

PURCHASE OF WATER TREATMENT MEMBRANE MODULES



SARATOGA COUNTY WATER AUTHORITY

260 Butler Road
Gansevoort, NY 12831

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Ed Hernandez, P.E., Executive Director

January 2021

NOTICE TO BIDDERS

This sheet is to be filled out in connection with the bid specification for WATER TREATMENT MEMBRANE MODULES.

The specification is comprised of 5 sections.

- | | | | |
|----|--------------------------|-------|--------|
| 1. | Notice to Bidders | Pages | 3 - 5 |
| 2. | Bid Sheets | Pages | 6 - 10 |
| 3. | Standard Conditions | Pages | 11-15 |
| 4. | Technical Specifications | Pages | 16-20 |
| 5. | Agreement | Pages | 21-30 |

I, _____, have received a complete specification according to the above information
(Company or Firm)

_____ Printed Name

_____ Signature

_____ Official Title

_____ Address

_____ City, State, Zip Code

_____ Telephone

This sheet must be submitted with your bid sheet.

LEGAL NOTICE

SARATOGA COUNTY WATER AUTHORITY NOTICE TO PROSPECTIVE BIDDERS

The Saratoga County Water Authority is soliciting sealed bids for the goods and services described in these specifications.

GENERAL DESCRIPTION: WATER TREATMENT MEMBRANE MODULES

BID SUBMISSION DEADLINE: January 19, 2021; 12 noon

BID OPENING: January 19, 2021; 1:30 pm

SUBMIT BIDS VIA EMAIL TO: cs@saratogacountywaterauthority.com
Saratoga County Water Authority
260 Butler Road
Gansevoort, NY 12831
(The email must contain the name of the bidder with return address and the contract title.)

BID DOCUMENTS: Available for download at www.saratogacountywaterauthority.com or by calling (518)761-2058.

BID DEPOSIT: No Deposit Required.

BOND REQUIREMENT: A performance bond is NOT required.

FOR MORE INFORMATION: Ed Hernandez, P.E.
Executive Director
(518) 761-2058

NOTICE TO BIDDERS

Pursuant to the provisions of Section 103 of General Municipal Law, sealed proposals will be received by the SCWA at the aforesaid address for furnishing the Item(s) listed in this proposal. When submitting a bid, you must.

1. Prepare your bid on this form using black ink or typewriter. Write the name of your company on each page of the bid, in the space provided.
2. If your bid deviates from the specifications, indicate such fact by marking "X" alongside the amount bid for each item in the price column. Explain such deviations or qualifications; if necessary, attach a separate sheet setting forth such explanation. The SCWA reserves the right to determine if a bid is unresponsive. The SCWA will not make any determinations of item equivalency prior to the bid submission date.
3. Sign the bid. By signing, you indicate full knowledge and acceptance of the General Specification and other requirements of the Bid Proposal. The bid must be completed in the name of the bidder, corporate or other, and must be fully and properly executed by an authorized person.
4. Record the required information on the envelope containing the sealed bid.
5. Mail the bid promptly in order for it to be received before the time of the bid opening. Late bids will be rejected. If you wish to remain on the SCWA's bidder's list, it is important that you answer this proposal. Failure to respond to three successive proposals may result in your name being removed from the mailing list for this commodity group. It is also requested that you indicate your reason for not bidding.
6. No Bid Deposit Required.
7. Each Bidder should visit the site of the proposed work and fully acquaint himself with the existing conditions, there relating to construction and labor, and should fully inform himself as to the facilities involved, the difficulties and restrictions attending the performance of the Contract. Bidder should thoroughly examine and familiarize himself with the equipment, Technical Specifications, and Contract Documents. Contractor, by execution of Contract, shall in no way be relieved of any obligation under it, due to failure to receive or examine any form or legal instrument or to visit Site and acquaint himself with conditions there existing. SCWA will be justified in rejecting any claim based on facts regarding which; Contractor should have been on notice as a result thereof.
8. SCWA will award the contract to the lowest responsible bidder unless, at SCWA's sole discretion, it chooses to award the contract on the basis of "best value", in which case SCWA will take into consideration the quality of product, product

