



July 26, 2017

## NOTICE TO BIDDERS

Sealed proposals will be received by the Board of Water and Light (BWL) up to **2:00 P.M., local time, Friday, 08/25/2017**, for furnishing:

### Infra-red/Thermal Imaging Services

Proposals must be in full accordance with the enclosed Specification.

Proposals may be submitted via hard copy or electronic format. If submitting hard copy proposals, **by US Mail**, please submit two (2) signed BWL Proposal Form(s) with attachments and supplemental information to the **Board of Water and Light, Attn: Jeff Schwarz, P.O Box 13007, Lansing, Michigan 48901**).

**If submitting by private carrier (UPS, Fedex, DHL, etc...) submit to: Board of Water and Light, Attn: Jeff Schwarz Purchasing and Warehousing Department, 1110 S. Pennsylvania, Building E, Lansing, Michigan 48912.**

**If submitting in person, deliver to: 1232 Haco Drive, Lansing, Michigan 48912.** Do not include copies of the other BWL RFP documents in your proposal package. The proposal package shall be marked on the outside of the cover with:

- 1) The Bidder's name;
- 2) The title of the Specification;
- 3) Attention: Jeff Schwarz, Board of Water and Light;

Additional documentation to submit with proposal package includes:

- 1) Certificate of Insurance.

Electronic copies shall be in a non-protected, Adobe pdf format and e-mailed to [sealedbids@lbwl.com](mailto:sealedbids@lbwl.com). For ease of identification, enter "**Infra-red/Thermal Imaging Services**" in the subject line of your e-mail proposal. You will receive an automatic reply to your submittal which confirms the BWL has received your emailed message. **Any electronic or hard copy Proposals must be received by due date/time deadline. Proposals received after deadline will be rejected.**

The BWL reserves the right to reject any or all proposals, waive irregularities or technicalities in any proposal, and accept any proposal in whole or in part, which in the opinion of the BWL, is in its best interest. The BWL does not limit the methods or factors to be used for evaluation.

Questions regarding this RFP will be accepted through Friday, 08/11/2017. Responses to these questions will be issued to all bidders via addenda to this RFP (reference Article 6 in the enclosed Instruction to Bidders). Direct all questions in writing concerning this Request for Proposal via email to Jeff Schwarz at [Jeff.Schwarz@lbwl.com](mailto:Jeff.Schwarz@lbwl.com).

Sincerely,

Jeff Schwarz  
Purchasing & Warehousing Department  
(517) 702-6310  
(517) 702-6042 Fax  
[Jeff.Schwarz@lbwl.com](mailto:Jeff.Schwarz@lbwl.com)



**INSTRUCTIONS TO BIDDERS**  
**Infra-Red/Thermal Imaging Services**

**1. THE REQUEST FOR PROPOSAL CONSISTS OF THE FOLLOWING:**

- (a) Notice to Bidders;
- (b) Instructions to Bidders;
- (c) Addenda, if issued;
- (d) Scope of Work / Specifications, including
- (e) Proposal Form;
- (f) Sworn and Notarized Affidavit of Compliance - Iran Economic Sanctions Act; and
- (g) Terms and Conditions for Services.

**2. PROPOSAL SECURITY**

Not applicable.

**3. TERMS AND CONDITIONS**

Do not submit BIDDER's standard terms and conditions as a replacement to the BWL's Standard Terms and Conditions. BIDDER shall submit their proposal based upon the BWL's Standard Terms and Conditions as attached. BIDDER may request clarifications, tender exceptions consistent with Section 8 (or provide alternative language that corresponds to a tendered exception as provided in Section 8) to the BWL's Standard Terms and Conditions. Exceptions to the BWL's Standard Terms and Conditions must be noted on the Proposal Form in the space provided. Wholesale rejection of the BWL's Standard Terms and Conditions, as well as replacing with BIDDER'S standard terms and conditions will not receive consideration and result in a rejection in BIDDER'S proposal in its entirety. Further, proposals which are submitted and contingent upon BIDDER'S standard terms and conditions will be rejected.

**4. BIDDER'S RESPONSIBILITY**

It shall be the BIDDER'S responsibility to be familiar with the Proposal Documents and with the BWL, scope of work, and conditions that are likely to be encountered. BIDDER shall visit the site and specific areas on the site wherein the Work will be performed.

Any failure by the successful BIDDER to familiarize itself with conditions likely to be encountered, to acquaint itself with the available information, or to attend any meeting of BIDDERS shall not relieve the BIDDER from responsibility for providing the specified equipment, materials, and service. A failure to comply with this requirement does not constitute grounds for extra compensation over the pricing stated in the BIDDER'S proposal.

BIDDER shall be prepared to make a presentation at the BWL's request on its proposal and to answer questions.

**5. AVAILABILITY OF LABOR AND MATERIALS**

The BWL will not furnish any labor, facilities, services, utilities, materials, equipment or supplies unless specifically stated in the Proposal Documents.

BIDDER shall assess and determine the availability of necessary labor and the prevailing wages applicable to that workforce. In addition, BIDDER shall assess and determine the availability of materials and equipment necessary to fulfill the contract in a complete and timely manner. The BWL will not honor any claim for additional cost premised on the unavailability of materials or equipment, shortage of labor, or unexpected wage rates.

**6. ADDENDA**

The BWL will clarify any questions or correct the Request for Proposal by the issuance of an Addendum to all BIDDERS.

Each BIDDER shall acknowledge receipt of each Addendum by filling in the blank space provided on the Proposal Form.

