete the following portions of this form. State your reason for not bidding by checking applicable box(es) or by explaining briefly in the space provided. It is not necessary to return any other quotation/tender documents. Just return the completed form by mail or by FAX prior to the closing date.

FAX NUMBER - 905 682-8521

- 1. We do not manufacture/supply this commodity/service.
- 2. We do not manufacture/supply to this specification.
- 3. Unable to quote competitively.
- 4. Cannot handle due to present work load.
- 5. Quantity/job too large.
- 6. Quantity/job too small.
- 7. Cannot meet delivery/completion requirements.
- 8. Agreements with distributors/dealers do not permit us to sell directly.
- 9. Licensing restrictions.
- 10. Do you wish to bid on this commodity/service in the future? Yes  No

Other reasons or additional comments:

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COMPANY NAME: \_\_\_\_\_ CONTACT PERSON: \_\_\_\_\_  
PHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_  
EMAIL ADDRESS: \_\_\_\_\_