



New York State Insurance Fund  
Procurement Unit

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April 12, 2018

TO WHOM IT MAY CONCERN:

Attached is the Request for Proposals (RFP) for Facility Management and Maintenance Services for the New York State Insurance Fund (NYSIF).

**The due date for submission of proposals is 5/25/2018 at 2:00 PM (EST).**

The attached *No Bid* form should be completed and returned by those Bidders who choose not to bid on this RFP. Please email questions to [contracts@nysif.com](mailto:contracts@nysif.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Megan McClune".

Megan McClune  
Contract Management Specialist

Attachments:

*No Bid* form  
RFP



New York State Insurance Fund  
Procurement Unit

## NO BID FORM

**RFP # 2018-29-RE**

**DESCRIPTION: FACILITY MANAGEMENT AND MAINTENANCE SERVICES**

**CONTRACT PERIOD: Five (5) Years**

<b>PROPOSALS DUE:</b>		<b>SUBMIT BIDS TO:</b>
<b>DATE:</b>	5/25/2018	NYSIF - Procurement Unit Bid # 2018-29-RE 15 Computer Drive West Albany, NY 12205-1690
<b>TIME:</b>	2:00 PM	

Bidders choosing not to bid are requested to complete and return only this page.

- ☐ 1. \_\_\_\_ We do not provide the requested services. Please remove our firm from your mailing list.
- ☐ 2. We are unable to bid at this time because \_\_\_\_\_
- \_\_\_\_\_

FAILURE TO RESPOND TO THIS BID SOLICITATION MAY RESULT IN YOUR FIRM BEING REMOVED FROM OUR MAILING LIST. A "NO BID" IS CONSIDERED A RESPONSE.

Name of Firm: \_\_\_\_\_ FEIN: \_\_\_\_\_

Address: \_\_\_\_\_

Web Page: \_\_\_\_\_ Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_ Fax: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Typed Name & Title: \_\_\_\_\_



NEW YORK  
STATE INSURANCE FUND

REQUEST FOR PROPOSALS

for

FACILITY MANAGEMENT AND MAINTENANCE  
SERVICES

2018-29-RE

April 12, 2018

NYSIF encourages the participation of Minority and Women-Owned Business Enterprises (M/WBE) in its procurement projects. NYSIF is committed to achieving the statewide goal of increasing opportunities for New York State Minority and Women-owned Business Enterprises. Any firm that feels it may meet the state requirements for certification is encouraged to visit the [NYS Empire State Development](#) for more information about the program and how to apply for certification.

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## RFP CALENDAR

DATE	EVENT	COMMENTS
4/12/2018	RFP Issued	
5/3/2018	Submission of Appendix P, Site Visit Attendance Notification	Appendix P, Site Visit Attendance Notification, is to be completed and returned to <a href="mailto:contracts@nysif.com">contracts@nysif.com</a>
5/4/2018 10:00 AM	Bidders' Conference / Site Visit	<b><u>ATTENDANCE IS MANDATORY</u></b> Attendees must have positive picture identification and arrive 15 minutes early for security check in. <b><u>1045 7<sup>th</sup> North Street, Liverpool NY 13088</u></b>
5/11/2018 11:00 AM	Final date for Bidder inquiries	<b><u>Written inquiries only</u></b> by 12:00 p.m. to:  Email: <a href="mailto:contracts@nysif.com">contracts@nysif.com</a> Fax: 518-437-4209
5/18/2018	Responses to Inquiries	Written responses will be posted on NYSIF's website at: <a href="http://www.nysif.com/procurement">www.nysif.com/procurement</a>
5/25/2018 2:00 PM	Final date for submission of bids	Deadline for response to this RFP. All sealed bids MUST be addressed to:  Mail: NYSIF – Procurement Unit Bid # 2018-29-RE 15 Computer Drive West Albany, NY 12205-1690  and received by 2:00 p.m.
TBD	Bidder Interviews	If requested, Bidder interviews expected to begin
TBD	Anticipated Start Date	Subject to the required approvals.

## SECTION 1 – GENERAL INFORMATION

### **1.1 OVERVIEW OF THE NEW YORK STATE INSURANCE FUND**

The New York State Insurance Fund (NYSIF) was established in 1914 as part of the original enactment of the New York Workers' Compensation Law. The Fund's mission is to guarantee the availability of workers' compensation insurance at the lowest possible cost to employers, while maintaining a solvent fund, as well as to provide timely and appropriate indemnity and medical payments to injured workers. NYSIF is a self-supporting insurance carrier that competes with private insurers in both the workers' compensation and disability benefits markets in New York State. With 160,000 policyholders, over \$2 billion in annual premium and \$17 billion of assets, NYSIF is the largest workers' compensation carrier in the state and among the top five largest workers' compensation carriers in the nation. NYSIF provides disability benefits coverage for off-the-job injuries to more than 61,000 New York employers.

### **1.2 INQUIRIES/ISSUING OFFICE/DESIGNATED CONTACT**

All inquiries concerning this solicitation will be addressed to the following Designated Contacts:

Megan McClune	Vincent Ginardi
Contract Management Specialist	Contract Management Specialist
E-Mail: <a href="mailto:contracts@nysif.com">contracts@nysif.com</a>	E-Mail: <a href="mailto:contracts@nysif.com">contracts@nysif.com</a>

For inquiries related specifically to Minority and Woman Owned Business Enterprises (MWBE) and Service Disabled Veteran Owned Businesses (SDVOB) provisions of this procurement solicitation, the designated contact is:

Heather Woolfolk  
MWBE/SDVOB Oversight Officer  
E-Mail: [contracts@nysif.com](mailto:contracts@nysif.com)

**All questions related to this RFP or the contract process must be submitted in writing to [contracts@nysif.com](mailto:contracts@nysif.com) by the date and time indicated in the RFP Calendar, citing the particular bid section and paragraph number. No telephone questions will be answered.**

Only questions received during the Question and Answer period (as outlined in the RFP Calendar) will be addressed. **Official answers to the questions will be posted on NYSIF's website at [www.nysif.com/procurement](http://www.nysif.com/procurement), on the date indicated in the RFP Calendar.**

Prospective Bidders should note that all clarifications and exceptions are to be resolved prior to the submission of a bid. Answers may be included in a bid addendum.

All amendments, clarifications and any announcements related to this procurement will be posted on NYSIF's website at: [www.nysif.com/procurement](http://www.nysif.com/procurement). It is the sole responsibility of the bidders to check the website for any amendments, clarifications or updates. All applicable amendment information must be incorporated into the firm's proposal. Failure to include this information in your proposal may result in the proposal being deemed non-responsive.

### **1.3 PURPOSE OF THIS RFP**

NYSIF is seeking bids from qualified bidders for Facility Management and Maintenance services at its offices located at 1045 7<sup>th</sup> North Street, Liverpool, NY, as further described in this RFP.

Proposals submitted in response to this solicitation must comply with the instructions and procedures contained herein. **Bidders are responsible for checking NYSIF's website at [www.nysif.com/procurement](http://www.nysif.com/procurement) for any RFP amendments, addenda, and/or updates.**

### **1.4 SUMMARY OF NYSIF'S POLICY AND PROHIBITIONS REGARDING PERMISSIBLE CONTACTS DURING A COVERED PROCUREMENT**

Pursuant to State Finance Law §§139-j and 139-k, this RFP includes and imposes certain restrictions on communications between a Governmental Entity and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of intent to solicit bids through final award and approval of the Procurement Contract by the Governmental Entity and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3)(a). Designated staff, as of the date hereof, is identified in section 1.2 of this RFP. NYSIF employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements is available from the designated contact(s).

### **1.5 BIDDERS' CONFERENCE / SITE VISIT**

Attendance at the Site Visit is **mandatory** and will be held at **1045 7<sup>th</sup> North Street, Liverpool NY 13088**. Bids will only be accepted from firms that attended the Site Visit. The date and time of the Site Visit is stated in the RFP Calendar. Attendees must have positive picture identification and allow 15 minutes for security check-in.

Prospective Bidders may submit questions in an acceptable format (section 1.2 above) by the date listed in the RFP Calendar. No Questions will be addressed during the site visit. All questions must be submitted in writing in accordance with section 1.2. A summary of the Q&A will be posted on **NYSIF's website** by the date and time indicated in the RFP Calendar.

If your firm plans to be represented, submit Appendix P as directed in the RFP Calendar. A maximum of two (2) representatives from each firm may attend. **Walk-ins may not be allowed.**

### **1.6 DUE DATE**

The due date for submission of proposals is 5/25/2018, 2:00 p.m. (Eastern).

### **1.7 METHOD OF AWARD / DISTRIBUTION OF WORK**

Award will be made on the basis of "best value", as determined by the evaluation process. The ability to perform the services will be deemed most important when evaluating bids. A single award will be made for the procurement.

**1.8 INSURANCE REQUIREMENTS**

Prior to the commencement of the work to be performed by the successful Bidder, the Bidder shall file with NYSIF Certificates of Insurance evidencing compliance with all requirements contained in this RFP. Acceptance and/or approval by NYSIF does not and shall not be construed to relieve Bidder of any obligations, responsibilities or liabilities under the contract awarded by this RFP.

All insurance required by the RFP shall be obtained at the sole cost and expense of the Bidder, shall be maintained with insurance carriers licensed to do business in New York State and acceptable to NYSIF, shall be primary and non-contributing to any insurance or self insurance maintained by NYSIF, shall be endorsed to provide written notice be given to NYSIF at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail, and shall be sent in accordance to the 'Notice' provision of the Agreement and shall name NYSIF, its officers, agents, and employees as additional insureds hereunder (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85).

The Bidder shall be solely responsible for the payment of all deductibles and self insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by NYSIF. Such approval shall not be unreasonably withheld.

If NYSIF allows subcontracting, the Bidder shall require that any subcontractors hired carry insurance with the same limits and provisions provided herein.

Each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to NYSIF and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Bidder shall cause all insurance to be in full force and effect as of the commencement date of the contract awarded as a result of this RFP, and to remain in full force and effect throughout the term of the contract and as further required by this RFP. The Bidder shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

Not less than thirty (30) days prior to the expiration date or renewal date, the Bidder shall supply NYSIF with updated replacement Certificates of Insurance, and amendatory endorsements.

The Bidder, throughout the term of the contract, or as otherwise required by this RFP, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this RFP, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

1. Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence, with a limit of not less than \$2,000,000 aggregate. Such liability shall be written on the ISO occurrence form CG 00 01, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-

completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

- a. Products/completed operations - \$2,000,000
  - b. Personal & Advertising injury - \$1,000,000
  - c. Damage to Rented Premises - \$50,000
  - d. Medical Expense - \$5,000
2. Workers Compensation and NYS Disability Benefits, as required by New York State. Visit <http://www.wcb.ny.gov/content/main/Employers/busPermits.jsp> for further information.
  3. Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.
  4. Crime Insurance, including Third Party Coverage, in an amount not less than \$50,000, including employee dishonesty on money, securities, or property other than money and securities, including property in your care, custody or control. The coverage shall include all employees including contract and temporary, whether identified or not, acting alone or in collusion with other.

**Waiver of Subrogation.** Bidder shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against NYSIF, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Bidder waives or has waived before the casualty, the right of recovery against NYSIF or (ii) any other form of permission for the release of NYSIF.

Awarded Bidder shall furnish evidence of all policies to NYSIF, before any work is started. Certificates of Insurance may be supplied as evidence of such aforementioned policies; however, if requested by the Agency, the Bidder shall deliver to NYSIF within forty-five (45) days of the request a copy of such policies, certified by the insurance carrier as being true and complete. If a Certificate of Insurance is submitted it must: (1) be signed by an authorized representative of the insurance carrier or producer and notarized; (2) disclose any deductible, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; (3) indicate the Additional Insureds and Named Insureds as required herein; (4) reference the Agreement by number on the face of the certificate; and (5) expressly reference the inclusion of all required endorsements.

If, at any time during the term of the resulting contract, insurance as required is not in effect, or proof thereof is not provided to NYSIF, NYSIF shall have the option to: (i) direct the Contractor to suspend work with no additional cost or extension of time due on account thereof, or (ii) treat such failure as a breach in contract.

**The successful Bidder will indemnify NYSIF against any and all liability which may be assessed against it as a result of the actions, activities, neglect, or malpractice of the successful Bidder, its officers, employees, agents, subcontractors or corresponding attorneys relating to its performance of the functions required. Specifically, the successful Bidder will provide a malpractice policy and a public liability policy to the benefit of NYSIF in the amount of \$2,000,000 each to insure against liability due to harassment,**

defamation, personal injury, violation of privacy rights, civil rights, or of any statute or regulation governing conduct in collecting debts.

**1.9 PARTICIPATION OF NYS MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE)**

It is the policy of NYSIF to encourage the greatest possible participation by Minority and Women-Owned Business Enterprises (MWBE) as Bidders, subcontractors and suppliers on its procurement contracts, consistent with New York State laws. NYSIF has established a goal of 30% MWBE participation for its contracts.

Bidders are required to complete the forms contained within Appendix M and submit those with the bid proposal. Failure to properly complete and provide these documents may result in rejection of the bid.

The Awarded Contractor(s) will be required to demonstrate its ability to meet NYSIF's goals for MWBE participation by documenting all subcontracted work related to this contract for which MWBE participation will take place. If a waiver (or partial waiver) from meeting NYSIF's MWBE goals is being sought, the contractor **MUST complete the waiver form (Form 104 of Appendix M) and provide supporting documentation as listed on the form's instructions** detailing extensive efforts taken to seek and sub-contract MWBE vendors for this procurement.

The awarded contractor may be required to submit subcontractor and payment information in the New York State Contract System on a regular basis throughout the term of the contract. Subcontractors may also be required to verify such payments through this system.

Proof of utilization and payment to MWBE subcontractors is required.

Please see Appendix M for further information.

**1.10 PARTICIPATION OF SERVICE DISABLED VETERAN OWNED BUSINESSES (SDVOB)**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. NYSIF recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of NYSIF contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

NYSIF hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified

SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the NYSIF Designated Contacts at [contracts@nysif.com](mailto:contracts@nysif.com). Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.

Bidders are required to complete the forms contained within Appendix S and submit those with the bid proposal. Failure to properly complete and provide these documents may result in rejection of the bid.

The Awarded Contractor(s) will be required to demonstrate its ability to meet NYSIF's goals for SDVOB participation by documenting all subcontracted work related to this contract for which SDVOB participation will take place. If a waiver (or partial waiver) from meeting NYSIF's SDVOB goals is being sought, the contractor **MUST** complete the waiver form (Form S-200 of Appendix S) and provide supporting documentation as listed on the form's instructions detailing extensive efforts taken to seek and sub-contract SDVOB vendors for this procurement.

The awarded contractor may be required to submit subcontractor and payment information in the New York State Contract System on a regular basis throughout the term of the contract. Subcontractors may also be required to verify such payments through this system.

Proof of utilization and payment to SDVOB subcontractors is required.

Please see Appendix S for further information.

### **1.11 PREVAILING WAGE**

This is a public work Contract covered by Article 9 of the Labor Law. Workers on this project must be paid in accordance with prevailing wage rate and be paid or provided the prevailing supplements, as set forth in prevailing wage and supplement schedules issued by the NYS Department of Labor, Bureau of Public Work Prevailing Wage and Supplement Schedules Exhibit B. Updates to these schedules are available through the NYS Department of Labor.

- Article 9 Schedule (PRC # 2017901033)

Updates to these schedules are available through the NYS Department of Labor. The contractor and all sub-contractors will be required to submit certified payrolls for all work completed.

**It is the responsibility of the Contractor** to ensure that any subcontractors pay their personnel according to the appropriate prevailing wage and supplement schedules.

### **1.12 GREEN CLEANING**

[Executive Order 134](#) - Directing State Agencies to Reduce the Environmental Impact of Cleaning of State Facilities (EO 134) - was signed on January 5, 2005 and requires all state agencies to procure and use cleaning products having properties that minimize potential impacts

to human health and the environment consistent with maintenance of the effectiveness of these products for the protection of public health and safety.

[Executive Order 4](#) - Establishing a State Green Procurement and Agency Sustainability Program (EO 4) was signed on April 24, 2008 promotes policies within state agencies and authorities that reduce the potential impacts on public health and the environment and reduce the consumption of materials and energy.

OGS has developed [Guidelines and Specifications](#) for the procurement of environmentally sensitive cleaning and maintenance products for elementary and secondary schools as well as state agencies and public authorities. This comprehensive Guidelines and Specifications document details all aspects of a green cleaning program that schools and state agencies need to follow to comply with the Green Cleaning Law and EO 134. The Office of General Services (OGS) has a listing of green cleaning products to be used for normal routine cleaning. They can be found at: [New York's Green Cleaning Program](#)

### **1.13 DISINFECTING**

Information on Swine Influenza, also called swine flu (H1N1) - The New York State Department of Health (DOH) has posted a number of documents, including Frequently Asked Questions, on their website. NYSIF requires the contractor to conduct cleaning/disinfecting of the building upon outbreak of infections of this or a similar nature in the building. Such cleaning will follow procedures and protocols found on the DOH website in addition to those provided by NYSIF.

The New York State Department of Health has posted several online health advisories for the prevention of MRSA in various settings including schools. These advisories describe the symptoms and transmission of the disease, and outline preventative measures including environmental cleaning and disinfection.

The Bidder's Work Plan shall describe environmental cleaning and disinfection process in regard to H1N1 and MRSA. [www.nyhealth.gov/](http://www.nyhealth.gov/).

**1.14 NYS DEPARTMENT OF HEALTH WATER COOLING TOWER REGULATIONS**

Per the new regulations from the NYS Department of Health, all owners of cooling towers, and all general hospitals and residential health care facilities as defined in Article 28 of the Public Health Law, shall comply with section 225(5)(a) of the Public Health Law, Part 4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York.

The term “cooling tower” means a cooling tower, evaporative condenser or fluid cooler that is part of a recirculated water system incorporated into a building’s cooling, industrial process, refrigeration or energy production system. NYSIF has a cooling tower located inside the Syracuse facility, which runs year-round, and the cooling tower has been registered with the Department of Health, as required by new regulations.

NYSIF currently has an agreement for Water Treatment Services with Jemco Water Treatment Services Inc., which will expire March 31, 2018. Beginning April 1, 2018, the Contractor shall maintain an annual contract with either NYSIF’s current vendor or with another qualified Water Treatment firm to maintain the proper level of chemical treatment of the water tower on site. Water treatment and testing must be completed in accordance with the NYS Department of Health regulations and NYSIF’s Water Cooling Tower Maintenance Program & Plan (Exhibit 1).

## SECTION 2 – BID/PROPOSAL FORMAT

**IMPORTANT NOTICE TO POTENTIAL BIDDERS:** Receipt of these bid documents does not indicate that NYSIF has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the bid opening and will be based on our evaluation of your bid submission compared to the specific requirements and qualifications contained in these bid documents.

NOTICE TO BIDDERS: NYSIF will receive bids pursuant to the provisions of Article XI of the State Finance Law or the provisions of the State Printing and Public Documents Law. The following procedures shall be used for bid submissions:

### **2.1 BID PREPARATION**

- Prepare your proposal on the forms provided.
- Proposals and other forms must be signed by an official of your firm authorized to sign contracts and bind the firm.
- The Fee Schedule Proposal must be bound and placed in a sealed envelope separately and enclosed with the Bid. **No references to costs are to be included in the detailed proposal.**
- Bidders must respond to each and every specification stated in this RFP. Moreover, Bidders must list and clearly explain any and all exceptions and/or alternatives and/or caveats to any item contained in this RFP in the *Comments and Limitations* section of their Proposal.

A proposal that does not comply with the requirements and that does not include all the information requested – in the format required – may be negatively affected in the overall evaluation and could be subject to rejection.

### **2.2 BID FORMAT**

- Submission must include **one (1) hard copy** of the proposal, organized as outlined below. Submission must also include **one (1) exact electronic copy** (CD/DVD-rom or USB flash drive) of the proposal.
- Bids/Proposals are to be submitted with each numbered item listed below as a separate section. Each proposal must follow the provided format, or the bid may be deemed non-responsive.
- Appendix Z, the *Fee Schedule Proposal*, must be bound and placed in a sealed envelope separately and enclosed with the Bid. **No references to costs are to be included in the detailed proposal.**
- Use the following format as your Table of Contents.

**PLEASE PROVIDE THE INFORMATION IN THE SAME ORDER IN WHICH IT IS REQUESTED.**

### **2.2.1 TITLE PAGE AND TABLE OF CONTENTS**

The *Title Page* should identify the RFP for which the proposal is being submitted; the Bidder's name, as well as the name, title, address, telephone number, and e-mail address of the bidder's contact person(s).

Please also include the name, title, address, telephone number, and e-mail address of the person(s) authorized to make representations for the bidder and bind the firm, if other than the contact person identified above.

The *Table of Contents* should identify each major (numbered) section of the proposal, according to this proposal format.

### **2.2.2 BIDDER CERTIFICATIONS**

Each Bidder is required to submit the Bidder Certifications form, found after Section 4 of the RFP.

### **2.2.3 COMPANY BACKGROUND**

Provide a background description of the bidder's firm, including, but not limited to, the date the company was organized, and, if a corporation, when and where incorporated.

Include the size and number of staff in the company. Briefly describe any prior experience in performing similar assignments and bidder's staffing capability and competency to complete the work within established deadlines. Include the following information for the Bidder:

- a. Other city, state or federal government agencies *previously* under contract with the Bidder's firm within the last five (5) years.
- b. Other city, state or federal government agencies *currently* under contract with the Bidder's firm.
- c. A list of all staff being proposed by Bidder.
- d. A copy of Bidder's certification to do business in New York State.
- e. Bidder must demonstrate its ability to service a contract with dollar sales volume similar to scope of this bid through submission of financial statements documenting past sales history. The Bidder must be financially stable and able to substantiate the financial statements of its company. In addition to sales history, current financial statements may be requested and must be provided within five (5) business days. NYSIF reserves the right to request additional documentation from the Bidder and to request reports on financial stability from independent financial rating services. NYSIF reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this bid.

**2.2.4 TECHNICAL EXPERIENCE / DESCRIPTION OF PROPOSED SERVICES  
(WORK PLAN)**

The *Work Plan* shall address each item below as well as any information requested in the Technical Requirements section, even if the answer is presumed to be known to NYSIF, not applicable, or a duplicate answer. *No references to the dollars or bid amounts are to be included in this detailed proposal.*

- a. Describe the services to be provided. Include information why Bidder should be chosen over all other Bidders. Include, where appropriate and applicable, the trades and level of each trade to be utilized, materials to be used as required in the Technical Requirements section, and a list of all applicable fees, permits and other charges that would be necessary to successfully complete this Contract.
- b. Provide information about the Bidder's organization, such as day-to-day operations and services.
- c. Provide escalation procedures NYSIF can use for reporting problems to higher levels of management within the Bidder's organization.
- d. Indicate whether the Bidder is able to carry 1.5 months of billings in receivables from NYSIF.
- e. Provide the names of the manufacturers of the equipment and supplies to be used on the Contract. Include the manufacturer's catalog sheets, data sheets, specifications, installation instructions, etc.
- f. Describe your firm's response protocol for afterhours, weekend, and holiday matters that may arise and how you will meet the response time requirement set forth by NYSIF.
- g. Provide your Quality Assurance Plan.
- h. Provide a list of services that will be performed by subcontractors and describe your plan to supervise the subcontractors. Unless the subcontractor is a current (sub) contractor for NYSIF, please provide references (section 2.2.5) and documented consent of the proposed subcontractors.
- i. Describe your attendance policy and how time-off, both scheduled and unscheduled, is handled. Describe your plan to provide coverage for employee absenteeism.

**2.2.5 REFERENCES**

The bidder shall provide a minimum of three (3) references of similar scope which best represents their abilities to satisfy the requirements of this RFP (Appendix I). References from current clients (those with which the bidder has an existing contractual relationship) are preferred. References should include a brief narrative description of the project (discuss the scope of the services provided to the client). A minimum of three (3) references shall also be provided for any subcontractors listed as part of the bidder's proposal. References shall be able

to document:

- a. The bidder's ability to manage large scale projects;
- b. The quality and scope of services provided by the bidder; and
- c. The following information:
  1. Name of the client;
  2. Name, title and telephone number for the contact at the client;
  3. Value, type and duration of contract with the client;
  4. Services provided, including geographic area involved; a description of how the bidder satisfied the client's requirements and improvements made to the client's systems as a result of the bidder's efforts; and
  5. If applicable, an explanation of why the bidder is no longer providing services to the client.

The inability to contact a reference provided by the bidder will be considered as part of the evaluation process and bidders may be asked for additional references. Individuals identified as references will be assured of anonymity to the fullest degree possible under the New York State Freedom of Information Law. NYSIF will make three (3) attempts between the hours of 9:00 and 5:00, on three (3) different days across a one (1) week period to contact references. It is the firm's responsibility to ensure that contacts will be available and willing to provide a reference.

#### **2.2.6 STATEMENT OF COMPETING COMMITMENTS**

Each Bidder must provide a *Statement of Competing Commitments*, a list of any contractual obligations they have entered into which requires effort on the part of their key personnel during the period in which these personnel will be working on the contract resulting from this RFP.

#### **2.2.7 COMMENTS AND LIMITATIONS**

Any exceptions, caveats or additional information to the Bidder's responses to specifications in this RFP must be listed, cross referenced to the response to which it applies and clearly explained.

Note well: No comments, limitations or changes are permitted with respect to any of the terms and conditions contained in Exhibit A, *Standard Clauses*.

#### **2.2.8 APPENDICES**

The following appendices must be completed and returned with your proposal:

- ***MacBride Questionnaire, Appendix D***
- ***Vendor Responsibility Questionnaire, Appendix E***
- ***Bidder Questionnaire, Appendix F***
- ***Encouraging Use of NYS Businesses in Contract Performance, Appendix G***
- ***Procurement Lobbying Legislation, Appendix H***
- ***Bidder References, Appendix I***

- ***MWBE Requirements and Procedures, Appendix M*** requires Bidders to submit (i) form 101; (ii) form 103 or a copy of bidders current NYSDER MWBE certification; and (iii) form 106 or a copy of bidders EEO policy
- ***Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance, Appendix S*** requires Bidders to submit form S-100 (Utilization Plan) and/or a copy of bidders current SDVOB certification.
- ***Vendor Assurance of No Conflict of Interest or Detrimental Effect, Appendix V***
- ***Fee Schedule, Appendix Z*** The *Fee Schedule* must be bound and placed in a sealed envelope separately and **enclosed** with the Bid.

The Bidders must respond to all sections of the Fee Schedule for which the Bidder is submitting a bid, in the format specified in Appendix Z. Bidders are strongly advised to consult the RFP for details underlying the Fee Schedule.

In the event of an ambiguity or omission, the Bidder's Fee Schedule will be deemed to have included all costs associated with delivering the services set forth in this RFP for the entire contract term.

*Exhibits A, B and C should be retained by the Bidder for future reference. Do not return to NYSIF as part of the bid submission.*

*Any other appendices and exhibits referenced in this RFP but not indicated above as being required at time of submission are included for informational purposes only. The Awarded Contractor will be required to complete these forms prior to contract execution.*

### **2.3 BID DELIVERY**

Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of bids to NYSIF prior to the date of the bid opening. E-mail and faxed bid submissions are NOT acceptable. LATE BIDS will be handled in accordance with Exhibit B, clause 9.

- **Hand Deliveries / US Postal Service / Courier**

An envelope and/or package containing a bid should be clearly marked as follows, and shall be delivered to:

NYSIF – Procurement Unit  
Bid # 2018-29-RE  
15 Computer Drive West  
Albany, NY 12205

**Bidders assume all risks for timely, properly submitted deliveries.**

### **SECTION 3 – METHOD OF EVALUATION & CRITERIA**

As required by New York State Finance Law §163, the award will be made on the basis of best value (the proposal which optimizes quality, cost and efficiency) to the responsive and responsible Bidder, as determined in the evaluation process. The contract will not be awarded solely on the basis of low bid. However, the Bidder with the low bid may be awarded the contract if it provides the best value, as defined above.

All proposals received will be reviewed and evaluated by a committee of NYSIF personnel. The committee will recommend the award be made to the Bidder whose proposal receives the highest overall evaluation score based on the criteria stated herein.

NYSIF reserves the right to award the contract based solely on section 3.1 below. However, NYSIF may request, at its sole discretion, that evaluators interview the Bidder's staff, as stated in section 3.2 below.

Bidder may be requested by NYSIF to clarify the contents of their proposals. Other than to provide such information as may be requested by NYSIF, no Bidder will be allowed to alter its proposal or add new information after the final filing date and time.

The ability to perform the services is most important in evaluating proposals. The evaluation criteria are listed below in order of importance to NYSIF.

#### **3.1 EVALUATION CRITERIA**

The evaluation criteria will consist of three (3) separate parts: (1) a Technical Proposal, (2) a Financial Proposal, and (3) a Quantitative Factor for Business Certification as described below. Each component will be evaluated separately and independently in accordance with the RFP as further described below. The relative weights of each part of the Proposal are as follows:

1. Technical Proposal: 55%
2. Financial Proposal: 40%
3. Minority and Woman-Owned Business Enterprises (MWBE) Certification, Small Business Enterprise (SBE) status, Service Disabled Veteran Owned Business (SDVOB) Certification (per section 3.1.3): 5%

##### **3.1.1 TECHNICAL PROPOSAL**

This reviews the capability of Bidder to perform the required services at the time of the bid, demonstrated ability to recruit and retain qualified staff for similar services, and the Bidder's experience in providing services of a similar scope. Includes references for Bidder and Bidder's liaison to NYSIF. This process consists of the following steps:

1. Pass / Fail Evaluation: the technical evaluation team will inspect each Technical Proposal to determine if it contains responses to all of the mandatory requirements as described in section 4.1 of the RFP.

Please Note: Should a Bidder fail to meet any of the mandatory requirements (section 4.1), the Bidder will be disqualified, and no further evaluation or scoring will be

completed.

2. Qualifications and Technical Evaluation: This phase of the Technical evaluation reviews the Bidders capability to meet NYSIF's needs as described in this RFP.

Please Note: See NYSIF's reserved right to request interviews in section 3.2.

### **3.1.2 FINANCIAL EVALUATION**

The Financial evaluation will be based upon a review of the Grand Total Cost of the Bidders Fee Schedule Proposal (Appendix Z), which details the total cost to provide all services listed within this RFP.

### **3.1.3 QUANTITATIVE FACTOR FOR NYS CERTIFIED MINORITY AND WOMEN OWNED BUSINESSES, SMALL BUSINESSES, AND SERVICE DISABLED VETERAN OWNED BUSINESSES AS DEFINED IN NYS EXECUTIVE LAW**

State Finance Law section 163(1)(j) allows, when making a Best Value determination, for the inclusion of a quantitative factor for Bidders that are Small Businesses, certified Minority or Women-owned Business Enterprises (MWBEs), or Service Disabled Veteran Owned Businesses (SDVOBs) as defined in subdivisions 310(7), 310(15), 310(20), and 369-H of NYS Executive Law.

In accordance with such authority, five percent (5%) of the overall evaluation scale (referred to herein as the "quantitative factor") will be awarded to any responsive Bidder who meets one of the following criteria (NOTE: Although a Bidder may meet more than one of the criteria, credit is to be awarded for only one category, not multiple categories):

- a. The bidder is a New York State Certified Minority- Owned Business Enterprise (MBE) as defined in Executive Law 310(7) *or*
- b. The bidder is a New York State Certified Woman- Owned Business Enterprise (WBE) as defined in Executive Law 310(15) *or*
- c. The bidder is a Small Business Enterprise as defined in Executive Law Section 310(20) *or*
- d. The bidder is a Service Disabled Veteran Owned Business Enterprise (SDVOB as defined in Executive Law Section 369-H

### **3.1.4 EVALUATION PREROGATIVES**

In addition, proposals will be evaluated for existing or potential conflicts of interest, for financial and operational stability, for adequacy and completeness, and to determine that all requirements of the RFP have been met. NYSIF reserves the right to disqualify a Bidder if, in NYSIF's sole opinion, the proposal does not pass the evaluation for any or all of the evaluation criteria.

For the purpose of insuring the completeness and comparability of offers, NYSIF reserves the right to analyze submissions and make adjustments or normalize submissions in the bid proposal, including the Bidder's technical assumptions, and underlying calculations and assumptions used to support the Bidder's computation of costs, or to apply such other methods, as it deems necessary to make level comparisons across bids.

**3.2 INTERVIEW**

NYSIF, at its own discretion, may require Bidders to attend an interview. NYSIF may select the top three (3) highest ranked Bidders, plus any vendors whose score is within 10% of the highest overall score to attend an interview. The top Bidders will be determined by total score as outlined in section 3.1. NYSIF evaluators may use the information gathered during this process to revise the scores from the technical evaluation, based on the merits and clarifications provided.

Interviews may be approximately 1 hour. Questions may be asked by the evaluation committee based on material covered in the RFP, the Bidders proposal, and/or the Bidders interview.

Interviews will be conducted in Syracuse or Albany. It will be the responsibility of the Bidder to present the proposed staff at the scheduled time. Bidders will be responsible for any costs associated with the attending the interview. Appointments will be made at least one week prior to the scheduled interview date.

**3.3 CONTRACT APPROVAL**

The contract between NYSIF and the successful Bidder will not be binding until it has been approved in accordance with NYSIF's contract approval process.

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**SECTION 4 – TECHNICAL SPECIFICATIONS**

No oral statements of any person shall modify or otherwise affect the terms, conditions or specifications noted herein or in the contract for the service. Any amendments to this RFP that may be necessary will be issued in writing and posted to NYSIF's website ([www.nysif.com/procurement](http://www.nysif.com/procurement)).

**4.1 MANDATORY REQUIREMENTS**

- A. The Firm must attend the mandatory Bidders' Conference/Site Visit (section 1.5) at the date and time indicated in the RFP Calendar.
- B. The Firm must demonstrate that it has five (5) years of recent experience in providing comprehensive facility management and maintenance services of similar, or greater size and scope. Facility management is defined as managing and maintaining all aspects of a building's physical plant, including but not limited to mechanical systems, janitorial, minor repairs and preventative maintenance. The Proposer must have experience in:
  - 1. The operation of commercial building mechanical and control systems;
  - 2. successful troubleshooting and/or performance verification of mechanical control systems;
  - 3. successful trouble shooting and/or performance verification of other building systems including but not limited to energy management systems (EMS), fire alarm/security systems, and general building and lighting electrical control systems, HVAC, standpipe and generators;
  - 4. testing instrumentation;
  - 5. planning and delivery of property management services;
  - 6. maintaining regular liaison with the Business Manager, or his designee and resolving building oriented complaints;
  - 7. implementing cost control and savings measures to ensure the building is operated effectively, efficiently; and
  - 8. inspection of life/safety mechanicals.
- C. The Bidder must, through subcontracting or other acceptable means, maintain the Water Cooling Tower per the attached Maintenance Program & Plan (Exhibit 1). The Bidder must supply copies of the required certifications, or the certifications of the Subcontractor, that will be responsible for providing these services.
- D. The Contractor must be able to carry an average of 1.5 months of billings in receivables from NYSIF. This includes funds advanced to subcontractors to complete any of the facilities maintenance services identified in this RFP as well as funds due directly to the Contractor. This amount should include both the normal receivables for services and supplies provided directly by the Contractor, such as salaries for staff, as well as any other maintenance services rendered.

## **4.2 PHYSICAL PLANT**

The building is a two-story structure built in 1987, encompassing approximately 60,000 square feet. The building is constructed of masonry and steel, and occupies a ground area of an estimated 499 x 417 feet. The interior has VAT covered floors, carpeting in the hallways and private offices, and acoustical ceilings with 8-foot clearance and 2 x 4 foot florescent lighting fixtures. Each of the entranceways has marble-like floor surfaces.

The mechanical systems include:

- 277v electrical services
- Hot water heat pumps
- Multiple hot water heaters to provide domestic hot water
- Central air conditioning
- A sprinkler system (FM200 Chemical based fire suppression in server room)
- One hydraulic elevator
- One Water Cooling Tower

The building is open Monday through Friday, 6:45 a.m. to 5:45 p.m., except for State holidays. Authorized employees have access to the building at times other than those mentioned above, including weekends, evenings and legal holidays. The parking lot is approximately 84,000 square feet of asphalt surface. The sidewalk is approximately 920 linear feet (approximately 4700 square feet) of concrete surface encircling the building. The access road is estimated at 850 feet from the NYSIF parking lot entrance to the entrance off 7<sup>th</sup> North Street. NYSIF's property extends an estimated distance of 200 feet from the NYSIF parking lot entrance to the premises entrance located at 1035 7th North Street. The remainder of the access road is maintained by another resident; however, NYSIF requires the Contractor to plow the entire access road as needed. Please note Exhibit 2, Property Map.

### **4.2.1 BUILDING RENOVATIONS**

NYSIF is in the process of a completing comprehensive building upgrades which preliminarily include:

1. Reconfiguration of both the 1<sup>st</sup> and 2<sup>nd</sup> floor.
2. Replacement of existing luminaires with energy efficient LED lighting.
3. Replacement of water source heat pumps.
4. Re-routing of duct work as needed.
5. Update or replace the existing sprinkler system.
6. Refresh of Existing Bathrooms.
7. Addition of an estimated two (2) single use ADA bathrooms.
8. Update electrical systems (new panels, rewiring, etc.).
9. Refurbish or replace water cooling tower.
10. Additional Pantry/Kitchens throughout the 1<sup>st</sup> and 2<sup>nd</sup> floor.

The renovation work will be bid separately; however, this work will be completed during the term of this contract. The Contractor will be responsible for Facility Management & Maintenance Services before, during and after the renovations.

#### **4.3 SERVICES TO BE PROVIDED**

The Contractor (Facility Manager) will be responsible for performing all facility maintenance services, including but not limited to providing the labor and materials necessary to perform all janitorial and facility maintenance to maintain and preserve the building and properties located at 1045 7<sup>th</sup> North Street, Liverpool, NY 13088 as described above (section 4.2), including the supplemental plowing of the access road.

The Contractor will be responsible for regularly assessing the conditions of the building and its systems; developing and implementing building operations, preventive maintenance, and establishing capital plan recommendations necessary to maintain, preserve, and keep the premises in good repair and condition. The services of the Facility Manager are to be of a scope and quality generally performed by professional property managers and performed in a reasonable, diligent, and careful manner to manage and supervise the operation, maintenance and servicing of the property in a manner that is comparable to, or better than, that generally found in similar properties located in the Central New York market. Services shall be provided in accordance with the highest standards of professionalism, skill, workmanship, and applicable trade practices and shall conform to all applicable codes and regulations. The Facility Manager's responsibilities shall include but not necessarily be limited to the following:

- A. Maintaining continuous communication with assigned NYSIF staff on all building related issues including conducting meetings and providing required written reports on a monthly basis, or such other schedule as may be determined. Such meetings will be conducted in Syracuse.
- B. Developing and implementing facility operations plans and preventative maintenance plans.
- C. Hiring, or causing to be hired, paid and supervised, all persons necessary to properly maintain and operate the building who, in each instance, shall be the Facility Manager's (and not NYSIF's) employee. The Agency requires, for the work done under this contract, that the Contractor and its subcontractor pay at least the prevailing wage rate and pay or provide the prevailing supplements, including premium rates for overtime pay, as issued by the New York State Labor Department. The annual determination of the prevailing rates and supplements will be in effect the first day of July.
- D. Ensuring that maintenance and repairs are performed by trained technicians, which maintenance and repair shall not interfere with the operations of the building's occupants whose normal hours of operation are 6:45 a.m. to 5:45 p.m. Monday through Friday.
- E. Where services are not directly provided by the bidder, bidder must hold contracts for any necessary equipment maintenance, janitorial, window cleaning, vermin extermination, snow plowing, landscaping, and other services required.
- F. NYSIF is responsible for payment of all property utility payments.
- G. Ensuring that any equipment to be replaced shall be new or re-manufactured and shall be manufactured by a reputable manufacturer. All substitutes for the original manufacturer's

equipment related to the upgrading of equipment shall be ENERGY STAR® compliant, if available. Facility Manager shall submit any proposed purchases to NYSIF for review and approval.

- H. Ensuring that any new equipment be guaranteed for a minimum of one (1) year from the date of replacement and replaced at no cost to NYSIF if found defective during that time. The Facility Manager shall obtain cost estimates for extended warranties on new installations and consult with NYSIF regarding the purchase of such contracts.
- I. Providing emergency services as needed on a twenty-four (24) hour, seven (7) days a week basis. The Facility Manager agrees to provide an emergency telephone service on a twenty-four (24) hour, seven (7) days a week basis. **From the time of the call by NYSIF, the Facility Manager has a maximum of one hour to respond to this call.** In addition, the Facility Manager will be responsible for reporting to the building if the building security alarm is triggered when security is not present. Security is present M-F 6:30 am – 6:15 pm. The Facility Manager will be responsible for performing a visual inspection of the exterior of the building for signs of vandalism or break in and check all entrances to verify that the building is secure. The Facility Manager will then contact the Building Manager, or his or her designee, to report the alarm and report the results of their visit to the office.
- J. Maintaining a log of all hours of work completed by all employees and subcontractors. Reviewing all bills received for services, work, and supplies ordered in connection with maintaining and operating the Building.
- K. Establishing and maintaining orderly books, records and files containing correspondence, receipted bills, contracts and vouchers and all other documents and papers pertaining to the Building and the operation and maintenance thereof, which NYSIF may review at any time.
- L. In accordance with the New York State Toxic Substance Act (Right-to-Know Law) and the United States Occupational Safety and Health Administration's Hazard Communication Standard, the State has established and implemented a Right-to-Know/Hazard Communication Program. The Facility Manager shall provide information and training to advise employees of the Facility Manager and NYSIF of potentially hazardous substances known to be in the work place. Part of this information is a collection of Material Safety Data Sheets for all chemicals used by contract vendors. Before any chemical product is used on or in the building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by NYSIF before the chemical is applied.
- M. Providing written monthly reports to NYSIF within ten (10) working days of the end of each month including a precise description of services provided to the building, including all systems and equipment, number of employees/subcontractors involved, and the costs incurred.
- N. Where specifications or standards are not included herein, maintenance shall be in accordance with manufacturer's recommendations and standards.
- O. Perform such other facility management services for NYSIF properties as may be mutually agreed upon.
- P. Implement cleaning procedures and protocol to disinfect the facility in the event of a viral outbreak as declared by NYSIF's Administration. Such protocol must follow applicable

industry and governmental-issued standards for disinfecting office buildings.

- Q. For repairs and services outside of this scope, prior authorization from NYSIF is necessary. NYSIF requires three (3) quotes for goods and services in strict adherence with internal goals/policies including M/WBE subcontracting goals in accordance with Appendix M. Written notice of all repairs must be given to the Business Manager or their designee weekly. Invoices for materials and services are to be billed to NYSIF. The cost of services or materials must be supported and deemed “reasonable” through documentation of multiple quotes and pricing. Contracted work must not exceed \$50,000 per project.

Billing to NYSIF for items in this section (Q) must be presented for payment within 60 days of the incurred expense. All contractor invoices shall include copies of the original invoice for materials and/or labor. The contractor may only bill NYSIF for the products and/or services. As an agency of the State of New York, NYSIF is exempt from paying sales tax. However, the contractor may add a mark up, not to exceed 10%, for overhead/profit for bidding and overseeing such repairs and services. The Contractor must have backup documentation for the labor and materials utilized for each service, and this documentation must be submitted with the invoice.

- R. Manage and supervise all facility management, mechanical and maintenance/janitorial operations (HVAC service agreement to be maintained by NYSIF).
- S. Provide services per the Schedules listed below, subject to NYSIF's modification. This service should be performed by the Contractor's staff as part of the service Contract.
- T. Provide and document an annual exterior and interior property inspection for adherence to maintenance standards and submit a copy of the inspection document to the Business Manager within one week of the date of inspection.
- U. Make all necessary routine repairs and provide services, except for those that are covered by other contracts. Where specifications or standards are not included herein, maintenance shall be in accordance with manufacturer's recommendations and standards.
- V. The Facility Manager will be responsible for the completion of a variety of administration and reporting requirements as part of its Management Fee as defined herein:
1. Upon award of the contract and prior to the start of any work, the Facility manager shall be available for an initial job meeting with NYSIF. This meeting shall include a review of all facility use rules and an introduction to the organization and appropriate staff.
  2. Unless otherwise determined, there shall be monthly meetings for the following purposes:
    - a. Review building management progress and quality of work.
    - b. Identify and resolve problems.
    - c. Coordinate the efforts of all concerned so that these services are rendered efficiently and effectively.
    - d. Maintain a sound working relationship between the Facility Manager and NYSIF

- e. Maintain a mutual understanding of the contract.
- f. Maintain sound working procedures.
- W. Provide Rubbish and Single Stream Recycling Dumpster Services, to be serviced weekly. The Contractor us to remove all trash and recycling to the dumpsters on a daily basis. Rubbish & Recycling Bins must be incorporated in the building.
- X. Implement cost control and savings measures to ensure the building is operated effectively, efficiently and within budget.
- Y. Annual electrical system inspection and maintenance (by a licensed electrician).
- Z. Review and update all building system manuals. Keeping documentation of all manuals and procedures and advising NYSIF of when manuals are outdated.
- AA. Maintenance and testing of the water cooling tower per section 1.14 & section 4.3.1.
- BB. Bidders are required to provide the names of the manufacturers of the equipment and supplies to be used on the Contract. Include the manufacturer's catalog sheets, data sheets, specifications, installation instructions, etc.