compatibility with SCWA's system and the product's anticipated useful life

9. The SCWA reserves the right to reject any or all proposals, and may advertise for new proposals, if in its opinion the best interests of the SCWA will thereby be promoted. The bidder must be prepared if requested by the SCWA to present evidence of experience, ability and financial standing, as well as a statement as to plant and machinery.
10. For materials and supplies separately sold to the SCWA for incorporation into work under this Contract, the SCWA is exempt from all sales tax and compensating use tax of the State of New York. The purchase by the Contractor or by subcontractors of materials for incorporation into the work under this Contract will be a purchase or procurement for resale to the SCWA and therefore not subject to the aforementioned sales compensating use tax.
11. The Contractor shall, upon request by the SCWA, furnish a bill of sale or other instrument indicating the quantities and types of materials purchased directly by the Contractor or subcontractors for incorporation into the work under this Contract. Upon delivery of all materials to the site, the Contractor shall mark or otherwise identify all materials to be incorporated into the work under this Contract. Only those materials so identified will be under this Contract. Only those materials so identified will be exempt from sales or compensating use tax under this specification.
12. This exemption does not apply to machinery, equipment, tools or other items purchased, leased, rented or otherwise acquired for use of the Contractor, even though said equipment is used either entirely or in part on this Contract. This exemption shall apply only to materials fully incorporated into the work under this Contract as accepted and approved by the Commissioner.

BID PROPOSAL
SARATOGA COUNTY WATER AUTHORITY
260 Butler Road
Gansevoort, NY 12831

DATED: _____

GENERAL DESCRIPTION: WATER TREATMENT MEMBRANE MODULES – Provide replacement UNA-620A replacement modules for the existing seven (7) Pall microfiltration racks at the Saratoga County Water Authority. Each rack is equipped with 92 modules. The bids shall include a minimum purchase of sufficient modules to complete three (3) racks over the next three (3) years and option to complete up to all seven (7) racks. This procurement is for materials only.

CONTRACT PERIOD: Duration of three (3) years from the effective date of the contract.

BID OPENING:

DATE: January 19, 2021
LOCATION: 260 Butler Road, Gansevoort, NY 12831
TIME: 1:30 pm
INQUIRE WITH: Ed Hernandez, P.E., Executive Director
260 Butler Road, Gansevoort, NY 12831

BIDDERS NAME: _____

EMPLOYER'S FEDERAL IDENTIFICATION NUMBER: _____

ADDRESS:

Street _____
City _____
County _____
State _____
Zip Code _____

Does any state officer or any officer or employee of the Saratoga County Water Authority have any affiliation or interest in this bid proposal? If so, set forth the name, address, nature and extent of the affiliation or interest of an officer/employee.

Bidders Signature _____

Official Title _____

Printed or Typed Copy of Signature _____

Telephone Number _____

**SARATOGA COUNTY WATER AUTHORITY
WATER TREATMENT MEMBRANE MODULES**

BID SHEET

Bidder Name: _____

The Total Bid listed on this sheet shall include all costs associated with the purchase and delivery to the SCWA Water Treatment Plant, 260 Butler Road, Gansevoort, New York, 12831.

1	2	3	4	5
Year	Delivery Item	Delivery Qty	Unit Price	Estimated Cost (3 X 4)
1	Modules	70		
2	Modules	92		
3	Modules	92		
1 - 3	Modules	368 (Optional)		
1 - 3	Module Ancillary Parts (Per Rack)	7 Packages (Package Includes: 184 - Module O-Rings 9 - XR Gaskets 9 - 2" clamps, lower 9 - Clear Coupling Assy 1 - Gallon Lubricant)		
TOTAL COST				

The SCWA shall have the option of purchasing up to all 622 modules in Year 1. Delivery shall be within 60 days of order placement. SCWA will pay actual shipping costs in addition to unit prices listed above. Proof of costs shall be provided. Damage during shipping shall be the responsibility of the supplier. Supplier shall, at a minimum, warranty modules at total replacement costs for the first 3 years, then at a pro-rated rate the remaining seven (7) years.

Estimated Total Cost in Words: _____

STANDARD CONDITIONS

SECTION 1. POLICY STATEMENT

The SCWA is a public benefit corporation. These standard conditions and the accompanying technical specifications are part of the contract between SCWA and the successful bidder.