## 7. DRAWINGS

Not applicable for bidding purposes. However, upon award the selected vendor will be required to enter into a confidentiality agreement.

## 8. PREPARATION OF PROPOSAL FORM

The Proposal Form is included in the Proposal Documents. BIDDER shall prepare proposals and submit them as stated in the Notice to Bidders.

Proposals must be prepared in full accordance with the Proposal Documents. The proposal price(s) stated on the Proposal Form must include all cost provisions of the complete Scope of Work. If the BIDDER chooses to submit an alternate or take an exception to any provision contained in the Proposal Documents, the alternate or exception must be specifically stated in BIDDER'S proposal, must reference the objectionable article of the Proposal Documents, and must propose alternate language or alternate Work. Any exception to the Proposal Documents, including any exception to the BWL's Standard Terms and Conditions must be raised in BIDDER'S proposal as exceptions provided subsequently will not be considered. Once a purchase order has been issued, and the Acknowledgement returned, a binding contract exists between the parties and further negotiation of terms is not permitted.

Proposals received after the time and date for receipt of proposals will not be accepted. The BIDDER is responsible for timely delivery of the Proposal at the designated location and time for receipt of Proposals.

**The Proposal must be signed with the full name and address of the BIDDER. Proposals received without signature will not be accepted.** If the BIDDER is a co-partnership, the firm name and signature of all parties are required. If the BIDDER is a corporation, full corporate name, signature of authorized official is required. BIDDER shall certify that the person who signs the proposal is empowered to do so by the corporation. Such certificate shall be up-to-date and current at time of the Proposal Form submittal.

A proposal may not be modified, withdrawn or canceled unilaterally by the BIDDER for a period of sixty (60) days following the time and date designated for the receipt of Proposals, and BIDDER so agrees in submitting the Proposal. A proposal submission is a confirmation by the BIDDER that it is prepared to commence and complete the various stages of the Work as described in the Proposal Documents.

Expenses for developing and presenting proposals shall be the responsibility of the BIDDER. It is the BIDDER'S responsibility to ensure that no conflict of interest or other ethical concern precludes the BWL from considering BIDDER'S proposal.

## 9. SUBSTITUTION

Under certain circumstances, the Proposal Documents may permit substitution of products. Those areas where substitution is permitted will be designated with the qualifying phrase or equal as may be approved by the BWL REPRESENTATIVE. If BIDDER would like to substitute a product, BIDDER must make a proposal including the products specified in the Proposal Documents AND an alternate proposal including the proposed substitution, specifically referencing any price change based on the substitution.

BIDDER'S proposal shall contain data to substantiate that the substitution is, in fact, equal to the products specified. Substantiating data may consist of drawings or other documents necessary or helpful to indicate any modifications resulting from use of proposed substitutions. BIDDER bears the burden of proving that the proposed substitutions meet the quality standards established in the Proposal Documents.

If BIDDER is eventually awarded a Purchase Order, the Purchase Order will indicate whether the substitution was acceptable or whether the original product must be used.

The acceptance of a substitution does not alleviate BIDDER of any contractual responsibility.

## 10. BONDS

Not applicable.

## 11. INSURANCE

The certificates of insurance required by the Contract Documents must also accompany the Acknowledgment of Award. All these documents should be directed to the attention of the BWL Buyer listed on the Notice to Bidders with a copy to the person designated as "BWL REPRESENTATIVE". The purchase order number must be indicated on the Acknowledgement, bonds, and certificates of insurance.

## **12. EVALUATION OF PROPOSALS**

All proposals will be sealed until the time designated on the Notice to Bidders. At the opening, the names of all BIDDERS will be made public.

To evaluate the proposals, the BWL will consider such factors as responsiveness of proposal, price, time of completion, exceptions to the Proposal Documents, financial stability, recent and past experience and similar factors in determining which proposal it deems to be in its best interest. The BWL does not herein limit the methods or factors to be used for evaluation. The intent of the evaluation process is to choose the best-evaluated proposal.

The BWL reserves the right to enter into private negotiations with the selected BIDDER(S), for further scrutiny, even though these negotiations may result in changes to the BWL specifications or to the BIDDER(S) services, price quotations, etc.

The BWL may reject any Proposal, waive irregularities or technicalities in any Proposal, and accept any Proposal in whole or in part. The BWL may cancel, in whole or in part, the entire Request for Proposal at any time prior to full execution of a contract between both parties.

## **13. QUESTIONS, MEETING OF BIDDERS, AND ADDENDA**

In the beginning of the bid preparation period, the BWL REPRESENTATIVE may notify each BIDDER of a Meeting of BIDDERS to be held at a later date, usually during the second week of the proposal preparation time. If a meeting is held, BIDDERS are required to attend the meeting to present their questions about the Proposal Documents, to receive answers to questions, to receive copies of Addenda, to participate in open discussion of the Project, and to participate in the only conducted tour of the Site. The Notice of Meeting will give complete details about the meeting and instructions regarding preparation for the meeting

Changes, revisions, and corrections that may result from the discussions that occur during the Meeting of BIDDERS will be confirmed by the issuance of an Addendum. Suggestions of topics for the Meeting agenda should be directed to the person designated on the Notice to Bidders.

## **14. CONTRACT PRICE**

The contract price shall be equal to the proposal price adjusted to any price changes as agreed upon in writing by the BIDDER and the BWL.

The contract price may be modified via a change order upon mutual agreement of both parties.