#### **4.3.1 WATER COOLING TOWER MAINTENANCE & TESTING**

The water cooling tower at this facility runs year-round, on a twenty-four (24) hour, seven (7) days a week basis. Proper maintenance, testing, and record keeping of the cooling tower is a critical service for this facility and the Bidder must, through subcontracting or other acceptable means, maintain the Water Cooling Tower per the attached Maintenance Program & Plan (Exhibit 1) and the NYS Department of Health Regulations.

Some of the key services to note are the following:

- A. Weekly Inspections:** Weekly Inspections are **performed by On-Site Maintenance staff** and include the following:
  - 1. Visual inspection of the cooling tower and associated equipment for any maintenance issues. This includes the drift eliminators located on the top of the unit;
  - 2. Testing of biocide concentrations in the water using a suitable test kit;
  - 3. Reading of make-up water meter readings;
  - 4. Visual check of conductivity levels;
  - 5. Recording of biocide concentration, conductivity level and water meter reading along with any other observed maintenance items in an on-site log maintained by the cooling tower equipment.
- B. Monthly Inspections:** Monthly Inspections are performed by Contracted Maintenance staff (or other acceptable means) and include the following:
  - 1. Visual inspection of the cooling tower and associated equipment for any maintenance issues;
  - 2. Supply and testing of biocide equipment and chemicals;
  - 3. Supply and testing of corrosion control equipment chemicals;

4. Check of water make-up connections and control;
5. Check for proper functioning of the conductivity control;
6. Check for proper functioning of all dosing equipment;
7. Monthly HPC microbe testing.
8. Completion of a monthly inspection form (Contractor supplied) and delivery of form to On-Site Maintenance Supervisor identified on Page 3 of Exhibit 1).

**C. Quarterly Inspections:** Quarterly Inspections are performed by Contracted Maintenance staff (or other acceptable means) and include the following:

1. Visual inspection of the cooling tower and associated equipment for the presence of organic material, biofilm, algae, and other visible contaminants;
2. Visual check of the general condition of the cooling tower, basin, packing material, and drift eliminator;
3. Check of water make-up connections and control;
4. Check for proper functioning of the conductivity control;
5. Check for proper functioning of all dosing equipment;
6. Completion of a formal Quarterly Inspection Report to be provided to the person Responsible for the inspection program identified on Page 3 of Exhibit 1.

**Note:** Should any inspection show visible debris in the basin and/or other objectionable conditions, corrective action will be commenced immediately under the direction of the Maintenance Supervisor.

**D. Annual Maintenance:** This work is to be completed annually and must be performed on a weekend.

1. Requires the shut down of all heat pumps.
2. From mechanical room - open both access ports, clean scale from walls, coils, etc. with pressure washer and manually as needed. Remove sludge and deposits from tower basin. Inspect and confirm proper operation of float assembly and spray pump. Inspect blower motors, belts and pulley and replace as needed. Ensure that automatic feed valve and bleeder valves are operating properly.
3. Inspect and lubricate two circulator pumps.
4. From roof top - remove cooling fins and clean with pressure washer and appropriate cleaning agent. Clean deposits from all spray nozzles and replace if needed.

**E. Legionella Testing:** The Contractor is to perform Inspection & Testing for Legionella:

1. Every ninety (90) days while the cooling tower is running. Water is to be sampled and sent to CDC Elite Lab for Legionella Testing.
2. Should the cooling tower be shut down, Legionella testing must be completed within thirty (30) days of start-up.

**Note:** If Legionella is found above the thresholds stated within the regulations, NYSIF is to be notified immediately, and immediate corrective action will be taken by the Contractor.

- F. Management & Record Keeping:** All documents on findings, deficiencies, corrective actions, cleaning and disinfection, tests performed and certifications pursuant to the regulations and plan, must be maintained for at least three years. There must be a hard copy of the records, on-site, in an organized binder.

**PLEASE NOTE: While some of the key services are listed above, all services listed under the Water Cooling Tower Maintenance Program & Plan (Exhibit 1) and the NYS Department of Health Regulations are the responsibility of the Bidder.**

**In the event the local municipality has requirements for maintaining the cooling tower, these requirements must be incorporated. In the event of a conflict, the more stringent requirements are to be followed.**

#### **4.4 FACILITY MANAGEMENT AND MAINTENANCE SERVICES**

It is the Contractor's responsibility to maintain and operate all mechanical and electrical equipment not covered by separate contracts and/or performed by staff. The facility management at minimum must also include, but is not limited to:

- A. Interior and Exterior Lighting Systems, supply and replace light tubes and bulbs as needed (all light bulbs will be at contractor's expense). Lighting currently includes but may not be limited to:
  - 1. Ceiling Troffers (florescent fixtures – F34T12 – 4', F32T8 – 4', FB34-U Bend)
  - 2. Recessed lighting (mercury vapor lamps – H38MP-100w/DX-A23)
  - 3. Wall Sconce Lights – compact florescent (9w DT9/27)
  - 4. Indoor recessed floods (65w/130v)
  - 5. Exit signs – Clear candelabra Base (T-6/15w)
  - 6. Work Station Garage Lights (F30T12) Florescent 3'
  - 7. Round, recessed lights at each entrance – mercury lamps (H37KC – 250DX)
  - 8. Walkway lighting – 175w Mercury Halogen
  - 9. Parking Lot Lighting – 250w Mercury Halogen
- B. As needed, Pest Management including but not limited to bug, rodent and other household pest control. Note: Extermination (eradicating an outbreak ex: removal of a bees nest) is not included in Pest Management. Any necessary Extermination would be done under the Special Project Allowance (see Appendix Z).
- C. Electrical Switchgear and Electrical Systems
- D. Interior and Exterior landscape services, including but not limited to tree maintenance, and maintaining walkways. \*
- E. Daily responsiveness to problems identified by NYSIF staff
- F. Rubbish and Recycling services, to be provided by the Contractor, will be serviced

- weekly. It is the responsibility of the Contractor to empty all trash into dumpsters daily.
- G. Solicit written bid proposals from at least three (3) qualified suppliers or service providers on each requirement having an expected value greater than \$500 following strict adherence with internal goals/policies including M/WBE subcontracting goals in accordance with Appendix M.
  - H. Maintain inventory, supply list and spare parts documentation
  - I. Quarterly Inspection of Fire Sprinkler System
  - J. Annual and monthly inspection of fire extinguishers per the National Fire Protection Association (NFPA) guidelines (NFPA10).
  - K. Minor electrical wiring, switch and outlet repair and installation.
  - L. Provide staff to maintain and perform required interior and exterior maintenance.
  - M. Janitorial cleaning and supplies – Janitorial supplies are to be provided by the contractor. Cleaning is to be provided per the cleaning schedules in section 4.8 of this RFP.
  - N. Vacuum all carpeting (vacuum) according to manufacturer's specifications per the cleaning schedules in section 4.8 of this RFP, using only HEPA filtered vacuum machines.
  - O. Maintain copies of all drawings, as-built and other schematic drawings current as well as site/equipment manuals
  - P. Plumbing
  - Q. Provide timely (monthly) invoicing and listing of services
  - R. Snow-blowing, light shoveling for entrances and walks, supplemental to snow plowing.
  - S. Plowing and Salting of the parking lot and the length of the 850 feet of access road. \*
  - T. Full preventive maintenance and monthly inspection, lubrication and adjustment for all elevators. If conditions warrant, replacement of specified parts. \*
  - U. Please Note: The Contractor is to supply NYSIF with a copy of the Elevator Maintenance Agreement.
  - V. Provide operational and preventative maintenance plans
  - W. Make minor repairs, patch and paint as required. Supplies are at the contractor's expense
  - X. Moving of furniture, equipment, cabinets and check stock
  - Y. Routine locksmith services including but not limited to minor lock repair and key duplication
  - Z. Assist the move, assembly and disassembly of work stations as required
  - AA. Remove broken glass, plaster or other debris as required
  - BB. Clean windows, both inside and outside as required. \*
  - CC. Parking lots and 200 ft of access road are to be sealed and striped - June 2018 and June 2020.

Please note: The Contractor may be required to provide other general facility management and maintenance related services required by the Business Manager or their designee.

\* These services are not to be completed by the Facility Manager or Maintenance Person. These services must be subcontracted; however, the management of these services is the responsibility of the Facility Manager.

#### **4.5 STAFFING**

The following lists the staff minimally required onsite.

Staff/Title	Work Hours	Work Days
One (1) Facility Manager	*7:00 AM – 5:00 PM	Mon – Fri

*\*Work Hours: Staff will be required to work an 8-hour shift at NYSIF's discretion between the hours of 7:00 AM – 5:00 PM.*

The Bidder will provide the services detailed herein. With the exception as noted, the contractor shall provide additional staff or subcontractors to provide additional work. In any event, the Facility Manager must provide janitorial work when necessary.

Bidders staff/subcontractors are not NYSIF employees, therefore; NYSIF does not pay employee vacation time or sick time additional to the monthly fee. Bidders must consider the allocation for all personnel time and fringe benefits in their proposals.

It is the responsibility of the Contractor to maintain the minimum staffing established in this RFP. The Contractor must have a procedure in place for substitute staffing in the event of anticipated and/or unanticipated absenteeism and tardiness. Coordination of any absence must be made with NYSIF, or their designee as needed so that the appropriate minimum staff is maintained onsite at all times as indicated. In the event of any absences, the contractor **MUST** provide appropriate substitute staff on site to cover these schedules as further detailed below, at no additional cost to NYSIF. It is the obligation of the Contractor to maintain sufficient staffing as detailed in the RFP. Substitute staff must be properly trained and familiar with the property/duties in advance of scheduled absences. In the event absent staff is not replaced, a credit equal to staff's hourly rate, supplemental benefits and the bidder's declared overhead and profit will be credited to NYSIF.

NYSIF reserves the right to:

1. Interview and screen all staff/subcontractors the Bidder proposes to ensure they meet all the requirements as outlined in this RFP.
2. Approve or disapprove the proposed staff/subcontractors; however, approval shall not be unreasonably withheld.
3. Change the number of staff and/or work hours, with the appropriate change in base cost. NYSIF also reserves the right to cancel or limit the scope of the Contract, if the Bidder assigns personnel not interviewed by NYSIF, unless NYSIF approves such substitution.

#### **4.6 OTHER RELATED SERVICES**

##### **4.6.1 QUALITY ASSURANCE-CLEANING**

The Contractor's liaison will physically inspect the building and complete a checklist documenting completion of items from the Schedules below to ensure that the Contract specifications are met. The checklist should be sent to the appropriate designated contact monthly. Checklists for the other tasks (such as quarterly/annually) should be submitted to the Business Manager and/or their designee in the month in which the Schedules are completed. Checklist should be available for review by NYSIF when requested.

##### **4.6.2 SEPARATE SERVICE CONTRACTS**

The items listed below are maintained by NYSIF and are NOT the responsibility of the Bidder:

1. Telephone system.
2. Office and EDP equipment.
3. HVAC Preventative maintenance
4. Shredding
5. Alarm systems and monitoring
6. Security services
7. 1st floor data center

#### **4.7 FLOORING**

Under certain conditions, services including but not limited to floor stripping, waxing and/or carpet cleaning may be required to be performed on a Saturday or Sunday. Evening and weekend projects shall be included in this proposal.

The bathroom tile floors and the Terrazzo floors must be restored and polished quarterly and the cost should be included in the monthly rate. All polish and wax buildup must be removed.

#### **4.8 CLEANING SCHEDULES**

The cost to provide the services in all schedules, including all supplies and paper goods, must be considered in the *Fee Schedule Proposal (Appendix Z)*.

##### **4.8.1 SCHEDULE A**

###### **DAILY/NIGHTLY CLEANING: GENERAL AREAS**

- A. Provide cleaning materials, soaps, detergents, floor finishes and polishes (wax less floor finish for any tiles), at the contractor's expense and subject to the approval of the Business Manager or their designee. A copy of the material safety data sheet for each chemical product used must be provided to the Business Manager or their designee. Please refer to the section below regarding Green Cleaning for more detailed product information.
- B. Sweep, mop, and rinse all hard surface floors.
- C. Vacuum floors (all rugs and carpeting).

- D. Dispose of recyclable material as directed. NYSIF will comply with local regulations.
- E. Empty all waste receptacles nightly and dispose of liner when contents are wet or sticky.
- F. Dust furniture, files, water coolers with cloth and dust window sills. **NOTE: The use of feather dusters is prohibited.**
- G. Extinguish all lights and lock designated doors upon completion of nightly cleaning and after emergency services. Alarm systems must be activated accordingly.

#### **STAIRWAYS AND MISCELLANEOUS AREAS**

- A. Sweep and wet mop stairwell treads and landings. Vacuum stairwells where carpeted.
- B. Clean and disinfect all handrails.
- C. Dust, wipe, and disinfect elevator doors and walls and remove smudges from all surfaces. Vacuum elevator door tracks.
- D. Wet mop all hard surface floors and elevator floor.
- E. During inclement weather and melting snow conditions, mop floors as necessary to maintain a high standard of cleanliness. This may also be done during the day, as necessary, if requested by NYSIF designated staff.
- F. Floors in front and rear vestibules are to be kept clean at all times.
- G. Place walk-off mats at the contractor's expense in entrances in inclement weather. Mats will be cleaned and/or replaced on a regular basis.
- H. Dust and clean glass front doors, office desks, dividing walls, and all glass in public area.
- I. Dust and clean glass front doors, dividing walls, and all glass in public area.
- J. Dust, wipe, and clean the waiting area including all chairs, floors and walls.
- K. Dust, clean, and vacuum the conference rooms - applying wood polish at the contractor's expense as needed
- L. Wash and disinfect all drinking fountains and water coolers.
- M. Wash and disinfect all cafeteria tables and clean the chairs, floors and pantry area. The pantry area includes: microwaves, countertops, and sink.
- N. Remove litter and debris from the sidewalks and landscaped areas.
- O. Clean any graffiti from the exterior surfaces.

#### **WASH ROOMS INCLUDING JANITOR CLOSETS**

- A. Supply toilet tissue, toilet seat covers, soap, air freshener, and paper towels at the contractor's expense and check mechanical operation of dispensers; repair or replace as necessary.
- B. Empty and reline the sanitary waste receptacles in each stall with plastic liners.
- C. Sweep, mop, and rinse floors nightly.
- D. Clean and polish sink fixtures and mirrors.
- E. Clean counters.

- F. Wash basins, urinals, and bowls, using cleaner to remove stains. Wash toilet seats with water and approved detergent.
- G. Damp wipe and disinfect, using approved disinfectant where necessary, partitions, and walls near urinals, bowls, and basins.
- H. Damp wipe and disinfect toilets, piping, toilet hinges and other works.
- I. Dust tops of dispensing cabinets, air dryers, doors, partitions and chairs.
- J. Store cleaning equipment (only in designated locations).
- K. Empty and clean receptacles, remove waste.

#### **4.8.2 SCHEDULE B**

##### **WEEKLY CLEANING AND MAINTENANCE**

- A. Wash stairwell landings, treads and handrails.
- B. Wipe clean elevator floors and walls.
- C. Wipe clean and polish all chrome, aluminum, and enamel surfaces and bathroom stall walls.
- D. Dust and damp mop all moldings, ledges, chair rails, baseboards and trim.
- E. Disinfect all common area surfaces including but not limited to door handles, elevator buttons, bathroom fixtures, lunch room tables etc. with H1N1 approved cleaner.
- F. Damp wipe exteriors and interiors of waste receptacles and replace receptacles at Contractor's expense.
- G. Spot clean carpets stains and heavy traffic areas.
- H. Re-line plastic wastebasket liners.
- I. Deep clean all walls (and stalls), and floors in each restroom.
- J. Water and maintain plants in Atrium, Entrance, and Conference/Training areas including supplying and applying necessary plant fertilizers and replacing plantings as necessary.

#### **4.8.3 SCHEDULE C**

##### **MONTHLY CLEANING**

- A. Dust and clean all HVAC air diffusers, intakes and registers.
- B. Clean and disinfect and remove perishables from refrigerator in lunch room.
- C. Wipe clean desktops which are prepared for cleaning on a rotating basis so that each area is cleaned at least once per month.
- D. Interior windows cleaned at least once per month.

#### **4.8.4 SCHEDULE D**

##### **QUARTERLY CLEANING**

- A. Buff, strip and refinish designated floors, including Terrazzo floors.
- B. Clean and dust window blinds.

**4.8.5 SCHEDULE E**

**SEMI-ANNUAL CLEANING**

- A. Wash interior and exterior of all windows. Window cleaning will be sub-contracted.
- B. Clean all carpeting. Two (2) times per year. Cleanings will be completed April/May and November/December of each year. (Spot clean as needed on a weekly basis.)
- C. Restroom tile and grout cleaning/resealing.
- D. Power wash sidewalks Two (2) times per year

**4.8.6 SCHEDULE F**

**ANNUAL CLEANING**

- A. Clean all seating (approx. 250 chairs).

**4.9 SNOW POLICY AND PROCEDURES**

As noted above, this service must be subcontracted. Provide snow/ice removal during normal business hours six days a week, Monday through Saturday, from parking areas, sidewalks and 200 feet of access road meeting or exceeding the specifications below.

- A. Safe walking conditions are of paramount importance. Accumulations of snow/sleet/hail/ice must be removed from sidewalks and building entrances/exits on a daily basis and additionally as necessary during the work day, or at NYSIF's request to ensure safe passage by the pedestrian public.
- B. Sidewalks and building entrances/exits are to be snow-blown/shoveled/plowed whenever snow/sleet/hail/ice has accumulated to a depth of two (2) inches, and additionally as necessary during the work day, or at the NYSIF's request. The curb line must always be kept clear and visible. If a snow blower is used it must be no wider than the sidewalk being plowed.
- C. Sidewalks leading to building entrances/exits must be kept clean and calcium chloride applied as necessary. An appropriate mixture of calcium chloride must be applied to the sidewalk after snow blowing/shoveling and as necessary or at NYSIF's request. Facility Manager will apply calcium chloride. A quantity of the calcium chloride should be left on the building premises for hand application during the day.
- D. Parking areas and driveways are to be kept reasonably clear as required by weather conditions to minimize hazards and ensure safe entry and exit from public roads.
- E. Whenever snow/sleet/hail/ice conditions develop after business hours, parking areas and driveways must be plowed and salted, and sidewalks and building entrances/exits must be cleared and calcium chloride applied, by 6:30 a.m., of the next business day.
- F. Parking areas and driveways are to be salted (not sanded) whenever snow/sleet/hail/ice has accumulated to a depth of one (1) inch, and as necessary during the work day, or at the NYSIF's request. No sand is to be used.
- G. Clearing snow/ice from sidewalks at intervals as necessary during the work day when snow/sleet/hail/ice have fallen to the depth of two (2) inches or more.
- H. Plowing of driveways and parking areas during the work day may be necessary if

additional two (2) inches of snow fall. After a snowfall the parking lot must be plowed overnight to clean up any remaining snowfall.

- I. Accumulated snow/sleet/hail/ice must be removed from premises whenever two or more parking spaces are blocked within 48 hours from the cessation of the storm. The annual pricing for removal is to be identified separately on the Fee Schedule (Appendix Z).

**NOTE WELL:**

1. There is no area for snow to be piled or dumped beyond the parking lot perimeters at any of the buildings. Snow must be loaded and removed from each location during off hours or weekends. There is no parking of snow plowing/removal equipment at any of the buildings' lots.
2. NYSIF requires the remainder of the access road to be plowed and salted as needed.

**4.10 LANDSCAPING**

As noted above, this service must be subcontracted, and services must meet or exceed the specifications below.

**4.10.1 EXTERIOR:**

- A. Curbs and curb lines around the perimeter of the lot including the perimeter of the property and inside driveways and parking lots, to be swept as needed.
- B. Areas around light poles, posts, trees and garden beds are to be trimmed weekly.
- C. Lawns mowed a minimum of once a week during the growing season.
- D. Trees are to be pruned and trimmed and have no contact with the buildings. Limbs are to be eight (8) feet above all parking areas and walkways. Dead limbs and branches must be removed immediately.
- E. Perimeter trees must be trimmed back to the edge of the parking lot. Leaf pickup a minimum of once a week.
- F. Shrubs to be trimmed as needed.
- G. Garden beds to be weeded as needed as well as cleaned out every spring.
- H. Mulch will be replaced once per year with contractor grade, dark mulch.
- I. Parking areas and exterior kept free from litter and debris.
- J. Turf irrigation sprinklers must be maintained and repaired as needed. This includes spring start up and fall winterization. Winterizing of outdoor sprinkler system consisting of 6 zones and approximately 40 heads by blowing out all moisture from the system.
- K. Insect and disease control of plants as needed.
- L. Lawn fertilization three (3) times per year.

**4.10.2 INTERIOR:**

- A. Watering, fertilization, insect and disease control of plants.
- B. Replacement of plants that deteriorate in health or appearance. All landscaping should appear neat and clean at all times.

**4.11 SEALING AND STRIPING PARKING LOT AND ACCESS ROAD**

Parking lot and 200ft. access road are to be sealed and striped in June of years 1, 3, and 5 of the contract. The contractor will completely sealcoat and machine stripe the parking lot and 200 feet of access road to their current configuration. Seal coating must be completed in order to provide access to the building at all times. The parking lot is to be done on consecutive weekends. Striping to be completed within 24 hrs of seal coating. Contractor is responsible for using materials from the NYS DOT list of Approved Materials if applicable:

<https://www.dot.ny.gov/divisions/engineering/technical-services/materials-bureau/materials-and-equipment>

For specifications regarding seal coating and striping please refer to Exhibit 3.

**4.12 TERM**

NYSIF anticipates awarding a five (5) year contract covering the services detailed in this RFP.

Note: This contract may be terminated at any time by NYSIF for convenience upon thirty (30) days written notice or other specified period without penalty or other early termination charges due. Such termination of the contract shall not affect any project or Purchase Order that has been issued under the contract prior to the date of such termination. If the contract is terminated pursuant to this subdivision, NYSIF shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.

**4.13 COST FACTORS & CONTRACT BILLING**

**4.13.1 COST FACTORS / FEE SCHEDULE**

The Fee Schedule (Appendix Z), requires the Bidder to submit all-inclusive annual rates for the management and maintenance of the facility, with the exception of the Landscaping and Snow Removal Services, which are priced separately on Appendix Z. No price escalations will be allowed over the term of the contract. All rates provided should incorporate the cost of all labor, fringe benefits, routine cleaning supplies (required herein) and materials, management, overhead and profit for all services listed within. Please note bidders are required to pay wages to meet or exceed the Prevailing Wage Schedule throughout the duration of the contract.

The items listed as “Yes” below are costs that should be factored into Fee Schedule (Appendix Z). Items listed as “No” are either covered under separate contracts or will be covered in the Special Projects Allowance of Appendix Z. Items listed as “N/A” are not the Bidder’s responsibility and are paid directly by NYSIF.

<u>Costs to be Factored into the Fee Schedule (Appendix Z)</u>	<u>Yes/No</u>
1. Facility Manager/Onsite Handyman/Porter as defined.	Yes
2. Emergency service/response in addition to regular hours.	Yes
3. Materials to complete miscellaneous maintenance and repair items.	Yes
4. Light bulb material (Florescent, LED, etc. as needed). **	Yes
5. Cleaning supervisor as defined.	Yes
6. Additional cleaners as defined.	Yes
7. Consumables (i.e. paper products, hand sanitizer, soap, garbage bags, etc.)	Yes
8. Cleaning chemicals (Per section 1.12)	Yes
9. Cleaning equipment	Yes
10. Snowplowing/Snow blowing/shoveling	Yes
11. Snow removal	Yes
12. Calcium Chloride	Yes
13. HVAC equipment maintenance	N/A
14. Electrical equipment maintenance	Yes
15. Elevator maintenance	Yes
16. Broken glass material	No
17. Rubbish and Single Stream Recycling Dumpster Services to be serviced weekly	Yes
18. Daily removal of all garbage, recyclables, & other debris to dumpsters	Yes
19. Landscaping Services	Yes
20. Pest Management/Exterminating services	Yes
21. Minor Plumbing services	Yes
22. Locksmith services (including keys)	Yes
23. Exterior window cleaning	Yes
24. Carpet cleaning	Yes
25. VCT/ceramic buffing/wax per schedule	Yes
26. Exterior site light replacement	Yes
27. Access Control System (card swipe)	N/A
28. Power Washing Sidewalks per schedule	Yes
29. Polish and restoration of bathroom floors per schedule	Yes
30. Polish and restoration of Terrazzo floors per schedule	Yes
31. Cleaning of sidewalks	Yes
32. Alarm system service/test/repair	N/A
33. Fire extinguisher service/test/repair/monthly inspection and marking of tags	Yes
34. Smoke detector service/test/repair	N/A
35. Security services	N/A
36. Generator Testing and Maintenance	N/A

\*\*See section 4.2.1 regarding building renovations/upgrades.

#### **4.13.2 SPECIAL PROJECTS ALLOWANCE**

The Fee Schedule (Appendix Z) also allows for a ten percent (10%) special project allowance based on the five (5) year base cost bid. This is listed on the Fee Schedule (Appendix Z) as the “Special Project Fund”. Proper documentation must be pre-approved by NYSIF and submitted with invoices to pay any of these additional costs, salaries and/or fringe benefits. NYSIF does not guarantee that any or all of the allowance will be expended during the Contract term and will be utilized ONLY at NYSIF’s sole discretion. Meal money and overtime expenses to cover regularly schedule time by other employees will not be paid by NYSIF. It is the Contractors responsibility to abide by the terms and conditions of the Prevailing Wage rules set by the NYS Department of Labor.

For all repairs and services, as stated above, the services must be approved by NYSIF prior to the work being completed. The cost of services or materials must be supported and deemed “reasonable” through documentation of multiple quotes and pricing. Contracted work must not exceed \$50,000 per project.

Billings to NYSIF for these items will be under the “Special Projects Allowance”, listed on the Fee Schedule (Appendix Z), and must be presented for payment within 60 days of the incurred expense. All contractor invoices shall include copies of the original invoice for materials and/or labor. **The contractor may only bill NYSIF for the products and/or services. As an agency of the State of New York, NYSIF is exempt from paying sales tax; however, the contractor may add a mark up, not to exceed 10%, for overhead/profit for bidding and overseeing such repairs and services. The Contractor must have backup documentation for the labor and materials utilized for each service, and this documentation must be submitted with the invoice. NYSIF cannot pay invoices without this documentation.**

#### **4.13.3 BUILDING RENOVATIONS**

Please see section 4.2.1 of the RFP for a preliminary list of the renovations NYSIF expects to complete during the term of this contract.

The Bidder is responsible for Facility Management and Maintenance Services as described within this RFP before, during and after the building renovations have been completed. Please note, rates provided by the Bidders in the Fee Schedule (Appendix Z) cannot be increased during the term of the contract. It is the responsibility of the Bidder to price the services accordingly, accounting for the changes in the scope of work after the renovations are completed.

NYSIF reserves the right to reduce the Contractors scope of work (staff utilized and tasks assigned) during the renovations. Should NYSIF decrease the Contractors scope of work, an amended contract rate will be negotiated and memorialized in a Side Letter agreement.

#### **4.13.4 CONTRACT BILLING**

Payments for services rendered under this RFP will not exceed the rates established in the Fee Schedule (Appendix Z). Payment will be billable upon the receipt of a proper invoice and completion of services.

Each invoice must be itemized and include the following information: Contract ID number (i.e.: D000XXX); NYSIF purchase order number, Contractor FEIN; date; time and location; actual number of hours worked; a detailed description of services performed; and itemized costs for services provided.

Invoices without the above stated information will be returned to contractor to be completed as required in the paragraph above. Payment will not be issued and will not be due and owing until a corrected invoice is received and approved.

The Contractor will submit bills for payment of services to NYSIF at the time those services are rendered; however, bills are not to be submitted more often than monthly. Thus, daily, weekly, and monthly services are to be billed each month. Any appropriate hourly charges shall be itemized and submitted monthly with a description of services provided. Invoices shall be on official company form or Excel spreadsheet and shall detail all specific costs associated with the invoice.

Quarterly and annual services are to be billed at the end of the appropriate month. Subcontractor payment reimbursement requests should be submitted monthly with a copy of the subcontractor's invoice.

#### **4.14 SUBCONTRACTING**

Prior to the commencement of the work to be performed by the successful Bidder, the Bidder must agree to the following provisions:

The Bidder agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of NYSIF. Approval shall not be unreasonably withheld upon written receipt of written request to subcontract.

The Bidder may arrange for a portion/s of its responsibilities under a Contract to be subcontracted to qualified, responsible subcontractors, subject to approval of NYSIF. If the Bidder determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under the Contract must be fully explained by the Bidder to NYSIF. As part of this explanation, the subcontractor must submit to NYSIF a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form- Appendix V, as required by the Bidder prior to execution of a Contract.

The Bidder retains ultimate responsibility for all services performed under a Contract.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of the Contract. Unless waived in writing by NYSIF, all subcontracts between the Bidder and subcontractors shall expressly name NYS, through NYSIF, as the sole intended third party beneficiary of such subcontract. NYSIF reserves the right to

review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make NYSIF or NYS a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against NYSIF.

NYSIF reserves the right, at any time during the term of the Contract, to verify that the written subcontract between the Bidder and subcontractors is in compliance with all of the provisions of this Section and any subcontract provisions contained in the Contract.

The Bidder shall give NYSIF immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the Bidder's duties under the Contract. Any subcontract shall not relieve the Bidder in any way of any responsibility, duty and/or obligation of the Contract.

If at any time during performance under the Contract total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a Vendor Responsibility Questionnaire.

#### **4.15 CERTIFICATIONS/LICENSE/PERMITS**

If required, the Contractor shall obtain, maintain and pay for all certifications, permits and licenses legally required and shall give all notices, pay all fees and comply with all laws, rules, and regulations applicable to the work at no additional cost. The Contractor must also have all local licenses and certifications to perform the work described in this RFP. It is the responsibility of the Contractor to ensure that any subcontractors are also licensed and permitted appropriately for the work they perform. Additionally, should work require certifications, permits and/or licenses, NYSIF must have a copies on file before any work is completed.

By submitting a bid, Bidders are certifying they are qualified to perform the proposed work. Bidders shall have the necessary staff, equipment, permits and licensing, and compliance for the schedule set forth in this contract.

#### **4.16 LOCATION AND TRAVEL**

The rates provided in the Fee Schedule (Appendix Z) will be inclusive of all costs, including any and all travel expenses. For purposes of any contract resulting from this RFP, NYSIF will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor. It is understood that travel expenses are not allowed, and will not be billed to NYSIF.

#### **4.17 PENALTIES**

Notwithstanding any other provisions, NYSIF reserves the right to penalize the Contractor including termination of the Contract if the Contractor fails to live up to any or all of the requirements of this Contract.

To gain a measure of assurance that the Bidder selected to maintain NYSIF's building will comply with all of the requirements of this Contract, NYSIF reserves the right to invoke penalties for Contractor failure(s). The amount of any reduction will be based on the following:

1. A charge of \$250 for each call the Contractor responds to in more than one (1) hour from NYSIF notification.
2. As stated in Exhibit C, 22(b), NYSIF reserves the right to withhold payment, in whole or in part, at NYSIF's discretion, in any case where a question of non-performance arises.

#### **4.18 PATENTED DEVICES, MATERIALS AND PROCESSES**

The Contract prices are to include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the work. Whenever the Contractor is required to desires to use any design, device, material, or process covered by letter, patent, or copyright, in providing the goods or services which are a part of this RFP, the Contractor warrants to NYSIF and to the State that it may do so and indemnifies and saves harmless the State from any and all claims for infringement by reason of the use of any such patented design, device, material, or process for any cost, expense, and damage which it may be obliged to pay by reason of any such infringement at any time during the performance or after the completion of the work.

#### **4.19 WARRANTIES & GUARANTEES**

**THE WARRANTIES SET FORTH IN THE CONTRACT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Misuse, accident, unsuitable physical or operating environment, modification or operation inconsistent with standard industry practice, or failure caused by a product for which Contractor is not responsible may void the warranties.

#### **4.20 ADDITIONAL BIDDER CERTIFICATION REQUIREMENTS**

In addition to those requirements outlined in item #39 of Exhibit B, NYSIF requires acceptance of the following contract conditions:

1. Bidders shall acquaint themselves with conditions at the site and shall assume all responsibility for providing and maintaining all facility management and maintenance services.
2. All materials used shall be of good quality and shall be free from any and all defects that would mar the appearance of the facility or render them structurally unsound or unsuitable for use.
3. The Contractor shall dedicate and utilize any real or personal property purchased with funds provided under this Contract for purposes benefiting this and subsequent agreements with NYSIF, or its assigns, for the duration of that property's useful life. The Contractor hereby grants and assigns a purchase money security interest in all such property, even though hereafter acquired.
4. Project Delay: If any delay in completing, or impeding, Contractor's work is caused by NYSIF, then NYSIF should be notified immediately in writing of the delay and reason(s) for the delay.

## BIDDER CERTIFICATIONS

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*Please initial where indicated for each item. Failure to complete and return this form will result in your bid being deemed non-responsive*

### Certifications:

- \_\_\_\_\_ 1. The person or persons signing below is (are) duly authorized to sign the proposal and the contract, and is (are) identified on the *Title Page*.
- \_\_\_\_\_ 2. Bidder is willing to enter into a contractual agreement containing, at a minimum, those terms and provisions identified in this RFP. *Any exceptions to these terms and conditions must be explicitly stated in a separate section of the proposal.*
- \_\_\_\_\_ 3. The Bidder agrees to comply with all terms of Exhibit A, Standard Clauses.
- \_\_\_\_\_ 4. The Bidder is in compliance with or meets all Bidder Certification Requirements (Exhibit B, clause 39).
- \_\_\_\_\_ 5. The fee(s) quoted in the Fee Proposal Schedule is a firm and irrevocable offer for 180 days.
- \_\_\_\_\_ 6. The Bidder meets or exceeds all Mandatory Bidder Qualifications and has provided evidence of such in its bid/proposal.
- \_\_\_\_\_ 7. The Bidder understands the work to be done, and is committed to performing the work as expeditiously as possible.

### Freedom of Information Law (FOIL):

Please indicate whether you believe that any of the information supplied herein constitutes a trade secret or that disclosure of the information would cause substantial injury to the Bidder's competitive position and should be exempt from disclosure under the Freedom of Information Law (see Exhibit B, clause 15 for additional information):

☐ No

☐ Yes

## BIDDER CERTIFICATIONS

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### Non-collusion:

\_\_\_\_\_ I hereby attest that I am the person responsible within my firm for the final decision as to the price(s) and amount of this bid or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on behalf of my firm:

- \_\_\_\_\_ 1. The price(s) and amount of this bid have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition with any other contractor, bidder or potential bidder.
- \_\_\_\_\_ 2. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential bidder on this project, and will not be disclosed prior to bid opening.
- \_\_\_\_\_ 3. No attempt has been made nor will be made to solicit, cause or induce any firm or person to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid, or other form of complementary bid.
- \_\_\_\_\_ 4. The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary bid.
- \_\_\_\_\_ 5. My firm has not offered nor entered into a subcontract or agreement regarding the purchase of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from bidding or to submit a complementary bid on this project.
- \_\_\_\_\_ 6. My firm has not accepted nor been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting a complementary bid, or agreeing to do so, on this project.
- \_\_\_\_\_ 7. I have made a diligent inquiry of all members, officers, employees and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this affidavit.

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## BIDDER CERTIFICATIONS

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### Conflicts of Interest:

- \_\_\_\_\_1. Bidder has provided “Appendix V – Vendor Assurance of No Conflict of Interest or Detrimental Effect”, signed by an authorized executive or legal representative attesting that the Bidder’s performance of the services does not and will not create a conflict of interest with, nor position Bidder to breach any other contract currently in force with, the State of New York, and that Bidder will not act in any manner that is detrimental to any State of New York project on which Bidder is rendering services.
- \_\_\_\_\_2. Bidder hereby reaffirms the attestations made in its proposal and covenants, and represents that there is and shall be no actual or potential conflict of interest that could prevent Bidder’s satisfactory or ethical performance of duties required to be performed pursuant to the terms of the RFP or subsequent Contract. Bidder shall have a duty to notify NYSIF immediately of any actual or potential conflicts.
- \_\_\_\_\_3. In conjunction with any subcontract under this RFP or subsequent Contract, the Bidder shall obtain and deliver to NYSIF, prior to entering into a subcontract, an “Appendix V- Vendor Assurance of No Conflict of Interest or Detrimental Effect”, signed by an authorized executive or legal representative of the subcontractor. Bidder shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to NYSIF a signed and completed Appendix V for each of its subcontractors prior to entering into a subcontract.
- \_\_\_\_\_4. NYSIF and Bidder recognize that conflicts may occur in the future because the Bidder may have existing, or may establish new relationships. The NYSIF will review the nature of any relationships and reserves the right to terminate any contract for any reason, or for cause, if, in the judgement of NYSIF, a real or potential conflict of interest cannot be cured.
- \_\_\_\_\_5. Bidder must disclose any existing or contemplated relationship with any other person or entity, including relationships with any of its members, shareholders of 5% or more, parents, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the NYSIF, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, please describe how your firm would eliminate or prevent it. Indicate in the bid what procedures will be followed to detect, notify the NYSIF of, and resolve such conflicts.
- \_\_\_\_\_6. Bidder must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Joint Commission on Public Ethics or its predecessor State entities (collectively, “Commission”) and, if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

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## BIDDER CERTIFICATIONS

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### Public Officers Law:

- \_\_\_\_\_1. As a general rule and in accordance with New York Public Officers law, former employees of NYSIF may neither appear nor practice before NYSIF, nor receive compensation for services rendered on a matter before NYSIF, for a period of two years following their separation from NYSIF. In addition, former NYSIF are subject to a “lifetime bar” from appearing before NYSIF receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with NYSIF.
  
- \_\_\_\_\_2. Bidder and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law; other laws applicable to the service of State employees; and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the “Ethics Requirements”). Bidder certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this RFP or subsequent contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by Bidder or is Subcontractors and who is disqualified from providing services under the RFP or subsequent contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from a Contract. Bidder shall identify and provide the State with notice of those employees of Bidder and its Subcontractors who are former employees of the State that will be assigned to perform services under this RFP or subsequent Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that Bidder provide it with whatever information that State deems appropriate about each such person’s engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be conflict with any of the Ethics Requirements. The State shall have the right to terminate the Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

### Subcontracting:

- \_\_\_\_\_1. Bidder agrees not to subcontract any of its services, unless, as indicated in its proposal, without the prior written approval of NYSIF.

## BIDDER CERTIFICATIONS

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**Signature**

**Typed Name**

\_\_\_\_\_  
**Company Position**

\_\_\_\_\_  
**Company Name**

**Date Signed**

**Sworn to before me this**

\_\_\_\_\_**Day of**\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
**Notary Public**

**NYSIF EXHIBIT A**

**STANDARD CLAUSES**

PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE.

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**STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**4. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**5. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**6. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**7. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the

Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

**9. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property

and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**12. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit A, the terms of this Exhibit A shall control.

**13. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**14. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**15. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**16. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**17. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**18. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**19. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**20. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain.

NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**21. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.**

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**22. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**23. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**24. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**25. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**NYSIF EXHIBIT B**

**GENERAL SPECIFICATIONS**

**PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE**

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**GENERAL****1. APPLICABILITY**

The terms and conditions set forth in this NYSIF Exhibit B are expressly incorporated in and applicable to the resulting procurement contracts let by NYSIF where incorporated by reference in its Bid Documents. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

**2. GOVERNING LAW**

This procurement, the resulting contract and any purchase orders issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the contract shall be heard in a court of competent jurisdiction in the State of New York.

**3. ETHICS COMPLIANCE**

All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the Bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

**4. CONFLICT OF TERMS**

Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

- a. NYSIF Exhibit A Standard Clauses
- b. Contract and other writing(s) setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. Clarifications must be specifically noted in writing as to what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph.
- c. Bid Documents (Other than Exhibit A).
- d. NYSIF Exhibit B (General Specifications).
- e. Contractor's Bid or Proposal.

**BID SUBMISSION****5. NOTIFICATION TO ALL BIDDERS**

NYSIF is responsible for providing addenda or responding to questions from prospective Bidders. If it is necessary to revise the Bid Documents before the due date for bids, amendments will be posted on NYSIF's website: [www.nysif.com/procurement](http://www.nysif.com/procurement).

By submitting a bid, Bidders are certifying they are qualified to perform the proposed work. Bidders shall have the necessary staff, equipment, compliance, etc. as set forth in the Bid Documents.

**6. INTERNATIONAL BIDDING**

All offers (tenders), and all information and Product required by the solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$US). Any offers (tenders) submitted which do not meet the above criteria will be rejected.

**7. BID OPENING**

Bids may, as applicable, be opened publicly. NYSIF reserves the right at any time to postpone or cancel a scheduled Bid opening.

**8. BID SUBMISSION**

All Bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their Bids to the location set forth in the Bid Specifications prior to the stated Bid opening date and time.

In the event that a Bidder fails to provide such information on the return Bid envelope or shipping material, the receiving entity reserves the right to open the shipping package or envelope to determine the proper Bid number or Product group, and the date and time of Bid opening. Bidder shall have no claim against the receiving entity arising from such opening and such opening shall not affect the validity of the Bid or the procurement.

Notwithstanding the receiving agency's right to open a Bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the foregoing requirements.

All Bids must be signed by a person authorized to commit the Bidder to the terms of the Bid Documents and the content of the Bid (offer).

## 9. LATE BIDS

For purposes of Bid openings held and conducted by NYSIF, a Bid must be received in such place as may be designated in the Bid Documents at or before the date and time established in the Bid Specifications for the Bid opening.

Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Bid Documents are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids were received to satisfy the multiple awards; and acceptance of the late Bid is in the best interests of NYSIF. Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with their specifications. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of NYSIF shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather or security procedures for parking and building admittance shall not excuse late Bid submissions. Determinations by NYSIF relative to Bid timeliness shall be final.

## 10. BID CONTENTS

Bids must be complete and legible. All Bids must have original signatures. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by NYSIF or may be grounds for rejection of the Bid. Changes, corrections and/or use of white-out in the Bid or Bidder's response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their Bids before submission, as amendments to Bids or requests for withdrawal of Bids received by NYSIF after the time specified for the Bid opening, will not be considered.

## 11. ERRORS AND OMISSIONS

If a Bidder discovers any ambiguity, conflict, discrepancy, omission or other error in Bid Documents, immediately notify one of the Designated Contacts of such error and request the clarification or modification thereof. Notice to NYSIF of any problems described above must be made in writing and received at NYSIF on or before the date and time shown as the final date for Bidder inquiries. Any modifications deemed necessary by NYSIF shall be given by written notice and posted on NYSIF's Procurement website ([www.nysif.com/procurement](http://www.nysif.com/procurement)).

If prior to the final filing date for submission of a bid, a Bidder fails to notify NYSIF of a known error or an error that reasonably should have been known, the Bidder shall assume the risk. If awarded the contract, the Bidder shall not be entitled to additional compensation or time by reason of the error or its late correction.

## 12. EXTRANEIOUS TERMS

Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

Only those extraneous terms that meet all the following requirements may be considered as having been submitted as part of the Bid:

- a. Each proposed extraneous term must be specifically enumerated in the "Comments and Limitations" section of the proposer's bid response; and
- b. The Bidder must identify the particular specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and

- c. The Bidder shall enumerate the proposed addition, deletion, counter-offer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed “material,” shall be incorporated into a Contract or Purchase Order unless submitted in accordance with the above and NYSIF expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

### 13. CONFIDENTIAL/TRADE SECRET MATERIALS

Trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as “confidential” or “proprietary” on its face or in the document header or footer shall not be considered by NYSIF to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing at the time of bid submission, setting forth the reasons for the claimed exemption. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or NYSIF hereunder or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of NYSIF, or otherwise obtained under the Freedom of Information Act or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take appropriate steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

### 14. RELEASE OF BID EVALUATION MATERIALS

Requests concerning the evaluation of Bids may be submitted under the Freedom of Information Law. Information, other than statistical or factual tabulations or data such as the Bid Tabulation, shall only be released as required by law after Contract award. Bid Tabulations are not maintained for all procurements. Names of Bidders may be disclosed after Bid opening upon request. Written requests should be directed to [contracts@nysif.com](mailto:contracts@nysif.com).