SECTION 2. TAX PROVISIONS

Purchases made by the SCWA are not subject to state or local taxes or federal excise taxes. There is no exemption from paying the New York State truck mileage, unemployment insurance, or Federal Social Security taxes. The official SCWA purchase order or voucher for materials, equipment and supplies is sufficient evidence to qualify the transaction exempt from sales tax under Section 116(a)(1) of the Tax Law.

For tax free transactions, the SCWA registration number is: Federal Tax Exemption #14-1735681.

SECTION 3. NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this bid, each bidder (the terms "bidder" and "Contractor" are used interchangeably throughout) and each person signing on behalf of any bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

- 1) The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and
- 2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor, and
- 3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

NOTE: Section 103-d of the General Municipal Law provides that every bid made to the SCWA where competitive bidding is required by statute, rule regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the foregoing statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury.

A bid shall not be considered for award nor shall any award be made where (1), (2) and (3) above have not been complied with; provided however, that if any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (1), (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the SCWA, public department or agency to which the bid is made, or his/her designee, determines that such disclosure was not made for the purpose of restricting completion.

The fact that a bidder has published price lists, rates or tariffs covering items being procured, has informed prospective customers or proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same prices being bid; does not constitute, without more, a disclosure within the meaning of paragraphs (1), (2) and (3) above.

Any bid hereafter made to the SCWA by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule or regulation,

and where such bid contains the certification set forth above shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

SECTION 4. ADHERENCE TO SPECIFICATIONS

The entire bid is understood to be in accordance with the specification and this proposal, unless the bidder explains otherwise in detail. The SCWA reserves the right to request clarification and additional information where deemed necessary.

SECTION 5. INTERNATIONAL BOYCOTT

In accordance with Section 200-f of the Labor Law, the Contractor agrees, as a material condition of the contract:

- a) That neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in any international boycott in violation of the provisions of the United States Export Administration Act of 1969, as amended, or the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder:
- b) That if the Contractor or any substantial owner or affiliated person, firm, partnership or corporation has been convicted or subjected to a final determination by the United States Department of Commerce or any other appropriate agency of the United States of a violation of the United States Export Administration Act of 1969, as amended, or the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder, the Contractor shall notify the Comptroller of such conviction or determination in the manner prescribed by the Comptroller's regulations.

SECTION 6. POLICY TO ENCOURAGE THE UTILIZATION OF M/WBES

- 1. Contractor represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:
 - a) Contractor shall (i) not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities, and (iii) make and document its conscientious and active efforts to employ and utilize M/WBES, Minority Group Members and women in its workforce on contracts. Such action shall be taken with reference to, but not limited to, solicitations or advertisements for employment, recruitment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
 - b) If requested, Contractor shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

2. Contractor is encouraged to include minorities and women in any job opportunities created by the Project; and to solicit and utilize M/WBE firms for any contractual opportunities generated in connection with the Project.
3. Contractor represents and warrants that, for the duration of the Agreement, it shall furnish all information and reports required by the Authority and shall permit access to its books and records by the Authority, or its designee, for the purpose of ascertaining compliance with provisions hereof.
4. Failure to comply with the terms and conditions of the Non-Discrimination and Affirmative Action Program set forth herein shall constitute and event of default.

SECTION 7. QUALIFICATIONS OF BIDDERS

The SCWA reserves the right to reject any bids where qualifications, financial standing, equipment, personnel or facilities of the bidder or any subcontractor are not satisfactory.

- a) No contract will be awarded except to responsible bidders capable of performing the class of work contemplated. Before the award of contract, any bidder is required to show that he has the necessary facilities, experience, ability, and financial resources to perform the work in a satisfactory manner and within the time stipulated. If the contract contains items for material or work the character of which will depend upon the contractor's skill or experience, he is required to show proof that he has a satisfactory record of similar work performed of materials furnished. Bidders will be required to furnish the SCWA with sworn statements as to their experience.

SECTION 8. HOURS AND WAGES

Not applicable.