## **15. EXECUTION OF ACKNOWLEDGMENT OF AWARD**

The successful BIDDER shall, within twenty-four hours after issuance of the Purchase Order, return the properly executed Acknowledgment of Award to the person designated on the Notice to Bidders. BIDDER shall certify that the person who signs the Acknowledgment is empowered to do so. Upon execution, an agreement will be deemed consummated and the documents, as specified in the list of RFP documents set forth in Section 1 herein, along with any mutually agreed written changes, shall constitute the full and binding agreement between the parties. If the properly executed Acknowledgment, along with any required bonds and insurance certificates, are not returned within five (5) calendar days, the BWL may deem the Purchase Order rejected and offer the Purchase Order to another BIDDER without penalty.

## **16. CONFIDENTIALITY**

All complete, in-process or conceptual work are the sole property of the BWL and may not be used without the consent of the BWL. Any product used, such as, drawings and specifications, photos, campaigns, drafts, etc. are the sole property of the BWL. All BWL information will be kept confidential at all times. The BIDDER shall not disclose to others, without the written consent of the BWL, any information concerning the service provided, the organization, its personnel, or its activities, which the BIDDER may obtain as a result of, or in connection with the performance of the services.

## **17. FREEDOM OF INFORMATION ACT (FOIA)**

The BWL is subject to the Freedom of Information Act (MCL §15.231 et seq.). The BWL may be required to make available certain information submitted with your bid or proposal available to the public if requested. This information may include comparative pricing and other data which the BIDDER may normally consider to be proprietary or confidential. If the BIDDER submits any information it deems to be exempt from FOIA requirements, the BIDDER shall clearly mark it as such.

## **18. LOCAL PREFERENCE**

*Applies to bids of \$100,000 or greater only.*

Businesses with an office in the BWL service area shall be given the following advantage when the BWL receives a sealed proposal:

- (a) After the proposals are evaluated and the best-evaluated proposal is selected, the BWL shall determine whether the best-evaluated BIDDER is a Local business.
- (b) If a Local business was not selected as the best-evaluated BIDDER due entirely to its proposal price being higher than the price of the best-evaluated proposal, the BWL shall determine whether the best-evaluated Local business's proposal was within 5% of the proposal price of the best evaluated proposal. If so, this Local business shall then have the opportunity to reduce its price to match the price of the original best-evaluated BIDDER, and upon such agreement, shall be deemed the best-evaluated proposal.
- (c) If more than one Local business is within 5% of the price of the best-evaluated proposal and is otherwise equal to the best-evaluated proposal, and the Local business identified in (b) refuses to lower its proposal price, the same opportunity shall be afforded to the other qualifying Lansing-based businesses, in order of ascending price.

If no Lansing-based business agrees to the conditions described above, the contract shall be awarded to the person or business originally deemed the best-evaluated BIDDER.

## **19. SAFETY**

Unless excepted in the Proposal, and accepted by the BWL, all BIDDERS will be required to comply with the BWL's Safety Manual. All BIDDERS should read and understand the BWL Safety Manual before submitting a Proposal. The BWL Safety Manual can be found on the BWL's website, <http://www.lbw.com> by selecting first "Business Services" and then "Doing Business with BWL."

**END OF INSTRUCTIONS TO BIDDERS**

**SCOPE OF WORK**  
**Infra-red /Thermal Imaging Services**

**1. GENERAL**

The Electric Transmission & Distribution Department (T&D), of the Lansing Board of Water and Light (LBWL) is soliciting proposals for a company to assist with Thermo-Imaging on the BWL Electric Primary and secondary system, and/or substations and switch yards. Take still photo's as well as heat imaging photo's. Need 2, 2-person crews for approximately 6-8 months. Report to BWL facility, and be dispatched by BWL personnel.

BOARD OF WATER and LIGHT BACKGROUND

The Lansing Board of Water and Light was founded in 1885 and is the largest municipally owned electric utility in Michigan and among the 30 largest in the United States. An eight-member Board of Commissioners appointed by the mayor and confirmed by the Lansing City Council governs the BWL.

The Board employs approximately 725 bargaining and non-bargaining employees. The bargaining unit employees are represented by the International Brotherhood of Electrical workers (IBEW) local 352.

The Board owns and operates:

- (a) an electric system, which generates, purchases and distributes electric power and energy, and provides electric service to approximately 96,000 residential, commercial, and industrial customers in the greater Lansing, Michigan area;
- (b) water wells, a raw water transmission system, water conditioning facilities, and an extensive water distribution system serving potable water to approximately 55,000 residential, commercial, and industrial customers in the greater Lansing area;
- (c) steam generation boilers, a steam transmission and distribution system serving approximately 164 customers, and a chilled water facility and distribution piping system serving 19 customers in the city of Lansing.

The Board's total operating revenue for fiscal 2016 was \$360,935,415.

Additional BWL background and information may be viewed at [www.lbwl.com](http://www.lbwl.com).

**2. SPECIFICATIONS (MATERIALS)**

Physical Requirements: can abide by BWL safety manual always. Walking uneven terrains, work in office settings. FR clothing is required.

Mode of dependable transportation, with emergency lights, cones, and 4-way hazards.

Functional Requirements: Ability to assist in the BWL distribution system. Taking photo and heat image photos with cameras, and down load to saved files.

Also, need the ability to determine "bad" wood poles with a mode of checking.

Must have cameras, with this ability, and to recognize trouble hot spots.

**3. STATEMENT OF WORK (SERVICES)**

Work Specifications of Services: Provide complete and finished product, of Infra- red technology, and ability to read and display any "trouble hot spots".