### 15. FREEDOM OF INFORMATION LAW

During the evaluation process, the content of each Bid will be held in confidence and details of any Bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. If the Bid contains any such trade secret or proprietary information, a written request to NYSIF to not disclose such information must accompany the Bid. Such request must state with particularity the reasons why the information should not be available for disclosure and must be provided at the time of submission of the Bid. Notations in the header, footer or watermark of the Bid Document will not be considered sufficient to constitute a request for non-disclosure of trade secret or proprietary information. Where a Freedom of Information request is made for a trade secret or proprietary information, NYSIF reserves the right to determine upon written notice to the Bidder whether such information qualifies for the exemption for disclosure under the law. Notwithstanding the above, where a Bid tabulation is prepared and Bids publicly opened, such Bid tabulation shall be available upon request.

### 16. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS

If any portion of work being Bid is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

- a. **“Public Works” and “Building Services” -Definitions**
  - i. **Public Works** Labor Law Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a “public works” project (distinguished from public “procurement” or “service” contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the Contract. The wage and hours provision applies to any work performed by Contractor or Subcontractors.
  - ii. **Building Services** Labor Law Article 9 applies to Contracts for building service work over \$1,500 with a public agency, that:
    - (i) involve the care or maintenance of an existing building, or
    - (ii) involve the transportation of office furniture or

equipment to or from such building, or (iii) involve the transportation and delivery of fossil fuel to such building, and (iv) the principal purpose of which is to furnish services through use of building service employees.

- b. **Prevailing Wage Rate Applicable to Bid Submissions** A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.
- c. **Wage Rate Payments / Changes During Contract Term** The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.
- d. **Public Posting & Certified Payroll Records** In compliance with Article 8, Section 220 of the New York State Labor Law:
  - i. **Posting** The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.
  - ii. **Payroll Records** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.
  - iii. **Submission of Certified Payroll Transcripts for Public Works Contracts Only** Contractors and Subcontractors on public works projects must submit monthly payroll transcripts to NYSIF that has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For Mini-Bid solicitations, the payroll records must be submitted to the entity preparing the agency Mini-Bid project specification. For “agency specific” Bids, the payroll records should be submitted to the entity issuing the purchase order. For all other OGS Centralized Contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and NYSIF, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor provided: 1) the Contractor/Subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the Contractor or Subcontractor attesting to the truth and accuracy of the records accompanies the disk. This provision does not apply to Article 9 of the Labor Law building services contracts.
  - iv. **Records Retention** Contractors and Subcontractors must preserve such certified transcripts for a period of three years from the date of completion of work on the awarded contract.

**Day's Labor** Eight hours shall constitute a legal day's work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law.

No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. “Extraordinary emergency” shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary, in the judgment of the NYS Commissioner of Labor, for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

## 17. TAXES

- a. Unless otherwise specified in the Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.
- b. Purchases made by NYSIF are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by NYSIF or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the Tax Law. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

- c. Pursuant to Revised Tax Law 5-a, Contractor will be required to furnish sales tax certification on its behalf and for its affiliates, and subcontractors for Contracts with a value greater than \$100,000 in accordance with provisions of the law.

## 18. EXPENSES PRIOR TO CONTRACT EXECUTION

NYSIF is not liable for any costs incurred by a Vendor, Bidder or Contractor in the preparation and production of a Bid, Mini-Bid or best-and-final offers or for any work performed prior to Contract execution.

## 19. ADVERTISING RESULTS

The prior written approval of NYSIF is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor shall also obtain the prior written approval of NYSIF relative to the Bid or Contract for press or other media releases.

## 20. PRODUCT REFERENCES

- a. **“Or Equal”** In all Bid Specifications the words “or equal” are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. NYSIF’s decision as to acceptance of the Product as equal shall be final.
- b. **Discrepancies in References** In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

## 21. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS

Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and unless such use is precluded due to health, welfare, safety requirements or by the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the “Warranties” set forth below.

Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

## 22. WARRANTIES

Where Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to NYSIF. Contractor hereby warrants and represents:

- a. **Product Performance** Contractor warrants and represents that Products delivered pursuant to this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.
- b. **Title and Ownership Warranty** Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Products transferred to NYSIF under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the NYSIF for any loss, damages or actions arising from a breach of said warranty without limitation.
- c. **Contractor Compliance** Contractor represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, tolls and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid/Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for worker’s compensation and disability benefits (form C-105.2 and form DB-120.1, respectively), and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds for the Commissioner to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.

- d. **Product Warranty** Unless recycled or recovered materials are available in accordance with the “Recycled or Recovered Materials” clause herein, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer’s recommendations and standard practice.

Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer (“Project warranty period”). During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to NYSIF. Contractor shall extend the Project warranty period for individual component(s), or for the System as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the System requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees (“extended warranty”).

Where Contractor, the Independent Software Vendor (“ISV”), or other third party manufacturer markets any Project Deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor’s warranty obligations during the project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the Project warranty or extended warranty period(s), Contractor shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third party manufacturer’s Product.

Where Contractor, ISV or other third party manufacturer markets any Project Deliverable with a standard commercial warranty which goes beyond the Project warranty or extended warranty period(s), Contractor shall notify NYSIF and pass through the manufacturer’s standard commercial warranty to NYSIF at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the third party extended warranty after expiration of the Project warranty and extended warranty period(s).

- e. **Replacement Parts Warranty** If during the regular or extended warranty period’s faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor, material and transportation incurred to repair or replace defective Product during the warranty period shall be borne solely by the Contractor, and the State or NYSIF shall in no event be liable or responsible for such costs.

Any part of component replaced by the Contractor under the Contract warranty shall be replaced at no cost to NYSIF and guaranteed for the greater of: a) the warranty period under paragraph (d) above; or b) if a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

- f. **Virus Warranty** The Contractor represents and warrants that Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at Licensee’s site.

- g. **Date/Time Warranty** Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor’s business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor’s or Product manufacturer/developer’s stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

- h. **Workmanship Warranty** Contract warrants that all components or deliverables specified and furnished by or through Contractor under the Project Definition/Work Order meet the completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.
- i. **Survival of Warranties** All warranties contained in this Contract shall survive the termination of this Contract.

## 23. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS

Bids offering Products that are manufactured or produced in public institutions will be rejected.

## 24. PRICING

- a. **Unit Pricing** If required by the Bid Specifications, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item unless otherwise specified, in the Bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of NYSIF, such unit pricing is obviously erroneous.
- b. **Net Pricing** Unless otherwise required by the Bid Specifications, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.
- c. **“No Charge” Bid** When Bids are requested on a number of Products as a Group or Lot, a Bidder desiring to Bid “no charge” on a Product in the Group or Lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of NYSIF.
- d. **Third Party Financing** If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract Award to agree to the terms and conditions of a “Consent & Acknowledgment Agreement” in a form acceptable to NYSIF.
- e. **Best Pricing Offer** During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of NYSIF, shall be immediately reduced to the lower price.
- f. **Price Decreases** Price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after:
  - i. **GSA Changes:** Where NYS Net Prices are based on an approved GSA Schedule, the date the approved GSA Schedule pricing decreases during the Contract term; or
  - ii. **Commercial Price List Reductions:** Where NYS Net Prices are based on a discount from Contractor’s list prices, the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

Unless otherwise specified in the Bid Specifications, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order(s) without being in conflict with, or obligation to comply on a global basis, with the terms of this clause.

- g. **Best and Final Prices** As specified in the Bid Documents and Contract, a Contractor may be solicited at the time of issuance of a Purchase Order or Mini-Bid award for best and final pricing for the Product or service to be delivered. Contractors are encouraged to reduce their pricing upon receipt of such request.

## 25. DRAWINGS

- a. **Drawings Submitted With Bid** When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by NYSIF, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.
- b. **Drawings Submitted During the Contract Term** Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Commissioner’s representative.

- c. **Accuracy of Drawings Submitted** All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing product, services or installation, or carrying out any other requirements of the intended scope of work.

## 26. SITE INSPECTION

Where a site inspection is required by the Bid Specifications or Project Definition, Bidder shall be required to inspect the site, including environmental or other conditions for pre-existing deficiencies that may affect the installed Product, equipment, or environment or services to be provided and, which may affect Bidder's ability to properly deliver, install or otherwise provide the required Product/Services. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly complete the delivery and installation of the required Product or provide the requested service.

## 27. SAMPLES

- a. **Standard Samples** Bid Specifications may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by NYSIF and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Specifications.
- b. **Bidder Supplied Samples** NYSIF reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Bid or Contract reference.

A sample may be held by NYSIF during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct NYSIF as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

- c. **Enhanced Samples** When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, NYSIF may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.
- d. **Conformance with Sample(s)** Submission of a sample (whether or not such sample is tested by, or for, NYSIF) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Bid Specifications. If in the judgment of NYSIF the sample or product submitted is not in accordance with the specifications or testing requirements prescribed in the Bid Specifications, NYSIF may reject the Bid. If an award has been made, NYSIF may cancel the Contract at the expense of the Contractor.
- e. **Testing** All samples are subject to tests in the manner and place designated by NYSIF, either prior to or after Contract award. Unless otherwise stated in the Bid Specifications, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fails to meet Contract requirements may be at the expense of the Contractor.

## **BID EVALUATION**

## 28. BID EVALUATION

NYSIF reserves the right to accept or reject any and all Bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if NYSIF determines the best interests of the State will be served. NYSIF, in its sole discretion, may accept or reject illegible, incomplete or vague Bids and its decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the offer.

**29. CONDITIONAL BID**

Unless the Bid Specifications provides otherwise, a Bid is not rendered non-responsive if the Bidder specifies that the award will be accepted only on all or a specified group of items or Product included in the specification. It is understood that nothing herein shall be deemed to change or alter the method of award contained in the Bid Documents.

**30. CLARIFICATIONS / REVISIONS**

Prior to award, NYSIF reserves the right to seek clarifications from Bidders on the contents of the bid/proposals Other than to provide such information as may be requested by NYSIF, no Bidder will be allowed to alter its proposal or add new information after the final filing date and time. Failure to provide requested information may result in rejection of the Bid.

**31. PROMPT PAYMENT DISCOUNTS**

While prompt payment discounts will not be considered in determining the low Bid, NYSIF may consider any prompt payment discount in resolving Bids which are otherwise tied. However, any notation indicating that the price is net, (e.g., net 30 days), shall be understood to mean only that no prompt payment discount is offered by the Bidder. The imposition of service, interest, or other charges, except pursuant to the provisions of Article 11-A of the State Finance Law, which are applicable in any case, may render the Bid non-responsive and may be cause for its rejection.

**32. EQUIVALENT OR IDENTICAL BIDS**

In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of NYSIF to award a Contract to one or more of such Bidders shall be final.

**33. PERFORMANCE AND RESPONSIBILITY QUALIFICATIONS**

NYSIF reserves the right to investigate or inspect at any time whether or not the Product, services, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Specifications/Contract or as set forth during Contract negotiations. Contractor shall at all times during the Contract term remain responsible and responsive. A Bidder/Contractor must be prepared to present evidence of legal authority to do business in New York State, integrity, experience, ability, prior performance, organizational and financial capacity as well as where applicable, a statement as to supply, plant, machinery and capacity of the manufacturer or source for the production, distribution and servicing of the Product offered/Bid. If NYSIF determines that the conditions and terms of the Bid Documents, Bid Specifications or Contract are not complied with, or that items, services or Product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, NYSIF may reject such Bid or terminate the Contract.

**34. DISQUALIFICATION FOR PAST PERFORMANCE AND FINDINGS OF NON-RESPONSIBILITY**

Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public bidding or contracts or is deemed non-responsible.

**35. QUANTITY CHANGES PRIOR TO AWARD**

NYSIF reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Bid Specifications. In the event such right is exercised, the lowest responsible Bidder meeting Bid Specifications will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

**36. TIMEFRAME FOR OFFERS**

NYSIF reserves the right to make awards within one hundred eighty (180) days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Pursuant to Section 163(9)(e) of the State Finance Law and Section 2-205 of the Uniform Commercial Code when applicable, where an award is not made within the one hundred eighty (180) day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to NYSIF written notice of the withdrawal of its Bid. Any Bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of NYSIF, be accepted or rejected.

**ADMINISTRATIVE****37. NYSIF PREROGATIVES**

The contract award is subject to the availability of funds. Moreover, NYSIF is not liable for any costs incurred by any firm for work performed to prepare its proposal or for any travel and/or other expenses incurred in the preparation and/or submission of its proposal or with respect to any presentation/interview that may be required by NYSIF. Further, NYSIF is not liable for any costs incurred by the successful Bidder for services performed or costs incurred until the contracting process has been completed and all required approvals obtained.

NYSIF reserves the right to exercise the following:

- a. Withdraw the IFB/RFP at any time, at NYSIF's sole discretion;
- b. Make an award under the IFB/RFP in whole or in part;
- c. Reject any or all bids received in response to the solicitation;
- d. Cancel or limit the scope of the contract for any reason;
- e. To not award a contract;
- f. Seek clarifications and revisions of proposals;
- g. Accept a bid for the contract other than the lowest cost;
- h. Make multiple contract awards pursuant to the solicitation;
- i. Waive any requirements that are not material;
- j. Eliminate mandatory requirements unmet by all Bidders;
- k. Change any of the scheduled dates;
- l. Waive or modify minor irregularities in bids received after prior notification to the Bidder;
- m. Consider modifications to bids at any time before the award is made, if such action is in the best interest of NYSIF;
- n. Amend and modify the specifications after their release and post to NYSIF's procurement website ([www.nysif.com/procurement](http://www.nysif.com/procurement));
- o. Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the IFB/RFP;
- p. Reject/disqualify a bid if, in NYSIF's sole opinion, the bid price is determined to be excessive;
- q. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's proposal and/or to determine a Bidder's compliance with the requirements of the solicitation;
- r. Use proposal information obtained through site visits, management interviews and the state's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the IFB/RFP
- s. Review Bidder's records used in determining bid;
- t. Require the Bidder to demonstrate to the satisfaction of NYSIF any feature(s) presented as a part of its bid;
- u. Investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant contract;
- v. Make inquiries, at NYSIF's discretion and by means which it may choose, into the Bidder's background or statements made in the bid to determine the truth and accuracy of all statements made therein;
- w. Adjust or correct Bidders' mathematical errors and waive or modify other minor irregularities in proposals received, after prior notification to the Bidder;
- x. Request any additional information deemed necessary for proper evaluation of bids;
- y. Adopt as NYSIF property all submitted bids and to use any portions thereafter which are not specifically noted as proprietary by the submitting firms;
- z. Utilize any and all ideas submitted in the proposals received;

- aa.** Adopt all or any part of a Bidder's proposal in selecting the optimum configuration;
- bb.** In any case where a question of non-performance of a contract arises, payment may be withheld in whole or in part at the discretion of NYSIF. Should the amount withheld be finally paid, a cash discount originally offered may be taken by NYSIF as if no delay in payment had occurred;
- cc.** Submission of an invoice and payment, or electronic transmission, thereof by NYSIF shall not preclude NYSIF from obtaining reimbursement or demanding a price adjustment in any case where the service delivered is found to deviate from the terms and conditions of the bid and award documents. Any delivery made which does not meet such terms and conditions may be rejected, or accepted on an adjusted price basis as may be determined by NYSIF;
- dd.** Reject an obviously unbalanced bid or to make "NO AWARD" on individual listings or sub-items if individual bid prices are deemed to be unbalanced or excessive or if an error in the solicitation becomes evident. In such case, ranking and evaluation of bids may be made on remaining items. Award would be made on the remaining items. The determination of an unbalanced bid shall be at the sole discretion of NYSIF. Options contained in this paragraph shall also be at NYSIF's sole discretion;
- ee.** Terminate the contract(s) if it deems the price adjustment pursuant to the solicitation or contract is not in the best interests of NYSIF or the State;
- ff.** ff. Implement changes in price based on unforeseen factors such as dramatic changes in availability, delivery, costs, etc., for product, supplies, etc., that substantively affect the contractor's business processes or that may impact contract pricing. Such changes may be based on information from the U.S. Bureau of Labor Statistics, industry data, or other sources;
- gg.** After an unsuccessful attempt to speak with the contact person noted on the reference form, survey another person knowledgeable and familiar with the Bidder from the submitted reference due to time constraints;
- hh.** Review and consider other known clients of the Bidder in addition to those provided, including NYSIF, and to disqualify based on unsatisfactory reports and/or records of services provided;
- ii.** Reject all bids which do not comply with the bid specifications. However, NYSIF may elect to award to the Bidder who receives the highest overall combined evaluation score providing that the Bidder's non-compliance is deemed by NYSIF to be non-material to overall performance of the services;
- jj.** Invalidate a Bidder's scores at any time during the evaluation process if the Bidder's bid is deemed non-responsive or is disqualified;
- kk.** Evaluate, accept and/or reject any and all bids, in whole or in part, and waive technicalities, irregularities and omissions if, in NYSIF's considered judgment, the best interests of NYSIF will be served. Separable portions of offers may also be accepted or rejected. In the event compliant bids are not received, NYSIF reserves the right to consider late or non-conforming bids as offers;
- ll.** ll. Stop the work covered by this solicitation and any contract(s) resulting there from at any time that it is deemed the successful Bidder is unable or incapable of performing the work to NYSIF's satisfaction;
- mm.** Disqualify a Bidder from receiving the award if the Bidder, or anyone in the Bidder's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts;
- nn.** Negotiate with Bidders to serve the best interests of the State and NYSIF;
- oo.** Begin contract negotiations with another Bidder in order to serve the best interests of NYSIF in the event that NYSIF is unsuccessful in negotiating a contract with the selected Bidder;
- pp.** Split the contract between several Bidders;
- qq.** If a contract is not approved by the State Comptroller or the Department of Financial Services, where applicable, or if a contract is awarded but terminated within 120 days, NYSIF reserves the right to contract with the next lowest Bidder (IFB)/next highest ranking offer (RFP);
- rr.** If two or more bids are found to be substantially equivalent, NYSIF, at its sole discretion, will determine award;
- ss.** Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 180 days from the bid opening;
- tt.** Accept or reject any of the Bidder's employees assigned to this contract and to require their replacement at any time
- uu.** Consider amendments which are not specifically covered by the terms of the contract but are judged to be in the best interest of NYSIF and/or the State;
- vv.** Have any service completed via separate competitive bid or other means, as determined to be in the best interest of NYSIF;

- ww. Adjust any Bidder's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said Bidder will cause the State to incur additional costs.

### 38. NEW YORK STATE PROCUREMENT RIGHTS

To enable the State to acquire commodities, technology and services at the lowest price or best value from responsible and responsive bids, the State reserves the rights to:

- a. Define requirements to meet Agency needs and to modify, correct and clarify requirements at any time during the process provided the changes are justified and maintain fairness in contracting with the business community;
- b. Accept and/or reject any or all bids, and waive technicalities or portions of the bids in the best interest of the State;
- c. Establish terms and conditions which must be met by all Bidders and/or, where permitted by the solicitation, eliminate mandatory requirements that are not met by any Bidder;
- d. Establish, where permitted by solicitation, conditions under which the scope of the contract can be expanded and criteria for price increases or decreases during the contract period;
- e. Award contracts for any or all parts of the bid solicitation in accordance with the Method of Award;
- f. Consider every bid as firm and not revocable for a period of up to one hundred eighty (180) days from the bid opening or such other period of time specified in the solicitation. Subsequent to such one hundred eighty (180) day or other specified period, a bid may be withdrawn in writing.
- g. Have the option to require a bond or other guarantee of performance, and to approve the amount, form and sufficiency thereof.

### 39. BIDDER CERTIFICATION REQUIREMENTS

Any company submitting a bid in response to this solicitation *must certify in writing* acceptance of the following contract conditions which relate to consideration of the bid:

- a. NYSIF reserves the sole right of judgment and acceptance of a company's written bid.
- b. The submitted bid must remain in effect for one hundred-eighty (180) days from the bidding deadline. However, a non-successful Bidder may withdraw its bid any time after the selection of the successful Bidder, upon written notice to NYSIF. Bidders whose bids have been rejected by NYSIF shall be notified of such rejection.
- c. Compensation shall be paid by the State of New York, in accordance with its standard payment practices.
- d. The Bidder certifies that, if selected, all services described in the bid document can and will be provided.
- e. The successful Bidder agrees to submit an Equal Employment Opportunity Policy Statement and Staffing Plan to NYSIF, upon request, as outlined under Participation of New York State Business Enterprises.
- f. The Bidder warrants that, if selected, it will not delegate, assign, encumber or subcontract, in whole or in part, its agreement and/or its responsibilities under the contract without prior written approval from NYSIF.

For any bid that includes services to be provided by subcontract with a third party, the Bidder will be responsible for the conduct and performance of the third party. NYSIF will consider the Bidder to be the prime contractor and the sole point of contact in regard to any contractual items specified or required in the bid documents.

The Bidder should obtain the consent of the proposed subcontractor and include it in the bid.

The bidder agrees not to subcontract any of its services, unless as indicated in its proposal, without prior written approval of NYSIF. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

- g. The Bidder warrants that all information provided by it in connection with this bid is true and accurate.
- h. The Bidder agrees not to make any claims for or have any right to damages because of any misinterpretation or misunderstanding of the specifications or because of any lack of information.
- i. The Bidder warrants that the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor. Unless otherwise required by law, the Bidder certifies that the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to the opening, directly or indirectly, to any Bidder or competitor and no attempt has been made or will be made by the Bidder to induce any other person, partnership, or corporation to submit or not submit a bid for the purpose of restricting competition. In addition, a Bidder is prohibited from making multiple bids in a different form (e.g., as prime Bidder and as a subcontractor to another prime Bidder).

A Bidder must include a statement in the bid describing all actual or potential relationships which may be considered to be a “conflict of interest.” The “conflict of interest” will be taken under consideration by NYSIF's Bid Evaluation Committee. The Committee's determination of a disqualifying “conflict of interest” is final.

- j. Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the Agencies and their Affiliates, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, please describe how your Staffing Firm would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.
- k. The Bidder must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, “Commission”), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

A Bidder must include a statement in the bid describing all actual or potential relationships which may be considered to be a “conflict of interest.” The “conflict of interest” will be taken under consideration by NYSIF's Bid Evaluation Committee. The Committee's determination of a disqualifying “conflict of interest” is final.

- l. The Bidder will conform to all provisions of NYSIF Exhibit A, *Standard Clauses*.
- m. The Bidder agrees that no New York State or local sales tax, transportation tax or Federal excise tax will be charged on any part of this project since NYSIF is an agency of the State of New York and tax exempt by statute.
- n. The Bidder will save and hold harmless NYSIF and its management from all claims, suits, litigation and legal liability from any acts or omissions committed by the Bidder during the course of the contract.
- o. The contractor is an independent contractor of the State and may not hold itself out nor claim to be an officer, employee or subdivision of the State nor may contractor make any claim, demand or application to or for any right based upon any different status.
- p. Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract, at the contractor's expense. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of NYSIF that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by NYSIF. Failure to comply or failure to provide proof may constitute grounds for NYSIF to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by NYSIF. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law
- q. All contractors and contractor employees must be aware of and comply with the requirements of the New York State Public Officers Law, all other appropriate provisions of New York State Law, and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees, and governing the conduct of employees of firms, associations and corporations in business with the State. In signing the bid, each Bidder has guaranteed knowledge and full compliance with those provisions for this and any other dealings, transactions, sales, contracts, services, offers or relationships involving the State and/or State employees. Failure to comply with those provisions may result in disqualification from the bidding process and in other civil or criminal proceedings as required by law.
- r. As a general rule and in accordance with New York Public Officers law, former employees of NYSIF may neither appear nor practice before NYSIF, nor receive compensation for services rendered on a matter before NYSIF, for a period of two years following their separation from NYSIF. In addition, former NYSIF are subject to a “lifetime bar” from appearing before NYSIF receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with NYSIF.
- s. Bidder and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law; other laws applicable to the service of State employees; and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the “Ethics Requirements”). Bidder certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this RFP or subsequent contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by Bidder or is Subcontractors and who is disqualified from providing services under the RFP or subsequent contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from a Contract. Bidder shall identify and provide the State with notice of those employees of Bidder and its Subcontractors who are former employees of the State that will be assigned to perform services under this RFP or subsequent Contract, and make sure

that such employees comply with all applicable laws and prohibitions. The State may request that Bidder provide it with whatever information that State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be conflict with any of the Ethics Requirements. The State shall have the right to terminate the Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

- t. Bidder hereby reaffirms the attestations made in its proposal and covenants, and represents that there is and shall be no actual or potential conflict of interest that could prevent Bidder's satisfactory or ethical performance of duties required to be performed pursuant to the terms of the RFP or subsequent Contract. Bidder shall have a duty to notify NYSIF immediately of any actual or potential conflicts.
- u. If NYSIF impedes or causes any delay in the completion of the Contractor's work, then NYSIF should be notified immediately in writing of the delay and the reason(s) for such delay.
- v. Tax Law 5-a is in effect for all solicitations to purchase issued by covered agencies on or after January 1, 2005. It applies to contracts where (1) the total amount of such persons' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates, subcontractors, or affiliates of subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and (2) the contracts or agreements with state agencies or public authorities for the sale of commodities or services having a value in excess of \$100,000. The law imposes upon certain contractors the obligation to certify whether or not the contract, its affiliates, its subcontractors and affiliates of the subcontractors are required to register to collect state sales and compensating use tax.
- w. Pursuant to State Finance Law Sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between NYSIF and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of a solicitation release through final award and approval of the Procurement Contract by NYSIF and, if applicable, Office of the State Comptroller or Department of Financial Services ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law Section 139-j (3)(a). Designated staff, as of the date hereof, is identified in the solicitation document (see INQUIRIES/ISSUING OFFICE/DESIGNATED CONTACT). NYSIF employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award, and in the event there are two findings within a 4 year-period, the Bidder is debarred from obtaining governmental Procurement Contracts.
- x. Bidder has provided "Appendix V – Vendor Assurance of No Conflict of Interest or Detrimental Effect", signed by an authorized executive or legal representative attesting that the Bidder's performance of the services does not and will not create a conflict of interest with, nor position Bidder to breach any other contract currently in force with, the State of New York, and that Bidder will not act in any manner that is detrimental to any State of New York project on which Bidder is rendering services.
- y. In conjunction with any subcontract under this RFP or subsequent Contract, the Bidder shall obtain and deliver to NYSIF, prior to entering into a subcontract, an "Appendix V- Vendor Assurance of No Conflict of Interest or Detrimental Effect", signed by an authorized executive or legal representative of the subcontractor. Bidder shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to NYSIF a signed and completed Appendix V for each of its subcontractors prior to entering into a subcontract.
- z. NYSIF and Bidder recognize that conflicts may occur in the future because the Bidder may have existing, or may establish new relationships. The NYSIF will review the nature of any relationships and reserves the right to terminate any contract for any reason, or for cause, if, in the judgement of NYSIF, a real or potential conflict of interest cannot be cured.

#### 40. PARTICIPATION OF NYS BUSINESS ENTERPRISES

It is the policy of New York State to maximize the opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as Bidders, subcontractors and suppliers on its procurement contracts.

For all contracts estimated to be \$25,000 or more:

- a. Contractors and subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination and rates of pay or other forms of compensation.

- b. Prior to the award of a State contract, the contractor shall submit an Equal Employment Opportunity Policy Statement to NYSIF within the time frame established by NYSIF.
- c. The contractor's EEO Policy Statement shall contain, but not necessarily be limited to, and the contractor, as a precondition to entering into a valid and binding State contract, shall, during the performance of the State contract, agree to the following:
  - i. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - ii. The contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - iii. ONLY FOR CONTRACTS WITH A TOTAL EXPENDITURE IN EXCESS OF \$250,000: The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
  - iv. The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
  - v. The Contractor will include the provisions of Subdivisions (i) through (iv) of this Subsection c, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.
  - vi. At the request of NYSIF, the contractor shall request each employment agency, labor union or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.
- d. Except for construction contracts, prior to award of a State contract, the contractor shall submit to NYSIF a staffing plan of the anticipated work force to be utilized on the State contract or, where required, information on the contractor's total work force, including apprentices, broken down by specified ethnic background, gender and Federal Occupational Categories or other appropriate categories specified by NYSIF. The form of the staffing plan shall be supplied by NYSIF.
- e. After an award of a State contract, the contractor shall submit to the contracting agency a work force utilization report, in a form and manner required by the agency, of the work force actually utilized on the State contract, broken down by specified ethnic background, gender and Federal Occupational Categories or other appropriate categories specified by the contracting agency.

**(Note: The contractor shall include the language of the above provisions in every subcontract in such a manner that the requirements of the provisions will be binding upon each subcontractor as to work in connection with the State contract. This includes the requirement that subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the contractor information on the ethnic background, gender and Federal Occupational Categories of the employees to be utilized on the State contract.)**

#### 41. DEBRIEFING

Any unsuccessful Bidder may request a debriefing by notifying NYSIF in writing within seven (7) business days after receiving notification of the contract non-award. All requests for debriefings shall be emailed to [contracts@nysif.com](mailto:contracts@nysif.com). The debriefing shall be

addressed within 30 days of receipt of the written request, or as soon after that time as practicable under the circumstances.

A debriefing will be limited to a review of an unsuccessful Bidder's own submission and the scoring of that submission. An unsuccessful Bidder is not entitled to review the submission of the successful Bidder beyond being informed of the total scoring of the successful Bidder. Generally, NYSIF will provide a written response to debriefing requests, providing the unsuccessful Bidder with the top score, average score, and Bidder's score for each of the major evaluation categories as well as the Bidder's ranking in each.

## 42. NYSIF'S VENDOR PROTEST PROCEDURE

NYSIF's Vendor Protest Procedure (Protest), which provides vendors with an opportunity to administratively resolve disputes related to NYSIF's procurement decisions, is as follows:

### a. Protesting NYSIF's Procurement Decisions

#### i. Protest Phases

##### Solicitation Phase Protest

A prospective proposer, Offeror or Bidder may, during the procurement solicitation phase, protest the content of a Request for Proposal (RFP) or Invitation for Bid (IFB) or any aspect of NYSIF's conduct of the solicitation phase of the procurement.

Such protests must be submitted in writing to NYSIF's Director of Administration, via certified mail or overnight mail service, and must be received by NYSIF no later than 1:00 p.m. on the 7<sup>th</sup> (seventh) business day prior to the date when proposals or bids are due. Solicitation phase protests are to be addressed as follows:

*Director of Administration  
New York State Insurance  
Fund 15 Computer Drive  
West Albany, NY 12205  
Attn: Vendor Protest*

##### Post Award Protest

An actual proposer, Offeror or Bidder that has submitted a bid or proposal in response to a solicitation may protest the award of the contract for that solicitation. Such protest must be submitted in writing to NYSIF's Director of Administration, via certified mail or overnight mail service, and must be received by NYSIF no later than 1:00 p.m. on the 10<sup>th</sup> (tenth) business day following: 1) NYSIF's issuance of a Notice of Contract Award or Bid Tab Certification or; 2) NYSIF's issuance of a letter to the Bidder indicating that its proposal was not selected. Post award protests are to be addressed as follows:

*Director of Administration  
New York State Insurance  
Fund 15 Computer Drive  
West Albany, NY 12205  
Attn: Vendor Protest*

#### ii. Protest Contents

Written protests must contain all the detail necessary for the Director of Administration to evaluate the protester's issue and make a determination. The written protest must, at a minimum, include the following:

- Name and title of person(s) filing the protest;
- Company name and address, telephone and fax numbers, and email address;
- The solicitation title and number;
- A detailed statement of all legal and/or factual grounds for disagreement with a specification or a procurement determination;
- A statement as to the form of relief requested; and
- Copies of all applicable supporting documentation.

### b. Protest Determination

NYSIF's Director of Administration shall make a determination for every solicitation phase and post award protest submitted in accordance with this Procedure. A copy of the decision, stating the reason(s) upon which it is based and informing the protester of the right to appeal an unfavorable decision to the General Attorney of NYSIF, shall be sent to the protester or its agent by regular mail within thirty (30) days of receipt of the protest, except that upon notice to the protester such period may be extended.

NYSIF shall include the protest and all determinations thereon in the Procurement Record relevant to the bid being protested."

**c. Appeal Process**

Should the protester be dissatisfied with NYSIF's Director of Administration's determination, the protester may file a written appeal. Such written appeal must be sent via certified mail or overnight mail service and must be received by NYSIF no later than 1:00 p.m. of the 10<sup>th</sup> (tenth) business day following the protester's receipt of the determination. The appeal should be directed to NYSIF's General Attorney at the following address:

*General Attorney  
New York State Insurance  
Fund 15 Computer Drive  
West Albany, NY 12205  
Attn: Vendor Protest*

An appeal of the decision shall not include any new facts and information unless requested in writing by the General Attorney.

The final determination on the appeal shall be issued within thirty (30) days of receipt of the appeal, except that upon notice to the protester such period may be extended. The decision of the General Attorney shall be a final and conclusive agency determination.

For contracts requiring approval by the Office of the State Comptroller (OSC), the protester may appeal to OSC directly. See <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/17.htm> for further information.

**d. Legal Appeals**

Nothing contained in these provisions is intended to limit or impair the rights of any vendor or contractor to seek and pursue remedies of law through the judicial process.

**NYSIF EXHIBIT C**

**CONTRACT PROVISIONS**

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**1. CONTRACT DOCUMENTS**

The contract documents consist of the contract agreement, proposal, bid document specifications, addenda issued prior to receipt of bids, and all subsequent modifications and changes issued pursuant to the bid documents.

The contract represents the agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral, including the bidding documents which may have resulted from the Bid Documents.

The contract may be revised, modified and/or amended by mutual written consent of both parties and where applicable the approval of the NYS Attorney General (AG), Office of the State Comptroller (OSC) or the Department of Financial Services (DFS). The contract is made in accordance with the laws of New York State.

**2. TERM**

In addition to any stated renewal periods in the Contract, any Contract or unit portion thereof let by NYSIF may be extended by NYSIF for an additional period(s) of up to one year with the written concurrence of the Contractor and, where required, OSC or DFS approval. Such extension may be exercised on a month to month basis or in other stated periods of time during the one year extension.

**3. TERMINATION OF CONTRACT**

- a. For Cause:** For a material breach that remains uncured for more than thirty (30) days or other specified period after written notice to the Contractor, the Contract may be terminated by NYSIF at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, NYSIF may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach. NYSIF shall have the right to award a new contract to a third party. In the event of termination for cause, NYSIF shall seek recovery damage incurred by NYSIF and the reasonable re-procurement costs associated in reassigning the contract.
- b. For Convenience:** This Contract may be terminated at any time by NYSIF for convenience upon sixty (60) days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, NYSIF shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.
- c. For Non-Responsibility:** Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate NYSIF officials or staff, the contract may be terminated by NYSIF at the Contractor's expense where the Contractor is determined by NYSIF to be non-responsible. In such event, NYSIF may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.
- d. For Violation of the Sections 139-j and 139-k of the State Finance Law:** NYSIF reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, NYSIF may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.
- e. For Violation of Revised Tax Law 5a:** NYSIF reserves the right to terminate the contract in the event it is found that the certification filed by the Contractor in accordance with §5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, NYSIF may exercise its termination right by providing written notification to the Contractor.
- f. Conflicts of Interest:** NYSIF reserves the right to review the nature of relationships and reserves the right to terminate the contract for any reason, or for cause, if, in the judgement of NYSIF, a real or potential conflict of interest cannot be cured

**4. SUSPENSION OF WORK**

- a. For Convenience:** NYSIF may order the contractor in writing to suspend performance of all or any part of the work for a reasonable period of time, not to exceed thirty (30) days, as determined by NYSIF.

Upon receipt of a suspension order, the contractor shall, as soon as practicable, cease performance of the work as ordered.

The contractor specifically agrees that a suspension, interruption or delay of the performance of the work pursuant to this proposal shall not increase the cost of performance of the work of this contract.

- b. For Non-Responsibility:** NYSIF, in its sole discretion, reserves the right to suspend any or all activities under this contract, at any time, when NYSIF discovers information that calls into questions the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of

such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as NYSIF issues a written notice authorizing a resumption of performance under the contract.

**5. VENDOR RESPONSIBILITY**

The contractor shall at all times during the contract term remain responsible. The Contractor agrees, if requested by NYSIF, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

**6. SAVINGS/FORCE MAJEURE**

A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or NYSIF in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. Contractor shall provide NYSIF with written notice of any force majeure occurrence as soon as the delay is known.

Neither the Contractor nor NYSIF shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and NYSIF to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of NYSIF where the delay or failure will significantly impair the value of the Contract to the State, NYSIF may:

- a.** Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to NYSIF with respect to Product subjected to allocation; and/or
- b.** Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to NYSIF; or
- c.** Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, NYSIF reserves the right, in its sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

**7. DISASTER RECOVERY PLAN****A. Disaster Recovery Plan**

Contractor shall develop and deliver, upon request, to NYSIF on or before a date as reasonably determined by NYSIF, and at no additional cost to NYSIF, a Disaster Recovery Plan for the services which is acceptable to NYSIF and all appropriate regulatory organizations having jurisdiction over Contractor. The Disaster Recovery Plan, which will apply specifically and exclusively to the services under this Agreement, shall provide a description of the Plan Assumptions, Recovery

Strategy, Disaster Declaration, Plan Notification and Activation, and Recovery Resources. Contractor shall make available at its premises its Master Disaster Recovery Plan applicable to all of its operations for review by NYSIF. NYSIF's approval of the disaster Recovery Plan shall not be unreasonably withheld. Review and acceptance of any Disaster Recovery Plan as may be required by any such regulatory organization shall be the responsibility of Contractor. The Disaster Recovery Plan shall provide, at a minimum, for Contractor to provide alternate electrical power for uninterrupted service. The Disaster Recovery Plan shall also designate one or more facilities (each a "Disaster Recovery Site") or separate computer resources to which Contractor shall move the Services (or affected portion of such services) upon the declaration of a Disaster requiring such a relocation (including a Disaster at a Disaster Recovery Site). Each Disaster Recovery Site must be appropriately equipped with data processing equipment which the parties reasonably believe should be sufficient to provide the Services in compliance with Attachment A. The Disaster Recovery Plan must also specify all procedures for the determination or declaration of a Disaster, which determination or declaration may not be unreasonably withheld or delayed by either party.

**B. Access to Disaster Recovery Plans**

1. Contractor shall make available to NYSIF any reports or findings of any regulatory agency dealing with Contractor's disaster recovery capabilities to provide services hereunder, unless it is prohibited from making such disclosure by law or by any such agency, together with any reports of its independent auditors relating to such plans. Contractor shall also make available to NYSIF results of any tests of Contractor's disaster recovery facilities conducted by Contractor or any third party with respect to the services provided under the Agreement. Contractor shall provide an annual briefing to NYSIF related to its disaster recovery strategy.
2. NYSIF acknowledges that Contractor's Master Disaster Recovery Plan providing disaster recovery for these services contains highly sensitive and confidential business information. It is understood and agreed that NYSIF may examine and approve the Master Disaster Recovery Plan; however, such examination shall be limited to that portion of the plan(s) which relates to the providing of services under this Agreement. Contractor may in its discretion limit NYSIF's review of its Master Disaster Recovery Plan(s) to a review of a copy maintained at Contractor's Capital Region office and not permit any copies to be made.

**C. Disaster Event Notification**

Contractor shall no later than twenty-four (24) hours after the occurrence of an event requiring activation of the Disaster Recovery Plan inform NYSIF that the plan has been activated. At that time, Contractor shall provide NYSIF with a description of the nature and extent of the disaster, an assessment of the impact on all services provided pursuant to this Agreement and a description of the specific recovery actions with their associated timeframes that have been or will be taken as part of the plan. Contractor will provide appropriate periodic updates of the recovery process as required by NYSIF.

**8. PRODUCT DELIVERY**

Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Unless otherwise specified in the Bid Documents, delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor. The decision of NYSIF as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify NYSIF and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by NYSIF. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in NYSIF's discretion, the Contract.

**9. WEEKEND AND HOLIDAY DELIVERY**

Unless otherwise specified in the Bid Specifications, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance, in which event the convenience of NYSIF shall govern

**10. SHIPPING / RECEIPT OF PRODUCT**

- a. **Packaging** Tangible Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of NYSIF User unless otherwise specified in the Contract documents.
- b. **Shipping Charges** Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be freight on board

(FOB) destination tailgate delivery at the dock. Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.

- c. **Receipt of Product** The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of NYSIF. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

**11. PRODUCT SUBSTITUTION**

In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause) a Product deemed in writing by NYSIF to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to NYSIF. Unless otherwise specified, any substitution of Product prior to NYSIF's written approval may be cause for cancellation of Contract.

**12. REJECTED PRODUCT**

When Product is rejected, it must be removed by the Contractor from the premises of NYSIF within ten calendar days of notification of rejection by NYSIF. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and NYSIF shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse NYSIF for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar day period

**13. INSPECTION AND ACCEPTANCE OF THE WORK**

NYSIF will, from time-to-time, inspect the products being provided and/or the services being performed under the terms of the contract.

All products/work shall be subject to the approval of NYSIF. In the event that any of the products provided/work performed are not acceptable to NYSIF in its sole judgment, the contractor shall replace the product/correct that work in an expeditious manner at no additional cost to NYSIF.

The contractor shall, without charge, promptly correct any problems NYSIF finds do not conform to the contract documents, unless in the public interest NYSIF consents to accept such product or work with an appropriate adjustment to the contract price.

If the contractor does not promptly correct rejected product/work, NYSIF may replace such product/correct such work and charge the cost thereof to the contractor, or terminate the contract in accordance with the Agreement.

**14. TITLE AND RISK OF LOSS**

Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to NYSIF until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by NYSIF personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by NYSIF.

**15. EMERGENCY CONTRACTS**

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or NYSIF determines pursuant to its authority under Section 163 (10) (b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, NYSIF reserves the right to obtain such Product from any source, including but not limited to this Contract(s), if NYSIF in its sole discretion determines it will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for Product procured from other sources pursuant to this paragraph. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

**16. ASSIGNMENT**

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of NYSIF. Failure to obtain consent to assignment from NYSIF shall revoke and annul such Contract. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with NYSIF. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assignment to NYSIF and seek written agreement from NYSIF. The assignment agreement

may be subject to the approval of AG and OSC or DFS. NYSIF reserves the right to reject any proposed assignee at its discretion.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes NYSIF responsibilities for the Contract.

**17. ASSIGNMENT OF CLAIM**

Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract which may arise under the antitrust laws of the United States, 15 USC Section 1, et. seq. and the antitrust laws of the State of New York, General Business Law Section 340, et. seq.

**18. RIGHT TO AUDIT**

Contractor shall maintain accurate records and accounts of services performed and money expended under this agreement and shall furnish or make available such supplemental accounts, records or other information as are required to substantiate any estimate, expenditures or report as required by NYSIF (or its designee), or as may be necessary for auditing purposes or to verify that expenditures were made only for the purpose authorized by this agreement and consistent with all requirements as stated in the Request for Proposal. Such records and accounts and all supportive documentation shall be kept for at least six (6) years subsequent to dates of final payment hereunder, or until a final audit has been made by NYSIF (or its designee).

In case all or a part of such records are not made available for audit purposes, Contractor agrees that any cost items claimed but not supported by such records shall be disallowed, or if payment has already been made, Contractor shall, upon written demand of NYSIF, refund to NYSIF the amount disallowed.

SSAE 18 Reports:

If Contractor utilizes a Statement on Standards for Attestation Engagements (SSAE) No. 16, or Statement on Standards for Attestation Engagements (SSAE) No. 18, as developed by the American Institute of Certified Public Accountants (AICPA), within the past twenty-four months prior to the Agreement, Contractor shall provide NYSIF with a copy of Contractor's Service Organization Control (SOC) Report types 1, 2, or 3, on an annual basis. Such Report(s) shall be used for information purposes only. NYSIF reserves the right to request a copy of the Report(s) during the Agreement duration (including option periods). Production of Contractor SSAE 16 or 18 Report(s), or SOC Reports shall not take the place of NYSIF's right under the Agreement to independently audit Contractor.

**19. POLICY COMPLIANCE**

Contractor warrants, covenants and represents that it will comply fully with all policies and procedures of NYSIF in performance of the Contract including but not limited to security, physical, facility, documentary and cyber security rules, policies, procedures and protocols.