SECTION 9. DECISION OF THE SCWA

In any event, the decision of the SCWA, regarding the qualifications of bidders or subcontractors to accomplish the contract shall be final.

SECTION 10. BOND REQUIREMENT

The SCWA does not require a Performance Bond for this project.

SECTION 11. EQUIVALENCE

This bid specifications as set forth are intended to be descriptive and the SCWA will consider bids from any vendor who can meet or exceed the specifications listed in the bid proposal as they relate to quality durability and performance. Deviations will not disqualify a bid where deviations are minor and do not affect quality, durability or performance. Any such deviations from bid specifications must be explained on the vendor's bid submissions. The SCWA's decision will be final in any case where a product is to be considered as equal to the specifications.

SECTION 12. SILENCE OF SPECIFICATION

The apparent silence of this specification and any supplemental specification as to the details or the omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that only materials of first quality and correct type, size and design are to be used. All workmanship is to be first quality. All interpretations of these specifications shall be made upon the basis of this statement.

SECTION 13. AWARDING THE CONTRACT

The SCWA reserves the right not to award a contract.

SECTION 14. INVOICE PROCEDURES

Upon acceptance and delivery to the Saratoga County Water Authority Water Plant, an invoice and SCWA voucher shall be delivered or mailed in duplicate to the Saratoga County Water Authority, 260 Butler Road, Gansevoort, NY, 12831.

MEMBRANE MODULES

TECHNICAL SPECIFICATIONS

GENERAL:

Furnish and deliver to the Saratoga County Water Authority Water Plant, 260 Butler Road, Gansevoort, NY, 12831.

DELIVERY:

Delivery of the product shall be coordinated with the Saratoga County Water Authority Water Plant (518-761-2058) 24 hours in advance of shipment. Vendor must have the capabilities to deliver product within sixty (60) days under normal conditions and fourteen (14) days during an emergency for individual modules. Vendors are encouraged to visit the water treatment plant and determine the requirements for delivery.

PRODUCT SPECIFICATIONS:

Membrane Modules shall meet the following specifications:

1. Product must conform to any AWWA/ANSI Standards for use in potable water.
2. Products shall be compatible with the existing SCWA Pall Membrane system with Microza UNA-620A hollow fiber modules. Membranes are PVDF in ABS housings with Polyurethane potting material. Gaskets are Silicone.
 - a. The module shall be 0.1 micron rated, homogenous, high-crystalline PVDF (Polyvinylidene fluoride) that support high and stable flux rates. Filtrate shall exit the module through only the top end of the lumen.
 - b. Membrane Hollow fibers manufactured by a Non-Solvent Induced Phase Separation (NIPS) process or by a hybrid process (NIPS and TIPS) will not be accepted
 - c. Module housing material to be Acrylonitrile butadiene styrene (ABS) or approved equal and be pressure rated to 60 psi.
 - d. Potting Material to be polyurethane. Potting to be applied via "centrifugal potting". "Static-potting" will not be accepted.
3. Membrane area is 538 cubic feet, module length is 93 inches, module diameter is 6.5 inches.
4. Manufacturer shall have a minimum of 10 years' experience supplying modules for potable water use and shall have a minimum of twenty (20) facilities of at least 5 MGD in operation in the United States using the same module that is being proposed for this tender. Bidder shall have at least three facilities in the United States with a design capacity of 14MGD All bidders to provide these references with bid.
5. Proposed "Or Equal" items shall be required to provide detailed breakdown material components, and samples for testing.

VENDOR QUALIFICATIONS

1. Bidder/manufacturer shall be a US based firm with US sales in excess of \$50 million USD.
2. Bidder/manufacturer shall have dedicated service, process, programming, and project management teams. Organization charts to be provided with bid.

- a. Dedicated service group to have a minimum of 3 field service technicians within a 4-hour drive of Gansevoort, NY.
 - b. Vendor shall have ability to be on-site within 24 hours for emergency visits should the need arise.
3. Bidder shall be US Entity with ISO9001 Certification.

SARATOGA COUNTY WATER AUTHORITY
UNIFORM CHEMICAL PURCHASE CONTRACT

AGREEMENT made on _____, 2021 between the _____ (the "Seller"), having its principal place of business at _____, and the Saratoga County Water Authority (the "Buyer"), having a mailing address of 260 Butler Road, Gansevoort, NY 12831, and a physical address at 260 Butler Road, Gansevoort, NY 12831.