Timeline: Must be able to provide services and cameras. Must have transportation to travel to BWL serve area.

Deliverables/ Phases: Must be able to join BWL leader 3 weeks after accepted bid.

Delivery requirements:

## **1) COMPLETE ASSIGNMENTS AS REQUIRED**

### **4. EVALUATION CRITERIA**

Proposals will be evaluated based on the following criteria:

1. Exceptions to T&C's
2. Location
3. Completeness of bid
4. Services provided
5. Demonstration of methods and documents

**PROPOSAL FORM**  
**Infra-red/Thermal Imaging Services**

**Note: This form may be completed using MS Word®**

**Provide the following business and contact information:**

Legal Name:		Federal ID or Social Security Number:
Address:		State of Incorporation
City:	State & Zip:	Primary E-Mail:
Type of Organization: <input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> LLP <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> S-Corporation <input type="checkbox"/> Other (Explain)		
Office Phone:	Alternate Office Phone:	Office Fax:
Primary Contact:	Contact Phone:	Contact Fax:
Contact Mobile:	Contact E-Mail:	Website URL:

**Provide responses to the following questions:**

How many years has your firm been in business under the present ownership?	
Have you done business with the Board of Water and Light? If so, furnish specifics.	
Have you done business with the City of Lansing? If so, furnish specifics.	
Have you ever defaulted on a contract or been involved in litigation with the Board of Water and Light or the City of Lansing? If so, furnish specifics.	
Have you ever defaulted on a contract or been involved in litigation with any other client in the past five years? If so, furnish specifics.	
List any relationships between your firm's staff and any current BWL employee.	
Specify your background, training, experience, credentials and other factors which qualify you to perform the work described in the Scope of Work included in this Request for Proposal.	
List at least three (3) references for similar work you have performed for other clients. Include Client name, contact name, title and phone number.	
List subcontractors that you plan to use on this project.	
Include any additional information you may deem helpful in evaluating your proposal.	



**PROPOSAL FORM**  
**Infra-red/Thermal Imaging Services**

Indicate any exceptions to the enclosed Terms and Conditions	Yes____or No____(✓). If YES, Contractor must provide editing on the BWL Terms and Conditions document only. Any submission of, or general references to Contractor Terms and Conditions in its entirety anywhere within the proposal will invalidate the proposal.
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**Provide pricing:**

Activity	Unit Pricing
Percentage of Discount for Early Invoice Payment	
Note: Use this form to list <b>ALL</b> applicable rates	
<p style="color: red;">Note: The BWL will reimburse all reasonable and actual non-commuting travel and living expenses incurred while the Bidder's personnel are engaged in the contracted work. Personal automobile mileage will be reimbursed at the then current IRS rate. No mark-up will be paid on T&amp;L expenses. All expenditures of \$25.00 or more require copies of receipts.</p>	

The undersigned bidder hereby acknowledges receipt of the following addenda:

					Enter addenda numbers if applicable
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The undersigned bidder states that this proposal is made in conformity with the Proposal Documents and agrees that, in the event of any discrepancies or differences between any conditions of their proposal and the Proposal Documents, the provisions of the latter shall prevail. No verbal or written agreements or understandings considered or entered into prior to signing of a contract in the form of a purchase order, shall be binding after the signing of the contract unless incorporated in the contract.

The undersigned bidder certifies that this proposal is made in good faith, without collusion or connection with any other person or persons submitting proposals for the work.

Company Name:
Signature:
Name:
Title:
Date:

**END OF PROPOSAL FORM**

**SWORN AND NOTARIZED AFFIDAVIT OF COMPLIANCE**

**IRAN ECONOMIC SANCTIONS ACT**

**Michigan Public Act No. 517 of 2012**

All bidders must submit the following certification statement in compliance with Public Act No. 517 of 2012 (the "Iran Economic Sanctions Act") and attach this form to the bid. **The Lansing Board of Water & Light shall not accept any bid that does not include this sworn and notarized certification of statement.**

The undersigned, the owner or authorized officer of \_\_\_\_\_ (the Bidder), pursuant to the compliance certification requirement provided in the Lansing Board of Water & Light Request for Proposal, hereby certifies, represents and warrants that the Bidder (including its officers, directors and employees) is not an "Iran linked business" within the meaning of the Iran Economic Sanctions Act, and that in the event the Bidder is awarded a contract as a result of the aforementioned Request for Proposal, the Bidder will not become an "Iran linked business" at any time during the course of performing the work or any services under the contract.

The Bidder further acknowledges that any person who is found to have submitted a false certification is responsible for a civil penalty of not more than \$250,000.00 or two (2) times the amount of the contract or proposed contract for which the false certification is made, whichever is greater, the cost of the Lansing Board of Water & Light's investigation, and reasonable attorney fees, in addition to the fine. Moreover, any person who submitted a false certification shall be ineligible to bid on a Request for Proposal for three (3) years from the date it is determined that the person has submitted the false certification.

BIDDER

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, \_\_\_\_\_  
My Commission Expires:  
Acting in the County of: \_\_\_\_\_

## LANSING BOARD OF WATER & LIGHT TERMS AND CONDITIONS: SERVICES

### DEFINITIONS:

The following definitions are ascribed to the terminology used in the following Terms and Conditions set forth herein:

**Acknowledgement of Purchase Order** – means the form signed and returned to the BWL by the successful Bidder/Offeror, acknowledging the award of the purchase order and deeming the Contract legally binding between the BWL and the CONTRACTOR.