**20. SUBCONTRACTORS / SUPPLIERS**

NYSIF reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, which may include, but are not limited to: they are on the Department of Labor's list of companies with which New York State cannot do business; NYSIF determines that the company is not qualified; NYSIF determines that the company is not responsible; the company has previously provided unsatisfactory work or services; the company failed to solicit minority and women's business enterprises (MWBE) Bidders as required by prior Contracts.

**21. CONTRACT BILLINGS**

Contractor shall provide complete and accurate billing invoices to NYSIF in order to receive payment. Invoices must contain all information required by the Contract. All invoices must be sent to:

[NYSIFAPVNDRINV@nysif.com](mailto:NYSIFAPVNDRINV@nysif.com)

Submission of an invoice and payment thereof shall not preclude NYSIF from reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Payments for invoices submitted by the Contractor shall be rendered electronically. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with NYSIF's procedures to authorize electronic payments. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with NYSIF's electronic payment procedures. NYSIF's policy and the authorization form may be found on NYSIF's website at [www.nysif.com/procurement](http://www.nysif.com/procurement).

Contractor shall provide, upon request of NYSIF, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by NYSIF and in a media commercially available from the Contractor. NYSIF may direct the Contractor to provide the information to the State Comptroller (OSC).

**22. REMEDIES FOR BREACH**

It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

- a. **Cover/Substitute Performance** In the event of Contractor's material breach, NYSIF may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If NYSIF is unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement Product of equal or comparable quality, NYSIF may acquire acceptable replacement Product of lesser or greater quality.

Such purchases may, in the discretion of NYSIF, be deducted from the Contract quantity and payments due to Contractor.

- b. **Withhold Payment** In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of NYSIF. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.

- c. **Bankruptcy** In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, NYSIF may, at its discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, credit NYSIF the amounts owed by the Contractor arising out of the same transactions.

- d. **Reimbursement of Costs Incurred** The Contractor agrees to reimburse NYSIF promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by NYSIF in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, NYSIF may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to NYSIF promptly by the Contractor or deducted by NYSIF from payments due or to become due the Contractor on the same or another transaction.

- e. **Deduction/Credit** Sums due as a result of these remedies may be deducted or offset by NYSIF from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to NYSIF the amount of such claim or portion of the claim still outstanding, on demand. NYSIF reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

**23. INSTALLATION**

Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the Product or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration,

dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to NYSIF and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

**24. PRODUCT ACCEPTANCE – HARDWARE AND SOFTWARE**

Unless otherwise provided by mutual agreement, NYSIF shall have thirty (30) days from the date of delivery to accept hardware products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Unless otherwise provided by mutual agreement, NYSIF shall have the option to run testing on the Product prior to acceptance. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions by NYSIF's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor.

Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by NYSIF as of the expiration of that period.

**25. TOXIC SUBSTANCES**

Each Contractor furnishing a toxic substance as defined by Section 875 of the Labor Law, shall provide NYSIF with not less than two copies of a material safety data sheet, which shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by NYSIF's agency representative.

**26. COOPERATION WITH THIRD PARTIES**

The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of NYSIF, as necessary to ensure delivery of Product or coordination of performance of services

**27. INDEPENDENT CONTRACTOR**

It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of NYSIF, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide NYSIF with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

**28. EMPLOYEES, SUBCONTRACTORS AND AGENTS**

All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Bid Specifications or the Bid Documents, whichever is more restrictive, and must comply with all security and administrative requirements of NYSIF. NYSIF reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with NYSIF's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. NYSIF reserves the right to reject and/or bar from the facility for cause any employee, Subcontractor, or agents of the Contractor.

**29. OWNERSHIP OF DOCUMENTS**

All drawings, specifications, computations, sketches, test data, survey results, reports and other documents including models, photographs, renderings and other material prepared for or relating to the project, including any material furnished by NYSIF are the property of NYSIF.

**30. INFORMATION SECURITY CLAUSE**

In the event of a Breach of Security as defined in NY CLS Gen Bus §899-aa and NY CLS State Technology Law §208, or otherwise, involving NYSIF supplied Personal Information or Private Information from systems owned, operated, sub-contracted

or otherwise routed through Contractor's systems or networks, Offeror shall notify NYSIF immediately, without unreasonable delay, pursuant to the NOTICE provision of this Agreement. "Breach of Security" shall mean the unauthorized acquisition or acquisition without valid authorization of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by a business. "Personal Information" shall mean any information concerning a person which, because of name, number, mark or other identifier, can be used to identify such person. "Private Information" shall mean personal information in combination with any one or more of the following data elements, when either the personal information or the data information or the data element is not encrypted or encrypted with an encryption key that has also been acquired: (i) social security number; (ii) driver's license number or non-driver identification cards number; or (iii) account number, credit or debit card number, in combination with any required security code, access code, or password which would permit access to an individual's financial account. Additionally, Offeror undertakes to, solely at its own cost and expense, provide any requisite notices that either Contractor or NYSIF would have to provide pursuant to NY CLS Gen Bus §899-aa and NY CLS State Technology Law §208, or any other applicable statute, both on behalf of Contractor and on behalf of NYSIF. Offeror's notification shall include but not be limited to a description of the categories of information that were, or are reasonably believed, to have been acquired by a person without valid authorization, including specification of which of the elements of personal information and private information were, or are reasonably believed to have been, so acquired, or as otherwise provided for by applicable law.

### **31. CONFIDENTIALITY CLAUSE**

NYSIF Confidential Information includes but is not limited to: (i) the meaning ascribed to "*Nonpublic Personal Information*" in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("*GLBA*"), as it relates to NYSIF's consumers, (ii) "*Protected Health Information ('PHI')*" as such term is defined in the Health Insurance Portability and Accountability Act of 1996, or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("*HIPAA*") and (iii) any personally identifiable information protected under any other applicable state or federal statute, rule or regulation.

All material made available to the contractor or its staff will remain the property of NYSIF. In addition, the contractor, subcontractor and staff shall maintain the confidentiality of all material, including the identity of any parties and content of any material to which they are exposed or have access. All improvements to applications and processes developed at NYSIF's expense and within the scope of the services provided to NYSIF shall be the sole and exclusive property of NYSIF.

The contractor will not divulge, disclose or furnish to any other party the information or processes utilized at NYSIF, disclosed to the contractor or developed by the contractor or another during the course of the project unless such information is in the public domain.

The contractor will advise NYSIF if it is engaged in a project for any other insurance company, or subsidiary, that has a Workers' Compensation or Disability Benefits productline.

Any request for information from third parties shall be reported to NYSIF in writing within 24 hours. News releases pertaining to this project will not be made without prior NYSIF approval.

### **32. INDEMNIFICATION**

Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless NYSIF from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property and intellectual property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of NYSIF.

### **33. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS**

The Contractor will also indemnify and hold NYSIF harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be finally assessed against NYSIF in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from NYSIF's gross negligence or willful misconduct, provided that the State shall give Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor.

If usage shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for NYSIF the right to continue Usage (ii) to modify the service or Product so that Usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace said service or Product or part(s) thereof, as applicable, with non-infringing service or Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided NYSIF is given a refund for any amounts paid for the period during which Usage

was not feasible.

### 34. LIMITATION OF LIABILITY

Except as otherwise set forth in the Indemnification Paragraphs above, the limit of liability shall be as follows:

- a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the contract, or (ii) one million dollars (\$1,000,000), whichever is greater.
- b. NYSIF may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against NYSIF unless Contractor at the time of the presentation of claim shall demonstrate to the NYSIF's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.
- c. Notwithstanding the above, neither the Contractor nor NYSIF shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by NYSIF, the Contractor, or by others

### 35. NON-SOLICITATION

The Contractor shall contact NYSIF employees, including employees designated by NYSIF to receive marketing material and negotiate contracts only in connection with the transaction of business set forth herein. The Contractor shall be cognizant of sections 73 and 74 of the NYS Public Officers Law, which govern the conduct of the state employees, and sections 139-j and 139-k of the NYS Finance Law which governs the conduct of the state employees and their relations with outside parties.

The Contractor shall not contact or solicit NYSIF employees in connection with any contests, lotteries, challenges, or competitions, whether or not prizes, awards, gifts, remuneration or items of value are awarded. The Contractor shall neither solicit nor market directly to any NYSIF employees in their individual capacities. If the Contractor maintains identifiable records of NYSIF employees in connection with its performance hereunder, such records shall not be commercially exploit its relationship with NYSIF nor use NYSIF, its name, trademarks or logo for any advertising, marketing or other commercial purpose without prior written approval. This clause shall survive termination of any awarded contract.

### 36. CONTRACTOR CONSULTANT LAW

Effective June 19, 2006, Chapter 10 of the Laws of 2006 amended the Civil Service and State Finance Laws, relative to maintaining certain information on contract employees working under State agency service and consulting contracts. State agency consultant contracts are defined as "contracts entered into by a state agency for *analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services*". The amendments require that certain contract employee information be provided to the state agency awarding such contracts, the Office of the State Comptroller (OSC), the Division of the Budget (DOB) and the Department of Civil Service (CS).

To meet these new requirements, the awarded contractor agrees to complete Form A - Contractor's Planned Employment Form, and Form B – Contractor's Annual Employment Report.

For more information on this requirement, please see the NYS Office of the State Comptroller's [Guide to Financial Operations Section XI.18.C Consultant Disclosure Legislation](#).

### 37. INSURANCE

Prior to the commencement of the work, Contractor shall file with NYSIF Certificates of Insurance evidencing compliance with all requirements contained in the Bid Documents. Acceptance and/or approval by NYSIF do not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under this Agreement.

Contractor shall cause all insurance to be in full force and effect as of the commencement date of this Agreement and to remain in full force and effect throughout the term of this Agreement and as further required by this Agreement. Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

### 38. PERFORMANCE / BID BOND

NYSIF reserves the right to require a Bidder or Contractor to furnish without additional cost, a performance, payment or Bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by NYSIF

**39. NOTICE**

Any communications between NYSIF and Contractor and notices provided herein, to be given or made, shall be in writing and shall be transmitted either by:

- a. certified or registered United States mail, return receipt requested
- b. facsimile transmission
- c. personal delivery
- d. expedited delivery service
- e. e-mail

Such notices shall be addressed to:

New York State Insurance Fund  
Procurement Unit  
15 Computer Drive West  
Albany, New York 12205  
Email: [contracts@nysif.com](mailto:contracts@nysif.com)  
Fax: 518-437-4209

or to such addressee as may be hereafter designated by notice.

Any such notice shall be deemed to have been given either at the time of personal delivery, or in the case of expedited delivery service or certified or registered US mail, as of the date of the first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

The parties may, from time to time, specify any new or different address in the United States as their address for the purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

**40. MODIFICATIONS TO THE AGREEMENT**

This Agreement may not be modified, renewed or discharged, except as herein specifically provided, or by an agreement in writing signed by both parties and, if applicable, approved by the Office of the State Comptroller or Department of Financial Services.

During the term of the contract, the contract may be amended as changes occur within the industry. NYSIF reserves the right to consider amendments which are not specifically covered by the terms of the contract but are judged to be in the best interest of NYSIF and the State. Examples of amendments may include but are not limited to new job titles under the Department of Labor Prevailing Wages, new categories of expertise, ancillary job classifications, on-going services, etc. NYSIF or the contractor may suggest changes. If the contractor offers new job titles or services, these services may be made available under this contract and may be offered at maximum not to exceed prices. It shall be the contractor's responsibility to submit to NYSIF service changes for consideration for contract amendment. These changes, if approved, shall take effect upon written notification by NYSIF and may be subject to approval by the Office of the State Comptroller or Department of Financial Services

**41. SEVERABILITY**

In the event that any provision of this Agreement shall be considered void, voidable, illegal or invalid for any reason, such provision shall be of no force and effect only to the extent that it is so declared void, voidable, illegal or invalid. All of the provisions of this Agreement not specifically found to be so deficient shall remain in full force and effect.

**42. CHOICE OF LAW: VENUE**

This Agreement shall be governed by and construed under the laws of the State of New York, without giving effect to the choice of law or conflict of law provisions thereof.

**43. COUNTERPARTS / SIGNATURES**

This Agreement may be executed in counterparts, each of which when so executed will be deemed to be an original. Such counterparts together will constitute one agreement.

## APPENDIX D

### MacBRIDE QUESTIONNAIRE

**YOU ARE REQUIRED TO ANSWER THE QUESTIONS BELOW IN ORDER TO BE CONSIDERED FOR SELECTION IN THE AWARD OF A CONTRACT WITH AN AGENCY OF THE STATE OF NEW YORK:**

“NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:  
MacBRIDE FAIR EMPLOYMENT PRINCIPLES”

In accordance with Chapter 807 of the Laws of 1992, the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either:

(Answer YES or NO to one or both of the following, as applicable:)

- (1) have business operations in Northern Ireland:

☐ YES

☐ NO

If yes,

- (2) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

☐ YES

☐ NO

This questionnaire should be signed by a person authorized to enter into contracts on behalf of the bidder.

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**Signature**

---

**Typed Name**

---

**Company Position**

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**Company Name**

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**Date Signed**

## APPENDIX E

### VENDOR RESPONSIBILITY QUESTIONNAIRE

Each Contracting Agency conducts a review of prospective contractors (“vendors”) to provide reasonable assurances that the vendor is responsible. This questionnaire is used for all non-construction contracts with a contract value of \$100,000.00 or more and is designed to provide information to assess a vendor’s authorization to do business in New York State, as well as your business integrity, financial and organizational capacity, and performance history. (Review of construction contractors will be based upon the Uniform Contracting Questionnaire developed by the Council of Contracting Agencies.)

Each vendor must answer every question contained in this questionnaire. Where a response requires additional information, the vendor must attach a written response that adequately details the requested information. Please number each response to match the question number. The completed questionnaire and attached responses will become part of the procurement record.

In order to expedite the required review, when providing additional information for a “YES” answer to Questions 14 a-s, or any other response which requires additional explanation, your information and responses should address the relationship of the issue to the proposed contract. Be brief, concise and to the point. Discuss as appropriate the following:

- Provide a description of the issue and identify the actions taken or currently being implemented to ensure that the issue will not occur again.
- State whether the staff and/or organizational component involved in the identified issue(s) will work on the proposed contract. If so, provide information to assure the agency that the issue will not be repeated.
- Identify the relationship (or lack thereof) between the product/services involved in the issue and the type of product/services proposed for this contract.
- State whether the issue will affect your financial or organizational ability to perform under the proposed contract.
- Provide copies of relevant documents or any other information that would assist the agency in its vendor responsibility evaluation.

It is imperative that the person completing the vendor responsibility questionnaire be knowledgeable about the proposing vendor’s business and operations, as an owner or officer of the vendor must attest to the questionnaire information. Please be advised that at the end of this questionnaire, you must certify, under oath, all responses given.

New York State  
Standard Vendor Responsibility Questionnaire

**VENDOR FEIN:** \_\_\_\_\_

1. Legal Business Name: \_\_\_\_\_

2. Federal Employer ID # (FEIN): \_\_\_\_\_

3. D/B/A — Doing Business As (if applicable): \_\_\_\_\_

County filed: \_\_\_\_\_

4. Website Address (if applicable): \_\_\_\_\_

5. Principal Place of Business Address: \_\_\_\_\_

6. Telephone Number: \_\_\_\_\_ 7. Fax Number: \_\_\_\_\_

8. Authorized Contact for this Questionnaire:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

9. Type of Business: (please check appropriate box and provide additional information)

☐ Corporation. State of Incorporation: \_\_\_\_\_

☐ Sole Proprietor. State/County filed in: \_\_\_\_\_

☐ General Partnership. State/County filed in: \_\_\_\_\_

☐ Not-for-Profit Corporation. Charities Registration Number: \_\_\_\_\_

☐ Limited Liability Company (LLC). Jurisdiction filed: \_\_\_\_\_

☐ Limited Partnership. State/County filed in \_\_\_\_\_

☐ Other - Specify: \_\_\_\_\_ Jurisdiction filed (if applicable) \_\_\_\_\_

10. If not incorporated or formed in New York State, please provide a current Certificate of Good Standing from your state or applicable local jurisdiction.

New York State  
Standard Vendor Responsibility Questionnaire

**VENDOR FEIN:** \_\_\_\_\_

11. List Name and Title of each principle, owner, officer, major stockholder (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), director, and member, as applicable:

- a) \_\_\_\_\_
- b) \_\_\_\_\_
- c) \_\_\_\_\_
- d) \_\_\_\_\_
- e) \_\_\_\_\_
- f) \_\_\_\_\_
- g) \_\_\_\_\_
- h) \_\_\_\_\_

12. Authorized Contact for the Proposed Contract:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

13. Does the vendor use, or has it used in the past five (5) years, any other business name, FEIN, or D/B/A other than what is listed in Questions 1-3 above?

Yes

No

**If yes**, provide the name(s), FEIN(s) and D/B/A(s) and the address for each such company and D/B/A on a separate piece of paper and attach to this response.

New York State  
Standard Vendor Responsibility Questionnaire

**VENDOR FEIN:** \_\_\_\_\_

14. Within the past five (5) years, has the vendor, any principal, owner, officer, major stockholder (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), affiliate<sup>1</sup> or any person involved in the bidding, contracting or leasing process been the subject of any of the following:

(a) a judgment or conviction for any business-related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct? ☐ Yes ☐ No

---

(b) a criminal investigation or indictment for any business-related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct? ☐ Yes ☐ No

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(c) an unsatisfied judgment, injunction or lien for any business-related conduct obtained by any federal, state or local government agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any federal, state or local government agency? ☐ Yes ☐ No

---

(d) an investigation for a civil or criminal violation for any business-related conduct by any federal, state or local agency? ☐ Yes ☐ No

---

(e) a grant of immunity for any business-related conduct constituting a crime under federal, state or local governmental law including, but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct? ☐ Yes ☐ No

---

(f) a federal, state or local government suspension or debarment from the contracting process? ☐ Yes ☐ No

---

(g) a federal, state or local government contract suspension or termination for cause prior to the completion of the term of a contract? ☐ Yes ☐ No

---

(h) a federal, state or local government denial of a lease or contract award for non-responsibility? ☐ Yes ☐ No

---

(i) an administrative proceeding or civil action seeking specific performance or restitution in connection with any federal, state or local contract or lease? ☐ Yes ☐ No

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<sup>1</sup> "Affiliate" meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

New York State  
Standard Vendor Responsibility Questionnaire

**VENDOR FEIN:** \_\_\_\_\_

---

(j) a federal, state or local determination of a willful violation of any public works or labor law or regulation?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<hr/>				
(k) a sanction imposed as a result of judicial or administrative proceedings relative to any business or professional license?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<hr/>				
(l) a consent order with the New York State Department of Environmental Conservation, or a federal, state or local government enforcement determination involving a violation of federal, state or local environmental laws?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<hr/>				
(m) an Occupational Safety and Health Act citation and Notification of Penalty containing a violation classified as serious or willful?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<hr/>				
(n) a rejection of a bid on a New York State contract or a lease with the State for failure to comply with the MacBride Fair Employment Principles?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<hr/>				
(o) a citation, violation order, pending administrative hearing or proceeding or determination issued by a federal, state or local government for violations of				
- health laws, rules or regulations	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<hr/>				
- unemployment insurance or workers' compensation coverage or claim requirements	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<hr/>				
- ERISA (Employee Retirement Income Security Act)	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<hr/>				
- human rights laws	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<hr/>				
- federal U.S. Citizenship and Immigration Services laws	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<hr/>				
- Sherman Act or other federal anti-trust laws	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<hr/>				
(p) entered into an agreement to a voluntary exclusion from contracting with a federal, state or local governmental entity	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<hr/>				
(q) a denial, decertification, revocation or forfeiture of Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise status?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<hr/>				
(r) a rejection of a low bid on a federal, state or local contract for failure to meet statutory affirmative action or Minority or Women's Business Enterprise or Disadvantaged Business Enterprise status requirements on a previously held contract?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
<hr/>				
(s) a finding of non-responsibility by an agency or authority due to a violation of State Finance Law §139-j?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

---

**For each YES answer to Question 14, items a-s, provide details on additional sheets regarding the finding, including but not limited to Cause, Current Status, Resolution, etc.**

New York State  
Standard Vendor Responsibility Questionnaire

**VENDOR FEIN:** \_\_\_\_\_

15. During the past three (3) years, has the vendor failed to:

(a) File returns or pay any applicable Federal, State, or Local Government Taxes ☐ Yes ☐ No

**If yes**, identify the taxing jurisdiction, type of tax, liability year(s) and tax liability amount the company failed to file/pay and the current status of the liability:

\_\_\_\_\_

(b) FILE RETURNS OR PAY NEW YORK STATE UNEMPLOYMENT INSURANCE? ☐ Yes ☐ No

**If yes**, indicate the years the company failed to file/pay the insurance and the current status of the liability:

\_\_\_\_\_

16. Have any bankruptcy proceedings been initiated by or against the vendor or its affiliates within the past seven (7) years (whether or not closed) or is any bankruptcy proceeding pending by or against the vendor or its affiliates, regardless of the date of filing? ☐ Yes ☐ No

**If yes**, indicate if this is applicable to the submitting vendor or one of its affiliates: \_\_\_\_\_

If it is an affiliate, include the affiliate's name and FEIN: \_\_\_\_\_

Provide the court name, address and docket number: \_\_\_\_\_

Indicate if the proceedings have been initiated, remain pending or have been closed: \_\_\_\_\_

If closed, provide the date closed: \_\_\_\_\_

17. Does vendor have the financial resources necessary to fulfill the requirements of the proposed contract? ☐ Yes ☐ No

New York State  
Standard Vendor Responsibility Questionnaire

**VENDOR FEIN:** \_\_\_\_\_

**State of** \_\_\_\_\_ )  
 ) ss:  
**County of** \_\_\_\_\_ )

**CERTIFICATION:**

The undersigned, personally and on behalf of the vendor identified in questions 1-3 above, does hereby state and certify to the New York State Insurance Fund (NYSIF) that the information given above is true, accurate and complete. It is further acknowledged that the State of New York and NYSIF will rely upon the information contained herein and in any attached pages for purposes of evaluating our company for vendor's responsibility for contract award and the State may, in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein. It is further acknowledged that intentional submission of false or misleading information may constitute a felony under Penal Law Section 175.35 or may constitute a misdemeanor under Penal Law Sections 175.30, 210.35 or 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in contract termination.

**Sworn to before me this**

\_\_\_\_\_  
**Signature of Officer**

\_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
**Typed/Printed Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Notary Public**

**Registration No:** \_\_\_\_\_

\_\_\_\_\_  
**Company Name**

**State:** \_\_\_\_\_

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**City, State, Zip**

APPENDIX F  
NYS CERTIFICATIONS

**Company Name:** \_\_\_\_\_

**Is your firm a New York resident business?**

☐ Yes

☐ No

**Total number of people employed by your firm:**

company-wide: \_\_\_\_\_

in New York City: \_\_\_\_\_

**Is your firm a NYSESD certified MINORITY ENTERPRISE as defined in Executive Law Article 15-A?**

☐ Yes

☐ No

*(If yes, attach a copy of your current New York State certification letter.)*

**Is your firm a NYSESD certified WOMEN-OWNED ENTERPRISE as defined in Executive Law Article 15-A?**

☐ Yes

☐ No

*(If yes, attach a copy of your current New York State certification letter.)*

**Does your firm purchase goods or services or subcontract with any New York State certified minority or women-owned enterprises?**

☐ Yes

☐ No

**Is your firm a NYSOGS certified SERVICE DISABLED VETERAN OWNED BUSINESS as defined in Executive Law Article 17-B?**

☐ Yes

☐ No

*(If yes, attach a copy of your current New York State certification letter.)*

## APPENDIX F

### NYS CERTIFICATIONS

**Is your firm a SMALL BUSINESS as defined in Executive Law Section Article 15-A?**

“Small Business” shall be defined as a business which:

- A. Has a significant business presence in New York demonstrated through one of the following;
  1. Pays taxes in New York State
  2. Purchases New York State products or materials, or
  3. Has any payroll in New York State
- B. Is independently owned and operated;
- C. Not dominant in its field; and,
- D. Employs less than three hundred persons

In accordance with New York State Finance Law, Section 165, the contractor certifies that it:

- ☐ IS a Small Business as defined in New York State Executive Law Section 310(20).
- ☐ IS NOT a Small Business as defined in New York State Executive Law Section 310(20).

## ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of \_\_\_\_\_ and that he/she executed the foregoing instrument in the firm name of \_\_\_\_\_, and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of \_\_\_\_\_, for the uses and purposes mentioned therein.

Notary Public

## ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

Bidders/proposers need to be aware that all authorized users of the contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Will New York State businesses be used in the performance of this contract?                        
Yes No

<b><u>Business Name</u></b>	<b><u>FEIN</u></b>	<b><u>Dollar Value</u></b>	<b><u>Description of Work</u></b>
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## APPENDIX H

### Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

\_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

Bid Number: \_\_\_\_\_

Date: \_\_\_\_\_

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No

Yes

**If yes, please answer questions 2-4; otherwise, proceed to 5:**

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j? (Please circle):

No

Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No

Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

## APPENDIX H

### Disclosure of Prior Non-Responsibility Determinations

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

Bidder certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPENDIX I**  
**BIDDER REFERENCES**

List three (3) verifiable references receiving service similar in scope to the services required.

Company Name \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Name \_\_\_\_\_  
Contact Title \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Date Services Provided \_\_\_\_\_  
Type of Services Provided \_\_\_\_\_

---

Company Name \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Name \_\_\_\_\_  
Contact Title \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Date Services Provided \_\_\_\_\_  
Type of Services Provided \_\_\_\_\_

---

Company Name \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Name \_\_\_\_\_  
Contact Title \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Date Services Provided \_\_\_\_\_  
Type of Services Provided \_\_\_\_\_

---

Company Name \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Name \_\_\_\_\_  
Contact Title \_\_\_\_\_  
Phone Number \_\_\_\_\_  
Date Services Provided \_\_\_\_\_  
Type of Services Provided \_\_\_\_\_

## **APPENDIX M**

### **PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**

#### **I. General Provisions**

- A. The NYS Insurance Fund (NYSIF) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to NYSIF, to fully comply and cooperate with NYSIF in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to NYSIF pursuant to the Contract and applicable law.

#### **II. Contract Goals**

- A. For purposes of this Contract, NYSIF hereby establishes an overall goal of 30% for MWBE participation, 18% for New York State-certified minority-owned business enterprise (“MBE”) participation and 12% for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

## **APPENDIX M**

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. [FOR CONSTRUCTION CONTRACTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE]. [FOR ALL OTHER CONTRACTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract]
- D. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
1. Evidence of outreach to MWBEs;
  2. Any responses by MWBEs to the Contractor’s outreach;
  3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
  4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by NYSIF with MWBEs; and,
  5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

### **III. Equal Employment Opportunity (“EEO”)**

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  2. The Contractor shall submit an EEO policy statement to NYSIF within seventy-two (72) hours after the date of the notice by NYSIF to award the Contract to the Contractor.

## APPENDIX M

3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, NYSIF may require the Contractor or subcontractor to adopt a model statement (see Form 106 – Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. ONLY FOR CONTRACTS WITH A TOTAL EXPENDITURE IN EXCESS OF \$250,000: The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
  - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

### C. Form 101 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by NYSIF.

### D. Form 102 - Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by NYSIF on a Quarterly basis during the term of the Contract, with the exception of Construction Contracts. For Construction Contracts, the Contractor is required to submit a Workforce Utilization Report on a Monthly basis.
2. Separate forms shall be completed by the Contractor and any subcontractors.

## APPENDIX M

3. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.
- E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

### IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by NYSIF, to the designated contacts at [mwbeinfo@nysif.com](mailto:mwbeinfo@nysif.com), provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to NYSIF, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, NYSIF shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

### V. Waivers

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver to [contracts@nysif.com](mailto:contracts@nysif.com), or a non-electronic method provided by NYSIF. Such waiver request must be supported by evidence of the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, NYSIF shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If NYSIF, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regard to such non-compliance, NYSIF may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency

## **APPENDIX M**

within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

### **VI. Quarterly MWBE Contractor Compliance Report**

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report to [mwbeinfo@nysif.com](mailto:mwbeinfo@nysif.com), provided, however, that the Contractor may arrange to provide such report via a non-electronic method to NYSIF by the 10<sup>th</sup> day following the end of each quarter during the term of the Contract.

### **VII. Liquidated Damages - MWBE Participation**

- A. Where NYSIF determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to NYSIF liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by NYSIF, the Contractor shall pay such liquidated damages to NYSIF within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

## **APPENDIX M**

### **Form 101 - Instructions**

**General Instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete a Staffing Plan (Form 101) and submit it as part of the bid or proposal. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

#### **Instructions for completing:**

1. Check off the appropriate box to indicate if the entity completing the Report is the Offeror or Subcontractor.
2. Check off the appropriate box to indicate work force to be utilized in the performance of the contract or the Offerors' total work force.
3. Enter the name and address of the Offeror and the solicitation number that this report applies to.
4. Verify that job titles are provided under the column titled "SOC Job Title" for each employee whose anticipated work will be reflected on the Report. If a necessary job title is not included, please add the corresponding job category, title and corresponding job code to the "EEO 1 Job Categories" "SOC Job Title" and "SOC Job Code" columns from the list of job categories, SOC titles, and SOC codes reflected in the EEO-1 Job Classification Guide, 2014. A copy of this guide can be found on NYSIF's website at: [www.nysif.com/procurement](http://www.nysif.com/procurement)
5. In the first group of boxes, identify the anticipated number of hours worked by persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
6. In the second group of boxes, identify the anticipated number of persons identifying with each racial/ethnic category by gender for each job title in the SOC Job Title column.
7. Enter the name and the title for the person completing the form, enter the date upon which the Report was completed, and sign the form.

#### **RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission and do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this Report are:

- **WHITE:** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK/AFRICAN AMERICAN:** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC/LATINO:** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN/NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER:** a person having origins in any of the original peoples of the Far East, Southeast Asia, the the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN/ALASKAN NATIVE:** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**Form 101**  
**STAFFING PLAN**  
**Submit with Bid or Proposal-Instructions in Appendix M**

Reporting Entity

☐

Contractor

☐

Subcontractor

Report includes Contractor's/Subcontractor's

☐

Workforce Utilized in Performance of Contract

☐

Contractor/Subcontractor's Total Workforce

Offeror's Name

Offeror's Address

Solicitation Number

EEO 1 Job Categories	SOC Job Title	SOC Job Code	Hours worked by Race/Ethnic Identification During Reporting Period									
			White		Black/African American		Hispanic/Latino		Asian/Native Hawaiian or Other Pacific Islander		Native American/Alaskan Native	
			Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Professionals	Lawyers	(23-1011)										
Administrative Support Workers	Paralegals and Legal Assistants	(23-2011)										
Administrative Support Workers	Miscellaneous Legal Support Workers	(23-2090)										
Administrative Support Workers	Secretaries and Administrative Assistants	(43-6010)										
	Other -											
	Other -											
	Other -											
<b>TOTAL ANTICIPATED HOURS WORKED</b>												

EEO 1 Job Categories	SOC Job Title	SOC Job Code	Number of Employees by Race/Ethnic Identification During Reporting Period									
			White		Black/African American		Hispanic/Latino		Asian/Native Hawaiian or Other Pacific Islander		Native American/Alaskan Native	
			Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Professionals	Lawyers	(23-1011)										
Administrative Support Workers	Paralegals and Legal Assistants	(23-2011)										
Administrative Support Workers	Miscellaneous Legal Support Workers	(23-2090)										
Administrative Support Workers	Secretaries and Administrative Assistants	(43-6010)										
	Other -											
	Other -											
	Other -											
<b>TOTAL ANTICIPATED EMPLOYEES</b>												

Preparer's Name:

Preparer's Title:

Date:

Preparer's Signature:

## APPENDIX M

### Form 102 - Instructions for Submitting the Workforce Utilization Report

The Workforce Utilization Report (“Report”) is to be submitted on a monthly basis for construction contracts<sup>1</sup>, and a quarterly basis for all other contracts, during the life of the contract to report the actual workforce utilized in the performance of the contract broken down by job title. When the workforce utilized in the performance of the contract can be separated out from the contractor’s and/or subcontractor’s total workforce, the contractor and/or subcontractor shall submit a Report of the workforce utilized on the contract. When the workforce to be utilized on the contract cannot be separated out from the contractor’s and/or subcontractor’s total workforce, information on the contractor’s and/or subcontractor’s total workforce may be included in the Report.

Reports are to be submitted electronically, using the provided Report worksheet, to [mwbeinfo@nysif.com](mailto:mwbeinfo@nysif.com) within ten (10) days following the end of each month or quarter, whichever is applicable.

#### Instructions for Completing the Workforce Utilization Report

1. **REPORTING ENTITY:** Check off the appropriate box to indicate if the entity completing the Report is the contractor or a subcontractor.
2. **FEDERAL EMPLOYER IDENTIFICATION NUMBER:** Enter the Federal Employer Identification Number (FEIN) assigned by the IRS. Contractors utilizing their social security number in lieu of an FEIN should leave this field blank.
3. **CONTRACTOR NAME and CONTRACTOR ADDRESS:** Enter the primary business address for the entity completing the Report.
4. **CONTRACT NUMBER:** Enter the number of the contract to which the Report applies.
5. **REPORTING PERIOD:** Check off the box that corresponds to the applicable quarterly or monthly reporting period for this Report. Only select one box.
6. **WORKFORCE IDENTIFIED IN REPORT:** Check off the appropriate box to indicate if the workforce being reported is just for the contract or the contractor’s or subcontractor’s total workforce.
7. **OCCUPATION CLASSIFICATIONS and SOC JOB TITLE:** Select the occupation classification and job title that best describes each group of employees performing work on the state contract under columns A and B.
8. **EEO JOB TITLE and SOC CODE:** These fields will populate automatically based upon the Occupation Classifications and SOC Job Titles selected. Do not modify the results generated in these fields.
9. **NUMBER OF EMPLOYEES and NUMBER OF HOURS:** Enter the number of employees and total number of hours worked by such employees for each job title under the columns corresponding to the gender and racial/ethnic groups with which the employees most closely identify.
10. **TOTAL GROSS WAGES: [TO BE REPORTED QUARTERLY]** Enter the total gross wages paid to all employees for each job code, and each gender and racial/ethnic group, identified in the Report. Contractors and subcontractors should report only gross wages for work on the contract paid to employees during the period covered by the Report. “Gross wages” are those reported by employers to employees on their wage statements. Gross wages are defined more specifically by 20 NYCRR §2380.4 and typically include every form of compensation for employment paid by an employer to his, her or its employees, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, tips and the reasonable value of board, rent, housing, lodging or similar advantage received.
11. **PREPARER’S INFORMATION:** Enter the name and title for the person completing the form, enter the date upon which the Report was completed, and check the box accepting the name entered into the Report as the digital signature of the preparer.

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<sup>1</sup> The Gross Wages column is only required to be completed on a quarterly basis commencing 1/1/2018.

## APPENDIX M

### Race/Ethnic Identification

Race/ethnic designations do not denote scientific definitions of anthropological origins. For the purposes of this Report, an employee must be included in the group with which he or she most closely identifies. No person may be counted in more than one race/ethnic group. In determining an employee's race or ethnicity, a contractor may rely upon an employee's self-identification, employment records, or, in cases where an employee refuses to identify his or her race or identity, observer identification. The race/ethnic categories for this Report are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK/AFRICAN AMERICAN** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC/LATINO** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN, NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE AMERICAN/ALASKAN NATIVE** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

### Resources

If you have questions regarding these requirements, are unsure of the appropriate job titles to include in your Report, or otherwise require assistance in preparing or submitting the Report, please contact [MWBEinfo@nysif.com](mailto:MWBEinfo@nysif.com) or contact Mary Rumberg at (212) 312-7178 or Carrell Clarke-Europe at (212) 312-0089.

**Form 103**  
**M/WBE UTILIZATION PLAN**

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

<b>Offeror's Name:</b>		<b>Federal Identification No.:</b>	
<b>Address:</b>		<b>Solicitation No.:</b>	
<b>City, State, Zip Code:</b>		<b>Project No.:</b>	
<b>Telephone No.:</b>		<b>M/WBE Goals in the Contract:</b>	MBE _____ %    WBE _____ %
<b>Region/Location of Work:</b>			

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/Supplies/Services and intended performance dates of each component of the contract.
<b>A.</b>	<u>NYS ESD CERTIFIED</u>  <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
<b>B.</b>	<u>NYS ESD CERTIFIED</u>  <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

**6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (M/WBE 104).**

<p><b>PREPARED BY (Signature):</b> _____</p> <p style="text-align: right;"><b>DATE:</b> _____</p> <p><b>NAME AND TITLE OF PREPARER (Print or Type):</b> _____</p> <p style="font-size: small;">SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"><b>TELEPHONE NO.:</b></td> <td style="width: 50%;"><b>EMAIL ADDRESS:</b></td> </tr> <tr> <td colspan="2" style="text-align: center; padding: 5px;"><b>FOR M/WBE USE ONLY</b></td> </tr> <tr> <td style="width: 70%;"><b>REVIEWED BY:</b></td> <td style="width: 30%;"><b>DATE:</b></td> </tr> <tr> <td colspan="2" style="padding: 5px;"> <p><b>UTILIZATION PLAN APPROVED:</b>      <input type="checkbox"/> YES      <input type="checkbox"/> NO      <b>DATE:</b></p> <p><b>Contract No.:</b></p> <p><b>Project No. (if applicable):</b></p> <p><b>Contract Award Date:</b></p> <p><b>Estimated Date of Completion:</b></p> <p><b>Amount Obligated Under the Contract:</b></p> <p><b>Description of Work</b></p> <p><b>NOTICE OF DEFICIENCY ISSUED:</b>      <input type="checkbox"/> YES      <input type="checkbox"/> NO      <b>DATE:</b></p> <p><b>NOTICE OF ACCEPTANCE ISSUED:</b>      <input type="checkbox"/> YES      <input type="checkbox"/> NO      <b>DATE:</b></p> </td> </tr> </table>	<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>	<b>FOR M/WBE USE ONLY</b>		<b>REVIEWED BY:</b>	<b>DATE:</b>	<p><b>UTILIZATION PLAN APPROVED:</b>      <input type="checkbox"/> YES      <input type="checkbox"/> NO      <b>DATE:</b></p> <p><b>Contract No.:</b></p> <p><b>Project No. (if applicable):</b></p> <p><b>Contract Award Date:</b></p> <p><b>Estimated Date of Completion:</b></p> <p><b>Amount Obligated Under the Contract:</b></p> <p><b>Description of Work</b></p> <p><b>NOTICE OF DEFICIENCY ISSUED:</b>      <input type="checkbox"/> YES      <input type="checkbox"/> NO      <b>DATE:</b></p> <p><b>NOTICE OF ACCEPTANCE ISSUED:</b>      <input type="checkbox"/> YES      <input type="checkbox"/> NO      <b>DATE:</b></p>	
<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>								
<b>FOR M/WBE USE ONLY</b>									
<b>REVIEWED BY:</b>	<b>DATE:</b>								
<p><b>UTILIZATION PLAN APPROVED:</b>      <input type="checkbox"/> YES      <input type="checkbox"/> NO      <b>DATE:</b></p> <p><b>Contract No.:</b></p> <p><b>Project No. (if applicable):</b></p> <p><b>Contract Award Date:</b></p> <p><b>Estimated Date of Completion:</b></p> <p><b>Amount Obligated Under the Contract:</b></p> <p><b>Description of Work</b></p> <p><b>NOTICE OF DEFICIENCY ISSUED:</b>      <input type="checkbox"/> YES      <input type="checkbox"/> NO      <b>DATE:</b></p> <p><b>NOTICE OF ACCEPTANCE ISSUED:</b>      <input type="checkbox"/> YES      <input type="checkbox"/> NO      <b>DATE:</b></p>									

## **APPENDIX M**

### **Form 104 - Instructions**

#### **REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS**

When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offeror/contractor's representative authorized to discuss and negotiate this waiver request.
11. Copy of notice of application receipt issued by Empire State Development (ESD).

Note: Unless a Total Waiver has been granted, the Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by NYSIF, to determine M/WBE compliance.

Form 104  
REQUEST FOR WAIVER FORM

INSTRUCTIONS: SEE APPENDIX M FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.			
Offeror/Contractor Name:		Federal Identification No.:	
Address:		Solicitation/Contract No.:	
City, State, Zip Code:		M/WBE Goals:	
		MBE % WBE %	
By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.			
Contractor is requesting a:			
1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial			
2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial			
3. <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development). Date of such filing with Empire State Development:			
PREPARED BY (Signature):		Date:	
SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.			
Name and Title of Preparer (Printed or Typed):		Telephone Number:	Email Address:
Submit with the bid or proposal or if submitting after award submit to:		*****FOR M/WBE USE ONLY *****	
New York State Insurance Fund Attn: Procurement Unit 15 Computer Dr. W. Albany, NY 12205 Email: contracts@nysif.com		REVIEWED BY:	DATE:
		Waiver Granted: <input type="checkbox"/> Yes <input type="checkbox"/> MBE <input type="checkbox"/> WBE	
		<input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver	
		<input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional	
		<input type="checkbox"/> Notice of Deficiency Issued	
		*Comments:	

## APPENDIX M

### Form 105 - Instructions PRODUCT KEY CODE

A	=	Agriculture/ Landscaping (e.g., all forms of landscaping services)
B	=	Mining (e.g., geological investigations)
C	=	Construction
C15	=	Building Construction – General Contractors
C16	=	Heavy Construction (e.g., highway, pipe laying)
C17	=	Special Trade Contractors (e.g., plumbing, heating, electrical, carpentry)
D	=	Manufacturing
E	=	Transportation, Communication and Sanitary Services (e.g., delivery services, warehousing, broadcasting and cable systems)
F/G	=	Wholesale/Retail Goods (e.g. hospital supplies and equipment, food stores, computer stores, office supplies)
G52	=	Construction Materials (e.g., lumber, paint, law supplies)
H	=	Financial, Insurance and Real Estate Services
I	=	Services
I73	=	Business Services (e.g., copying, advertising, secretarial, janitorial, rental services of equipment, computer programming, security services)
I81	=	Legal Services
I82	=	Education Services (e.g., AIDS education, automobile safety, tutoring, public speaking)
I83	=	Social Services (Counselors, vocational training, child care)
I87	=	Engineering, architectural, accounting, research, management and related services

## Form 105

## M/WBE Quarterly Report of

NYS AGENCY Contract No. \_\_\_\_\_

Project No. \_\_\_\_\_

Is this the final report? Check one:

Yes: ☐No: ☐

The following information indicates the payment amounts made by the grantee/contractor to the NYS Certified M/WBE subcontractor on this project. The payments as shown made are in compliance with contract documents for the above referenced project.

<b>Contractors Name and Address</b>		<b>Federal ID#</b>	<b>Goals/\$ Amt.</b>		<b>Contract Type:</b>							
			MBE	% =	<b>Paid to Contractor This Quarter:</b>							
			WBE	% =	<b>Total Paid to Contractor To Date:</b>							
				-								
		<b>Project Completion Date</b>	<b>Work Location</b>		<b>Reporting Period (Check One):</b>							
					<input type="checkbox"/> 1st Quarter (4/1-6/30) <input type="checkbox"/> 3rd Quarter (10/1-12/31) <input type="checkbox"/> 2nd Quarter (7/1-9/30) <input type="checkbox"/> 4th Quarter (1/1-3/31)							
<b>M/WBE Subcontractor/Vendor</b>		<b>Product Code*</b>	<b>Work Status This Report</b>		<b>Total Subcontractor Contract Amount</b>		<b>Payments this Quarter</b>		<b>Previous Payments</b>		<b>Total Payment Made to Date</b>	
					<b>MBE</b>	<b>WBE</b>	<b>MBE</b>	<b>WBE</b>	<b>MBE</b>	<b>WBE</b>	<b>MBE</b>	<b>WBE</b>
Name: FED ID#			<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete									
Name: FED ID#			<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete									
Name: FED ID#			<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete									
Name: FED ID#			<input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Complete									
<b>Total</b>												

\*See BELOW for Product Codes

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

# APPENDIX M

## Form 106

### MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

#### M/WBE AND EEO POLICY STATEMENT

I, \_\_\_\_\_, the (awardee/contractor) \_\_\_\_\_ agree to adopt the following policies with respect to the project being developed or services rendered at \_\_\_\_\_

#### **M/WBE**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

#### **EEO**

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2 \_\_\_\_\_

By \_\_\_\_\_

Print: \_\_\_\_\_ Title: \_\_\_\_\_

## APPENDIX M

### Form 106 (continued)

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison  
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

#### **M/WBE Contract Goals**

\_\_\_\_\_ % Minority and Women's Business Enterprise Participation

\_\_\_\_\_ % Minority Business Enterprise Participation

\_\_\_\_\_ % Women's Business Enterprise Participation

\_\_\_\_\_  
(Authorized Representative)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Contractor Certification to Covered Agency**

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

**ST-220-CA**

(12/11)

**For information, consult Publication 223, Questions and Answers Concerning Tax Law Section 5-a (see Need Help? on back).**

Contractor name				For covered agency use only Contract number or description	
Contractor's principal place of business		City	State		
Contractor's mailing address (if different than above)					
Contractor's federal employer identification number (EIN)			Contractor's sales tax ID number (if different from contractor's EIN)		
Contractor's telephone number			Covered agency name		
Covered agency address				Covered agency telephone number	

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
(name) (title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

☐ The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

☐ The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_  
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
(sign before a notary public)

\_\_\_\_\_  
(title)

## Instructions

### General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. See *Need help?* for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

**Note:** Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

### When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

**Individual, Corporation, Partnership, or LLC Acknowledgment**

STATE OF \_\_\_\_\_ }  
: \_\_\_\_\_ SS.:  
COUNTY OF \_\_\_\_\_ }

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that \_\_\_\_\_ he resides at \_\_\_\_\_, Town of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_; and further that:

[Mark an **X** in the appropriate box and complete the accompanying statement.]