1. **SALE.**

Seller shall sell to Buyer and Buyer shall purchase from Seller the following (hereinafter collectively referred to as the "Product" or "Products"):

2. **PRICES.**

Seller's price shall not be higher than the amount set forth in the bid proposal submitted by Buyer for competitive bidding unless otherwise agreed by Buyer in writing.

3. **QUANTITIES.**

Shipments must equal exact amounts ordered and per the bid between the parties unless otherwise agreed by Buyer in writing.

4. **DELIVERY.**

All shipments shall be made to Buyer's plant/facilities ("physical address") at the specific location within the facility to be designated by Buyer, having a mailing address of 260 Butler Road, Gansevoort, NY 12831. As such, all products sold hereunder shall be sold and billed to the Purchaser as delivered to the SCWA water plant. Buyer agrees to abide by any notice or other security requirements and/or rules or regulations to be imposed by Buyer as a result of the increased need for security at Buyer's facility.

5. **TIME FOR DELIVERY.**

The Buyer's production schedules are based upon the agreement that materials will be delivered to the Buyer by the date specified on the face of any applicable purchase order. Time is therefore of the essence for any purchase order. If deliveries are not made at the time agreed upon, Buyer reserves the right to cancel or to purchase elsewhere, and hold Seller accountable therefore.

6. PAYMENT.

Terms of payment are net cash ten days from date of invoice provided that said invoice is provided at least ten (10) days before the meeting of the SCWA Board.

7. TERM.

The term of this agreement shall be for all dealings between the parties. As such, unless cancelled or otherwise modified in writing, the provisions contained herein shall govern all future transactions between Buyer and Seller. This agreement may be terminated at any time upon written notice to Seller.

8. SELLER WARRANTIES.

1. THE SELLER HEREBY WARRANTIES THAT THE GOODS COVERED BY THIS CONTRACT ARE MERCHANTABLE AND FIT FOR THE INTENDED PURPOSE. MOREOVER, SELLER EXPRESSLY WARRANTS THAT ALL GOODS CONTRACTED HEREIN WILL BE REPRESENTATIVE OF THE BRAND OR GRADE SPECIFIED HEREIN TO BE SOLD.
2. Moreover, Seller expressly warrants that all products sold hereunder shall be of merchantable quality, free from defects in materials and workmanship, and fit for their intended use.
3. Seller warrants that the products do not infringe on any United States or foreign patent, or on any other right of any other person.
4. Seller specifically and expressly warrants that the products furnished hereunder are and will be manufactured, sold and delivered in full compliance with all applicable federal, state and local laws, rules and regulations, including, but not limited to the Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders issued pursuant thereto, and all other federal and state occupational safety and health statutes, the provisions of which are substantially the same as those found in the Occupational Safety and Health Act of 1970, or administered by any state pursuant to that Act. Seller shall furnish Buyer with a Material Safety Data Sheet with each shipment or delivery to Buyer of a hazardous chemical or material, in strict compliance with the hazard communication regulations of the Occupational Safety and Health Administration of the United States Department of Labor and any and all state and local hazard communication, right-to-know and similar laws, rules and regulations.
5. On request, Seller shall furnish Buyer certificates of compliance with all applicable laws, orders and regulations of the federal or any state or municipal government or agency thereof, which apply to this Agreement. Seller shall, at time of delivery or invoicing, certify that products sold hereunder were manufactured or produced in full compliance, to the date of certifications, with the Fair Labor Standards Act of 1938, as

amended, and all applicable United States Department of Labor Regulations promulgated thereunder.