**Buyer** – means the purchasing agent acting on behalf of BWL and designated on the Notice to Offerors/Bidders.

**BWL** – means the City of Lansing, by its Board of Water and Light.

**Change Order** - means the written order issued by the BWL, directing a change to the Work and/or any corresponding change to time of completion or CONTRACTOR's compensation.

**Contract Documents** – means the BWL's solicitation, including the invitation to bid (ITB) or request for proposal (RFP) or quotation, instructions to bidders/offerors, CONTRACTOR's response to the solicitation, the specifications, any addenda or supplements including Change Orders, the purchase order, these Terms and Conditions, and Supplemental Requirements. The final versions of the Contract Documents, taken as a whole, constitute the sole and final agreement between the parties (Contract), which can only be modified by a written document properly executed by both parties.

**CONTRACTOR** – means the individual, partnership, corporation or other entity awarded a purchase order by the BWL, and its subcontractors, performing the Work outlined in the Contract Documents.

**Litigation Expense** - means any court filing fee, court cost, arbitration fee or cost, witness fee, and all other fees and costs of investigating and defending or asserting any claim for indemnification under this Agreement, including without limitation, in each case, attorneys' fees, other professionals fees and disbursements

**Loss** - means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge, other than litigation expense.

**Day**– means any calendar day.

**Work** – means the service or the various separately identifiable parts required to be furnished, completed in its entirety as outlined in the Contract Documents. Work includes and is the result of performing services, furnishing labor and documents, and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

### 1. ACKNOWLEDGEMENT OF PURCHASE ORDER

CONTRACTOR shall complete and return the BWL Acknowledgement Form in accordance with its terms and conditions set forth. The signed and returned *BWL Acknowledgement of Purchase Order* constitutes an acceptance of a Contract between the CONTRACTOR and the BWL.

### 2. INDEPENDENT CONTRACTOR

Nothing herein shall be construed to make CONTRACTOR an agent or employee of the BWL for any purpose. CONTRACTOR shall in all respects be an independent contractor of the BWL in its performance of the Services. CONTRACTOR and its employees and subcontractors shall in no way represent themselves to third parties as agents or employees of the BWL in performance of the Services.

CONTRACTOR will have full responsibility in determining labor relation policies, wage rates, and fringe benefits with respect to its employees. CONTRACTOR will have full responsibility for compliance with all laws regulating pension plans, welfare plans, fringe benefits, wages or other compensation and any other matters relating to its employees. CONTRACTOR shall bear sole responsibility for any health or disability insurance, retirement

benefits or other welfare or pension benefits (if any) that CONTRACTOR provides or is legislatively mandated to provide its employees, as its employees (including responsibility for compliance or mandates, including fines, taxes and penalties, required by the Patient Protection and Affordable Care Act with respect to its employees. In order to avoid any possible claim, lien or assignment against BWL regarding CONTRACTOR's obligations under this Section, BWL may require the CONTRACTOR to provide proof of such compliance in a form or manner as BWL may request.

CONTRACTOR, at its own cost and expense, will at all times maintain insurance coverages in the minimum amounts specified herein, to protect the BWL and CONTRACTOR from claims for injury or death to persons or damage to property that may in any way arise from or be occasioned by the performance of Services. CONTRACTOR is responsible for consulting with its own insurance advisors to ensure that it has adequate insurance coverage to meet the obligations of this Agreement and its business operation. BWL reserves the right to require different or additional coverage as it determines necessary from time to time. CONTRACTOR will furnish certificates, policies, and related documentation for all such insurance to the BWL before commencing the Services and as reasonably requested by BWL from time to time, within ten (10) days of BWL's written request for the certificates, policies and/or related documentation.

### **3. COMPLIANCE WITH LAWS**

In performing these services, CONTRACTOR shall comply with all applicable laws, rules, and regulations, including but not limited to, the Michigan Workers' Compensation Act, federal and state tax laws, and the City of Lansing's Ethics Ordinance. CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE OR WORKERS' COMPENSATION BENEFITS. CONTRACTOR IS SOLELY LIABLE FOR ANY FEDERAL AND STATE INCOME AND WITHHOLDING TAXES, UNEMPLOYMENT TAXES, FICA TAXES AND WORKERS' COMPENSATION PAYMENTS AND PREMIUMS APPLICABLE TO THIS AGREEMENT OR ANY SERVICES PROVIDED. CONTRACTOR SHALL INDEMNIFY THE BWL FOR ANY LIABILITY RESULTING FROM NONPAYMENT OF SUCH TAXES AND SUMS.

CONTRACTOR certifies that it has complied, and will continue to comply during the term of this agreement with the Immigration Reform and Control Act of 1986. The BWL is exempt from state sales tax and federal excise tax, unless otherwise indicated in the bid or proposal documents. Federal ID# 38-6005774.