- ☐ (If an individual): \_\_\_\_\_ he executed the foregoing instrument in his/her name and on his/her own behalf.
- ☐ (If a corporation): \_\_\_\_\_ he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_\_\_\_\_ he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_\_\_\_\_ he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- ☐ (If a partnership): \_\_\_\_\_ he is a \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_\_\_\_\_ he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_\_\_\_\_ he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- ☐ (If a limited liability company): \_\_\_\_\_ he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that \_\_\_\_\_ he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_\_\_\_\_ he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Registration No.

**Privacy notification**

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

**Need help?**



Visit our Web site at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features



**Telephone assistance**

**Sales Tax** Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

**Contractor Certification**(Pursuant to Tax Law Section 5-a, as amended,  
effective April 26, 2006)**ST-220-TD**

(4/15)

**For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).**

Contractor name

Contractor's principal place of business

City

State

ZIP code

Contractor's mailing address (if different than above)

City

State

ZIP code

Contractor's federal employer identification number (EIN)

Contractor's sales tax ID number (if different from contractor's EIN)

Contractor's telephone number

( )

Covered agency or state agency

Contract number or description

Covered agency telephone number

( )

Covered agency address

City

State

ZIP code

Is the estimated contract value over the full term of the contract (but not including renewals) more than \$100,000?

Yes ☐No ☐Unknown at this time ☐**General information**

Tax Law section 5-a, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file Form ST-220-CA, *Contractor Certification to Covered Agency*, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and *Individual, Corporation, Partnership, or LLC Acknowledgement* on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

**Note:** Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT  
DATA ENTRY SECTION  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0826**

**Privacy notification**

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

**Need help?**Visit our Web site at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features

**Telephone assistance****Sales Tax** Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
(name) (title)  
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

**Complete Sections 1, 2, and 3 below. Make only one entry in each section.**

**Section 1 – Contractor registration status**

- ☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253, and is listed on Schedule A of this certification.
- ☐ The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 2 – Affiliate registration status**

- ☐ The contractor does not have any affiliates.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 3 – Subcontractor registration status**

- ☐ The contractor does not have any subcontractors.
- ☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- ☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
(sign before a notary public)

\_\_\_\_\_  
(title)

**Schedule A – Listing of each entity (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold**

List the contractor, or affiliate, or subcontractor in Schedule A only if such entity exceeded the \$300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship to contractor	B Name	C Address	D Federal ID number	E Sales tax ID number	F Registration in progress

- Column A – Enter **C** in column A if the contractor; **A** if an affiliate of the contractor; or **S** if a subcontractor.
- Column B – Name - If the entity is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If the entity is a partnership or sole proprietor, enter the name of the partnership and each partner’s given name, or the given name(s) of the owner(s), as applicable. If the entity has a different DBA (doing business as) name, enter that name as well.
- Column C – Address - Enter the street address of the entity’s principal place of business. Do not enter a PO box.
- Column D – ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.
- Column E – Sales tax ID number - Enter only if different from federal EIN in column D.
- Column F – If applicable, enter an X if the entity has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

**Individual, Corporation, Partnership, or LLC Acknowledgment**

STATE OF                    }  
                              :                   SS.:  
COUNTY OF                }

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that  
\_ he resides at \_\_\_\_\_,  
Town of \_\_\_\_\_,  
County of \_\_\_\_\_,  
State of \_\_\_\_\_; and further that:

*(Mark an X in the appropriate box and complete the accompanying statement.)*

- ☐ (If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.
- ☐ (If a corporation): \_he is the \_\_\_\_\_  
of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- ☐ (If a partnership): \_he is a \_\_\_\_\_  
of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- ☐ (If a limited liability company): \_he is a duly authorized member of \_\_\_\_\_  
LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_  
Notary Public

Registration No. \_\_\_\_\_

**APPENDIX P**  
**SITE VISIT ATTENDANCE NOTIFICATION**

**BID#:** \_\_\_\_\_

NAME OF FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

TELEPHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

WWW: \_\_\_\_\_ FEIN: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

SIGNATURE OF AUTHORIZED PERSON: \_\_\_\_\_

TYPED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

NAME AND TITLE OF ATTENDEES (PLEASE TYPE):

1. \_\_\_\_\_

2. \_\_\_\_\_

Email to:  
[contracts@nysif.com](mailto:contracts@nysif.com)

Fax to:  
(518) 437-4209

Or mail to:  
New York State Insurance Fund  
Procurement Unit  
15 Computer Drive West  
Albany, New York 12205

## **APPENDIX S**

### **CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE DISABLED VETERAN OWNED BUSINESSES (SDVOB)**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. NYSIF recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of NYSIF contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

#### **I. CONTRACT GOALS**

- A. NYSIF hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: [https://ogs.ny.gov/veterans/Docs/CertifiedNYS\\_SDVOB.pdf](https://ogs.ny.gov/veterans/Docs/CertifiedNYS_SDVOB.pdf). Questions regarding compliance with SDVOB participation goals should be directed to the NYSIF Designated Contacts at [contracts@nysif.com](mailto:contracts@nysif.com). Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).

#### **II. SDVOB UTILIZATION PLAN**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form S-100 with their bid.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract

## APPENDIX S

award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to NYSIF.

- C. NYSIF will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of NYSIF acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to NYSIF a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by NYSIF to be inadequate, NYSIF shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by NYSIF, a request for a partial or total waiver of SDVOB participation goals on S-200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. NYSIF may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - 1. If a Bidder fails to submit an SDVOB Utilization Plan;
  - 2. If a Bidder fails to submit a written remedy to a notice of deficiency;
  - 3. If a Bidder fails to submit a request for waiver; or
  - 4. If NYSIF determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, NYSIF shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

### **III. REQUEST FOR WAIVER**

- A. **Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at NYSIF for guidance.**
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form S-200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by NYSIF at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, NYSIF shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to NYSIF, but must be

## **APPENDIX S**

made no later than prior to the submission of a request for final payment on the Contract.

- D. If NYSIF, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (Form S-101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regard to such non-compliance, NYSIF may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to the NYSIF designated contacts at [contracts@nysif.com](mailto:contracts@nysif.com).

### **IV. REQUIRED GOOD FAITH EFFORTS**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- 1) Copies of solicitations to SDVOBs and any responses thereto.
- 2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- 3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by NYSIF with certified SDVOBs whom NYSIF determined were capable of fulfilling the SDVOB goals set in the Contract.
- 4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- 5) Other information deemed relevant to the waiver request.

### **V. MONTHLY SDVOB CONTRACTOR COMPLIANCE REPORT**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to NYSIF during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using Form S-101 available on the NYSIF website and should be completed by the Contractor and submitted to NYSIF, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: [SDVOBinfo@nysif.com](mailto:SDVOBinfo@nysif.com).

### **VI. BREACH OF CONTRACT AND DAMAGES**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

**APPENDIX S**  
**FORM S-100: SDVOB UTILIZATION PLAN**

**SDVOB UTILIZATION PLAN**

☐ Initial Plan    ☐ Revised plan    Contract/Solicitation # \_\_\_\_\_

**INSTRUCTIONS:** This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each NYS **Certified** Service-Disabled Veteran-Owned Business (SDVOB) under the contract. By submission of this Plan, the Bidder/Contractor commits to making good faith efforts in the utilization of SDVOB subcontractors and suppliers as required by the SDVOB goals contained in the Solicitation/Contract. Making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward SDVOB utilization. Attach additional sheets if necessary.

BIDDER/CONTRACTOR INFORMATION		SDVOB Goals In Contract
Bidder/Contractor Name:	Federal Identification No.:	%
Bidder/Contractor Address (Street, City, State and Zip Code):		

Bidder/Contractor Telephone Number:	Contract Work Location/Region:
Contract Description/Title:	

**CONTRACTOR INFORMATION**

Prepared by (Signature):	Name and Title of Preparer:	Telephone Number:	Date:
Email Address:			

***If unable to meet the SDVOB goals set forth in the solicitation/contract, bidder/contractor must submit a request for waiver on the SDVOB Waiver Form (S-200).***

SDVOB Subcontractor/Supplier Name:		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed description of work to be provided by subcontractor/supplier:		

Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ \_\_\_\_\_ or \_\_\_\_\_%

SDVOB Subcontractor/Supplier Name:		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		

Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ \_\_\_\_\_ or \_\_\_\_\_%

**FOR NYSIF USE ONLY**

NYSIF Authorized Signature:	<input type="checkbox"/> Accepted	<input type="checkbox"/> Accepted as Noted	<input type="checkbox"/> Notice of Deficiency
NAME (Please Print):	SDVOB %/\$	Date Received:	Date Processed:

Comments:

**NYS CERTIFIED SDVOB SUBCONTRACTOR/SUPPLIER INFORMATION:** The directory of New York State Certified SDVOBs can be viewed at: [https://ogs.ny.gov/Veterans/Docs/CertifiedNYS\\_SDVOB.pdf](https://ogs.ny.gov/Veterans/Docs/CertifiedNYS_SDVOB.pdf)

***Note: All listed Subcontractors/Suppliers will be contacted and verified by NYSIF.***

**APPENDIX S**  
**FORM S-100: SDVOB UTILIZATION PLAN**

# ADDITIONAL SHEET

<b>Bidder/Contractor Name:</b>	<b>Contract/Solicitation #</b>
--------------------------------	--------------------------------

<b>SDVOB Subcontractor/Supplier Name:</b>		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %		
<b>SDVOB Subcontractor/Supplier Name:</b>		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %		
<b>SDVOB Subcontractor/Supplier Name:</b>		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform): \$ _____ or _____ %		
<b>SDVOB Subcontractor/Supplier Name:</b>		
Please identify the person you contacted:	Federal Identification No.:	Telephone No.:
Address:	Email Address:	
Detailed Description of work to be provided by subcontractor/supplier:		
Dollar Value of subcontracts/supplies/services (When \$ value cannot be estimated, provide the estimated % of contract work the SDVOB will perform)): \$ _____ or _____ %		

**APPENDIX S**  
**INSTRUCTION FOR COMPLETING THE MONTHLY**  
**SDVOB COMPLIANCE REPORT – FORM S-101**

**Instructions for Completing the**  
**Monthly SDVOB Compliance Report – Form S-101**

The SDVOB Monthly Reporting Form is to be completed by the Contractor/Vendor, and submitted by the 10<sup>th</sup> day of *each* month for the duration of the Contract. This form should include **all** (e.g. SDVOB and non SDVOB) Subcontractors and/or Suppliers assigned by the Contractor/Vendor to perform work during the contract. This reporting should also include payments made by your Subcontractors and/or Suppliers to SDVOB firms.

Complete the form as specified below.

Contract No.	Indicate the NYSIF Contract No.
Contractor/Vendor Name and Address	Provide your firm's name and address.
Federal ID No.	Enter your firm's Federal ID No.
Goals	Indicate SDVOB participation goals.
Reporting Period	Fill in the month and year of reporting period. One copy must be submitted with final payment application.
Description of Project	Briefly describe the work you are providing under the terms of this contract.
Firm Name and Address	Provide the name, address and phone number of <b>all</b> Subcontractors/Suppliers assigned by the Contractor/Vendor on this contract or purchase agreement(s).
Federal ID No.	Enter the Subcontractor's/Supplier's Federal ID No. If no Federal ID No. has been assigned, provide only the owner's last four (4) digits of his or her Social Security No.
Payment This Month	Indicate the amount paid <i>this month</i> to each Subcontractor/Supplier. If there was no income activity for a Subcontractor/Supplier, please check the box indicating "No Payment This Month."
Contract Amount	Enter the total contract amount or purchase agreement(s) amount for each Subcontractor/Supplier.
Description of Work/Supplies	Briefly describe the work performed or supplies provided by each Subcontractor/Supplier.

Submit to:  
New York State Insurance Fund  
Attn: Procurement Unit  
15 Computer Drive West  
Albany, NY 12205  
Email: [SDVOBinfo@nysif.com](mailto:SDVOBinfo@nysif.com)

**APPENDIX S**  
**FORM S-101: CONTRACTOR'S MONTHLY SDVOB COMPLIANCE REPORT**

**CONTRACTOR'S MONTHLY SDVOB COMPLIANCE REPORT (DUE ON THE 10<sup>TH</sup> DAY OF EACH MONTH FOR THE PRECEDING MONTH'S ACTIVITY AS EVIDENCE TOWARDS ACHIEVEMENT OF THE SDVOB GOALS ON THE CONTRACT)**

Contract No.: \_\_\_\_\_

Contractor/Vendor Name, Address and Phone No.:	Contractor/Vendor Federal ID No.:	SDVOB Goals	Reporting Period	
	Description of Project:	%	Month	Year

Firm Name, Address and Phone Number (List All Firms)	Description of Work or Supplies Provided	Designation	Payment This Month	Contract Amount
Federal ID No.:		<input type="checkbox"/> SDVOB <input type="checkbox"/> Supplier <input type="checkbox"/> Sub <input type="checkbox"/> Team <input type="checkbox"/> Broker <input type="checkbox"/> Other <input type="checkbox"/> Joint Venture <input type="checkbox"/> No Written Contract <input type="checkbox"/> Written Contract	<input type="checkbox"/> No Payment This Month	
Federal ID No.:		<input type="checkbox"/> SDVOB <input type="checkbox"/> Supplier <input type="checkbox"/> Sub <input type="checkbox"/> Team <input type="checkbox"/> Broker <input type="checkbox"/> Other <input type="checkbox"/> Joint Venture <input type="checkbox"/> No Written Contract <input type="checkbox"/> Written Contract	<input type="checkbox"/> No Payment This Month	
Federal ID No.:		<input type="checkbox"/> SDVOB <input type="checkbox"/> Supplier <input type="checkbox"/> Sub <input type="checkbox"/> Team <input type="checkbox"/> Broker <input type="checkbox"/> Other <input type="checkbox"/> Joint Venture <input type="checkbox"/> No Written Contract <input type="checkbox"/> Written Contract	<input type="checkbox"/> No Payment This Month	
Federal ID No.:		<input type="checkbox"/> SDVOB <input type="checkbox"/> Supplier <input type="checkbox"/> Sub <input type="checkbox"/> Team <input type="checkbox"/> Broker <input type="checkbox"/> Other <input type="checkbox"/> Joint Venture <input type="checkbox"/> No Written Contract <input type="checkbox"/> Written Contract	<input type="checkbox"/> No Payment This Month	

_____ Signature	_____ Print Name and Title	_____ Date
--------------------	-------------------------------	---------------

Submission of this form constitutes the Contractor's acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the Contract.

For NYSIF Use Only	
Reviewed By:	Date:

**APPENDIX S**  
**FORM S-200: APPLICATION FOR WAIVER OF SDVOB PARTICIPATION GOAL**

**APPLICATION FOR WAIVER OF SDVOB PARTICIPATION GOAL**

*(must be submitted before requesting final payment on the Contract)*

**Section 1: Basic Information**

Contractor's Name:	Federal Identification Number:
Street Address:	E-Mail Address:
City, State, Zip Code:	Telephone:
Contract Number:	SDVOB CONTRACT GOALS
	%

**Section 2: Type of SDVOB Waiver Requested**

<input type="checkbox"/> Total	<input type="checkbox"/> Partial	If partial waiver, please enter the revised SDVOB percentage:	%
Please explain the reason for the waiver request:			

**Section 3: Supporting Documentation**

Provide the following documentation as evidence of your good faith efforts to meet the SDVOB goals set forth in the contract and in support of your waiver application:

- ☐ **Attachment A.** Copies of solicitations to SDVOBs and any responses thereto.
- ☐ **Attachment B.** Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- ☐ **Attachment C.** Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by NYSIF with certified SDVOBs whom NYSIF determined were capable of fulfilling the SDVOB goals set forth in the contract.
- ☐ **Attachment D.** Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- ☐ **Attachment E.** Other information deemed relevant to the request.

**Section 4: Signature and Contact Information**

**By signing and submitting this form, the contractor certifies that a good faith effort has been made to promote SDVOB participation pursuant to the SDVOB requirements set forth under the solicitation or Contract. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, and a suspension or termination of the contract.**

Prepared By: (Signature)	Date:
Name and Title of Preparer (Print or Type)	

**Submit with the bid or proposal or if submitting after award submit to:**

New York State Insurance Fund  
Attn: Procurement Unit  
15 Computer Drive West  
Albany, NY 12205  
Email: [contracts@nysif.com](mailto:contracts@nysif.com)

**APPENDIX S**  
**FORM S-200: APPLICATION FOR WAIVER OF SDVOB PARTICIPATION GOAL**

<b>For NYSIF Use Only</b>	
Reviewed By:	Date:
<div>Decision:</div> <div style="margin-left: 20px;"><input type="checkbox"/> Full SDVOB waiver granted <input type="checkbox"/> Partial SDVOB waiver granted; revised SDVOB goal: _____ % <input type="checkbox"/> SDVOB waiver denied</div>	
Approved By:	Date:
Date Notice of Determination Sent:	
Comments	

## APPENDIX V

### **Vendor Assurance of No Conflict of Interest or Detrimental Effect**

The Firm offering to provide services pursuant to this Facility Management & Maintenance Services RFP 2018-29-RE, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in this Contract does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this Contract;
5. During the negotiation this Contract, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this Contract, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
8. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment,

## APPENDIX V

hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms engaged under this RFP should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name, Title:

Signature:

Date:

This form must be signed by an authorized executive or legal representative.

**APPENDIX Z**  
**FEE SCHEDULE PROPOSAL**  
**BID # 2018-29-RE**

Bidder _____ DBA, if any _____ Federal ID # _____ Type of Firm _____ Address _____ _____ _____	Contact _____ Title _____ Email Address _____ Telephone # _____ Fax # _____ Web Address _____ _____
--	---

The cost evaluation portion of this contract will be based on the Grand Total Bid for Five (5) Years Service. Schedules (Bid) must include all costs necessary or incidental to deliver all required services of this RFP. Bid prices shall include all direct and indirect costs, including, but not limited to labor, fringe benefits, supplies, equipment, managerial (administrative) support, materials and markup (includes profit, overhead, all taxes, employer's share of fringe benefits, health insurance and the employer's expenses related to recruitment and training).

	Facility Management & Maintenance Services	Landscaping	Snowplowing	Total Annual Cost
<b>A. Cost for Year One</b>	\$ _____	\$ _____	\$ _____	\$ _____
<b>B. Cost for Year Two</b>	\$ _____	\$ _____	\$ _____	\$ _____
<b>C. Cost for Year Three</b>	\$ _____	\$ _____	\$ _____	\$ _____
<b>D. Cost for Year Four</b>	\$ _____	\$ _____	\$ _____	\$ _____
<b>E. Cost for Year Five</b>	\$ _____	\$ _____	\$ _____	\$ _____
<b>F. Subtotal Cost for Five (5) Years Services</b>				\$ _____
<b>G. Special Projects Allowance (10% of F.)</b>				\$ _____
<b>H. Grand Total Bid for Five (5) Years Service (F. + G.)</b>				\$ _____

Special Projects Allowance shall be defined as any emergency or special project not covered under the regularly scheduled services in this contract. As previously noted, these require prior authorization from NYSIF and shall be submitted and billed separately on a detailed invoice for review and approval.

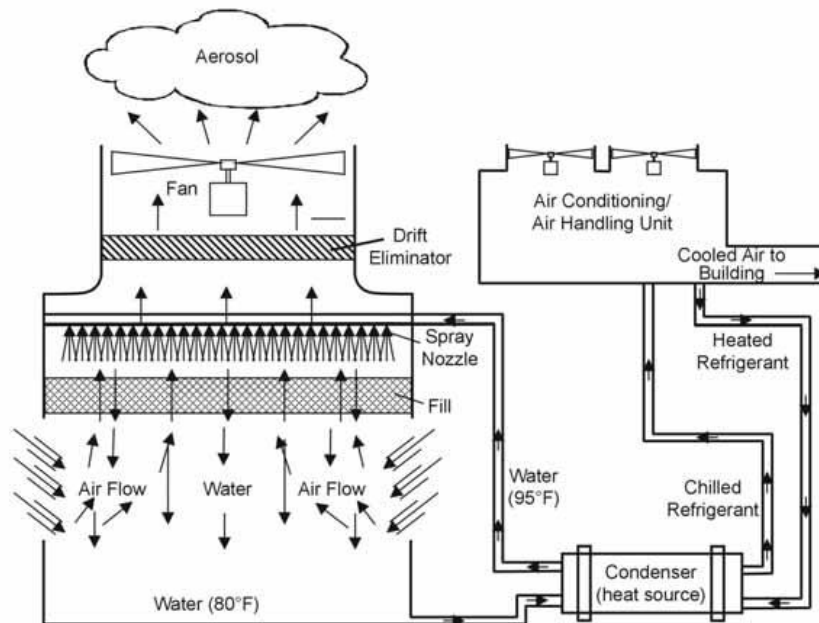
Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

# **NYSIF – LIVERPOOL OFFICE**

## **COOLING TOWER MAINTENANCE**

### **PROGRAM AND PLAN**



*This program is intended to meet the requirements of the August 2015 NYS DOH Emergency Regulations for Legionella control in cooling towers. This document is intended for use by the facility indicated. Any unauthorized use or reproduction of this document for any facility other than that intended is strictly prohibited.*

Prepared by:  
Adirondack Mountain Engineering, PC  
PO Box 1376 – 313 Ushers Road  
Ballston Lake, NY 12019

**August 2017**

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- A. Plan History Log
- B. NYS Department of Health Regulations
- C. Proof of Cooling Tower Registration
- D. Contract with Inspection/Treatment Entity
- E. Maintenance and Service Logs for Backflow Prevention Equipment
- F. Manufacturer O&M Manuals
- G. Material Safety Data Sheets for Chemicals
- H. DOH Notification Log

## EXHIBIT 1

### ***Cooling Tower Maintenance Program and Plan***

#### **Program Responsibilities**

The following persons are responsible for the management, implementation and completion of this program:

<b>FACILITY:</b>	New York State Insurance Fund 15 Computer Drive West Albany, NY 12205
<b>PERSON RESPONSIBLE FOR PROGRAM DEVELOPMENT, SUPERVISION AND REPORTING TO THE DOH AS REQUIRED</b>	Megan McClune, Contract Management Specialist 1 New York State Insurance Fund 15 Computer Drive West Albany, NY 12205 Phone: (518) 437-1599 E-Mail: <a href="mailto:mmcclune@nysif.com">mmcclune@nysif.com</a>
<b>PERSON RESPONSIBLE FOR MAINTENANCE:</b>  <b>MAINTENANCE SUPERVISOR</b>	Todd M. DeOrdio, Building Manager NYSIF Syracuse District Office Gilbert International Group 1045 7th North Street Liverpool, NY 13088 Phone: (315)430-6699 <a href="mailto:todd@gilbertinternational.com">todd@gilbertinternational.com</a>
<b>PERSON/ENTITY WHO CONDUCTS QUARTERLY INSPECTIONS:</b>	JEMCO WATER TREATMENT SERVICES 7035 VAN BUREN ROAD SYRACUSE, NY 13209 Phone: (315) 635-4630
<b>PERSON/ENTITY WHO COMPLETES ANNUAL INSPECTION AND CERTIFICATION:</b>	
<b>PERSON/ENTITY WHO TREATS THE COOLING TOWERS:</b>	JEMCO WATER TREATMENT SERVICES 7035 VAN BUREN ROAD SYRACUSE, NY 13209 Phone: (315) 635-4630

This program is intended to meet the requirements of the August 2015 NYS DOH Emergency Regulations for Legionella control in cooling towers. These regulations can be found in the Appendix B. A copy of this plan shall be provided to each responsible party identified above. This document is intended for use by the facility indicated. Any unauthorized use or reproduction of this document for any facility other than that intended is strictly prohibited.

**Cooling Tower Maintenance Program and Plan**

**General**

The following cooling towers are present at the Facility. All have been registered by the Facility with the NYS Department of Health. Details can be found in Appendix C.

**Cooling Tower System**

**Plan Review and Availability**

This plan will be reviewed on an annual basis by the New York State Insurance Fund (NYSIF). Each year, by November 1<sup>st</sup>, the “Person Responsible for Program Development and Supervision” will ensure that a NYS licensed professional engineer or appropriately trained environmental consultant meeting the requirements of the regulations, certifies to the Department of Health, that all cooling towers were inspected, tested, cleaned, and disinfected in compliance with the DOH regulations, that the condition of the cooling towers is appropriate for intended use, and that a maintenance program and plan has been developed and implemented.

A copy of this plan will be kept on the premises where the cooling tower is located. It will be made available to the local of state Department of Health immediately upon request. In addition to this plan, the Owner should ensure that all manufacturer’s recommended operating, maintenance and repair procedures be followed. In rare circumstances that the manufacturer’s procedures may differ from this plan, the manufacturer’s recommendations should be followed and/or the Owner should check with a licensed professional.

**Plan Authority and References**

- NYS Department of Health Emergency Regulations
- ASHRAE 188 (2015) *Legionellosis: Risk Management for Building Water Systems (ANSI/ASHRAE 188-2015)*
- ASHRAE Guideline 12 (2000) *Minimizing the Risk of Legionellosis Associated with Building Water Systems*
- Cooling Technology Institute (CTI) Legionellosis. *Guideline: Best Practices for Control of Legionella, CTI Guidelines WTB-148 (08)*
- OSHA eTools: Legionnaires Disease,  
<https://www.osha.gov/dts/osta/otm/legionnaires/index.html>
- Centers for Disease Control and Prevention, *Guidelines for Environmental Infection Control in Health-Care Facilities; Recommendations of CDC and the Healthcare Infection Control Practices Advisory Committee (HICPAC); U.S. Department of Health and Human Services Centers for Disease Control and Prevention (CDC) Atlanta, GA 30333 (2003)*

***Cooling Tower Maintenance Program and Plan***

**Routine Inspection, Cleaning and Treatment**

All cooling towers will be subject to weekly, monthly and quarterly inspections. In addition, NYS requires that all towers be inspected and tested not less than once every ninety days during use by a NYS Licensed Professional Engineer or other competent person as outlined in the regulations.

**Weekly Inspections:** Weekly Inspections are performed by On-Site Maintenance staff and include the following:

- (i) Visual inspection of the cooling tower and associated equipment for any maintenance issues;
- (ii) Testing of biocide concentrations in the water using a suitable test kit;
- (iii) Reading of make-up water meter readings;
- (iv) Visual check of conductivity levels;
- (v) Recording of biocide concentration, conductivity level and water meter reading along with any other observed maintenance items in an on-site log maintained by the cooling tower equipment.

**Monthly Inspections:** Monthly Inspections are performed by Contracted Maintenance staff and include the following:

- (i) Visual inspection of the cooling tower and associated equipment for any maintenance issues;
- (ii) Supply and testing of biocide equipment and chemicals;
- (iii) Supply and testing of corrosion control equipment chemicals;
- (iv) Check of water make-up connections and control;
- (v) Check for proper functioning of the conductivity control;
- (vi) Check for proper functioning of all dosing equipment;
- (vii) Monthly HPC microbe testing.
- (viii) Completion of a monthly inspection form (Contractor supplied) and delivery of form to On-Site Maintenance Supervisor identified on Page 3 of this plan.

**Quarterly Inspections:** Quarterly Inspections are performed by Contracted Professionals and include the following:

- (i) Visual inspection of the cooling tower and associated equipment for the presence of organic material, biofilm, algae, and other visible contaminants;
- (ii) Visual check of the general condition of the cooling tower, basin, packing material, and drift eliminator;
- (iii) Check of water make-up connections and control;
- (iv) Check for proper functioning of the conductivity control;
- (v) Check for proper functioning of all dosing equipment;
- (vi) Completion of a formal Quarterly Inspection Report to be provided to the person Responsible for the inspection program identified on Page 3 of this plan.

## EXHIBIT 1

### ***Cooling Tower Maintenance Program and Plan***

Should any inspection show visible debris in the basin and/or other objectionable conditions, corrective action will be commenced immediately under the direction of the Maintenance Supervisor.

#### **Routine Treatment Program**

Proper biocides must be applied as part of any treatment program. All persons who apply biocides must hold the proper class commercial pesticide applicator certification, or pesticide technician status, from the NYS Department of Conservation, and act within the scope of the regulations. All chemicals used in the treatment and cleaning of cooling towers will be approved by the Department of Corrections and Community Supervision and an MSDS will be found in the Appendix. All biocides used will be registered with the NYS Department of Conservation as required.

The following is all equipment and chemicals that will be used for the purpose of treating the open recirculating loop:

- (i) Properly Sized Biocide Metering Pump (**Rainbow T-300-29X tablet feeder or Equal**)
- (ii) Properly Sized Corrosion Control Metering Pump (**Iwaki EX-A10 or Equal**)
- (iii) Chemical Holding Tanks with Secondary Containment as applicable
- (iv) Biocide and Corrosion Control Chemicals are included in Appendix G

Recommended minimum chemical residuals are dependent on the disinfectant being used at the time. ASHRAE 12-2000 recommends that the types of biocides used for disinfection be alternated on a regular basis to avoid the selection and growth of resistant strains of microbes. It is also commonly recommended to utilize more than one type of biocide in addition to alternating methods. Free halogens shall be tested using an on-site test kit as recommended by the chemical provider. The residual level will be measured at each cooling tower sump. All information will be documented in a service log maintained on-site.

#### Continuous Application of Halogens (CTI WTB-148 (08) Recommendations:)

- Maintain continuous free residuals of 0.5 to 1.0 ppm as Cl<sub>2</sub> in the cooling towers hot returns. Ensure adequate distribution. Effectiveness decreases with increasing pH; bromine is relatively more effective at higher pH (8.5-9.0)
- Stabilized halogen products should be added according to the label instructions.
- Discharge of water to surface water will require dehalogenation.
- Adding biocides may aid in the penetration, removal, and dispersion of biofilm and often increases the efficacy of the biocide.
- Continuous halogen programs may also require periodic use of nonoxidizing biocides in order to control biofilms and other organisms. The use of additional chemicals must be per the recommendations of the NYSDEC certified biocide applicator or Professional Engineer.

***Cooling Tower Maintenance Program and Plan***

Hyperhalogenation (CTI WTB-148 (08) Recommendations:)

Hyperhalogenation as practiced is the maintenance of a minimum of 5 ppm free halogen for at least 6 hours. Periodic hyperhalogenation will discourage development of large populations of Legionella and their host organisms. Consequently, periodic hyperhalogenation may eliminate the need for conducting more complicated and higher risk off-line emergency disinfection procedures. Periodic on-line hyperhalogenation may also be necessary for systems:

- That have process leaks;
- That have heavy biofouling;
- That use reclaimed water as makeup;
- That have been stagnant for a long time;
- When HPC testing exceed 100,000 CFU/ml or
- When Legionella testing exceed 100 CFU/ml

**Make-Up Water Maintenance**

All potable water systems used to provide make-up water for cooling towers must be equipped with a reduced pressure zone backflow prevention device to prevent potential contamination of the drinking water system. The make-up water source for the cooling tower serving the facility is from the drinking water system serving the building. Backflow prevention devices must be inspected and certified by a NYS Department of Health certified Backflow Tester on an annual basis. Records of the inspection should be maintained on NYSDOH Form 1013 (or latest version) and maintained on-site.

Proper operation of the make-up water system and valves is important for the operation of the cooling tower systems. Valves and water usage should be checked in conjunction with the weekly inspections.

**Biological Testing and Remedial Action Plans**

**HPC Activity**

At each monthly inspection service visit, a dip slide or HPC will be taken from each basin and analyzed. The biocide regimen will be presumed adequate if the dip slide is found to be less than 10,000 CFU/ml. If the dip slide is *greater than 10,000 CFU/ml* the biocide regimen will be immediately examined and modified to correct conditions. Retesting will occur within 30 calendar days. Modification to the treatment regimen may be required.

All results and actions will be logged in the monthly service reports and in the on-site log.

## EXHIBIT 1

### **Cooling Tower Maintenance Program and Plan**

**Reference: Cooling Technology Institute WTB-148**

Parameter	Dipslides	Agar Pour Plate or Petri film	Microscopic Examination
Plank tonic Counts (bulk water)	<10,000 CFU/ml	<10,000 CFU/ml	No higher life forms
Sessile Counts (surfaces)	<100,000 CFU/cm <sup>2</sup>	<100,000 CFU/cm <sup>2</sup>	No higher life forms
Deposits	NA	NA	No higher life forms

### **Legionella Activity**

In addition to HPC monitoring, it is recommended that legionella culture testing be completed by a certified laboratory on a quarterly basis or if HPC activity is noted. Non-emergency Legionella sampling should also be conducted at the following triggers:

- Failure of a dosing system or indications of maintenance conditions that may have permitted amplification of microbial population.
- When the tower is off-line for more than 5 days.
- When the HPC count exceeds 10,000 CFU/ml

Results from Legionella testing will result in the immediate corrective actions found in Appendix 4-A of the NYSDOH regulations for levels that exceed  $\geq 10$  CFU /ml.

### **Emergency Legionella Sample Collection**

Per NYS regulations, emergency sample collection and submission of samples for Legionella culture testing will be conducted in the case of events including, but not limited to:

- (i) Power failure of sufficient duration to allow for the growth of bacteria;
- (ii) Loss of biocide treatment sufficient to allow for the growth of bacteria;
- (iii) Failure of conductivity control to maintain proper cycles of concentration;
- (iv) A determination that one or more cases of Legionellosis is or may be associated with the cooling tower, based upon epidemiologic data or laboratory testing; and
- (v) Any other conditions determined by maintenance or regulatory personnel.

Sample collection will be coordinated with the contracted service provider identified on Page 2. Results will be interpreted immediately upon receipt and corrective actions will be immediately implemented. All records and analysis will be maintained on-site.

The samples must be analyzed by a laboratory with New York State ELAP certification. The results will trigger immediate action based on Appendix 4-A in the regulations. All results and actions will be logged in the service reports and on-site logs and maintained on site for regulatory review.

# EXHIBIT 1

## Cooling Tower Maintenance Program and Plan

### DOH Appendix 4-A - Interpretation of Legionella Culture Results from Cooling Towers

LEGIONELLA TEST RESULTS IN CFU/ML	APPROACH	PRESCRIBED ACTION
No detection (< 10 CFU /ml)	Maintain treatment program and Legionella monitoring.	<p><b>Online disinfection</b> means – Dose the cooling tower water system with either a different biocide or a similar biocide at an increased concentration than currently used.</p> <p><b>Online decontamination</b> means – Dose the recirculation water with a chlorine-based compound equivalent to at least 5 mg/l (ppm) free residual chlorine for at least one hour; pH 7.0 to 7.6.</p> <p><b>System decontamination</b> means – Maintain 5 to 10 mg/l (ppm) free residual chlorine for a minimum of one hour; drain and flush with disinfected water; clean wetted surface; refill and dose to 1 – 5 mg/l (ppm) of free residual chlorine at pH 7.0 – 7.6 and circulate for 30 minutes. Refill, re-establish treatment and retest for verification of treatment.</p>
For levels at ≥ 10 CFU /ml but < 1000 CFU /ml perform the following:	<p>Review treatment program.</p> <p>Institute immediate <b>online disinfection</b> to help with control</p> <p>Retest the water in 3 – 7 days.</p> <ul style="list-style-type: none"> <li>Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.6. Continue with regular maintenance strategy.</li> <li>If &lt; 100 CFU /ml <b>repeat online disinfection</b> and retest.</li> <li>If ≥ 100 CFU /ml but &lt; 1000 CFU /ml further investigate the water treatment program and immediately perform <b>online disinfection</b>. Retest and repeat attempts at control strategy.</li> </ul> <p>If ≥ 1000 CFU /ml undertake control strategy as noted below.</p>	
For levels ≥ 1000 CFU /ml perform the following:	<p>Review the treatment program</p> <p>Institute immediate <b>online decontamination</b> to help with control</p> <p>Retest the water in 3 – 7 days.</p> <ul style="list-style-type: none"> <li>Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.6. Continue with regular maintenance strategy.</li> <li>If &lt; 100 CFU /ml <b>repeat online disinfection</b> and retest;</li> <li>If ≥ 100 CFU /ml but &lt; 1000 CFU /ml further investigate the water treatment program and immediately perform <b>online disinfection</b>. Retest and repeat attempts at control strategy.</li> </ul> <p>If ≥ 1000 CFU /ml carry out <b>system decontamination</b></p>	

**Cooling Tower Maintenance Program and Plan**

**Emergency Disinfection and Decontamination Plan**

This procedure will be used typically where HPC >100,000 CFU/ml or legionella >1000 CFU/ml. It will be employed and modified under the direction of contracted professionals or properly trained staff.

**Procedure for Cleaning Cooling Towers and Related Equipment**

Reference: Centers for Disease Control and Prevention "Guidelines for Environmental Infection Control in Health-Care Facilities," Page 225, Item 4.

**I. Perform these steps prior to chemical disinfection and mechanical cleaning.**

A. Provide protective equipment to workers who perform the disinfection, to prevent their exposure to chemicals used for disinfection and aerosolized water containing *Legionella* spp. Protective equipment may include full-length protective clothing, boots, gloves, goggles, and a full- or half-face mask that combines a HEPA filter and chemical cartridges to protect against airborne chlorine levels of up to 10 mg/L.

B. Shut off cooling tower.

1. Shut off the heat source, if possible.
2. Shut off fans, if present, on the cooling tower/evaporative condenser (CT/EC).
3. Shut off the system blowdown (i.e., purge) valve.
4. Shut off the automated blowdown controller, if present, and set the system controller to manual.
5. Keep make-up water valves open.
6. Close building air-intake vents within at least 30 meters of the CT/EC until after the cleaning procedure is complete.
7. Continue operating pumps for water circulation through the CT/EC.

**II. Perform these chemical disinfection procedures.**

A. Add fast-release, chlorine-containing disinfectant in pellet, granular, or liquid form, and follow safety instructions on the product label. Use EPA-registered products, if available. Examples of disinfectants include sodium hypochlorite (NaOCl) or calcium hypochlorite (Ca[OCl]<sub>2</sub>), calculated to achieve initial free residual chlorine (FRC) of 50 mg/L: either a) 3.0 lbs [1.4 kg] industrial grade NaOCl [12%–15% available Cl] per 1,000 gallons of CT/EC water; b) 10.5 lbs [4.8 kg] domestic grade NaOCl [3%–5% available Cl] per 1,000 gallons of CT/EC water; or c) 226 0.6 lb [0.3 kg] Ca[OCl]<sub>2</sub> per 1,000 gallons of CT/EC water. If significant biodeposits are present, additional chlorine may be required. If the volume of water in the CT/EC is unknown, it can be estimated (in gallons) by multiplying either the recirculation rate in gallons per minute by 10 or the refrigeration capacity in tons by 30. Other appropriate compounds may be suggested by a water-treatment specialist.

B. Record the type and quality of all chemicals used for disinfection, the exact time the chemicals were added to the system, and the time and results of FRC and pH measurements.

C. Add dispersant simultaneously with or within 15 minutes of adding disinfectant. The dispersant is best added by first dissolving it in water and adding the solution to a turbulent zone in the water system. Automatic-dishwasher compounds are examples of low- or non-foaming, silicate based dispersants. Dispersants are added at 10–25 lbs (4.5–11.25 kg) per 1,000 gallons of CT/EC water.

***Cooling Tower Maintenance Program and Plan***

D. After adding disinfectant and dispersant, continue circulating the water through the system. Monitor the FRC by using an FRC-measuring device with the DPD method (e.g., a swimming pool test kit), and measure the pH with a pH meter every 15 minutes for 2 hours. Add chlorine as needed to maintain the FRC at >10 mg/L. Because the biocidal effect of chlorine is reduced at a higher pH, adjust the pH to 7.5–8.0. The pH may be lowered by using any acid (e.g., muriatic acid or sulfuric acid used for maintenance of swimming pools) that is compatible with the treatment chemicals.

E. Two hours after adding disinfectant and dispersant or after the FRC level is stable at >10 mg/L, monitor at 2-hour intervals and maintain the FRC at >10 mg/L for 24 hours.

F. After the FRC level has been maintained at >10 mg/L for 24 hours, drain the system. CT/EC water may be drained safely into the sanitary sewer. Municipal water and sewerage authorities should be contacted regarding local regulations. If a sanitary sewer is not available, consult local or state authorities (e.g., a department of natural resources or environmental protection) regarding disposal of water. If necessary, the drain-off may be dechlorinated by dissipation or chemical neutralization with sodium bisulfite.

G. Refill the system with water and repeat the procedure outline in steps 2–7 in I-B above.

**III. Perform mechanical cleaning.**

A. After water from the second chemical disinfection has been drained, shut down the CT/EC.

B. Inspect all water-contact areas for sediment, sludge, and scale. Using brushes and/or a low pressure water hose, thoroughly clean all CT/EC water-contact areas, including the basin, sump, fill, spray nozzles, and fittings. Replace components as needed.

C. If possible, clean CT/EC water-contact areas within the chillers.

**IV. Perform these procedures after mechanical cleaning.**

A. Fill the system with water and add chlorine to achieve an FRC level of 10 mg/L.

B. Circulate the water for 1 hour, then open the blowdown valve and flush the entire system until the water is free of turbidity.

C. Drain the system.

D. Open any air-intake vents that were closed before cleaning.

E. Fill the system with water. The CT/EC may be put back into service using an effective water treatment program.

***Cooling Tower Maintenance Program and Plan***

In addition to this plan, all required actions for positive legionella cultures specific by NYS DOH will be followed, including procedures for online disinfection, online decontamination, and system decontamination.

**Online disinfection** means – Dose the cooling tower water system with either a different biocide or a similar biocide at an increased concentration than currently used.

**Online decontamination** means – Dose the recirculation water with a chlorine-based compound equivalent to at least 5 mg/l (ppm) free residual chlorine for at least one hour; pH 7.0 to 7.6.

**System decontamination** means – Maintain 5 to 10 mg/l (ppm) free residual chlorine for a minimum of one hour; drain and flush with disinfected water; clean wetted surface; refill and dose to 1 – 5 mg/l (ppm) of free residual chlorine at pH 7.0 – 7.6 and circulate for 30 minutes. Refill, re-establish treatment and retest for verification of treatment.

***Cooling Tower Maintenance Program and Plan***

**Start Up and Shut Down Plan**

Cooling tower systems need to be shut down to manage hazardous conditions associated with operation of fans during untreated water conditions and to address any of the following conditions (Reference: ASHRAE 188 Section 7.2.5):

- Shutdown that includes all chemical pretreatment steps, pump cycling protocols, and procedures for system drainage for shutdown periods longer than five days;
- Startup from a drained system;
- Start up from an undrained (stagnant) system that exceeds five days.

**Shut-Down** (Reference: ASHRAE Guidelines 12-2000 Section 7.6.3)

All manufacturer recommended shut down and start-up procedures should be followed for mechanical equipment and systems, as applicable. Refer to the manufacturer's O&M Manual for the unit for shut down procedures. When the system is to be shut down for a period of more than three days, it is recommended that the entire system (cooling tower, system piping, heat exchangers, etc.) be drained to waste. When draining the system is not practical during shutdowns of short duration, the stagnant cooling water must be pretreated with an appropriate biocide regimen before tower start-up.

**Start-Up for Drained Systems**

- Clean all debris, such as leaves and dirt from the cooling tower.
- Fill the system with water. While operating the recirculation pump and prior to operating the cooling tower fans, execute one of the two alternative biocidal treatment programs described below:
  - 1) Treat with a biocide that had been used prior to shut down. Utilize the services of the water treatment supplier. Maintain the maximum recommended biocide residual (for the specific biocide) for a sufficient period of time (residual and time will vary with the biocide) to bring the system under good biological control.
  - 2) Treat the system with sodium hypochlorite to a level of 4 to 5 mg/L (ppm) free chlorine residual at a pH of 7.0 to 7.6. The chlorine residual must be held at 4 to 5 mg/L (ppm) for six hours, measurable with standard commercial water test kits.
- Once one of these two biocidal treatments has been successfully completed, the fan can be turned on and the system returned to service. Resume the standard water treatment program (including biocidal treatment).