9. ENVIRONMENTAL/HAZARDOUS.

1. The Seller warrants that it understands the currently known hazards and suspected hazards which are presented to persons, property, and the environment by the transportation and delivery of the product.
2. Seller further warrants that it will perform all services under this contract in a safe, efficient, and lawful manner using industry accepted practices, and in full compliance with all applicable local, state, and federal laws and regulations as the same may apply to Seller's acts and responsibilities, in connection with this Contract, and use due care with respect to such acts and responsibilities. Seller shall maintain and provide necessary insurance with regard to environmental health hazards and related claims. The Seller acknowledges and agrees that the indemnity obligations contained in this Contract include, but are not limited to, the obligation to indemnify, save harmless and defend the Buyer as set forth therein with respect to environmental matters, which may include, among other things, all fines, judgments, actions, penalties, administrative proceedings, demands, damages, mitigation, remediation and any decreases in the value of Buyer-owned or private property as a results on the Seller's acts or omissions pursuant to this Contract. Upon occurrence or discovery of any matter having adverse environmental impacts, which matter is the act or within the responsibility of the Seller, the Seller shall immediately notify the Executive Director, and promptly take at it sole expense all necessary actions to comply with all relevant environmental laws.

10. INSURANCE.

1. Seller shall maintain in full force and effect the insurances as set forth in the annexed Schedule A and shall also include environmental occurrences. Buyer shall be named as an additional insured on that policy.
2. Seller shall carry and maintain comprehensive general -public liability insurance, including contractual liability, automobile, bodily injury and property damage, workmen's compensation, employer's liability and occupational disease insurance with coverage in a form satisfactory to Buyer. Upon Buyer's request, Seller shall deliver to Buyer certificates of such insurance which stipulate that no less than ten (10) days notice will be given Buyer prior to termination or reduction of the limits of coverage.

11. POLICY TO ENCOURAGE THE UTILIZATION OF M/WBES/NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM.

1. Seller represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:

a) Seller shall (I) not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities, and (iii) make and document its conscientious and active efforts to employ and utilize M/WBEs, Minority Group Members and women in its workforce on contracts. Such action shall be taken with reference to, but not limited to, solicitations or advertisements for employment, recruitment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

b) If requested, Seller shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Seller's obligations herein.

2. Seller is encouraged to include minorities and women in any job opportunities created by the Project; and to solicit and utilize M/WBE firms for any contractual opportunities generated in connection with the Project.
3. Seller represents and warrants that, for the duration of the Agreement, it shall furnish all information and reports required by the Authority and shall permit access to its books and records by the Authority, or its designee, for the purpose of ascertaining compliance with provisions hereof.
4. Failure to comply with the terms and conditions of the Non-Discrimination and Affirmative Action Program set forth herein shall constitute and event of default.

12. HOLD HARMLESS & INDEMNIFICATION.

1. Seller shall defend, indemnify and hold Buyer harmless, to the fullest extent allowed by law, Buyer, and its principal officers, board members, officers and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court ordered attorney's fees), arising out of or resulting from the acts or omissions of the Seller or its principals, officers, employees, subcontractors or anyone directly or indirectly employed by Seller or its subcontractors or anyone for whose acts the Seller or its subcontractors may be liable in the performance of the contract, whether sounding in tort, contract, warranty, or otherwise. This shall include, but not be limited to from any injury to or death of any person, or any damage to property, caused by defects in the manufacture, transportation, delivery and usage of the products delivered hereunder. Liability includes any claims, damages, losses and expenses arising out of or resulting from performance of this contract that results in claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease or damage to or

destruction of tangible property, including the loss of use therefrom.

2. Moreover, Seller shall indemnify and hold Buyer harmless and will, upon request, defend the other against all actions, proceedings, claims, demands, suits, outlays, damages or expenses, including reasonable legal fees and other costs that may be assessed against the other, and which the other may incur in defending any proceedings in which the damage sustained arose from a failure of the Seller party to meet its obligations under this Agreement, or from any other act or omission of the Seller, its representatives, agents or employees. This shall include, but not be limited to any claim or infringement of patent or such other rights relating to the manufacture, sale or use of the products.
 - a) Seller shall further indemnify and hold Buyer harmless from the actual withdrawal and recall costs and expenses incurred by Buyer due to defects in Seller's manufacture of the products, or if a recall of products is ordered by a court of competent jurisdiction or governmental agency.
 - b) SHALL SELLER BE LIABLE TO BUYER FOR SPECIAL OR CONSEQUENTIAL DAMAGES BEYOND THOSE DAMAGES EXPRESSLY PROVIDED HEREIN.