### **4. INSURANCE**

- (a) At its own expense, CONTRACTOR shall acquire and maintain in effect for the term of the Contract and/or any Contract extension, insurance providing the following coverage:
  - (i) Commercial General Liability Insurance on an occurrence basis. This coverage shall include Personal Injury, Contractual Liability, and Products/Completed Operations insurance. The limit of liability shall be at least \$1,000,000 combined single limit for bodily injury and property damage. There shall be no exclusion for work within any distance of railroad property. There shall be coverage for explosion, collapse, and underground hazards (x, c, & u coverage).
  - (ii) Automobile liability insurance that complies with the requirements of the Michigan No-fault law, MCL 500.3101, with residual liability limit of at least \$1,000,000 combined single limit for bodily injury and property damage. There shall be coverage for owned, hired, and non-owned vehicles.
  - (iii) Network Security & Privacy (Cyber) Insurance with an aggregate limit of liability not less than \$1,000,000. Such insurance shall include coverage for claims and losses with respect to network security & privacy risks including data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, forensic & notification costs, etc. The retroactive coverage date shall be no later than the EFFECTIVE DATE of this agreement. Contractor shall maintain an extended reporting period providing that claims first made and reported to the insurance company within two (2) years after termination of the AGREEMENT will be deemed to have been made during the policy period.
  - (iv) Worker's compensation insurance as required by Michigan law, MCL 500.2301;
  - (v) Professional Liability Insurance in an amount not less than \$1,000,000; and
  - (vi) Employment Practices Liability Insurance, with 3rd party extension coverage, for not less than \$1,000,000 per claim (Claims made policy form).

- (b) CONTRACTOR shall purchase insurance from companies meeting acceptable standards of the BWL. Generally, a company rated A- or better by A.M. Best and domiciled in the United States will be acceptable to the BWL. The A.M. Best website can be found at: <http://www.ambest.com>.
- (c) CONTRACTOR shall ensure that coverage will not be canceled nor any changes made, at any given time during the term of the Contract, which alters, restricts or reduces the insurance provided or changes the name of the insured, without first giving thirty (30) days notice in writing to the Corporate Secretary, BWL, 1201 S. Washington Ave., P.O. Box 13007, Lansing, Michigan 48910-1650.
- (d) CONTRACTOR shall name the "City of Lansing, by its Board of Water and Light, its employees, Board Members, and officers" as additional insureds on all liability coverages other than workers compensation and professional liability.
- (e) The coverage granted to the BWL as an additional insured shall apply on a primary basis. The BWL's coverage shall be excess.
- (f) Deductibles and retentions shall be clearly stated on any certificate of insurance and shall be the responsibility of CONTRACTOR and not the BWL.
- (g) If liability policies do not contain the ISO separation of insureds provision, the policies shall be endorsed to provide cross-liability coverage.
- (h) Neither the issuance of any insurance policy required by this provision, nor the minimum limits specified with respect to any insurance coverage, shall be deemed to limit or restrict in any way the liability of CONTRACTOR or its subcontractors arising under or out of this Contract.
- (i) **BEFORE PERFORMING ANY WORK**, CONTRACTOR shall provide copies of the applicable insurance certificates to the person designated in the Notice to Offerors/Bidders with a copy to ENGINEER. CONTRACTOR SHALL ENSURE THAT THE COVERAGE will not be canceled nor any changes made, which alters, restricts or reduces the insurance provided or changes the name of the insured, without first giving thirty (30) days notice in writing to the Corporate Secretary, BWL, 1201 S. Washington Ave., P.O. Box 13007, Lansing, Michigan 48910-1650, as evidenced by the BWL's receipt of a letter to that effect. **ANY WORK PERFORMED PRIOR TO PRESENTMENT OF AN ACCEPTABLE INSURANCE CERTIFICATE MAY NOT BE COMPENSABLE. CONTRACTOR PERFORMS WORK PRIOR TO THE PRESENTMENT OF ACCEPTABLE INSURANCE CERTIFICATE AT THEIR OWN RISK.**
- (j) CONTRACTOR waives all rights against the City of Lansing, by its Board of Water and Light, its employees, Board Members, and officers for recovery of damages and expenses to the extent that these damages and expenses are covered by any of CONTRACTOR'S insurance coverages.

## 5. NONDISCRIMINATION

CONTRACTOR agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant may be considered a material breach of contract.

## 6. GOVERNING LAW

This agreement is construed in accordance with Michigan law, without regard to conflict of laws provisions, and venue is in Ingham County, Michigan.

## 7. INDEMNITY

CONTRACTOR shall, to the fullest extent permitted by law, indemnify and hold harmless the BWL and the City of Lansing, and their officers, agents, and employees harmless from and against all losses and litigation expenses arising out of or resulting from the performance of work hereunder and caused, in whole or part, by any act or omission of CONTRACTOR. The BWL shall further be entitled to all cost (which include both internal and external) incurred in the process of enforcing this or any other provision under this Agreement.

## **8. CONFIDENTIALITY OF INFORMATION AND COMPUTER SECURITY**

CONTRACTOR will retain in strictest confidence all information furnished by the BWL and the results of any investigation, reports or studies conducted as a result of this agreement, along with all supporting work papers and any other substantiating documents. CONTRACTOR will not disclose such information to others without the prior written consent of the BWL, or as may be required by law. The BWL may in a contemporaneous writing agree to retain information supplied by the CONTRACTOR in confidence, to the extent it doesn't conflict or prevent the BWL from adhering to its disclosure obligations under the Freedom of Information Act (FOIA). In the interest of a conflict between the language in this provision and such contemporaneous writing, this provision shall prevail.

CONTRACTOR acknowledges that he, she or an employee of CONTRACTOR may use the BWL's computer or telecommunication resources to fulfill the terms of this Agreement. CONTRACTOR agrees that he, she or any of CONTRACTOR's employees who are required to use such resources will abide by the BWL's policies and guidelines governing the use of these resources.

Further, to the extent the BWL provides the Contractor data, information and/or equipment, CONTRACTOR agrees not to alter, manipulate, damage or use such data, information and/or equipment in a manner that is inconsistent with the BWL's permitted use.