***Cooling Tower Maintenance Program and Plan***

**Start-Up for Undrained (Stagnant) Systems**

- Remove accessible solid debris from the cooling tower sump and from any remote storage tank(s) that may be used.
- Perform one of the two biocide pretreatment procedures (described in "Start-Up for Drained Systems") directly to the cooling tower sump or remote storage tank. Do not circulate stagnant bulk cooling water over cooling tower fill or operate cooling tower fans during pretreatment.
- Stagnant cooling water may be circulated with the main cooling system pump(s) if tower fill is bypassed. Otherwise, add approved biocide directly to the bulk water source and mix with either manual or by sidestream flow methods. Take care to prevent the creation of aerosol spray from the stagnant cooling water from any point in the cooling water system.
- After biocidal pretreatment has been successfully completed, the cooling water should be circulated over the tower fill with fans off. When biocide residual is maintained at a satisfactory level for at least six hours, the cooling tower fans may be operated.

**Recordkeeping**

All documents on findings, deficiencies, corrective actions, cleaning and disinfection, tests performed and certifications pursuant to the regulations and plan, must be maintained for at least three years.

**Discontinued Use**

The Facility will notify the Department of Health within 30 days after removing or permanently discontinuing use of a cooling tower. The notice will include a statement that such cooling tower has been disinfected and drained in accordance with the procedures set forth in the shutdown plan.

**Electronic Registration and Reporting**

The following items are required to be reported to the NYS Department of Health using the statewide electronic system used for registration:

	<b>Action Item</b>	<b>Timeframe Required</b>
i	Registration Changes	10 days
ii	Date of last routine culture sample collection, sample results, and date of any required remedial action	10 days
iii	Date of any legionella sample collection, sample results, and date of any required remedial actions	10 days
iv	Date of last cleaning and disinfection	10 days
v	Dates of start and end of any shutdown for more than five days	10 days
vi	Date of last certification and date due	10 days
vii	Date of last inspection and date due	10 days
viii	Dates of discontinued use	30 days
ix	Any other pertinent requirements Identified by NYSDOH	

# **APPENDICES**

EXHIBIT 1

**Cooling Tower Maintenance Program and Plan**

**Appendix A- Plan History Log**

**Track all significant changes to the plan.**

<b>Date</b>	<b>Initials</b>	<b>Summary of Changes</b>
<b>September 1, 2017</b>		<b>Revised Plan Implementation Date</b>

**Appendix B**

**NYS Department of Health Regulations**

## EXHIBIT 1

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 225(5)(a) of the Public Health Law, Part 4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added, to be effective upon filing with the Secretary, to read as follows:

### 4.1 Scope.

All owners of cooling towers, and all general hospitals and residential health care facilities as defined in Article 28 of the Public Health Law, shall comply with this Part.

### 4.2 Definitions.

As used in this Part, the following terms shall have the following meanings:

(a) Building. The term “building” means any structure used or intended for supporting or sheltering any use or occupancy. The term shall be construed as if followed by the phrase “structure, premises, lot or part thereof” unless otherwise indicated by the text.

(b) Commissioner. The term “commissioner” means the New York State Commissioner of Health.

(c) Cooling Tower. The term “cooling tower” means a cooling tower, evaporative condenser or fluid cooler that is part of a recirculated water system incorporated into a building’s cooling, industrial process, refrigeration or energy production system.

(d) Owner. The term “owner” means any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of the premises.

## EXHIBIT 1

### 4.3 Registration.

All owners of cooling towers shall register such towers with the department within 30 days after the effective date of this Part. Thereafter, all owners of cooling towers shall register such towers with the department prior to initial operation, and whenever any owner of the cooling tower changes. Such registration shall be in a form and manner as required by the commissioner and shall include, at a minimum, the following information:

- (a) street address of the building at which the cooling tower is located, with building identification number, if any;
- (b) intended use of the cooling tower;
- (c) name(s), address(es), telephone number(s), and email address(es) of all owner(s) of the building;
- (d) name of the manufacturer of the cooling tower;
- (e) model number of the cooling tower;
- (f) specific unit serial number of the cooling tower;
- (g) cooling capacity (tonnage) of the cooling tower;
- (h) basin capacity of the cooling tower;
- (i) whether systematic disinfection is maintained manually, through timed injection, or through continuous delivery;
- (j) the contractor or employee engaged to inspect and certify the cooling tower; and
- (k) commissioning date of the cooling tower.

### 4.4 Culture sample collection and testing; cleaning and disinfection.

- (a) All owners of cooling towers shall collect samples and obtain culture testing:

## EXHIBIT 1

(1) within 30 days of the effective date of this Part, unless such culture testing has been obtained within 30 days prior to the effective date of this Part, and shall take immediate actions in response to such testing, including interpreting Legionella culture results, if any, as specified in Appendix 4-A.

(2) in accordance with the maintenance program and plan, and shall take immediate actions in response to such testing as specified in the plan, including interpreting Legionella culture results, if any, as specified in Appendix 4-A; provided that if a maintenance program and plan has not yet been obtained in accordance with section 4.6 of this Part, bacteriological culture samples and analysis (dip slides or heterotrophic plate counts) to assess microbiological activity shall be obtained, at intervals not exceeding 90 days while the tower is in use, and any immediate action in response to such testing shall be taken, including interpreting Legionella culture results, if any, as specified in Appendix 4-A.

(b) Any person who performs cleaning and disinfection shall be a commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower and certified in accordance with the requirements of Article 33 of the Environmental Conservation Law and 6 NYCRR Part 325, or a pesticide apprentice under the supervision of a certified applicator.

(c) Only biocide products registered by the New York State Department of Environmental Conservation may be used in disinfection.

(d) All owners shall ensure that all cooling towers are cleaned and disinfected when shut down for more than five days.

## EXHIBIT 1

### 4.5 Inspection and certification.

(a) Inspection. All owners of cooling towers shall inspect such towers within 30 days of the effective date of this Part, unless such tower has been inspected within 30 days prior to the effective date of this Part. Thereafter, owners shall ensure that all cooling towers are inspected at intervals not exceeding every 90 days while in use. All inspections shall be performed by a: New York State licensed professional engineer; certified industrial hygienist; certified water technologist; or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015, as incorporated by section 4.6 of this Part.

(1) Each inspection shall include an evaluation of:

- (i) the cooling tower and associated equipment for the presence of organic material, biofilm, algae, and other visible contaminants;
- (ii) the general condition of the cooling tower, basin, packing material, and drift eliminator;
- (iii) water make-up connections and control;
- (iv) proper functioning of the conductivity control; and
- (v) proper functioning of all dosing equipment (pumps, strain gauges).

(2) Any deficiencies found during inspection will be reported to the owner for immediate corrective action. A person qualified to inspect pursuant to paragraph (a) of this section shall document all deficiencies, and all completed corrective actions.

(3) All inspection findings, deficiencies, and corrective actions shall be reported to the owner, recorded, and retained in accordance with this Part, and shall also be reported to the department in accordance with section 4.10 of this Part.

## EXHIBIT 1

(b) Certification. Each year, the owner of a cooling tower shall obtain a certification from a person identified in paragraph (a) of this section, that such cooling tower was inspected, tested, cleaned, and disinfected in compliance with this Part, that the condition of the cooling tower is appropriate for its intended use, and that a maintenance program and plan has been developed and implemented as required by this Part. Such certification shall be obtained by November 1, 2016, and by November 1 of each year thereafter. Such certification shall be reported to the department.

### 4.6 Maintenance program and plan.

(a) By March 1, 2016, and thereafter prior to initial operation, owners shall obtain and implement a maintenance program and plan developed in accordance with section 7.2 of Legionellosis: Risk Management for Building Water Systems (ANSI/ASHRAE 188-2015), 2015 edition with final approval date of June 26, 2015, at pages 7-8, incorporated herein by reference. The latest edition of ASHRAE 188-2015 may be purchased from the ASHRAE website ([www.ashrae.org](http://www.ashrae.org)) or from ASHRAE Customer Service, 1791 Tullie Circle, NE, Atlanta, GA 30329-2305. E-mail: [orders@ashrae.org](mailto:orders@ashrae.org). Fax: 678-539-2129. Telephone: 404-636-8400, or toll free 1-800-527-4723. Copies are available for inspection and copying at: Center for Environmental Health, Corning Tower Room 1619, Empire State Plaza, Albany, NY 12237.

(b) In addition, the program and plan shall include the following elements:

- (1) a schedule for routine bacteriological sampling and analysis (dip slides or heterotrophic plate counts) to assess microbiological activity and a schedule for Legionella sampling and culture analysis; provided that where the owner is a general hospital or residential health care facility, as defined in Article 28 of the Public Health

## EXHIBIT 1

Law, routine testing shall be performed at a frequency in accordance with the direction of the department.

(2) emergency sample collection and submission of samples for Legionella culture testing to be conducted in the case of events including, but not limited to:

- (i) power failure of sufficient duration to allow for the growth of bacteria;
- (ii) loss of biocide treatment sufficient to allow for the growth of bacteria;
- (iii) failure of conductivity control to maintain proper cycles of concentration;
- (iv) a determination by the commissioner that one or more cases of legionellosis is or may be associated with the cooling tower, based upon epidemiologic data or laboratory testing; and
- (v) any other conditions specified by the commissioner.

(3) immediate action in response to culture testing, including interpreting Legionella culture results, if any, as specified in Appendix 4-A; provided that where the owner is a general hospital or residential health care facility, as defined in Article 28 of the Public Health Law, the provisions shall additionally require immediately contacting the department for further guidance, but without any delay in taking any action specified in Appendix 4-A.

(c) An owner shall maintain a copy of the plan required by this subdivision on the premises where a cooling tower is located. Such plan shall be made available to the department or local health department immediately upon request.

### 4.7 Recordkeeping.

## EXHIBIT 1

An owner shall keep and maintain records of all inspection findings, deficiencies, corrective actions, cleaning and disinfection, and tests performed pursuant to this Part, and certifications, for at least three years. An owner shall maintain a copy of the maintenance program and plan required by this Part on the premises where a cooling tower is located. Such records and plan shall be made available to the department or local health department immediately upon request.

### 4.8 Discontinued use.

The owner of a cooling tower shall notify the department within 30 days after removing or permanently discontinuing use of a cooling tower. Such notice shall include a statement that such cooling tower has been disinfected and drained in accordance with the same procedures as set forth in the shutdown plan, as specified in the maintenance program and plan required pursuant to this Part.

### 4.9 Enforcement.

(a) An officer, employee or agent of the department or local health department may enter onto any property to inspect the cooling tower for compliance with the requirements of this Part, in accordance with applicable law.

(b) Where an owner does not register, obtain certification, clean or disinfect, culture test or inspect a cooling tower within the time and manner set forth in this Part, the department or local health department may determine that such condition constitutes a nuisance and may take such action as authorized by law. The department or local health department may also take any other action authorized by law.

## EXHIBIT 1

(c) A violation of any provision of this Part is subject to all civil and criminal penalties as provided for by law. Each day that an owner remains in violation of any provision of this Part shall constitute a separate and distinct violation of such provision.

### 4.10 Electronic registration and reporting.

(a) (1) Within 30 days of the effective date of this Part, and thereafter within 10 days after any action required by this Part, owners shall electronically input the following information in a statewide electronic system designated by the commissioner:

- (i) registration information;
- (ii) date of last routine culture sample collection, sample results, and date of any required remedial action;
- (iii) date of any legionella sample collection, sample results, and date of any required remedial action;
- (iv) date of last cleaning and disinfection;
- (v) dates of start and end of any shutdown for more than five days;
- (vi) date of last certification and date when it was due;
- (vii) date of last inspection and date when it was due;
- (viii) date of discontinued use; and
- (ix) such other information as shall be determined by the department.

(2) The commissioner may suspend this requirement in the event that the electronic system is not available.

(b) The data in the system referenced in paragraph (a) shall be made publicly available, and shall be made fully accessible and searchable to any local health department. Nothing in this Part shall

## EXHIBIT 1

preclude a local health department from requiring registration and reporting with a local system or collecting fees associated with the administration of such system.

### 4.11 Health care facilities

(a) All general hospitals and residential health care facilities, as defined in Article 28 of the Public Health Law, shall, as the department may determine appropriate:

- (1) adopt a Legionella sampling plan for its facilities' potable water distribution system;
- (2) report the results of such sampling; and
- (3) take necessary responsive actions.

(b) With respect to such general hospitals and residential health care facilities, the department shall investigate to what extent, if any, requirements more stringent than those set forth in this Part are warranted.

### 4.12 Severability.

If any provisions of this Part or the application thereof to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons, entities, and circumstances.

## Appendix 4-A

<b>Interpretation of Legionella Culture Results from Cooling Towers</b>	
Legionella Test Results in CFU <sup>1</sup> /ml	Approach

## EXHIBIT 1

No detection (< 10 CFU /ml)	Maintain treatment program and <i>Legionella</i> monitoring.
For levels at $\geq 10$ CFU /ml but < 1000 CFU /ml perform the following:	<ul style="list-style-type: none"> <li>○ Review treatment program.</li> <li>○ Institute immediate <u>online disinfection</u><sup>2</sup> to help with control</li> <li>○ Retest the water in 3 – 7 days. <ul style="list-style-type: none"> <li>▪ Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.6. Continue with regular maintenance strategy.</li> <li>▪ If &lt; 100 CFU /ml repeat <u>online disinfection</u><sup>2</sup> and retest.</li> <li>▪ If <math>\geq 100</math> CFU /ml but &lt; 1000 CFU /ml further investigate the water treatment program and immediately perform <u>online disinfection</u>.<sup>2</sup> Retest and repeat attempts at control strategy.</li> </ul> </li> <li>○ If <math>\geq 1000</math> CFU /ml undertake control strategy as noted below.</li> </ul>
For levels $\geq 1000$ CFU /ml perform the following:	<ul style="list-style-type: none"> <li>○ Review the treatment program</li> <li>○ Institute immediate <u>online decontamination</u><sup>3</sup> to help with control</li> <li>○ Retest the water in 3 – 7 days. <ul style="list-style-type: none"> <li>▪ Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.6. Continue with regular maintenance strategy.</li> <li>▪ If &lt; 100 CFU /ml repeat <u>online disinfection</u><sup>2</sup> and retest;</li> </ul> </li> </ul>

## EXHIBIT 1

	<ul style="list-style-type: none"><li>▪ If <math>\geq 100</math> CFU /ml but <math>&lt; 1000</math> CFU /ml further investigate the water treatment program and immediately perform <u>online disinfection</u>.<sup>2</sup> Re-test and repeat attempts at control strategy.</li><li>▪ If <math>\geq 1000</math> CFU /ml carry out <u>system decontamination</u><sup>4</sup></li></ul>
--	--

<sup>1</sup> Colony forming units.

<sup>2</sup> Online disinfection means – Dose the cooling tower water system with either a different biocide or a similar biocide at an increased concentration than currently used.

<sup>3</sup> Online decontamination means – Dose the recirculation water with a chlorine-based compound equivalent to at least 5 mg/l (ppm) free residual chlorine for at least one hour; pH 7.0 to 7.6.

<sup>4</sup> System decontamination means – Maintain 5 to 10 mg/l (ppm) free residual chlorine for a minimum of one hour; drain and flush with disinfected water; clean wetted surface; refill and dose to 1 – 5 mg/l (ppm) of free residual chlorine at pH 7.0 – 7.6 and circulate for 30 minutes. Refill, re-establish treatment and retest for verification of treatment.

## EXHIBIT 1

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement will be published in the Register within 30 days of the rule's effective date.

### **Emergency Justification**

Improper maintenance of cooling towers can contribute to the growth and dissemination of *Legionella* bacteria, the causative agent of legionellosis. Legionellosis causes cough, shortness of breath, high fever, muscle aches, headaches and can result in pneumonia. Hospitalization is often required, and between 5-30% of cases are fatal. People at highest risk are those 50 years of age or older, current or former smokers, those with chronic lung diseases, those with weakened immune systems from diseases like cancer, diabetes, or kidney failure, and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005-2014 increased 323% when compared to those reported in the previous ten year period.

Outbreaks of legionellosis have been associated with cooling towers. A cooling tower is an evaporative device that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system. Because water is part of the process of removing heat from a building, these devices require biocides—chemicals that kill or inhibit bacteria (including *Legionella*)—as means of controlling bacterial overgrowth. Overgrowth may result in the normal mists ejected from the tower having droplets containing *Legionella*.

For example, in 2005, a cooling tower located at ground level adjacent to a hospital in New Rochelle, Westchester County resulted in a cluster of 19 cases of legionellosis and multiple fatalities. Most of the individuals were dialysis patients or companions escorting the patients to their dialysis session. One fatality was in the local neighborhood. The cooling tower was found to have insufficient chemical treatment. The entire tower was ultimately replaced by the

## EXHIBIT 1

manufacturer in order to maintain cooling for the hospital and to protect public health. In June and July of 2008, 12 cases of legionellosis including one fatality were attributed to a small evaporative condenser on Onondaga Hill in Syracuse, Onondaga County. An investigation found that the unit was not operating properly and this resulted in the growth of microorganisms in the unit. Emergency biocide treatment was initiated and proper treatment was maintained. No new cases were then detected thereafter.

Recent work has shown that sporadic cases of community legionellosis are often associated with extended periods of wet weather with overcast skies. A study conducted by the New York State Department of Health that included data from 13 states and one United States municipality noted a dramatic increase in sporadic, community acquired legionellosis cases in May through August 2013. Large municipal sites such as Buffalo, Erie County reported 2- to 3-fold increases in cases without identifying common exposures normally associated with legionellosis. All sites in the study except one had a significant correlation, with some time lag, between legionellosis case onset and one or more weather parameters. It was concluded that large municipalities produce significant mist (droplet) output from hundreds of cooling towers during the summer months. Periods of sustained precipitation, high humidity, cloud cover, and high dew point may lead to an “urban cooling tower” effect. The “urban cooling tower” effect is when a metropolitan area with hundreds of cooling towers acts as one large cooling tower producing a large output of drift, which is entrapped by humid air and overcast skies.

More recently, 119 cases of legionellosis that included 12 fatalities (8/12/15) occurred in Bronx, NY (July-August, 2015). This event was preceded by an outbreak in Co-Op City in the Bronx, from December 2014 to January 2015, which involved 8 persons and no fatalities. Both of these outbreaks have been attributed to cooling towers, and emergency disinfection of

## EXHIBIT 1

compromised towers helped curtail these outbreaks. These events highlight the need for proper maintenance of cooling towers.

The heating, ventilation, and air-conditioning (HVAC) industry has issued guidelines on how to seasonally start a cooling tower; treat it with biocides and other chemicals needed to protect the components from scale and corrosion; and set cycles of operations that determine when fresh water is needed; and how to shut down the tower at the end of the cooling season. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has recently released a new Standard entitled *Legionellosis: Risk Management for Building Water Systems* (ANSI/ASHRAE Standard 188-2015). Section 7.2 of that document outlines components of the operations and management plan for cooling towers. The industry also relies on other guidance for specific treatment chemicals, emergency disinfection or decontamination procedures and other requirement.

However, none of the guidance is obligatory. Consequently, poor practice in operation and management can result in bacterial overgrowth, increases in legionellae, and mist emissions that contain a significant dose of pathogenic legionellae. This regulation requires that all owners of cooling towers ensure proper maintenance of the cooling towers, to protect the public and address this public health threat.

Further, these regulations require all general hospitals and residential health care facilities (i.e., nursing homes) to develop a sampling plan, report the results, and take necessary actions to protect the safety of their patients or residents. The details of each facility's sampling plan and remedial measures will depend on the risk factors for acquiring Legionnaires' disease in the

## EXHIBIT 1

population served by the hospital or nursing home.

Most people in nursing homes should be considered at risk, as residents are typically over 50 years of age. In general hospitals, persons at risk include those over 50 years of age, as well as those receiving chemotherapy, those undergoing transplants, and other persons housed on healthcare units that require special precautions. Additional persons who might be at increased risk for acquiring Legionnaires' disease include persons on high-dose steroid therapy and persons with chronic lung disease. Certain facilities with higher risk populations, such as those with hematopoietic stem-cell transplant (HSCT) and solid organ transplant units, require more protective measures.

An environmental assessment involves reviewing facility characteristics, hot and cold water supplies, cooling and air handling systems and any chemical treatment systems. The purpose of the assessment is to discover any vulnerabilities that would allow for amplification of *Legionella* spp. and to determine appropriate response actions in advance of any environmental sampling for *Legionella*. Initial and ongoing assessment should be conducted by a multidisciplinary team that represents the expertise, knowledge and functions related to the facility's operation and service. A team should include, at a minimum, representatives from the following groups: Infection Control; Physical Facilities Management; Engineering; Clinicians; Laboratory; and Hospital Management.

Thus, to protect the public from the immediate threat posed by *Legionella*, the Commissioner of Health and the Public Health and Health Planning Council have determined it necessary to file these regulations on an emergency basis. Public Health Law § 225, in

## EXHIBIT 1

conjunction with State Administrative Procedure Act § 202(6) empowers the Council and the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.

**Appendix C**

**Proof of Cooling Tower Registration**

# Account Overview

## Joseph Mullen

New York State Insurance Fund  
15 Computer Drive West  
Albany, NY 12205  
United States

## Buildings

Address	Type	Property Manager	Phone	Email
193-207 Church New York 10007 Manhattan, 151, 10	Commercial	John Murdaugh	(212) 312-7141	Jmurd@nysif.com
<b>Equipment</b>	<b>Type</b>	<b>Manufacturer</b>	<b>Model Number</b>	<b>Serial Number</b>
	Cooling Tower	Phillips	Not Available	Not Available
15 Computer Drive West Albany 12205	Commercial	John Murdaugh	(212) 312-7141	Jmurd@nysif.com
<b>Equipment</b>	<b>Type</b>	<b>Manufacturer</b>	<b>Model Number</b>	<b>Serial Number</b>
	Cooling Tower	Imeco (Division of York Refrigeration)	EFC-C-222-4	33179/100
1045 7th North Street Liverpool 13088	Commercial	John Murdaugh	(212) 312-7141	Jmurd@nysif.com
<b>Equipment</b>	<b>Type</b>	<b>Manufacturer</b>	<b>Model Number</b>	<b>Serial Number</b>
	Cooling Tower	Evapco	LSW-58C	879563

## Equipment

Equipment

Type	Manufacturer	Model Number	Serial Number		
Cooling Tower	Phillips	Not Available	Not Available		
Buildings	Address	Type	Property Manager	Phone	Email
	193-207 Church New York 10007	Commercial	John Murdaugh	(212) 312-7141	Jmurd@nysif.com

**Appendix D**

**Contract with Inspection/Treatment Entity**

Include in this section a copy of the Contract with **Jemco Water Treatment Services**  
along with proof of NYSDEC Biocide application license

EXHIBIT 1

**PESTICIDE BUSINESS / AGENCY REGISTRATION**

THIS REGISTRATION CANNOT BE SOLD OR TRANSFERRED

7/1/2014  
**Date Issued**

**Registration # 75975**

**Certified Applicators**

**JEMCO WATER TREATMENT SERVICES INC  
JASON MARKHAM  
7035 VAN BUREN RD  
SYRACUSE NY 13209**

C7675412  
C7814781  
T7862696

7/31/2017  
**Expiration Date**

*Category(s) of operation*

7G – Cooling Towers

This is to certify that the holder of this certificate is registered with the Department of Environmental Conservation as a Pesticide Applicator Business or Agency pursuant to the provisions of the Environmental Conservation Law and the Rules and Regulations promulgated thereunder.

New York State Department of Environmental Conservation  
Division of Solid and Hazardous Materials Bureau of Pesticides Management  
Albany, New York 12233-7254

**POST CONSPICUOUSLY**

**Appendix E**

**Maintenance and Service Logs**

**for**

**Backflow Prevention Equipment**

Include in this section a copy of Annual Backflow Certifications

**Appendix F**

**CT Manufacturer O&M Manuals**

Include in this section a copy of any Manufacturer recommended maintenance programs

**Appendix F**  
**Material Safety Data Sheets**  
**for**  
**Cooling Tower Chemicals**

<b>Date of Acceptance by Campus</b>	<b>Product Name</b>	<b>General Use</b>	<b>Manufacturer</b>	<b>MSDS Provided</b>
September 1, 2017	Tower Shield	Corrosion Control	Jemco	Yes
September 1, 2017	K-Brom T	Biocide	WST	Yes
September 1, 2017	XJ815	Biocide	Jemco	Yes



# Operation and Maintenance Instructions

## FOR EVAPCO INDUCED DRAFT AND FORCED DRAFT CLOSED CIRCUIT COOLERS AND EVAPORATIVE CONDENSERS



ATC-E/eco-ATC/  
ATWB/eco-ATW



eco-ATWB-E



eco-ATWB-H



PMC-E/eco-PMC  
PMCQ/PMWQ



ESWA/ESWB



eco-LSWE  
LSWE/LSC-E



eco-LRWB  
LRWB/LRC



MTW/MTC

For EVAPCO Authorized Parts and Service, Contact Your Local EVAPCO Representative or the Local Mr. GoodTower® Service Provider

### EVAPCO, Inc. — World Headquarters & Research/Development Center

**EVAPCO, Inc.** • P.O. Box 1300 • Westminster, MD 21158 USA  
PHONE: 410-756-2600 • FAX: 410-756-6450 • E-MAIL: [marketing@evapco.com](mailto:marketing@evapco.com)

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Taneytown, MD 21787 USA  
Phone: 410-756-2600  
Fax: 410-756-6450  
E-mail: [marketing@evapco.com](mailto:marketing@evapco.com)

##### EVAPCO Midwest

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## Introduction

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Congratulations on the purchase of your EVAPCO evaporative cooling unit. EVAPCO equipment is constructed of the highest quality materials and designed to provide years of reliable service when properly maintained.

Evaporative cooling equipment is often remotely located and periodic maintenance checks are often overlooked. It is important to establish a regular maintenance program and be sure that the program is followed. This bulletin should be used as a guide to establish a program. A clean and properly serviced unit will provide a long service life and operate at peak efficiency.

This bulletin includes recommended maintenance services for unit start up, unit operation and unit shutdown and the frequency of each. Please note: the recommendations of frequency of service are minimums. Services should be performed more often when operating conditions necessitate.

Become familiar with your evaporative cooling equipment. Refer to the isometric drawings located on pages 31-52 for information on the arrangement of components in your equipment.

If you should require any additional information about the operation or maintenance of this equipment, contact your local EVAPCO representative. You may also visit [www.evapco.com](http://www.evapco.com) or [www.mrgoodtower.com](http://www.mrgoodtower.com) for more information.

## Safety Precautions

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Qualified personnel should use proper care, procedures and tools when operating, maintaining or repairing this equipment in order to prevent personal injury and/or property damage. The warnings listed below are to be used as guidelines only.

**WARNING:** This equipment should never be operated without fan screens and access doors properly secured and in place.

**WARNING:** A lockable disconnect switch should be located within sight of the unit for each fan motor associated with this equipment. Before performing any type of service or inspection of the unit make certain that all power has been disconnected and locked in the "OFF" position.

**WARNING:** The top horizontal surface of any unit is not intended to be used as a working platform. No routine service work is required from this area.

**WARNING:** The recirculating water system may contain chemicals or biological contaminants including *Legionella Pneumophila*, which could be harmful if inhaled or ingested. Direct exposure to the discharge airstream and the associated drift generated during operation of the water distribution system and/or fans, or mists generated while cleaning components of the water system require respiratory protection equipment approved for such use by governmental occupational safety and health authorities.

## Terminology

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Throughout this manual, the terms "Induced Draft" and "Forced Draft" are used. Below is a list of EVAPCO Closed Circuit Cooler and Condenser products offerings and associated terminology.

**Induced Draft** equipment includes the following Evapco Product Models:

■ **ES Product Lines**

- ESWA - Closed Circuit Cooler
- ESWB - Closed Circuit Cooler

■ **AT Product Lines**

- ATWB - Closed Circuit Cooler
- ATC-E - Evaporative Condenser

■ **MT Product Lines**

- MTW - Closed Circuit Cooler
- MTC - Evaporative Condenser

■ **Containerized Product Lines**

- CATWB - Closed Circuit Cooler
- CATC - Evaporative Condenser

■ **eco Product Line**

- eco-ATW - Closed Circuit Cooler
- eco-ATWE - Wet/Dry Closed Circuit Cooler
- eco-ATWB-H - Wet/Dry Closed Circuit Cooler
- eco-ATC - Wet/Dry Evaporative Condenser

**Forced Draft** equipment includes the following Evapco Product Models:

■ **LR Product Lines**

- LRWB - Closed Circuit Cooler
- LRC - Evaporative Condenser

■ **LS Product Lines**

- LSWE - Closed Circuit Cooler
- LSC-E - Evaporative Condenser

■ **PM Product lines**

- PMC-E - Evaporative Condenser
- PMC-EQ - Evaporative Condenser
- PMWQ - Closed Circuit Cooler

## **Initial Storage and/or Idle Period Recommendations**

---

If the unit will sit for idle periods of time it is recommended that the following be performed in addition to all component manufacturers recommended maintenance instructions.

- The fan/motor/pump bearings and motor bearings need to be turned by hand at least once a month. This can be accomplished by tagging and locking out the unit's disconnect, grasping the fan assembly (or removing the pump motor fan guard), and rotating it several turns.
- If unit sits longer than a few weeks, run gear reducer (if equipped) for 5 minutes weekly.
- If unit sits longer than 3 weeks, completely fill gear reducer with oil. Drain to normal level prior to running.
- If unit sits longer than one month, insulation test motor windings semi-annually.
- If fan motor sits idle for at least 24 hours while the spray pumps are energized distributing water over the coil, motor space heaters (if equipped) should be energized. Alternatively, fan motors may be energized for 10 minutes, twice daily, to drive any moisture condensation out of the motor windings.



## International Building Code Provisions

---

The International Building Code (IBC) is a comprehensive set of regulations addressing the structural design and installation requirements for building systems – including HVAC and industrial refrigeration equipment. The code provisions require that evaporative cooling equipment and all other components permanently installed on a structure must meet the same seismic design criteria as the building.

All items attached to Evapco Closed Circuit Coolers or Evaporative Condensers must be independently reviewed and isolated to meet applicable wind and seismic loads. This includes piping, ductwork, conduit, and electrical connections. These items must be flexibly attached to the Evapco unit so as not to transmit additional loads to the equipment as a result of seismic or wind forces.

## Initial and Seasonal Start-Up Checklist

---

### General

1. Verify that the overall installation reflects the requirements of the installation guidelines found in EVAPCO Bulletin 311 – Equipment Layout Manual available at [www.evapco.com](http://www.evapco.com).
2. For multi-speed fan motors, verify that 30 second or greater time delays are provided for speed changes when switching from high to low speed. Also check to see if interlocks are provided to prevent simultaneously energizing high and low speed, and confirm both speeds operate in the same direction.
3. Verify all safety interlocks work properly.
4. For units operating with a variable frequency drive, make certain that minimum speed requirements have been set. Check with VFD manufacturer for recommended minimum speeds. Check with VFD manufacturer for recommendations on locking out resonance frequencies. See “Fan System Capacity Control” section for more information.
5. Verify that a water treatment plan has been implemented including passivation of galvanized steel units. See “Water Treatment” section for more details.
6. If the unit is going to sit idle for an extended period of time, follow all manufacturers’ fan motor and pump instructions for long term storage. Plastic sheets or tarps should never be used to protect a unit during storage. This practice can trap heat inside the unit, and could potentially cause damage to plastic components. See your local EVAPCO representative for additional information on unit storage.
7. For units subject to freezing climates, high humidity climates, or idle periods lasting 24 hours or more, motor space heaters are suggested and (if equipped) should be energized. Alternatively, fan motors may be energized for 10 minutes, twice daily, to drive any moisture condensation out of the motor windings.

**BEFORE BEGINNING ANY MAINTENANCE, BE CERTAIN THAT THE POWER IS TURNED OFF  
AND THE UNIT IS PROPERLY LOCKED AND TAGGED OUT!**

### Initial and Seasonal Start-Up

1. Clean and remove any debris, such as leaves and dirt from the air inlets.
2. Flush the cold water basin (with the strainer screens in place) to remove any sediment or dirt.
3. Remove the strainer screen, clean **and reinstall**.
4. Check mechanical float valve to see if it operates freely.
5. Inspect water distribution system nozzles and clean as required. Check for proper orientation.  
*(This is not required at initial start-up. The nozzles are clean and set at the factory).*
6. Check to ensure drift eliminators are securely in place and in the proper orientation.
7. Adjust fan belt tension as required. See “Fan Belt Adjustment” section.
8. Lubricate fan shaft bearings prior to seasonal start-up.
9. Turn the fan(s) and pumps by hand to insure it turns freely without obstructions.



10. Visually inspect the fan blades. Blade clearance should be approximately 3/8" (1/4" minimum) from tip of blade to the fan cowl. The fan blades should be securely tightened to the fan hub.
11. If any stagnant water remains in the system including "dead legs" in the piping, the unit must be disinfected prior to the fans being energized. Please refer to ASHRAE Guideline 12-2000 and CTI Guideline WTP-148 for more information.
12. Manually fill the cold water basin up to the overflow connection.
13. For closed circuit coolers, fill the heat exchanger coil with the specified fluid and "burp" air from the system before pressurizing, using vents on coil inlets. Do not do this for evaporative condensers.

For eco-WE & eco-W with optional controls, see controls O&M for proper start up procedure.

**After the unit has been energized, check the following:**

1. Adjust mechanical float valve as required to the proper water level.
2. Unit basin should be filled to the proper operating level. See "Recirculating Water System Operating Levels" section for more details.
3. Verify fan is rotating in proper direction.
4. Start the spray water pump and check for proper rotation as indicated by the arrow on the front cover.
5. Measure voltage and current on all three power leads of pump and fan motor. The current should not exceed the motor nameplate full load amp rating taking the service factor into account.
6. Adjust bleed valve to proper flow rate. Maximum bleed off is 3 US GPM per 100 tons. Consult your qualified water treatment person to fine tune the minimum bleed necessary.
7. See fan and pump motor manufacturer maintenance and long term storage instructions for more detailed information. The motors should be lubricated and serviced in accordance with manufacturer's instructions.
8. All new evaporative cooling equipment and associated piping should be pre-cleaned and flushed to remove grease, oil, dirt, debris and other suspended solids prior to operation. Any pre-cleaning chemistry should be compatible with the cooling equipment's materials of construction. Alkaline formulations should be avoided for systems which include galvanized materials of construction.

Closed hydronic systems connected to either a closed-circuit cooler or dry cooler should be pre-cleaned and flushed to remove debris, grease, flash rust, oil, and other suspended solids prior to operation. Evapco recommends the use of inhibitor chemistry or inhibited glycol to minimize corrosion and scale during normal operation.



## MAINTENANCE CHECKLIST



PROCEDURE	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1. Clean pan strainer – <b>monthly or as needed</b>												
2. Clean and flush pan* – <b>quarterly or as needed</b>												
3. Check bleed-off valve to make sure it is operative – <b>monthly</b>												
4. Lubricate pump and pump motor according to manufacturer's instructions												
5. Check operating level in pan and adjust float valve if necessary – <b>monthly</b>												
6. Check water distribution system and spray pattern – <b>monthly</b>												
7. Check drift eliminators – <b>quarterly</b>												
8. Check the fan blades for cracks, missing balancing weights, and vibrations – <b>quarterly</b>												
9. Lubricate fan shaft bearings – <b>every 1000 hours of operation or every three months</b>												
10. Lubricate fan motor bearings – see mfg's instructions. Typically for non-sealed bearings, <b>every 2-3 years</b>												
11. Check belt tension and adjust – <b>monthly</b>												
12. Inspect and grease sliding motor base – <b>annually or as needed</b>												
13. Check fan screens, inlet louvers, fans and dry cooler coil (eco-ATC, eco-ATW, eco-ATWE). Remove any dirt or debris – <b>monthly</b>												
14. Inspect and clean protective finish – <b>annually</b> - Galvanized: scrape and coat with ZRC - Stainless: clean and polish with a stainless steel cleaner.												
15. Check water quality for biological contamination. Clean unit as needed and contact a water treatment company for recommended water treatment program* – <b>regularly</b>												

### OPTIONAL ACCESSORIES:

1. Gear Reducer – Check oil level with unit stopped – <b>24 hours after start-up &amp; monthly</b>												
2. Gear Reducer/Piping – Do visual inspection for oil leaks, auditory inspection for unusual noises and vibrations – <b>monthly</b>												
3. Gear Reducer – Replace oil – <b>semi-annually</b>												
4. Oil Pump – Do visual inspection for leaks and proper wiring – <b>monthly</b>												
5. Gear Reducer/Coupling – Check alignment of the system – <b>24 hours after start-up &amp; monthly</b>												

\* Evaporative cooling equipment must be cleaned on a regular basis to prevent the growth of bacteria including Legionella Pneumophila.



## MAINTENANCE CHECKLIST



<b>OPTIONAL ACCESSORIES:</b>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
6. Coupling/Shaft – Inspect flex elements and hardware for tightness, proper torque & crack/deterioration – <b>monthly</b>												
7. Heater Controller – Inspect controller and clean probe ends – <b>quarterly</b>												
8. Heater – Inspect junction box for loose wiring and moisture – <b>one month after start-up and semi-annually</b>												
9. Heater – Inspect elements for scale build-up – <b>quarterly</b>												
10. Electronic Water Level Controller – Inspect junction box for loose wiring and moisture – <b>semi-annually</b>												
11. Electronic Water Level Controller – Clean probe ends of scale build-up – <b>quarterly</b>												
12. Electronic Water Level Controller – Clean inside the standpipe – <b>annually</b>												
13. Solenoid Make-up Valve – Inspect and clean valve of debris – <b>as needed</b>												
14. Vibration Switch (mechanical) – Inspect enclosure for loose wiring and moisture – <b>one month after start-up and monthly</b>												
15. Vibration Switch – Adjust the sensitivity – <b>during start-up and annually</b>												
16. Sump Sweeper Piping – Inspect and clean piping of debris – <b>semi-annually</b>												
17. Water Level Indicator – Inspect and clean – <b>annually</b>												

### **DURING IDLE PERIODS:**

1. <b>Two or more Days:</b> Energize motor space heaters or run motors for <b>10 minutes twice daily</b>												
2. <b>Few Weeks:</b> Run gear reducer for 5 minutes – <b>weekly</b>												
3. <b>Several Weeks:</b> Completely fill gear reducer with oil. Drain to normal level prior to running.												
4. <b>One Month or longer:</b> Rotate motor shaft/fan 10 turns – <b>bi-weekly</b>												
5. <b>One Month or longer:</b> Megger test motor windings – <b>semi-annually</b>												



## **Seasonal Shut-Down Checklist**

---

When the system is to be shut down for an extended period of time, the following services should be performed.

1. The evaporative cooling unit cold water basin should be drained
2. The cold water basin should be flushed and cleaned with the suction strainer screens in place.
3. The suction strainer screens should be cleaned and re-installed.
4. The cold water basin drain should be left open.
5. The fan shaft bearings and motor base adjusting screws should be lubricated. This should also be performed if the unit is going to sit idle prior to initial start-up.
6. The make-up water supply, overflow and drain lines, as well as the recirculating pump and pump piping up to the overflow level must be heat traced and insulated to account for any residual water.
7. The finish of the unit should be inspected. Clean and refinish as required.
8. The fan, motor and pump bearings need to be turned at least once a month by hand. This can be accomplished by making sure the unit's disconnect is tagged and locked out, and grasping the fan assembly, rotating it several turns.
9. Closed Circuit Coolers only - If the recommended minimum fluid flows thru the heat transfer coil cannot be maintained, and an anti-freeze solution is not in the coil, the coil must be drained immediately whenever the system pumps are shut down or flow stops during freezing conditions. This is accomplished by having automatic drain valves and air vents in the piping to and from the cooler. Care must be taken to ensure that the piping is adequately insulated and sized to allow the water to flow quickly from the coil. This method of protection should be used only in emergency situations and is neither a practical nor recommended method of freeze protection. Coils should not be drained for an extended period of time, as internal corrosion may occur. See Cold Weather Operation section of this document for more details.

**See fan and pump manufacturer maintenance and long term storage instructions for more detailed instructions.**

## **Basic Closed Circuit Cooler/Condenser Sequence of Operation**

---

**Note: The eco-ATW/eco-ATWE sequence of operation is unique and is explained in detail in the Sage<sup>2</sup>, Sage<sup>3</sup> Panel Control Manual.**

### **System Off / No Load**

The system pumps and fans are off. If the basin is full of water a minimum basin water temperature of 40°F must be maintained to prevent freezing. This can be accomplished with the use of optional basin heaters. See the "Cold Weather Operation" section of this bulletin for more details on cold weather operation and maintenance.

### **System/Condensing Temperature Rises**

The recirculation pump turns on. The unit will provide approximately 10% cooling capacity with only the pump running. If the unit has positive closure dampers they should be fully opened before the pumps turn on.

If the system temperature continues to rise, the unit fan is cycled on. For a variable speed controller, the fans are turned on to minimum speed. See the "Fan System – Capacity Control" section of this bulletin for more details on fan speed control options. If the system temperature continues to rise, then the fan speed is increased as required, up to full speed.

**Note: During sub-freezing weather the minimum recommended speed for variable speed controllers is 50%. ALL FANS IN OPERATING CELLS OF MULTIPLE CELL UNITS MUST BE CONTROLLED TOGETHER TO PREVENT ICING ON THE FANS.**

### **System Temperature Stabilizes**

Control the leaving fluid temperature (closed circuit coolers) or condensing temperature (evaporative condensers) by modulating the fan speeds with variable speed drives or by cycling fans on and off with single or two-speed drives.

### **System/Condensing Temperature Drops**

Decrease the fan speed, as required.

### **System Off / No Load**

The system pump turns off. The starter interlock will energize any optional basin heaters in cold weather.

The recirculation pump should not be used as a means of capacity control, and should not be cycled frequently. Excessive cycling can lead to scale build-up, and reduce wet and dry performance.

### **Dry Operation**

During colder winter months it is possible to turn off the spray pump, drain the cold water basin, and just cycle the fans. Be sure to leave the basin drain open during this time to prevent collection of rain water, snow, etc. If the unit has positive closure dampers they should be fully opened before the fans turn on. If this method will be used on a centrifugal fan, forced draft unit, be sure to verify that the motor and drives have been properly sized to handle the reduction in static pressure experienced when the spray water is turned off.

**NOTE: MINIMUM CONTROL POINT FOR PROCESS FLUID SHOULD NEVER BE LOWER THAN 42° F.**

**NOTE: WHEN A UNIT IS PROVIDED WITH A DISCHARGE DAMPER ASSEMBLY, THE CONTROL SEQUENCE SHOULD CYCLE THE DAMPERS OPEN AND CLOSED ONCE A DAY REGARDLESS OF CAPACITY REQUIREMENTS TO PREVENT THE ASSEMBLY FROM SEIZING. THE FAN MOTOR SHOULD BE SHUT OFF WHENEVER THE DAMPERS ARE CLOSED.**

## **Fan System**

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The fan systems of both centrifugal and axial driven units are rugged; however, the fan system must be checked regularly and lubricated at the proper intervals. The following maintenance schedule is recommended.

### **Fan Motor Bearings**

EVAPCO evaporative cooling units use either a T.E.A.O. (Totally Enclosed Air Over) or a T.E.F.C. (Totally Enclosed Fan Cooled) fan motor. These motors are built to "Cooling Tower Duty" specifications. They are supplied with permanently lubricated bearings and special moisture protection on the bearings, shaft and windings. After extended shut-downs, the motor should be checked with an insulation tester prior to restarting the motor.

### **Fan Shaft Ball Bearings**

For induced draft units, lubricate the fan shaft bearings every 1,000 hours of operation or every three months. For forced draft units, lubricate the fan shaft bearings every 2,000 hours of operation or every six months. Use any of the following synthetic waterproof, polyurea inhibited greases which are suitable for operation between -20°F and 350°F. (For colder operating temperatures, contact the factory).

Mobil – Polyrex EM

Chevron - SRI

Timken Pillowblock Grease

**Feed grease slowly into the bearings or the seals may be damaged. A hand grease gun is recommended for this process. When introducing new grease, all grease should be purged from the bearings.**

Most EVAPCO units are supplied with extended grease lines to allow easy lubrication of the fan shaft bearings as shown in Table 1.