13. RIGHTS OF BUYER.

Seller shall, without limitation, be in default if Seller becomes insolvent or is adjudged bankrupt, or if Seller shall fail to make any payment to Buyer when due under this or any other contract between Buyer and Seller, or if at any time the Seller's property and assets are in liquidation, or if Seller's financial responsibility becomes impaired; but Seller shall not be in default for nonperformance due to fire, flood, earthquake, tornado, labor difficulties, riot, federal or state laws or regulations, failure of supply, acts or defaults of common carriers, or act of God, or the public enemy. In case of Seller's default, Buyer may within 14 days of notice thereof by written notice sent by registered or certified mail to Seller at its office:

1. cancel the contract; or
2. terminate the contract as to the portion in default and purchase within such 14 days an equal quantity of goods of the same kind and grade and recover from Seller the excess of the price so paid over the purchase price provided herein, plus any incidental loss or expense, and in addition, recover a sum equal to 1% of the contract price named herein; or
3. Terminate the contract as to any unshipped balance.
4. Performance of obligations hereunder must be substantial at the time or times specified herein, in written releases, in other written instructions issued by Buyer, or in Buyer's Purchase Orders. Buyer may change or temporarily suspend delivery or service schedules from time to time. In the event of consistently late deliveries of

product, or consistently late performance of any services covered hereunder which is not due to any act or failure to act of Buyer, Buyer may, at its option:

- a) terminate or partially terminate this Agreement,
- b) vary delivery terms hereunder, or
- c) obtain the items or services from other sources.

Termination of this Agreement as specified herein shall not terminate any liability arising out of conduct prior to the actual date of termination.

14. CUMULATIVE NATURE OF REMEDIES.

The remedies reserved to Buyer or Seller herein shall be cumulative and in addition to all other or further remedies provided by law. No waiver by either party of any breach, default or violation of any term, warranty, representation, agreement, covenant, condition or provision hereof shall constitute a waiver of any subsequent breach, default or violation of the same or other term, warranty, representation, agreement, covenant, condition or provision.

15. REPRESENTATIONS.

Seller represents that it is merchant with respect to the subject goods.

16. INSTALLMENT DELIVERIES.

A breach of default in any installment delivery shall be deemed grounds for buyer to declare a breach of the entire agreement even though such breach or default substantially impairs the value of the entire agreement.

17. INSPECTION AND REJECTION.

Final inspection shall be on the Buyer's premises unless otherwise agreed in writing. Materials rejected as not, or as otherwise defective, shall be returned at Seller's expense, including transportation and handling costs.

18. SETOFFS AND COUNTERCLAIMS.

All claims for moneys due or to become due from the Buyer shall be subject to deduction by the Buyer for any setoff or counterclaim arising out of this or any other of the Buyer's Purchase Orders with Seller, whether such setoff or counterclaim arose before or after any such assignment by Seller.

19. BENEFIT.

This agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties.

20. FORCE MAJEURE.

A party shall not be deemed to have defaulted or failed to perform hereunder if that party's inability to perform or default shall have been caused by an event or events beyond the control and without the fault of that party, including (without limitation) acts of Government, embargoes, fire, flood, explosions, acts of God or a public enemy, strikes, labor disputes, vandalism, civil riots or commotions, failure of supply, including water supply or lack of SCWA demand or the inability to procure necessary raw materials, supplies or equipment.

21. SEVERABILITY.

The invalidity, illegality or unenforceability of any one or more provisions of this Agreement shall in no way affect or impair the validity, legality or enforceability of the remaining provisions hereof, which shall remain in full force and effect.

22. EVENT OF CONFLICT.

In the event of any conflict between the terms and conditions which appear in this Agreement and any Purchase Order used to order Containers hereunder, the terms and conditions of this Agreement and any attached Schedules shall control.

23. APPLICABLE LAW.

This agreement shall be governed by the Uniform Commercial Code and other applicable laws of the State of New York.

24. ASSIGNMENT.

This contract is not assignable and the duties hereunder are not delegable without Seller's written consent.

25. MODIFICATION.

This instrument is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of its terms. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this agreement. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings, or agreements have been made or relied upon in the making of this agreement other than those specifically set forth herein. This agreement can only be modified by a writing signed by all of the parties or their duly authorized agents.