## **9. SITE SECURITY AND SAFETY COMPLIANCE**

While on BWL property, CONTRACTOR, its agents, employees or subcontractors shall conform in all respects with all BWL physical, fire, or other security policies or regulations. In addition, in performing all services pursuant to this agreement, CONTRACTOR agrees to comply with all federal, state, local, and BWL safety rules and regulations ([www.lbw.com/SafMan/default.htm](http://www.lbw.com/SafMan/default.htm)), including MIOSHA "Right to Know" obligations, MCL 408.1001 et seq.

Additionally, CONTRACTOR acknowledges that BWL property is an industrial environment with certain inherent hazards. As such, CONTRACTOR and its respective SUBCONTRACTORS enters upon BWL property at its own risk and waives any and all liability associated with injuries sustained on BWL property.

## **10. SUBCONTRACTORS AND VENDORS**

The CONTRACTOR is responsible for the actions and activities of its respective SUBCONTRACTORS. The BWL has the right to review and reject any SUBCONTRACTOR or VENDOR which does not meet the BWL's requirements. As such, within fourteen (14) days of Acknowledgement of Purchase Order, but not later than the start of Work, CONTRACTOR must present the BWL with a final list of all vendors and subcontractors they intend to utilize. Included in that list should be what materials and/or services will be provided by the respective SUBCONTRACTOR and/or Vendor. The CONTRACTOR must also provide additional information as needed which is sufficient to support that the vendor or subcontractor has the necessary facilities, experience, and financial resources to perform the Work within the terms of the Contract Documents. After receiving the information, the BWL will notify CONTRACTOR within seven (7) days if any vendor or subcontractor is unacceptable to the BWL and the reasons therefore. If a subcontractor is deemed unacceptable by the BWL, CONTRACTOR may submit another subcontractor for approval or advise the BWL that it intends to do the Work itself. The following conditions apply to subcontractors:

- (a) CONTRACTOR shall not employ any subcontractor without the BWL's consent. CONTRACTOR acknowledges that the BWL may deny a CONTRACTOR's request to subcontract certain portions of the Work.
- (b) If CONTRACTOR submitted a preliminary list of subcontractors and vendors in its bid or proposal and the final list of subcontractors and vendors increases or decreases Contract price shall be increased or diminished by the difference in cost occasioned by such change. There shall be no increase in Contract price if the BWL rejects a proposed subcontractor submitted after the purchase order is issued.
- (c) The BWL's approval of any subcontractor shall not relieve CONTRACTOR of any responsibilities or liabilities. The CONTRACTOR agrees that it is as fully responsible to the BWL for the acts and omissions of its subcontractors and of all persons either directly or indirectly employed by the subcontractor, as it is for the acts and omissions of persons directly employed by CONTRACTOR.

- (d) Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and the BWL.
- (e) In its contract with any subcontractor, CONTRACTOR shall require, at a minimum: 1.) subcontractor to carry insurance coverage similar to that listed in Article 4; 2.) a warranty substantially similar to Article 20 for materials and services provided by the subcontractor in favor of the BWL; 3.) the requirement that the subcontractor meet all federal, state, and BWL safety rules and regulations in accordance with Article 9; and 4.) a clause prohibiting discrimination in accordance with Article 5.

#### **11. QUALITY OF SERVICES**

CONTRACTOR shall perform all services pursuant to this contract:

- (a) In a manner meeting or exceeding the professional standard in the industry or other standard set forth in the Contract, whichever is more stringent;
- (b) Using adequate numbers of qualified individuals with suitable training, experience, education, and skill;
- (c) In the most cost effective manner possible consistent with the required level of quality and performance; and
- (d) Without infringing the proprietary rights of any third party.

#### **12. PROGRESS AND TIME OF COMPLETION**

The CONTRACTOR must complete all services in accordance with the time stated in the contract. The CONTRACTOR must perform services at such times and in such a manner to ensure timely completion. If requested by the BWL, immediately after award and acceptance, CONTRACTOR shall prepare a schedule depicting the timing of service completion. The BWL's representative must approve this schedule before any services are performed. If requested by the BWL, on the first day of each month during the delivery of services, the CONTRACTOR must submit to the BWL's representative a progress report depicting actual progress in relation to estimated progress.

#### **13. OWNERSHIP OF WORK PRODUCT**

All work product of CONTRACTOR that results from this agreement is the exclusive property of the BWL. CONTRACTOR and the BWL intend that such work product be deemed "work for hire" of which the BWL shall be deemed the author. If for any reason the work product is not deemed "work for hire," CONTRACTOR irrevocably assigns to the BWL all its right, title, and interest in and to any and all of the work product, whether arising from copyright, patent, trademark, or any other state or federal intellectual property law or doctrine. Upon request, CONTRACTOR shall execute such further documents and instruments required to fully vest such rights in the BWL.

#### **14. CONTRACTOR RESPONSIBILITY**

The BWL shall not oversee the work of the Contractor or instruct the Contractor on how to perform the Services. Contractor shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all studies, reports and other Services rendered. Contractor is responsible for providing his or her own training and tools for performance of the Services. Without additional compensation, and without limiting the BWL's remedies, Contractor shall promptly remedy and correct any errors, omissions or other deficiencies in the Services.

To the extent required by the Purchase Order or other Contractual documents that the Contractor is required to provide professional engineering services and Contractor is not qualified to perform professional engineering in the State of Michigan, all of the services required to be performed by engineers qualified and registered to practice professional engineering in the State of Michigan shall be subcontracted to persons or firms so qualified and registered.