Unit Description	Location of Lube Line Fittings
Induced Draft Units (Except MTW/MTC): 3', 4', 8', 8.5', 17' wide	Located just beside the fan casing access door
Induced Draft Units (Except MTW/MTC): 10', 12', 14', 24', 28' wide	Located inside the fan casing access door
Forced Draft Units	Located on the bearing support or on the side of the unit
MTW/MTC Internally Mounted Motors	Direct Drive. No bearing to lube
MTW/MTC Externally Mounted Motors	Motor adjustment plate

**Table 1** – Location of Grease Lube Line Fittings for Belt Driven Units

### Fan Shaft Sleeve Bearings – (4' wide LS units only)

Lubricate the intermediate sleeve bearing(s) before unit start up. The reservoir should be checked several times during the first week to ensure that the oil reserve is brought to full capacity. After the first week of operation, lubricate the bearing(s) every 1,000 hours of operation or every three months (whichever occurs first). High temperatures or poor environmental conditions may necessitate more frequent lubrication. The oil reservoir consists of a large felt packed cavity within the bearing housing. It is not necessary to maintain the oil level within the filler cup.

Use one of the following industrial grade, non-detergent mineral oils. **Do not use a detergent based oil or oils designated heavy duty or compounded.** Different oils may be required when operating at temperatures below 30°F continuously. Table 2 provides a short list of approved lubricants for each temperature range. Most automotive oils are detergent based and may not be used. Detergent oils will remove the graphite in the bearing sleeve and cause bearing failure.

Ambient Temp	Texaco	Mobil	Exxon
30°F to 100°F	Regal R&O 220	DTE Oil BB	Teresstic 220
-25°F to 30°F	Capella WF 32	DTE Heavy	-----

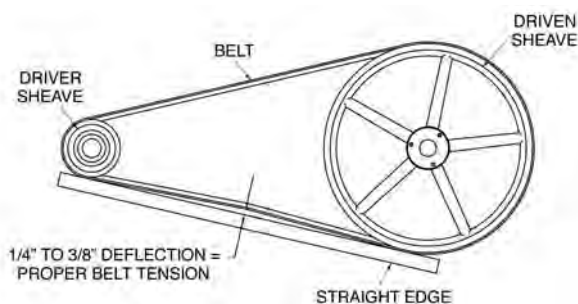
**Table 2** – Sleeve Bearing Lubricants

All bearings used on EVAPCO equipment are factory adjusted and self aligning. Do not disturb bearing alignment by tightening the sleeve bearing caps.

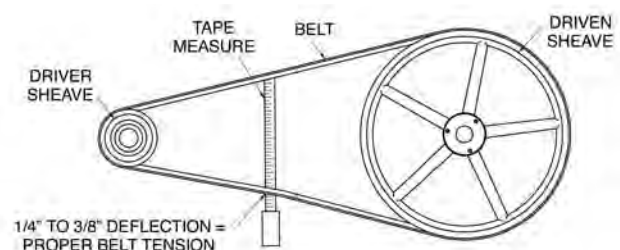
Oil drippage may result from over-oiling or from using too light of an oil. Should this condition persist with correct oiling, it is recommended that a heavier weight oil be used.

### Fan Belt Adjustment

The fan belt tension should be checked at start up and again after the first 24 hours of operation to correct for any initial stretch. To properly adjust the belt tension, position the fan motor so that the fan belt will deflect approximately 3/8" when moderate pressure is applied midway between the sheaves. Figure 1 and Figure 2 show two ways to measure this deflection. Belt tension should be checked on a monthly basis. A properly tensioned belt will not "chirp" or "squeal" when the fan motor is started.

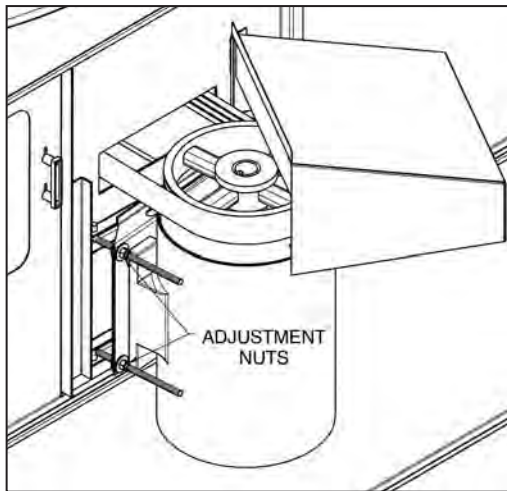


**Figure 1** – Method 1

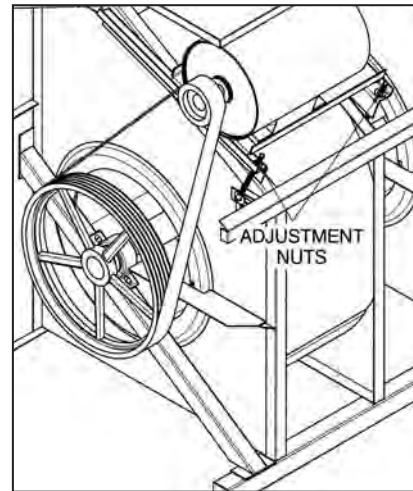


**Figure 2** – Method 2

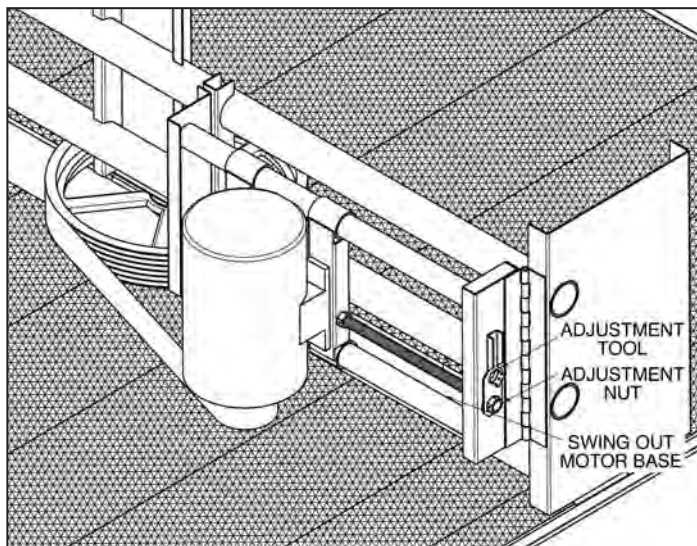
On induced draft belt driven units provided with externally mounted motors (3, 4, 8, 8.5 and 17 foot wide units) and LS, PM and MT Style forced draft units, both J-type adjustment bolts on the adjustable motor base should have an equal amount of exposed thread for proper sheave and belt alignment. See Figures 3, 4 & 7.



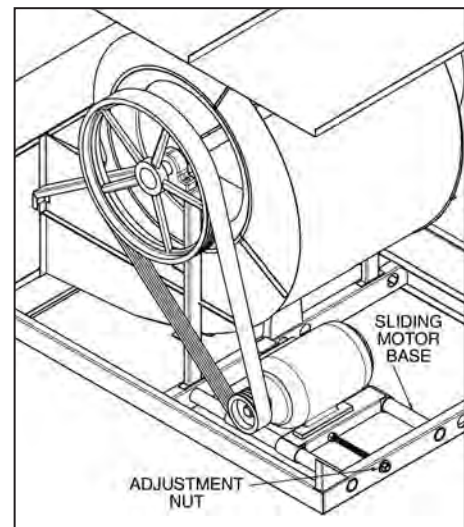
**Figure 3** – Externally Mounted Motor, Induced Draft



**Figure 4** – Externally Mounted Motor, Large LS Units



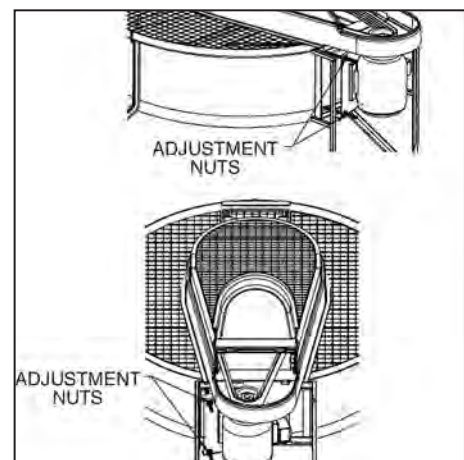
**Figure 5** – Internally Mounted Motor, Induced Draft



**Figure 6** – LR Motor Adjustment

On induced draft belt driven units with internally mounted motors (10, 12, 14, 20, 24 and 28 foot wide units) and LR units, a motor adjustment tool is provided on the adjustment nut. See Figures 5 and 6. To use, place the hex end over the adjustment nut and tension the belt by turning the nut counterclockwise. When the belts are properly tensioned, tighten the lock nut.

Direct drive units do not require any adjustment.



**Figure 7** – Externally Mounted Motor, MT Units



## **Gear Drives**

Induced draft units with gear drive systems require special maintenance. Please refer to the gear manufacturers recommended maintenance instructions. These will be enclosed and shipped with the unit.

## **Air Inlet**

Inspect the air inlet louvers (induced draft units) or fan screens (forced draft units) monthly to remove any paper, leaves or other debris that may be blocking airflow into the unit.

## **Fan System — Capacity Control**

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There are several methods for capacity control of the evaporative cooling unit. Methods include: Fan motor cycling, the use of two speed motors, and the use of variable frequency drives (VFD's).

Note: for the eco-ATW with Sage<sup>2</sup> and eco-ATWE with Sage<sup>3</sup> consult the manual.

### **Fan Motor Cycling**

Fan Motor Cycling requires the use of a single stage thermostat which senses the fluid temperature (closed circuit coolers) or condensing temperature (evaporative condensers). The contacts of the thermostat are wired in series with the fan motor's starter holding coil.

### **Sequence of Operation for Fan Motor Cycling**

Fan Motor Cycling is often found to be inadequate where the load has a wide fluctuation. In this method, there are only two stable levels of performance: 100% of capacity when the fan is on, and approximately 10% of capacity when the fan is off. Please note that rapid cycling of the fan motors can cause the fan motor to overheat. Controls should be set to only allow a maximum of six start/stop cycles per hour. The recirculation pump may not be used as a means of capacity control and should not be cycled frequently. Excessive cycling can lead to scale build-up, resulting in reduced wet and dry performance.

### **Two Speed Motors**

The use of a two-speed motor provides an additional step of capacity control when used with the fan cycling method. The low speed of the motor will provide approximately 60% of full speed capacity.

Two-speed capacity control systems require not only a two-speed motor, but also a two-stage thermostat and the proper two-speed motor starter. The most common two-speed motor is a single winding type. This is also known as a consequent pole design. Two-speed two-winding motors are also available. All multi-speed motors used in evaporative cooling units should be variable torque design.

It is important to note that when two-speed motors are to be used, the motor starter controls must be equipped with a decelerating time delay relay. The time delay should be a minimum of 30 seconds when switching from high speed to low speed.

### **Sequence of Operation for Two Cell Units with Two Speed Motors during Peak Load**

For eco-ATWE, see Sage<sup>2</sup>/Sage<sup>3</sup> control Panel O&M

1. Both fan motors off – Pump running on one cell.
2. Both fan motors off – Pump running on both cells.
3. One fan motor on low speed, one fan motor off – Pump running on both cells.
4. Both fan motors on low speed – Pump running on both cells.
5. One fan motor on high speed, one fan motor on low speed – Pump running on both cells.
6. Both fan motors on full speed – Pump running on both cells.

## Variable Frequency Drives

The use of a variable frequency drive (VFD) provides the most precise method of capacity control. A VFD is a device that converts a fixed AC voltage and frequency into an adjustable AC voltage and frequency used to control the speed of an AC motor. By adjusting the voltage and frequency, the AC induction motor can operate at many different speeds.

The use of VFD technology can benefit the life of the mechanical components with fewer and smoother motor starts and built-in motor diagnostics. VFD technology has particular benefit on evaporative cooling units operating in cold climates where airflow can be modulated to minimize icing and reversed at low speed for de-icing cycles. Applications using a VFD for capacity control must also use an inverter duty motor built in compliance with NEMA standard MG-1. This is an available option from EVAPCO.

**NOTE:** VFD's should not be used on pump motors. The pumps are designed to be operated at full speed and are not intended to be used as capacity control.

The type of motor, manufacturer of the VFD, motor lead lengths (between the motor and the VFD), conduit runs and grounding can dramatically affect the response and life of the motor. Select a high quality VFD that is compatible with the fan motor(s) in the EVAPCO unit(s). Many variables in the VFD configuration and installation can affect motor and VFD performance. Two particularly important parameters to consider when choosing and installing a VFD are switching frequency and the distance between the motor and VFD often referred to as lead length. Consult the VFD manufacturer's recommendations for proper installation and configuration. The motor lead length restrictions can vary with the vendor. Regardless of motor supplier, minimizing lead length between the motor and drive is good practice.

### Sequence of Operations / Guidelines for Multi-fan Units with a VFD during Peak Load

For eco-WE, see Sage<sup>2</sup>/Sage<sup>3</sup> control Panel O&M

1. Both fan motors off – Pump running on one cell.
2. Both fan motors off – Pump running on both cells.
3. Both VFDs turn on at the manufacturer's recommended minimum operating speed (20-25%) – Pump running on both cells.
4. Both VFDs speed up uniformly (they should be synchronized on start-up) – Pump running on both cells.
5. Both VFDs are on full speed – Pump running on both cells.

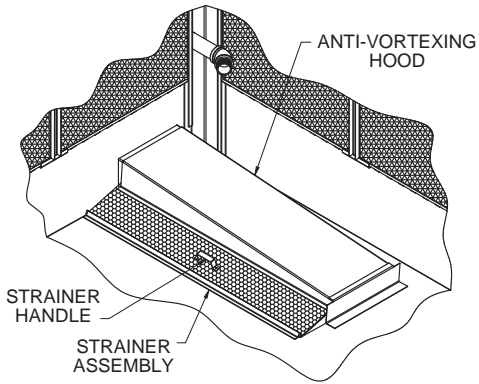
Note: the VFDs need to have a pre-set shutoff to prevent water temperatures from becoming too cold and to prevent the drive from trying to turn the fan at near zero speed. Operating below 25% of motor speed achieves very little return in fan energy savings and capacity control. Check with your VFD supplier if operating below 25% is possible.

For more details on the use of variable frequency drives, please download a copy of EVAPCO's Engineering Bulletin 39 from [www.evapco.com](http://www.evapco.com).

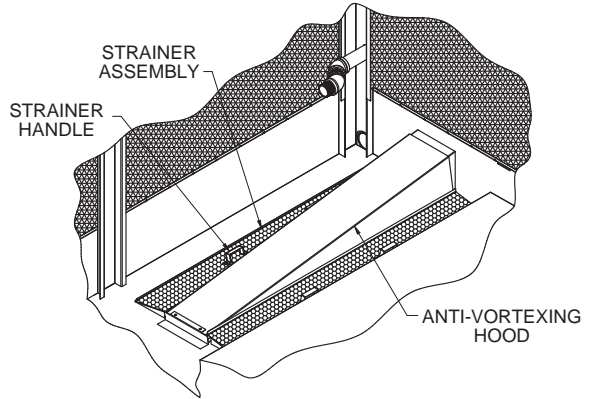
## Recirculated Water System – Routine Maintenance

### Suction Strainer in Cold Water Basin

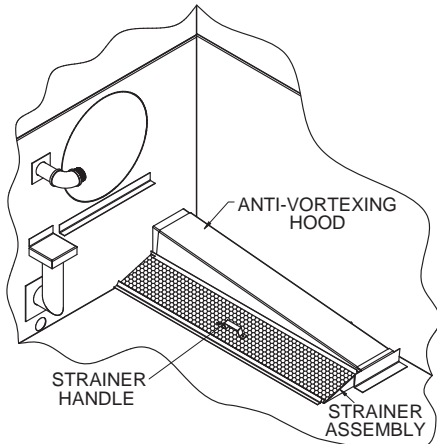
The pan strainer as shown in Figures 8, 9, 10, 11, 12 and 13 should be removed and cleaned monthly or as often as necessary. The suction strainer is the first line of defense in keeping debris out of the system. Make certain that the strainer is properly located over the pump suction, alongside the anti-vortexing hood.



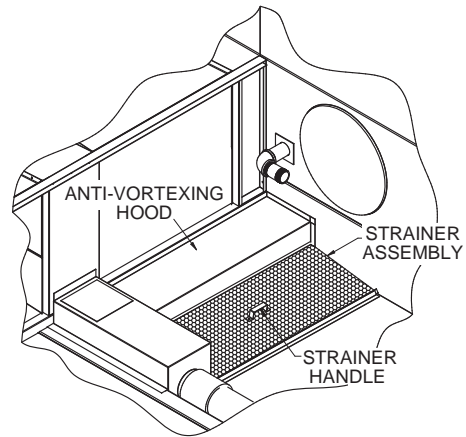
**Figure 8 – Single Strainer Assembly**



**Figure 9 – Dual Strainer Assembly**



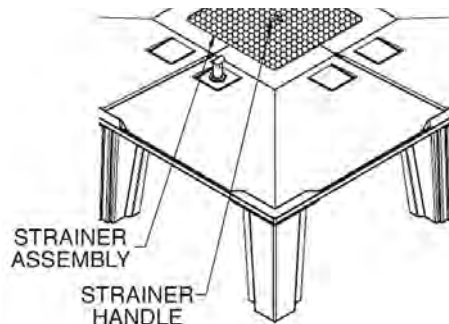
**Figure 10 – LSWB/LSC-E/PMC-E/PMWQ Strainer Assembly**



**Figure 11 – LRWB/LRC Strainer Assembly**



**Figure 12 – MTW/C Strainer Assembly V-Sump**



**Figure 13 – MTW/C Strainer Assembly Depressed Sump**

### Cold Water Basin

The cold water basin should be flushed out quarterly, and checked monthly or more often if necessary, to remove any accumulation of dirt or sediment which normally collects in the basin. Sediment can become corrosive and cause deterioration of basin materials. When flushing the basin, it is important to keep the suction strainers in place to prevent any sediment from entering the system. After the basin has been cleaned, the strainers should be removed and cleaned before refilling the basin with fresh water.

## Operating Level of Water in Cold Water Basin

The operating level should be checked monthly to make sure the water level is correct. Refer to Table 3 for unit specific levels.

Evaporative Condenser Model Number	Closed Circuit Cooler Footprint	Operating Water Level*
<b>ATC-E &amp; eco-ATC Products</b> 50E to 165E 187E to 3714E	<b>ATWB, eco-ATW &amp; eco-ATWE Products</b> 3' and 4' wide units** 8.5' wide thru 24' wide	9" 11"
<b>eco-ATC Products</b> 176 to 4068	8.5' wide thru 24' wide	11"
<b>CATC Products</b> 181 to 504	<b>CATW Products</b> 7.5' wide units	11"
<b>MTC Products</b> 47 to 206 222 to 487	<b>MTW Products</b> 4-3FG to 8-5J8 10-3G10 to 12-6N12	4"† 4"†
<b>LRC Products</b> 25 to 379	<b>LRWB Products</b> 3' wide thru 8' wide units	8"
<b>LSC-E Products</b> 36 to 170 185 to 385 400 to 515, 800 to 1030 550 to 805, 1100 to 1610 — — —	<b>LSW Products</b> 4'x6' thru 4'x12' 5.5'x12', 5.5'x18' 8'x12', 8'x24', 10'x12', 10'x24' 8'x18', 8'x36', 10'x18', 10'x36' <b>Dual Fan Sided Units</b> 8'x12', 8'x24' 8'x18', 8'x36'	11" 11" 12" 15" 12" 12" 15"
<b>PMC-E Products</b> 175E to 375E 332E to 1985E —	<b>PMWQ Products</b> — 10' and 12' wide units	10" 14"
—	<b>ESWB Products</b> 8.5' wide and 2.4M wide 12' wide	9" 10"
—	<b>ESWA Products</b> 8.5' wide thru 14' wide units	11"

\* Measured from lowest point on basin floor.

\*\* Not available on eco-ATWE.

† Measured from the overflow.

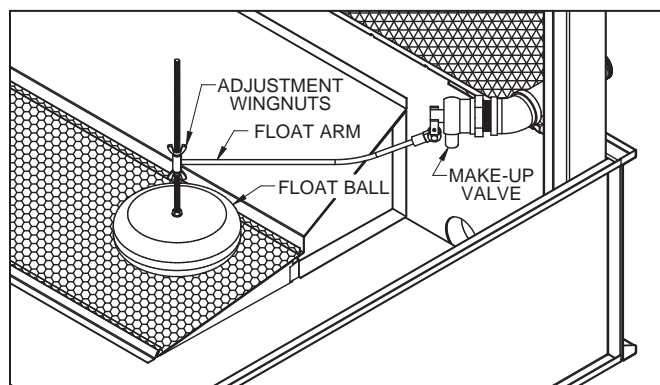
**Table 3 - Recommended Operating Water Level**

At initial start up or after the unit has been drained, the unit must be filled to the overflow level. Overflow is above the normal operating level and accommodates the volume of water normally in suspension in the water distribution system and the riser piping.

The water level should always be above the strainer. Check by running the pump with the fan motors off and observing the water level through the access door or remove the air inlet louver.

## Water Make Up Valve

A mechanical float valve assembly is provided as standard equipment on the evaporative cooling unit (unless the unit has been ordered with an optional electronic water level control package or the unit is arranged for remote sump operation). The make up valve is easily accessible from outside the unit through the access door or removable air inlet louver. The make up valve is a bronze valve connected to a float arm assembly and is activated by a large foam filled plastic float. The float is mounted on an all-thread rod held in place by wing nuts. The water level in the basin is adjusted by repositioning the float and all-thread using the wing nuts. Refer to Figure 14 for details.



**Figure 14 – Mechanical Water Make Up Valve**

-The make up valve assembly should be inspected monthly and adjusted as required. The valve should be inspected annually for leakage and if necessary, the valve seat should be replaced. The make up water pressure for the mechanical valve should be maintained between 20 and 50 PSIG.

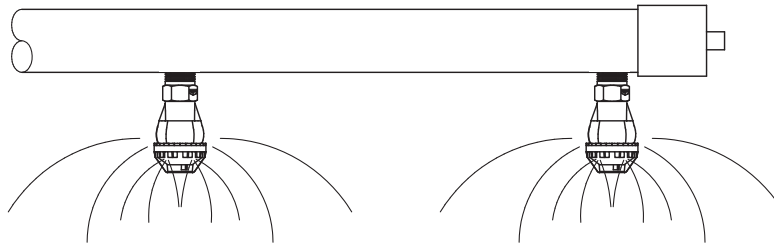
## Pressurized Water Distribution Systems

Check the water distribution system monthly to make sure it is operating properly. Always check the spray system with the pump on and the fans off. On forced draft models, remove one or two eliminator sections from the top of the unit and observe the operation of the water distribution system. On induced draft models, lifting handles are provided along the top layer of eliminators. Eliminators can be easily removed from the access door and the distribution system observed. The diffusers are essentially non-clogging and should seldom need cleaning or maintenance.

If the water diffusers are not functioning properly, it is a sign that the pan or system strainer has not been working properly and that foreign matter or dirt has accumulated in the water distribution pipes. The nozzles can be cleared by taking a small pointed probe and moving it rapidly back and forth in the diffuser opening.

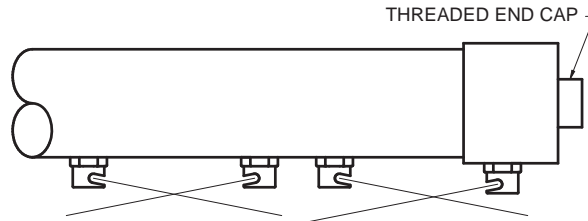
If an extreme build-up of dirt or foreign matter occurs, remove the end cap in each branch to flush the debris from the header pipe. The branches or header can be removed for cleaning, but do so only if necessary. Check the strainer in the pan to make sure it is in good condition and positioned properly so that cavitation or air entrainment does not occur.

All Evaporative Condensers and Closed Circuit Coolers, except the ESWA Closed Circuit Cooler, are supplied with ZMII<sup>®</sup> spray nozzles as standard. The ZMII<sup>®</sup> spray nozzles do not need to be oriented a specific way to achieve proper coil coverage. Figure 13 shows the standard orientation of the ZMII<sup>®</sup> spray nozzles.

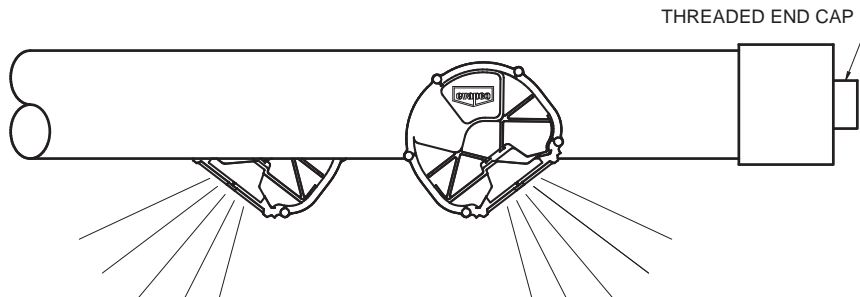


**Figure 15 – ZMII<sup>®</sup> Spray Nozzle Orientation**  
 All Coil Products except the ESWA

For the ESWA, wide orifice water diffusers are supplied. When inspecting and cleaning the water distribution system, always check that the orientation of the water diffusers is correct as shown in Figures 16 and 17. For EvapJet nozzles, make sure that the top edge of the “EVAPCO” logo is parallel to the top of the water distribution pipe.



**Figure 16** – Proper Water Diffuser Orientation (2A Nozzles)  
ESWA Models (Except 14' Wide Models)



**Figure 17** – Proper Water Diffuser Orientation (EvapJet)  
ESWA 14' Wide Models

## Bleed-Off Valve

The bleed-off valve, whether factory or field installed, must be checked weekly to make sure it is functioning and set properly. Keep the bleed-off valve wide open unless it has been determined that it can be set partially open without causing scaling or corrosion.

## Pump (When Supplied)

The pump and pump motor should be lubricated and serviced in accordance with the pump manufacturer's instructions as supplied with the unit. The recirculation pump should not be used as a means of capacity control, used with a VFD or be cycled frequently. Excessive cycling can lead to scale build-up, and reduce wet and dry performance. On 14' wide ESWA's, which are supplied with two pumps per cell, both pumps should be energized at the same time. One pump should not be on while the other pump is off.

Note: for the eco-ATWE, please consult the Sage<sup>2</sup> and Sage<sup>3</sup> manual.

The pump motor fan and impeller should be turned by hand if the pump assembly sits idle.

## Water Treatment and Water Chemistry

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Proper water treatment is an essential part of the maintenance required for evaporative cooling equipment. A well designed and consistently implemented water treatment program will help to ensure efficient system operation while maximizing the equipment's service life. A qualified water treatment company should design a site specific water treatment protocol based on equipment (including all metallurgies in the cooling system), location, makeup water quality, and usage.

### Bleed or Blowdown

Evaporative cooling equipment rejects heat by evaporating a portion of the recirculated water into the atmosphere as warm, saturated discharge air. As the pure water evaporates it leaves behind the impurities found in the system's makeup water and any accumulated airborne contaminants. These impurities and contaminants, which continue to recirculate in the system, must be controlled to avoid excessive concentration which can lead to corrosion, scale, or biological fouling.

Evaporative cooling equipment requires a bleed or blowdown line, located on the discharge side of the recirculating pump, to remove concentrated (cycled up) water from the system. EVAPCO recommends an automated conductivity controller to maximize the water efficiency of your system. Based on recommendations from the water treatment company, the conductivity controller should open and close a motorized ball or solenoid valve to maintain the conductivity of the recirculating water. If a manual valve is used to control the rate of bleed it should be set to maintain the conductivity of the recirculating water during periods of peak load at the maximum level recommended by the water treatment company.

### Galvanized Steel – Passivation

'White Rust' is a premature failure of the protective zinc layer on hot dip or mill galvanized steel which can occur as a result of improper water treatment control during the start-up of new galvanized equipment. The initial commissioning and passivation period is a critical time for maximizing the service life of galvanized equipment. EVAPCO recommends that the site specific water treatment protocol includes a passivation procedure which details water chemistry, any necessary chemical addition, and visual inspections during the first six (6) to twelve (12) weeks of operation. During this passivation period, recirculating water pH should be maintained above 7.0 and below 8.0 at all times. Since elevated temperatures have a harmful effect on the passivation process, the new galvanized equipment should be run without load for as much of the passivation period as is practical.

The following water chemistry promotes the formation of white rust and should be avoided during the passivation period:

1. pH values in the recirculating water greater than 8.3.
2. Calcium hardness (as CaCO<sub>3</sub>) less than 50 ppm in the recirculating water.
3. Anions of chlorides or sulfates greater than 250 ppm in the recirculating water.
4. Alkalinity greater than 300 ppm in the recirculating water regardless of pH value.

Changes in water chemistry control may be considered after the passivation process is complete as evidenced by the galvanized surfaces taking on a dull gray color. Any changes to the treatment program or control limits should be made slowly, in stages while documenting the impact of the changes on the passivated zinc surfaces.

- Operating galvanized evaporative cooling equipment with a water pH below 6.0 for any period may cause removal of the protective zinc coating.
- Operating galvanized evaporative cooling equipment with a water pH above 9.0 for any period may destabilize the passivated surface and create white rust.
- Re-passivation may be required at any time in the service life of the equipment if an upset condition occurs which destabilizes the passivated zinc surface.

For more information on passivation and white rust, please download a copy of EVAPCO's Engineering Bulletin 36 at [www.evapco.com](http://www.evapco.com).

## Water Chemistry Parameters

The water treatment program designed for evaporative cooling equipment must be compatible with the unit's materials of construction. Control of corrosion and scale will be very difficult if the recirculating water chemistry is not consistently maintained within the ranges noted in Table 4. In mixed metallurgy systems, the water treatment program should be designed to ensure protection of all the components used in the cooling water loop.

Property	G-235 Galvanized Steel	Type 304 Stainless Steel	Type 316 Stainless Steel
pH	7.0 – 8.8	6.0 – 9.5	6.0 – 9.5
pH During Passivation	7.0 – 8.0	N/A	N/A
Total Suspended Solids (ppm)*	< 25	< 25	< 25
Conductivity (Micro-mhos/cm) **	< 2,400	< 4,000	< 5,000
Alkalinity as CaCO <sub>3</sub> (ppm)	75 - 400	< 600	< 600
Calcium Hardness CaCO <sub>3</sub> (ppm)	50 - 500	< 600	< 600
Chlorides as Cl (ppm) ***	< 300	< 500	< 2,000
Silica (ppm)	< 150	< 150	< 150
Total Bacteria (cfu/ml)	< 10,000	< 10,000	< 10,000

\* Based on standard EVAPAK® fill

\*\* Based on clean metal surfaces. Accumulations of dirt, deposits, or sludge will increase corrosion potential

\*\*\* Based on maximum coil fluid temperatures below 120°F (49°C)

**Table 4 – Recommended Water Chemistry Guidelines**

If a chemical water treatment program is used, all chemicals selected must be compatible with the unit's materials of construction as well as other equipment and piping used in the system. Chemicals should be fed through automatic feed equipment to a point which ensures proper control and mixing prior to reaching the evaporative cooling equipment. Chemicals should never be batch fed directly into the basin of the evaporative cooling equipment.

Evapco does not recommend the routine use of acid due to the destructive consequences of improper feeding; however, if acid is used as part of the site specific treatment protocol, it should be pre-diluted prior to introduction into the cooling water and fed by automated equipment to an area of the system which ensures adequate mixing. The location of the pH probe and acid feed line should be designed in conjunction with the automated feedback control to ensure that proper pH levels are consistently maintained throughout the cooling system. The automated system should be capable of storing and reporting operational data including pH reading and chemical feed pump activity. Automated pH control systems require frequent calibration to ensure proper operation and to protect the unit from increased corrosion potential.

The use of acids for cleaning should also be avoided. If acid cleaning is required, extreme caution must be exercised and only inhibited acids recommended for use with the unit's materials of construction should be used. Any cleaning protocol, which includes the use of an acid, shall include a written procedure for neutralizing and flushing the evaporative cooling system at the completion of the cleaning.

## Control of Biological Contamination

Evaporative cooling equipment should be inspected regularly to ensure good microbiological control. Inspections should include both monitoring of microbial populations via culturing techniques and visual inspections for evidence of biofouling.

Poor microbiological control can result in loss of heat transfer efficiency, increase corrosion potential, and increase the risk of pathogens such as those that cause Legionnaires' disease. The site specific water treatment protocol should include procedures for routine operation, startup after a shut-down period, and system lay-up, if applicable. If excessive microbiological contamination is detected, a more aggressive mechanical cleaning and/or water treatment program should be undertaken.



It is important that all internal surfaces, particularly the basin, be kept clean of accumulated dirt and sludge. Additionally, drift eliminators should be inspected and maintained in good operating condition.

## Gray Water and Reclaimed Water

The use of water reclaimed from another process as a source of makeup water for evaporative cooling equipment can be considered as long as the resultant recirculating water chemistry conforms to the parameters noted in Table 4. It should be noted that using water reclaimed from other processes may increase the potential of corrosion, microbiological fouling, or scale formation. Gray water or reclaimed water should be avoided unless all of the associated risks are understood and documented as part of the site specific treatment plan.

## Air Contamination

Evaporative cooling equipment draws in air as part of normal operation and can scrub particulates out of the air. Do not locate the unit next to smokestacks, discharge ducts, vents, flue gas exhausts, etc. because the unit will draw in these fumes which may lead to accelerated corrosion or deposition potential within the unit. Additionally, it is important to locate the unit away from the building's fresh air intakes to prevent any drift, biological activity, or other unit discharge from entering the building's air system.

## Cold Weather Operation

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EVAPCO counterflow evaporative cooling equipment is well suited to operate in cold weather conditions. The counterflow design encases the heat transfer media (fill and/or coils) completely, and protects it from the outside elements such as wind which can cause freezing in the unit.

When the evaporative cooling unit is going to be used during cold weather conditions, several items need to be considered including unit layout, recirculating water, unit recirculating piping, unit heat transfer coils, unit accessories and capacity control of the units.

## Unit Layout

Adequate unobstructed air flow must be provided for both the intake and discharge from the unit. It is imperative that the equipment minimize the risk of recirculation. Recirculation can result in condensation freezing the inlet louvers, fans and fan screens. The buildup of ice on these areas can adversely affect air flow and in more severe cases, lead to failure of these components. Prevailing winds can create icing conditions on the inlet louvers and fan screens adversely affecting airflow to the unit.

For additional information on unit layout, please refer to EVAPCO's Equipment Layout Manual.

## Freeze Protection of Recirculating Water

The simplest and most effective way of keeping the recirculated water from freezing is to use a remote sump. With a remote sump, the recirculating water pump is mounted remotely at the sump and whenever the pump is shut off, all recirculating water drains back to the sump. Recommendations for sizing the remote sump tank and recirculating water pumps for coil products are presented for Evaporative Condensers and Closed Circuit Coolers in their respective catalog bulletin. The pressure drop through the water distribution system measured at the water inlet is as follows in Table 5.

If a remote sump cannot be used, basin heaters are available to keep the recirculating water from freezing when the pump is turned off. Electric heaters, hot water coils, steam coils or steam injectors may be used to heat the basin water when the unit is shut down. However, the basin heater will not prevent the external water lines, pump or pump piping from freezing. The make-up water supply, overflow and drain lines, as well as the pump and pump piping up to the overflow level must be heat traced and insulated to protect them from damage. Any other connections or accessories at or below the water level, such as electronic water level controllers, must also be heat traced and insulated.

**Note: Using basin heaters will not prevent the fluid in the coils, nor the residual water in the pump or pump piping from freezing.**

A condenser or cooler cannot be operated dry (fans on, pump off) unless the water is completely drained from the pan. The pan heaters are sized to prevent pan water from freezing only when the unit is completely shut down.

Evaporative Condenser Model Number		Closed Circuit Cooler Footprint	Required Inlet Pressure (psi)
<b>ATC-E Products</b>	<b>eco-ATC Products</b>	<b>ATWB, eco-ATW &amp; eco-ATWE Products</b>	
50E to 165E	—	3' and 4' wide units**	2.0
170E to 247E	176 to 272	8.5'x7.5'	2.0
218E to 305E	226 to 334	8.5'x9'	2.0
246E to 473E	225 to 487	8.5'x10.5', 8.5'x12', 8.5'x14'	2.0
486E to 630E	447 to 668	8.5'x18'	3.0
508E to 755E	501 to 797	8.5'x21'	4.0
643E to 926E	658 to 1011	17'x12', 17'x14'	2.5
XE298E to XC462E, XE596E to XC925E	280 to 503, 559 to 1005	10'x12', 10'x24', 20'x12'	3.7
XE406E to XC669E, XE812E to XC1340E	365 to 705, 731 to 1411	10'x18', 10'x36', 20'x18'	5.7
428E to 892E	433 to 644, 557 to 710, 636 to 942	12'x12', 12'x14', 12'x18'	3.5
858E to 1784E	866 to 1288, 1176 to 1420, 1186 to 1883	12'x24', 12'x28', 12'x36'	2.5
857E to 1783E	867 to 1289, 1177 to 1421, 1187 to 1884	24'x12', 24'x14', 24'x18'	3.0
1879E to 3459E	1844 to 2572, 2353 to 2841, 2545 to 3766	24'x24', 24'x28', 24'x36'	2.5
791E to 967E, 1625E to 1925E	775 to 1023, 1607 to 2043	12'x20', 12'x40'	3.5
1616E to 1915E, 2855E to 3714E	1608 to 2044, 2911 to 4086	24'x20', 24'x40'	3.2
<b>CATC Products</b>		<b>CATW Products</b>	
181 thru 373		7.5'x8', 7.5'x12', 7.5'x14'	2.0
362 thru 504		7.5'x18'	3.0
<b>LRC Products</b>		<b>LRWB Products</b>	
25 to 72		3' wide units	1.0
76 to 114		5'x6'	2.0
108 to 183		5'x9'	2.0
190 to 246		5'x12'	2.0
188 to 379		8' wide units	2.0
<b>LSC-E Products</b>		<b>LSWE Products</b>	
36 to 80		4'x6'	1.5
90 to 120		4'x9'	1.5
135 to 170		4'x12', 4'x18'	1.5
185 to 385		5.5'x12', 5.5'x18'	2.0
400 to 1610		10'x12', 10'x18', 10'x24', 10'x36'	2.5
		8'x12', 8'x18', 8'x24', 8'x36'	3.0
		<b>Dual Fan Sided Units</b>	
		8'x12', 8'x18', 8'x24', 8'x36'	2.5
		<b>ESWA Products</b>	
		8.5'x9'	3.0
		8.5'x12'	2.5
		8.5'x18'	3.5
		12'x12'	3.0
		12'x18'	2.5
		14'x24', 14'x48'	3.0
<b>PMC-E Products</b>		<b>PMWQ Products</b>	
175E to 375E		—	2.0
332E to 1556E		10' wide units	3.0
420E to 1985E		12' wide units	3.5

Note: For multi-cell units, the inlet pressure shown is per cell.

\*\* Not available as eco-ATWE

**Table 5** - Required Recirculating Water Inlet Pressure for Remote Sump Application - Coil Products Only

### Freeze Protection of Closed Circuit Cooler Coils

The simplest and most effective way of protecting the heat exchanger coil from freezing is to use an inhibited ethylene or propylene glycol anti-freeze. If this is not possible, an auxiliary heat load and minimum flow rate must be maintained on the coil at all times so that the water temperature does not drop below 50°F when the cooler is shut down. See Table 6 for recommended minimum flow rates.

If an anti-freeze solution is not used, the coil must be drained immediately whenever the pumps are shut down or flow stops. This is accomplished by having automatic drain valves and air vents in the piping to and from the cooler. Care must be taken to ensure that the piping is adequately insulated and sized to allow the water to flow quickly from the coil. This method of protection should be used only in emergency situations and is neither a practical nor recommended method of freeze protection. Coils should not be drained for an extended period of time, as internal corrosion may occur.

When the unit is in operation during freezing weather, some type of capacity control is normally required in order to keep water temperatures from dropping below 50°F. Operating dry with a remote sump is an excellent way of reducing unit capacity at low temperatures. Other methods of capacity control include two-speed motors, VFDs and fan cycling. These can be used individually or in combination with dry/remote sump operation.

Closed Circuit Cooler Footprint	Minimum Flows	
	Standard Flow GPM	Series Flow GPM
<b>ATWB Products, eco-ATW &amp; eco-ATWE</b>		
3'x3'***	—	26
4' wide units**	74	37
8.5'x7.5'	148	74
8.5'x9' to 8.5'x21'	160	80
17'x12', 17'x14'	320	160
10'x12', 10'x18'	188	94
10'x24', 10'x36', 20'x12', 20'x18'	376	188
20'x24', 20'x36'	752	376
12'x12', 12'x14', 12'x18', 12'x20'	232	116
12'x24', 12'x28', 12'x36', 12'x40'	464	232
24'x12', 24'x14', 24'x18', 24'x20'	464	232
24'x24', 24'x28', 24'x36', 24'x40'	928	464
<b>CATW Products</b>	140	70
<b>MTW Products</b>		
4'x6'	27.75	-
4'x9'	62.9	-
8'x8'	158.4	-
10'x10'	202.4	-
12'x12'	250.8	-
<b>LRWB Products</b>		
3' wide units	60	30
5' wide units	94	47
8' wide units	148	74
<b>LSWE Products</b>		
4'x6', 4'x9', 4'x12', 4'x18'	66	30
5.5'x12', 5.5'x18'	94	47
8'x12', 8'x18'	148	74
8'x24', 8'x36'	296	148
10'x12', 10'x18'	188	94
10'x24', 10'x36'	376	188
<b>Dual Fan Side Units</b>		
8'x12', 8'x18'	132	66
8'x24', 8'x36'	264	132
<b>ESWA Products</b>		
8.5'x9', 8.5'x12', 8.5'x18'	237	119
12'x12', 12'x18'	330	165
14'x24'	708	354
14'x48'	1416	708
<b>PMWQ Products</b>		
10'x12', 10'x18'	210	105
10'x24', 10'x36'	415	208
12'x12', 12'x18', 12'x20'	256	128
12'x24', 12'x36', 12'x40'	511	256

**Table 6 - Closed Circuit Cooler Minimum Recommended Flow Rate**

\*\*\* Not available as eco-ATWE

## Unit Accessories

The appropriate accessories to prevent or minimize ice formation during cold weather operation are relatively simple and inexpensive. These accessories include cold water basin heaters, the use of a remote sump, electric water level control and vibration cut out switches. Each of these optional accessories ensures that the cooler or condenser will function properly during cold weather operation.

### Cold Water Basin Heaters

Optional basin heaters can be furnished with the unit to prevent the water from freezing in the basin when the unit is idle during low ambient conditions. The basin heaters are designed to maintain 40°F basin water temperature at a 0°F ambient temperature. The heaters are only energized when the recirculating pumps are off and no water is flowing over the heat exchanger coil. As long as there is a heat load and water is flowing over the heat exchanger coil, the heaters do not need to operate. Other types of basin heaters to consider would include: hot water coils, steam coils or steam injectors.

### Remote Sumps

A remote sump located in an indoor heated space is an excellent way to prevent freezing in the cold water basin during idle or no load conditions because the basin and associated piping will drain by gravity whenever the recirculating pump is idle. EVAPCO units built for remote sump operation do not include recirculating water pumps.

### Electric Water Level Control

Optional electric water level control packages can be furnished to replace the standard mechanical float and valve assembly. The makeup water pressure for electronic water level control should be maintained between 5 and 100 psig. The electric water level control eliminates the freezing problems experienced by the mechanical float. In addition, it provides accurate control of the basin water level and does not require field adjustment even under varying load conditions. Please note: the standpipe assembly, make up piping and solenoid valve must be heat traced and insulated to prevent them from freezing.

### Vibration Cut Out Switches

During severe cold weather conditions, ice can form on the fans of cooling towers causing excessive vibration. The optional vibration switch shuts the fan off avoiding potential damage to or failure of the drive system.

## Capacity Control Methods for Cold Weather Operation

Induced draft and forced draft coolers or condensers require separate guidelines for capacity control during cold weather operation.

The sequence of control for a unit operating at low ambient conditions is much the same as a cooler or condenser operating under summer conditions provided that the ambient temperature is above freezing. When the ambient temperatures are below freezing, additional precautions must be taken to avoid the potential for damaging ice formation.

The most effective way to avoid ice formation in and on a closed circuit cooler or condenser during the winter is to run the unit DRY. In dry operation, the recirculation pump is turned off, the basin drained, and air passes over the coil. Instead of using evaporative cooling to cool the process fluid or condense the refrigerant, sensible heat transfer is utilized, so there is no recirculation water to freeze. If this method will be used on a forced draft unit, be sure to verify that the motor and drives have been properly sized to handle the reduction in static pressure experienced when the spray water is turned off.