26. NOTICES.

For the purpose of any notice required to be given by this agreement or by an applicable provision of the Uniform Commercial Code or other law, the Seller represents that its principal place of business shall be deemed either the address on any purchase order or unless otherwise specified, the address in the precatory paragraph of this agreement, and the Buyer represents that its principal place of business is at the mailing address also set forth above, unless otherwise stated in writing. All notices and other communications from either party to the other hereunder shall be in writing and shall be deemed given when delivered personally, by courier service or when deposited in the U.S. Mail, certified or registered mail, return receipt requested, postage prepaid and properly addressed to Seller.

27. LIMIT OF AUTHORITY.

Both parties are independent Sellers and this Agreement does not constitute either party as the legal representative of the other for any purpose whatsoever. Neither party has authority to assume or create any obligation whatsoever, expressed or implied, on behalf or in the name of the other party, nor to bind the other in any manner whatsoever.

In witness whereof the parties have executed this agreement:

SELLER

Corporate Seal
Attest:

Title: _____

SARATOGA COUNTY WATER AUTHORITY

Corporate Seal
Attest:

Chairman

SCHEDULE A

Indemnification and Insurance

Seller shall provide and maintain insurance coverage for claims under workers' compensation acts, claims for damages because of bodily injury, including personal injury, sickness or disease, or death of employees or of any other person; business auto liability, and claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The insurance will be procured from insurance companies authorized to do business in New York State and shall cover all services under this proposal whether performed by the Seller or a sub-contractor. Seller shall furnish to the AUTHORITY a certificate or certificates, in a form satisfactory to the AUTHORITY showing that they have complied with this requirement, which certificate or certificates, shall provide that the policies shall not be changed or cancelled until thirty days written notice has been give to the AUTHORITY. The kinds and amounts of insurance required are as follows:

The following insurance must be provided by the Seller from an insurer licensed to do business in the State of New York.

Workers Compensation:

The Seller shall procure and maintain during the life of this contract, Workers Compensation for all of his employees to be engaged in the work on the project under this contract and in case of any such work sublet, the Seller shall require his subcontractor similarly to provide workers compensation insurance for all the latter employees to be engaged in such work unless such employees are covered by the protection afforded by the Seller's compensation insurance. This coverage's shall meet the Statutory Limits of New York State. Any and all proprietors, partners, executive officers and members must be covered for workers compensation even if not required by NYS law to be covered. Certificates of Insurance must show that Workers Compensation is in effect and "N" must appear on the Certificate next to the question, "Any Proprietor/Partner/Executive Officer/Member Excluded".

Comprehensive Commercial General Liability including Contractual on a primary and non-contributory basis:

The Seller shall procure and maintain insurance in the following amounts:

- a. \$1,000,000 — each occurrence bodily injury and property damage
- b. \$2,000,000 — general aggregate
- c. Include the Saratoga County Water Authority as additional insured.

Umbrella Liability:

The Seller shall procure and maintain insurance in the following amounts:

- a. \$10,000,000 — over primary coverage
- b. Include the Saratoga County Water Authority as additional insured.

Business Auto Liability:

The Seller shall procure and maintain insurance in the following amounts:

- a. \$1,000,000 — bodily injury and property damage combined limit

b. \$1,000,000 — hired and non-owned autos included.

Certificates:

Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the work. The certificates and insurance policies required by this contract shall contain a provision that coverage's afforded under the policies will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the SCWA.

Indemnity:

Seller shall hold harmless, indemnify, and defend the Saratoga County Water Authority and their employees from any and all liability claims, losses or damages arising or alleged to arise from the performance of the work described herein, but not including the sole negligence of the Saratoga County Water Authority.

Approvals:

The Seller shall not commence work until the required insurance and coverage's have been submitted to the Saratoga County Water Authority and approved by their insurance agent.

Each Seller will agree to indemnify and hold harmless the Saratoga County Water Authority from and against any and all liability, loss, damages, claim or action whatsoever to the extent permissible by law arising out of operations performed and services provided by under this proposal, including the costs, disbursements and expenses of litigation and reasonable attorney's fees.