## **15. TERMINATION**

The BWL retains the exclusive right to terminate all or any portion of the services by giving fourteen (14) days written notice to CONTRACTOR. If the project is terminated, the BWL will pay CONTRACTOR equitably for all services properly performed pursuant to this agreement.

## **16. ASSIGNMENT**

Neither this agreement, nor any claim arising under this agreement, shall be transferred or assigned by the CONTRACTOR without the BWL's express written consent.

## **17. FORCE MAJEURE**

Neither the BWL nor CONTRACTOR shall be held responsible for any delay or default caused by fire, act of God, riot, terrorist act, war, or flood where such cause was beyond the delaying or defaulting party's reasonable control. However, CONTRACTOR shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance or its obligation under this agreement.

## **18. RIGHT TO AUDIT RECORDS AND INSPECT PLANTS**

The BWL may, at reasonable times, inspect the part of the plant, place of business or worksite of a CONTRACTOR or subcontractor, which is pertinent to the performance of any contract awarded or to be awarded by the BWL. The BWL shall be entitled to audit the books and records of a CONTRACTOR or subcontractor under any BWL contract or subcontract to the extent that such books, documents, papers and records are pertinent to the performance of such contract or subcontract. The CONTRACTOR shall maintain such books and records for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

## **19. CHANGES IN SERVICES AND CLAIMS FOR EXTRAS**

The BWL shall have the right to order additions, deletions or changes in the services at any time, so long as such changes are within the general scope of work covered by this contract. All requests for material changes in the services must be made in writing (Change Order). If the BWL approves and directs CONTRACTOR to proceed with a material change, CONTRACTOR shall be paid for the change as agreed to by the parties. Claims for extras or services not specifically described in the RFP, CONTRACTOR'S proposal or addendums, and not approved in writing by the BWL's representative before they were performed, will not be honored. If CONTRACTOR expects additional compensation for a change or extra, the additional compensation must have been approved in writing before it was incurred.

## **20. RISK OF LOSS**

CONTRACTOR is responsible for all risk of loss to materials furnished by, and Work provided by, CONTRACTOR or its Sub-contractors until final completion of the Work or earlier if agreed mutually in writing with the BWL's designated representative. CONTRACTOR is also responsible for all risk of loss to materials and Work provided by the BWL or any other contractor which are to be included in CONTRACTOR's Work or materials and which have been made available to CONTRACTOR.

## **21. WARRANTY**

For a period of one (1) year after completion of the Work, CONTRACTOR guarantees:

- (a) All materials and Work against:
  - (i) Defects due to poor selection of material;
  - (ii) Defects due to poor material; and
  - (iii) Defects due to poor workmanship.
- (b) Performance shall be in accordance with the specifications or as otherwise specified in the Contract Documents.



In the event the Work fails to comply with or meet the warranty, the CONTRACTOR shall proceed at its own expense to rectify faulty material, workmanship or faulty performance and, if CONTRACTOR fails to do so, the BWL may rectify the error at CONTRACTOR's expense. CONTRACTOR is responsible for all shipping/transportation costs and "in and out" costs incurred to meet this warranty.

**22. MATERIALS FURNISHED BY CONTRACTOR**

- (a) All materials furnished for the Work shall be new and from a reputable manufacturer currently engaged in the production of like materials. Any coatings will be lead-free.
- (b) The CONTRACTOR shall arrange and pay all charges for the proper delivery, receipt, rigging, unloading, and storage of all material needed. CONTRACTOR must supply a sufficient number of individuals to promptly unload and store materials. BWL must approve, in advance, any on-site storage of materials. CONTRACTOR continues to bear all responsibility for care, custody, control and protection of the material after unloading.
- (c) The CONTRACTOR is responsible for notifying the BWL when any material is ready for shipment. Before arranging for any shipment, CONTRACTOR must ensure that the delivery will not cause undue blocking at the delivery site. BWL must receive notice of shipments at least 48 hours before arrival at the site.
- (d) If requested by BWL, CONTRACTOR shall furnish copies of bills of lading, shipping manifests, and other papers showing shipment of materials and/or reports of their receipt.

**23. PAYMENT**

BWL shall pay all undisputed invoices within net sixty (60) days of receipt of invoice.

**24. DEFAULT**

If either party fails or refuses to substantially perform according to the terms of this Contract, that party shall be declared to be in default by the other party by a written notice and shall be given an opportunity to perform in accordance with the notice. If the default has not been corrected or meaningfully begun to be corrected within the time specified in the notice, or the defaulting party has ceased to pursue the correction with due diligence, the party declaring default may elect to (a) terminate the agreement and seek damages, or (b) treat the agreement as continuing and require specific performance, or (c) avail itself of any other remedy at law or equity.

**25. INTELLECTUAL PROPERTY RIGHTS**

**NO RIGHTS IN COPYRIGHT, PATENTS, TRADEMARKS, TRADE SECRETS, OR OTHER INTELLECTUAL PROPERTY ARE GRANTED TO CONTRACTOR AND/OR SUBCONTRACTOR EXCEPT AS EXPRESSLY PROVIDED UNDER THESE TERMS. CONTRACTOR AND/OR SUBCONTRACTOR WILL NOT REGISTER OR USE ANY MARK AND/OR INTERNET DOMAIN NAME THAT CONTAINS ANY BWL INTELLECUTAL PROPERTY.**

**END OF TERMS AND CONDITIONS**