It is very important to maintain close control of the cooler or condenser during winter operation. EVAPCO recommends that an absolute MINIMUM leaving water temperature of 42° F must be maintained for cooler applications. The higher the leaving temperature from the cooler or condenser, the lower the potential for ice formation.

### Induced Draft Unit Capacity Control

The simplest method of capacity control is cycling the fan motor on and off in response to the leaving fluid temperature of the cooler or condenser. However, this method of control results in larger temperature differentials and longer periods of down time. During extremely low ambient conditions, the moist air may condense and freeze on the fan drive system. Therefore, fans must be cycled during extremely low ambient conditions to avoid long periods of idle time when water is flowing over the coil. The number of start/stop cycles must be limited to no more than six per hour.

A better method of control is the use of two-speed fan motors. This allows an additional step of capacity control. This additional step reduces the water temperature differential, and therefore, the amount of time the fans are off. In addition, two-speed motors provide savings in energy costs, since the cooler or condenser has the potential to operate on low speed for the reduced load requirements.

The best method of capacity control during cold weather operation is the use of a variable frequency drive (VFD). This allows the closest control of the leaving water temperature by allowing the fan(s) to run at the appropriate speed to closely match the building load. As the building load decreases, the VFD control system may operate for long periods of time at fan speeds below 50%. Operating a low leaving water temperature and low air velocity through the unit can cause ice to form. It is recommended that the minimum speed of the VFD be set at 50% of full speed to minimize the potential for ice to form in the unit.

### **Forced Draft Unit Capacity Control**

The most common methods of capacity control are cycling the single speed fan motors, using two-speed motors or pony motors and utilizing variable frequency drives to control the cooler or condenser fans. Although capacity control methods for forced draft units are similar to those used for induced draft units, there are slight variations.

The simplest method of capacity control for forced draft units is to cycle the fan(s) on and off. However, this method of control results in larger temperature differentials and periods of time with the fans off. When the fans are cycled off, the water falling through the unit can draw air flow into the fan section. During extremely low ambient conditions, this moist air may condense and freeze on the cold components of the drive system. When conditions change and cooling is needed, any amount of ice that has formed on the drive system can severely damage the fans and fan shafts. **Therefore, fans MUST be cycled during low ambient operation to avoid long periods of idle fan operation. Excessive cycling can damage the fan motors. Limit the number of cycles to a maximum of six per hour.**

Two speed or pony motors offer a better method of control. This additional step of capacity control will reduce water temperature differentials and the amount of time that the fans are off. This method of capacity control has proven effective for applications where load variations are excessive and cold weather conditions are moderate.

The use of a variable frequency drive provides the most flexible method of capacity control for forced draft units. The VFD control system allows the fans to run at nearly an infinite range of speeds to match the unit capacity to the system load. During periods of reduced load and low ambient temperatures, the fans must maintain enough speed to ensure positive air flow through the unit. This positive air flow in the unit will prevent moist air from migrating towards the cold fan drive components reducing the potential for condensation to form and freeze on them. The VFD control system should be implemented for applications that experience fluctuating loads and severe cold weather conditions.

## **Ice Management**

When operating an evaporative cooling unit in extreme ambient conditions, the formation of ice is inevitable. The key to successful operation is to control or manage the amount of ice that builds up in the unit. If extreme icing occurs, it can lead to severe operational difficulties as well as potential damage to the unit. Following these guidelines will minimize the amount of ice that forms in the unit leading to better operation during the cold weather season.

### **Induced Draft Units**

When operating an induced draft unit during the cold weather season, the control sequence must have a method to manage the formation of ice in the unit. The simplest method of managing the amount of ice buildup is by cycling the fan motors off while keeping the pump on. During these periods of idle fan operation, the warm water that is absorbing the building load flows thru the coil to help melt the ice that has formed in the coil, basin or louver areas. Warning: Using this method during periods of high winds can cause blow thru, resulting in splash-out and ice formation. To help prevent blow thru and splash-out, maintain a minimum 50% fan speed.

In more severe climates, the incorporation of a defrost cycle can be used to mitigate and/or eliminate any detrimental effects of ice in the unit. During the defrost cycle, the fans are reversed at **half speed** while the recirculating pump flows water through the unit's water distribution system. Operating the unit in reverse will melt any ice or frost that may have formed in the unit or on the air intake louvers. **The defrost cycle requires the use of two speed motors with reverse cycle starters or reversible variable frequency drives.** All motors supplied by EVAPCO are capable of reverse operation.

The defrost cycle should be incorporated into the normal control scheme of the cooler or condenser system. The control system should allow for either a manual or automatic method of controlling frequency and length of time required to completely defrost the ice from the unit. The frequency and length of the defrost cycle is dependent on the control methods and ambient cold weather conditions. Some applications will build ice quicker than others which may require longer and more frequent defrost periods. **Frequent inspection of the unit will help "fine-tune" the length and frequency of the defrost cycle.**

### Forced Draft Units

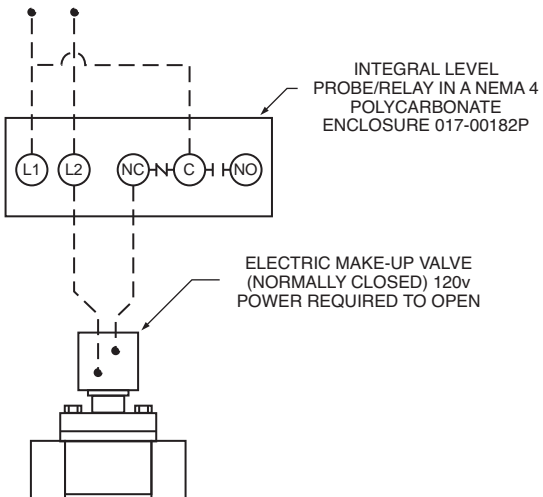
Defrost cycles are NOT recommended for forced draft units, since allowing the leaving water temperature set point to rise causes the fans to be off for very long periods of time. This is not recommended for forced draft coolers or condensers because of the potential for freezing the fan drive components. Therefore, the defrost cycle is an inappropriate method of ice management for forced draft units. However, low speed fan operation or variable frequency drives maintain a positive pressure in the unit which helps prevent ice formation on the fan drive components.

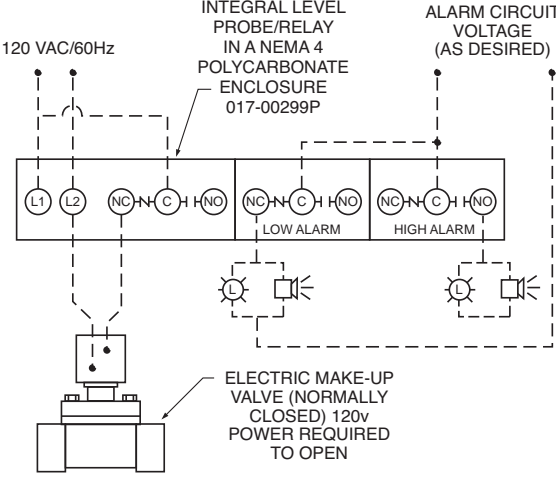
For more information on cold weather operation, please download a copy of EVAPCO's Engineering Bulletin 23 at [www.evapco.com](http://www.evapco.com)

## Troubleshooting

Problem	Possible Cause	Remedy
<b>Overamping Fan Motors</b>	Reduction in air static pressure	<ol style="list-style-type: none"> <li>1. On a forced draft unit verify that the pump is on, and water is flowing over the coil. If the pump is off, and the unit was not sized for dry operation, the motor may over-amp.</li> <li>2. If the forced draft unit is ducted, verify that the design ESP matches the actual ESP.</li> <li>3. Verify the correct pump rotation direction. If the pump is rotating incorrectly, it will result in less water flow, and therefore less overall static pressure.</li> <li>4. Check the basin water level against the recommended level.</li> </ol> <b>Note: Air density directly affects AMP reading. Low air density can cause the fans to spin faster, thus increasing the amp draw.</b>
	Electrical issue	<ol style="list-style-type: none"> <li>1. Check voltage across all three legs of the motor.</li> <li>2. Verify that the motor is wired per the wiring diagram, and connections are tight.</li> </ol>
	Fan rotation	Verify that the fan is rotating in the correct direction. If not, switch the leads so it runs correctly.
	Mechanical failure	Verify that the fan and motor turn freely by hand. If not, there may be damage to the internal motor components or bearings.
	Belt tension	Check for proper belt tension. Extreme belt tension can cause the motor to overamp.
<b>Unusual Motor Noise</b>	Motor running single-phase	Stop motor and attempt to start it. Motor will not start again if single phased. Check wiring, controls and motor.
	Motor leads connected incorrectly	Check motor connections against wiring diagram on motor.
	Bad bearings	Check lubrication. Replace bad bearings.
	Electrical unbalance	Check voltage and current of all three lines. Correct if required.
	Air gap not uniform	Check and correct bracket fits or bearing.
	Rotor unbalance	Rebalance.
	Cooling fan hitting end bell guard	Reinstall or replace fan.
<b>Incomplete Spray Pattern</b>	Nozzles clogged	Remove nozzles and clean. Flush water distribution system.
	Pump running backwards	Visually verify pump rotor rotation by turning pump off and then on. Verify amp draw.
	Inadequate pump flow for remote sump	Confirm inlet pressure at header meets required valves.
	Strainer clogged	Remove strainer and clean.

Problem	Possible Cause	Remedy
<b>Fan Noise</b>	Blade rubbing inside of fan cylinder (induced draft models)	Adjust cylinder to provide blade tip clearance.
<b>Scaled Inlet Louvers on AT Units</b>	Improper water treatment, insufficient bleed rates or excessive cycling of the fan motors, or high concentrations of solids in water.	Scale should not be removed using a power washer or wire brush because it could damage the louvers. Remove the louver assemblies and let them soak in the cold water basin of the unit. The water treatment chemicals in the unit will neutralize and dissolve the buildup of scale. Please note that the time required for soaking the inlet louvers depends on the severity of the scale buildup. <b>Note: This assumes chemicals are being used.</b>
<b>Overramping Pump Motors</b>	Initial start-up	If the unit has only run for a few hours, the pump may overramp until the pump wear ring has worn in. In this case, it would only be small percentages, not 15 or 20%. Normally, after a few hours, the pump amp readings will reduce and level off.
	Mechanical failure	Verify that the pump can turn freely by hand. If not, pump most likely needs to be replaced.
	Electrical issue	Verify that the pump has been wired properly. Verify that the voltage supplying the pump is correct.
	Misconception of head increase or decrease	Note: Increase or decrease in pump flow as a result of clogged or blown out nozzles or headers should NOT cause the pump to over amp.
<b>Makeup Valve Will Not Shut Off</b>	Make-up water pressure too high	Mechanical make-up valve water pressure must be between 20 and 50psi. If pressure is too high, the valve will not close. A pressure reducing valve can be added to lower the pressure. For the 3 and 5 Probe Electronic Water Level Control Package, the electrical actuator has a 5 to 100 psi water pressure requirement.
	Debris in solenoid	Clean out solenoid of any debris.
	Frozen float ball	Inspect, and if so, float or valve may need to be replaced.
	Float ball is full of water	Check ball for leaks and replace.
<b>Water <u>Constantly</u> Blowing Out Overflow Connection</b>	This can happen on forced draft units due to the positive pressure in the casing section. Overflow connection has not been piped at all or properly	Pipe the overflow with a P-trap to an appropriate drain.
	Incorrect water level	Verify actual operating level versus O&M recommended levels
<b>Water <u>Intermittently</u> Blowing Out Overflow Connection</b>	This is normal	This is normal. The bleed line for the unit is piped to the overflow connection
<b>Cold Water Basin Overflowing</b>	Problem with make-up line.	Refer to Makeup Valve or Electronic Water Level section.
	If multi-cell unit, there may be an elevation problem.	Make sure that multi-cell units are installed level to one another. If they are not, it can cause overflowing in one cell.

Problem	Possible Cause	Remedy
<b>Low Pan Water Level</b>	Electronic Water Level Control	See EWLC Section
	Float Ball not set correctly	Adjust float ball up or down to obtain proper water level. Note: The float ball is set to the operating level at the factory.
<b>Rusting Stainless Steel</b>	Foreign material on surface of SS	Rust spots that show up on the surface of the unit are typically not signs of the base stainless steel material corroding. Often, they are foreign material, such as welding slag, that has collected on the surface of the unit. The rust spots will be located around where there has been welding. These areas may include the coil connections, the cold water basin near the support steel, and around field erected platforms and catwalks. The rust spots can be removed with a good cleaning. EVAPCO recommends using either Naval Jelly or a good stainless steel cleaner, such as Mother's Wax in conjunction with a Scotch-Brite pad. Maintenance of the unit's surface should be done on a regular basis.
<b>Cracking Fluid Cooler Insulation</b>	Cracking paint	Most of the time, it is the paint that is cracking and not the insulation. If the paint is degrading, it should be touched up to maintain the finish on the insulation. It is recommended that maintaining the finish of the insulation paint be a part of the standard maintenance program. If the insulation is cracking, see your local Evapco representative for further guidance.
<b>Electric Water Level Control Not Working</b>  	The valve won't open or close	<ol style="list-style-type: none"> <li>1. Verify that water pressure is above 5psi and below 100psi.</li> <li>2. Verify wiring with wiring diagram. Check supply voltage.</li> <li>3. Verify that there is not a blockage in the Y-Strainer</li> <li>4. Confirm the probes are not dirty.</li> <li>5. Check Red LED on circuit board. If it is on, the valve should be closed.</li> </ol> <p><b>For a 3-Probe Assembly:</b></p> <p><b>Simulate "Low Water Condition" - LED OFF</b> After cleaning the probes, lift probe assembly out of the stand pipe. This will simulate a "low water condition". Check the contacts for proper position.</p> <ul style="list-style-type: none"> <li>- The contact between "C" and "NC" should now be closed and water makeup valve should be energized (valve open)</li> </ul> <p><b>Simulate "High Water Condition" - LED ON</b></p> <ul style="list-style-type: none"> <li>- Connect a jumper wire between the longest probe and the shortest probe. The contact between "C" and "NC" should now be open and the water makeup valve should be de-energized (valve closed)</li> </ul>

Problem	Possible Cause	Remedy
<b>Electric Water Level Control Not Working</b>		<p><b>For a 5-Probe Assembly:</b></p> <p><b><i>Simulate "Low Water Condition"</i></b></p> <p>After cleaning the probes, lift probe assembly out of the stand pipe. This will simulate a "low water condition". Check the contacts for proper position.</p> <ul style="list-style-type: none"> <li>- Differential Contacts: C to NC - closed - Water make-up valve energized - <b>LED = OFF</b></li> <li>- High Alarm Contacts: C to NO - open - High alarm circuit de-energized - <b>LED = OFF</b></li> <li>- Low Alarm Contacts: C to NC - closed - Low alarm circuit energized - <b>LED = OFF</b></li> </ul> <p><b><i>Simulate "High Water Condition"</i></b></p> <p>Connect a jumper wire between the longest probe (ground) and all other probes (high limit, high alarm, and low alarm). Check the contacts for proper position.</p> <ul style="list-style-type: none"> <li>- Differential Contacts: C to NC - open - Water make-up valve de-energized - <b>LED = ON</b></li> <li>- High Alarm Contacts: C to NO - closed - High alarm circuit energized - <b>LED = ON</b></li> <li>- Low Alarm Contacts: C to NC - open - Low alarm circuit de-energized - <b>LED = ON</b></li> </ul>

## Replacement Parts

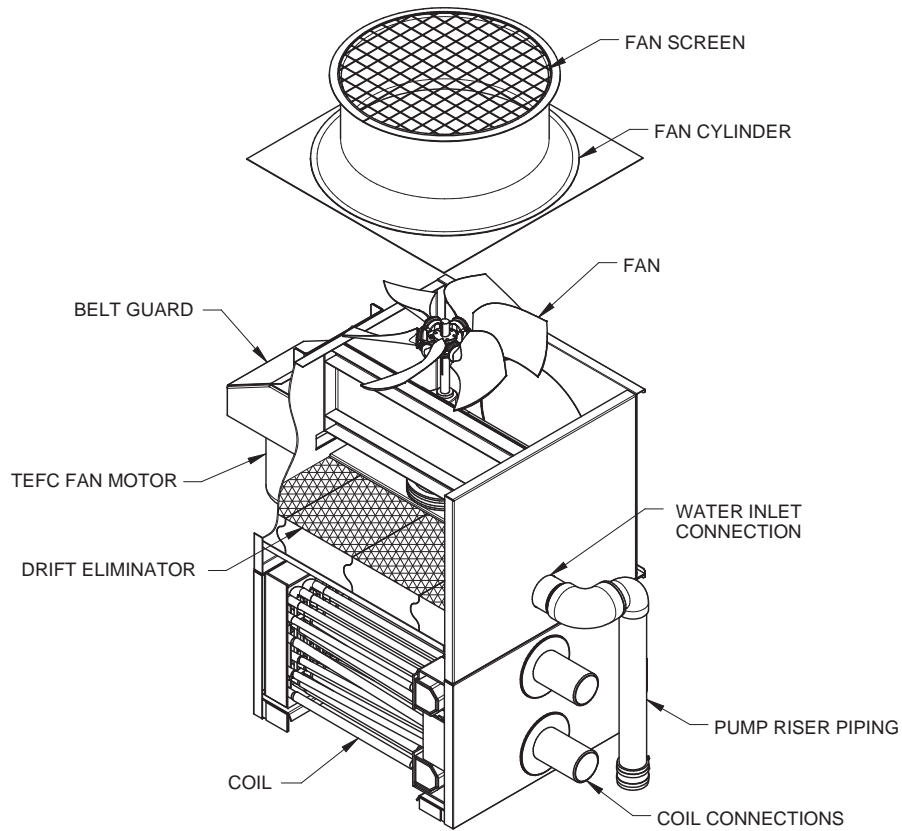
EVAPCO has replacement parts available for immediate shipment. Most orders ship within 24 hours from time of order!

The following pages contain exploded view drawings of all current Evapco closed circuit coolers and condensers. Please use these drawings to help identify the major parts of your unit. To order replacement parts, please contact your local EVAPCO representative or Mr. GoodTower Service Center. The EVAPCO representative contact information is located on the unit's nameplate or can be found by visiting either [www.evapco.com](http://www.evapco.com) or [www.mrgoodtower.com](http://www.mrgoodtower.com).

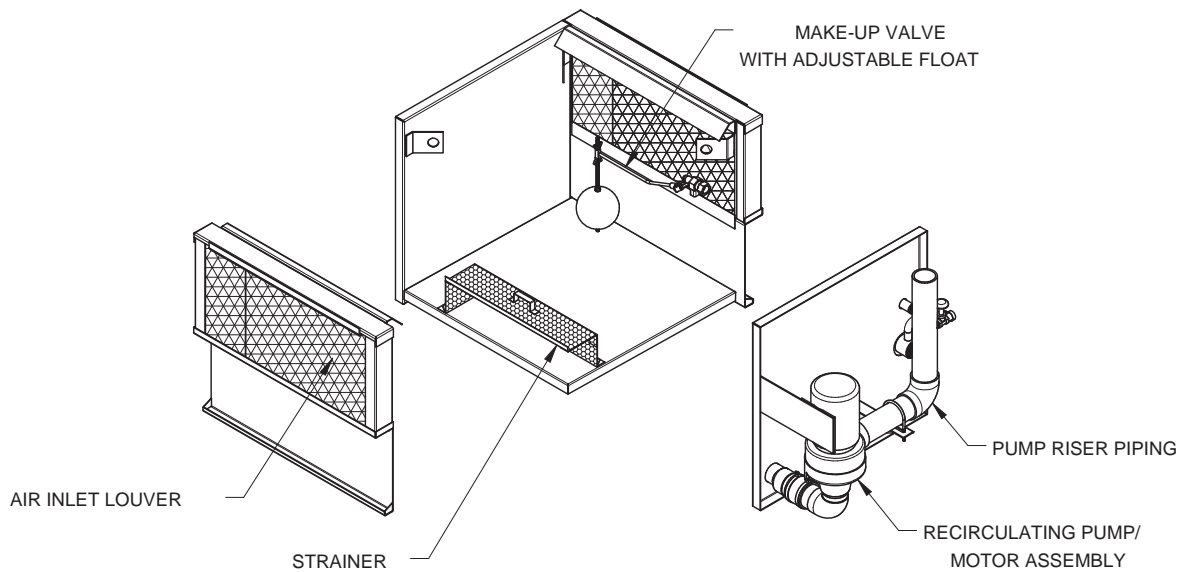
Additionally, your local EVAPCO representative or Mr. GoodTower Service Center can provide FREE unit inspections to help ensure your equipment operates at peak performance regardless of the original manufacturer!

## ATWB & eco-ATW 3' Wide Units

### FAN & COIL CASING SECTION

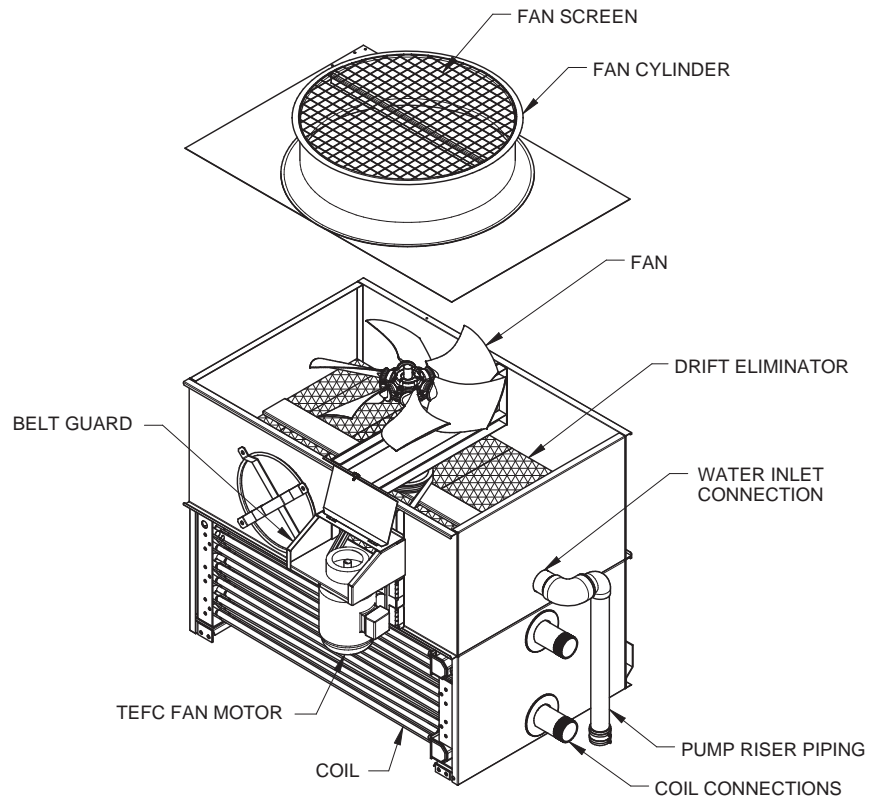


### PAN SECTION

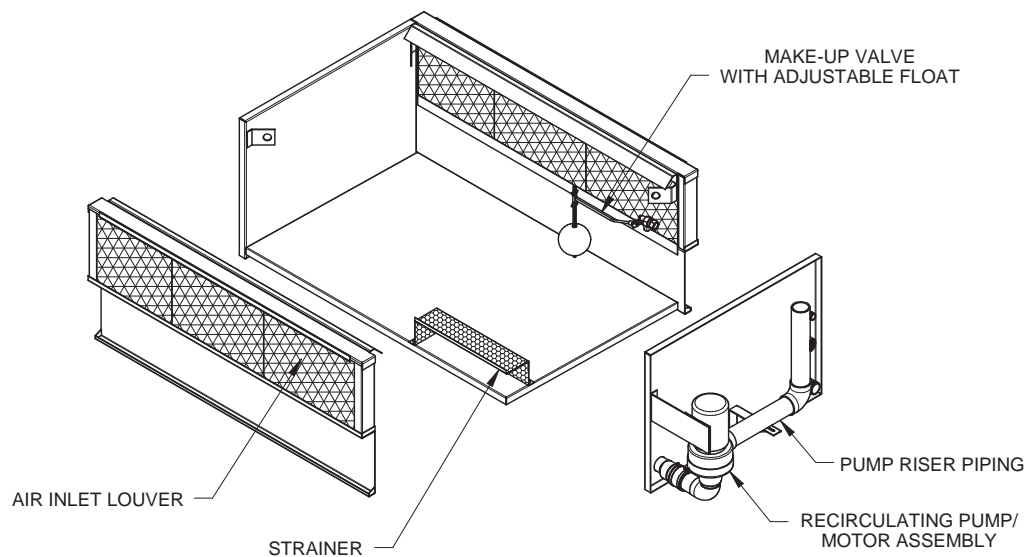


**ATC-E/ATWB/eco-ATW 4'x4' & 4'x6' Wide Units**

**FAN & COIL CASING SECTION**

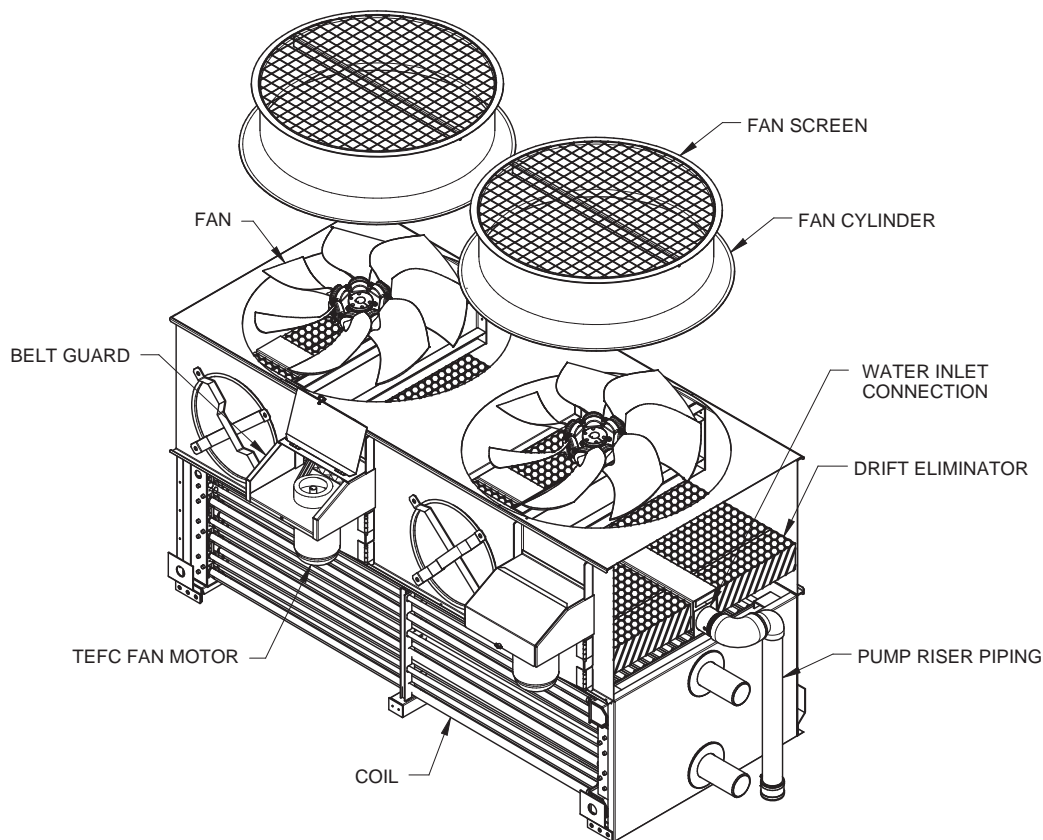


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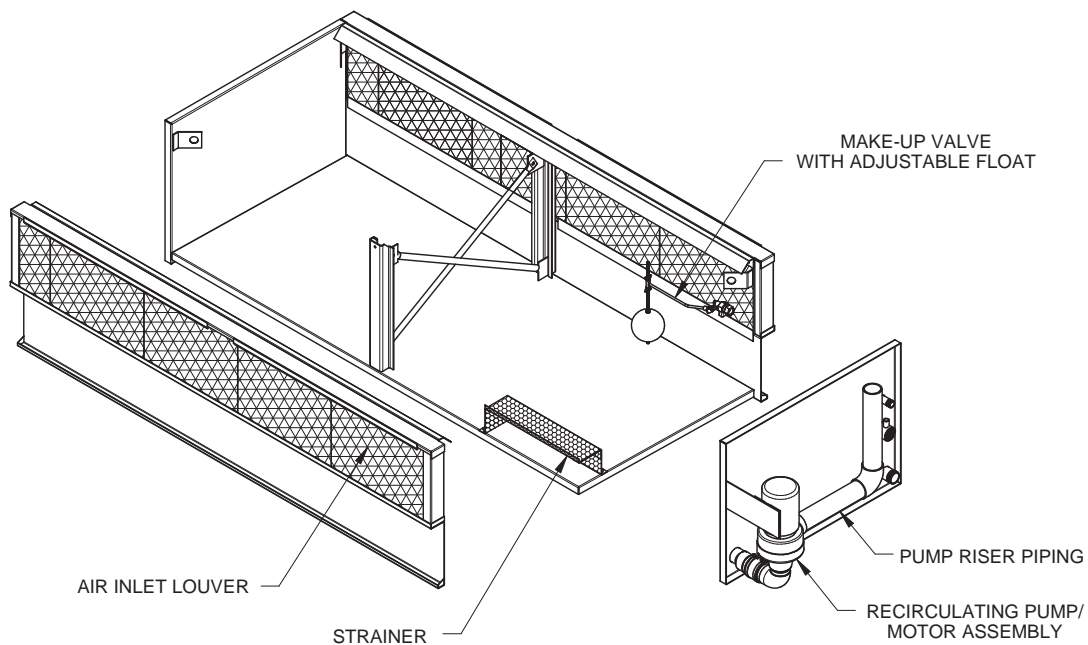


## ATC-E/ATWB/eco-ATW 4'x9' & 4'x12' Wide Units

### FAN & COIL CASING SECTION

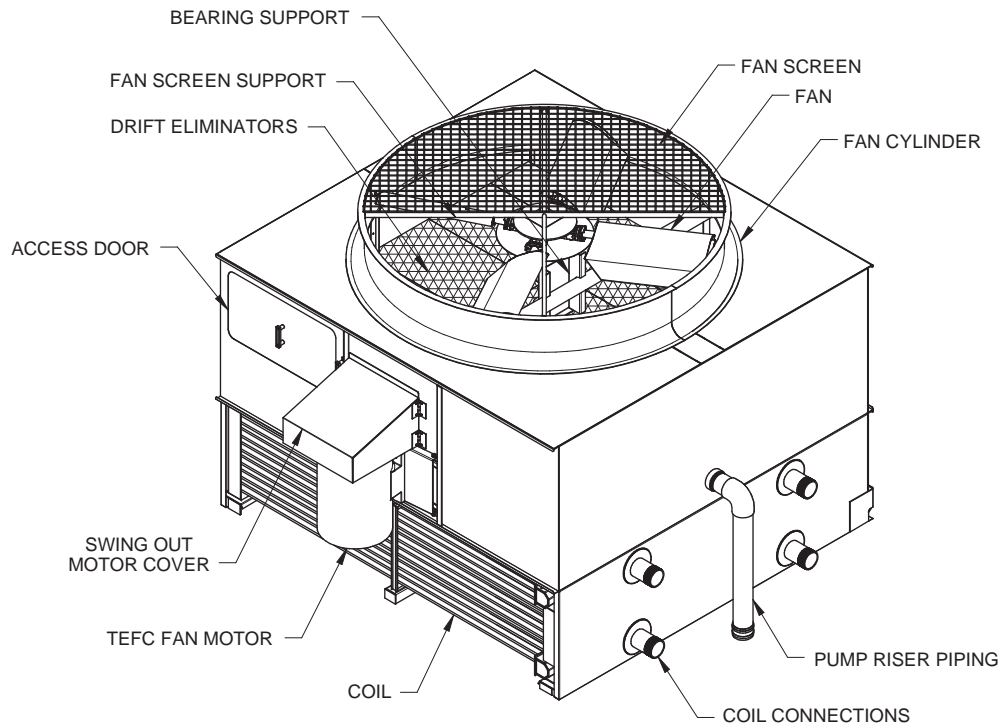


### PAN SECTION

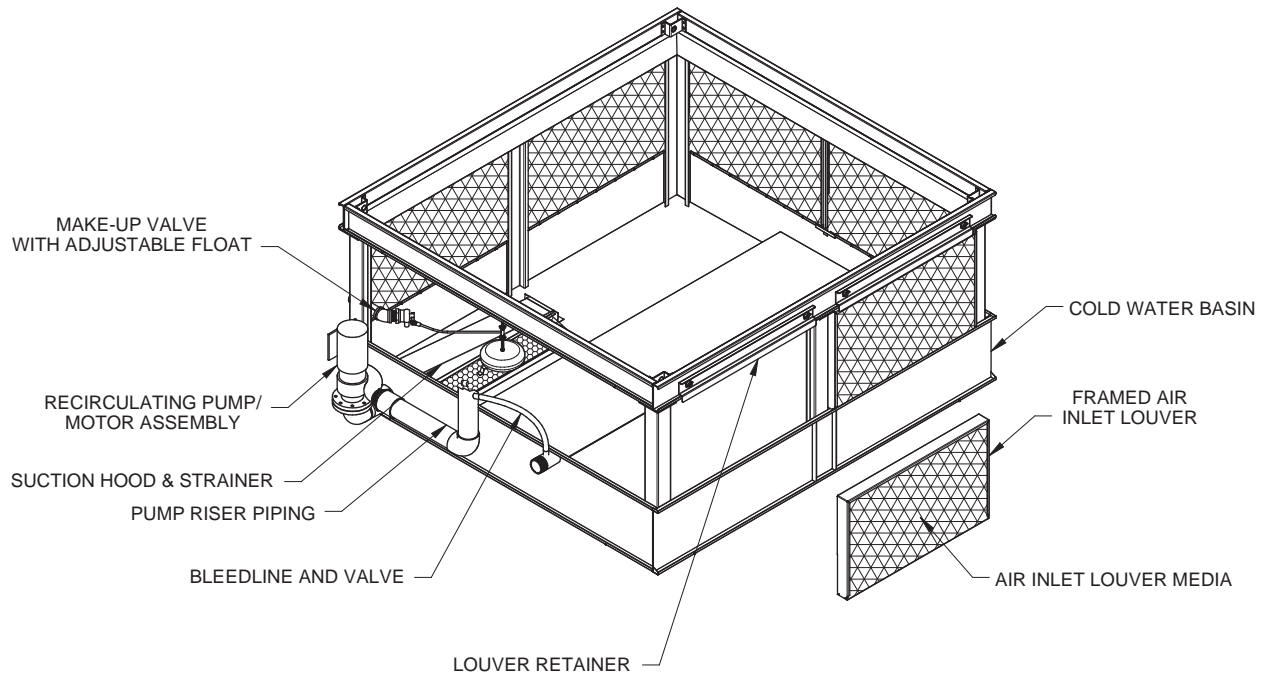


**ATC-E/ATWB/eco-ATC/eco-ATW 8' & 8.5' Wide Units**

**FAN & COIL CASING SECTION**

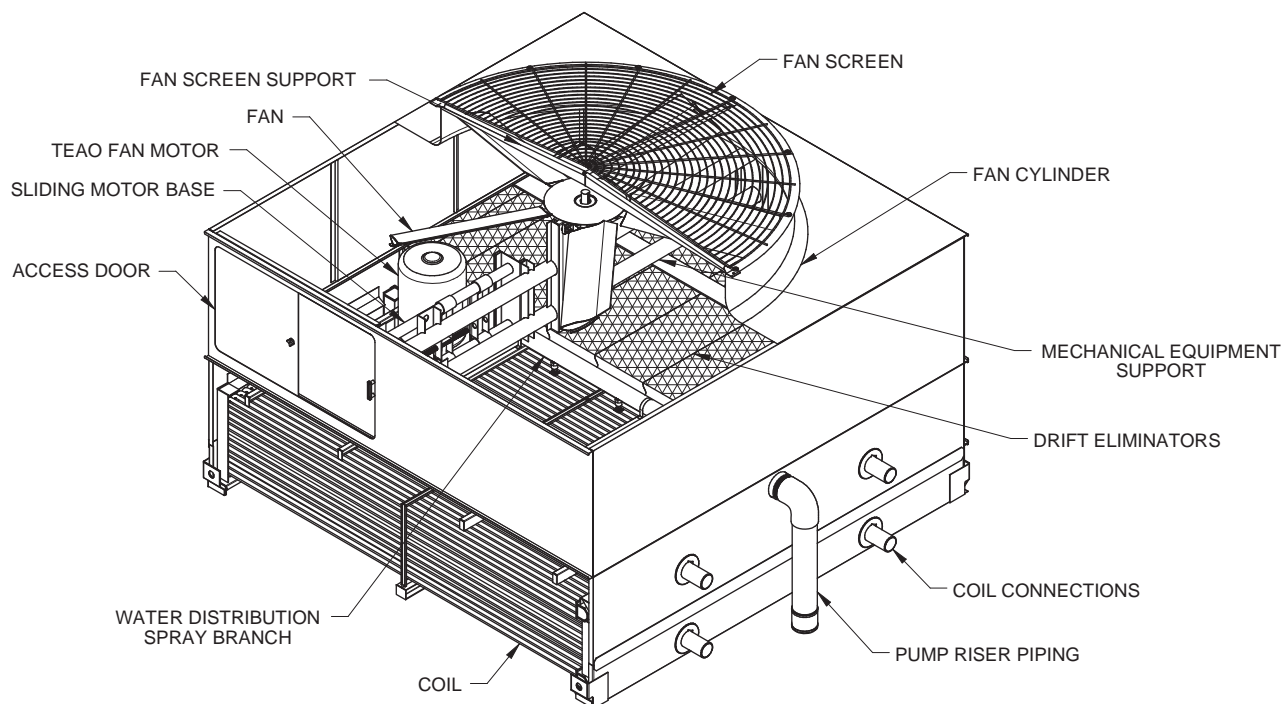


**PAN SECTION**

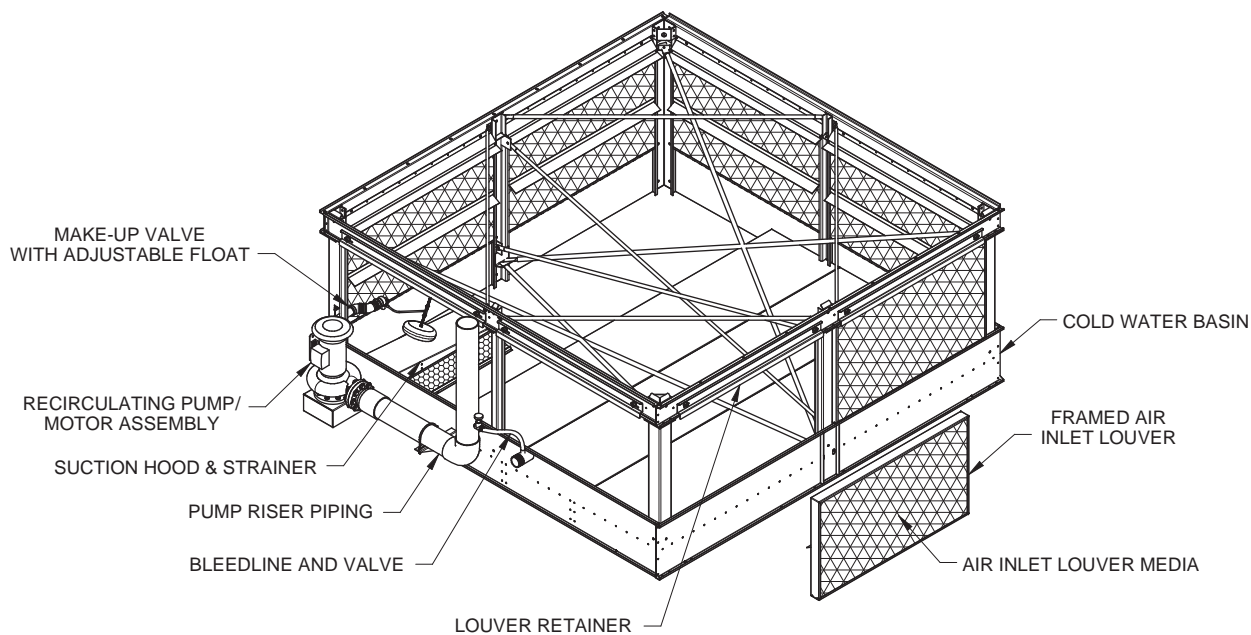


## ATC-E/ATWB/eco-ATC/eco-ATW 10' & 12' Wide Units

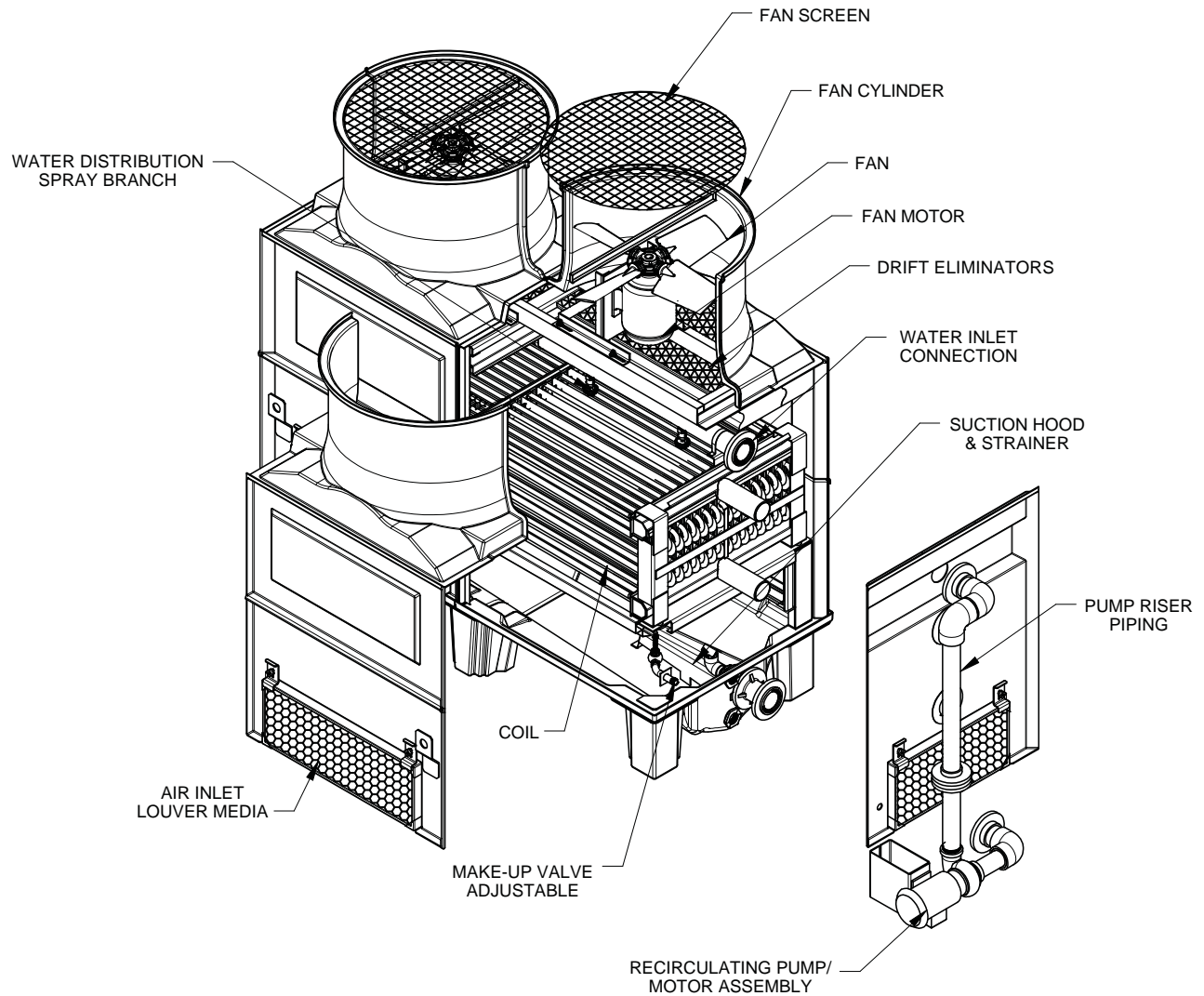
### FAN & COIL CASING SECTION



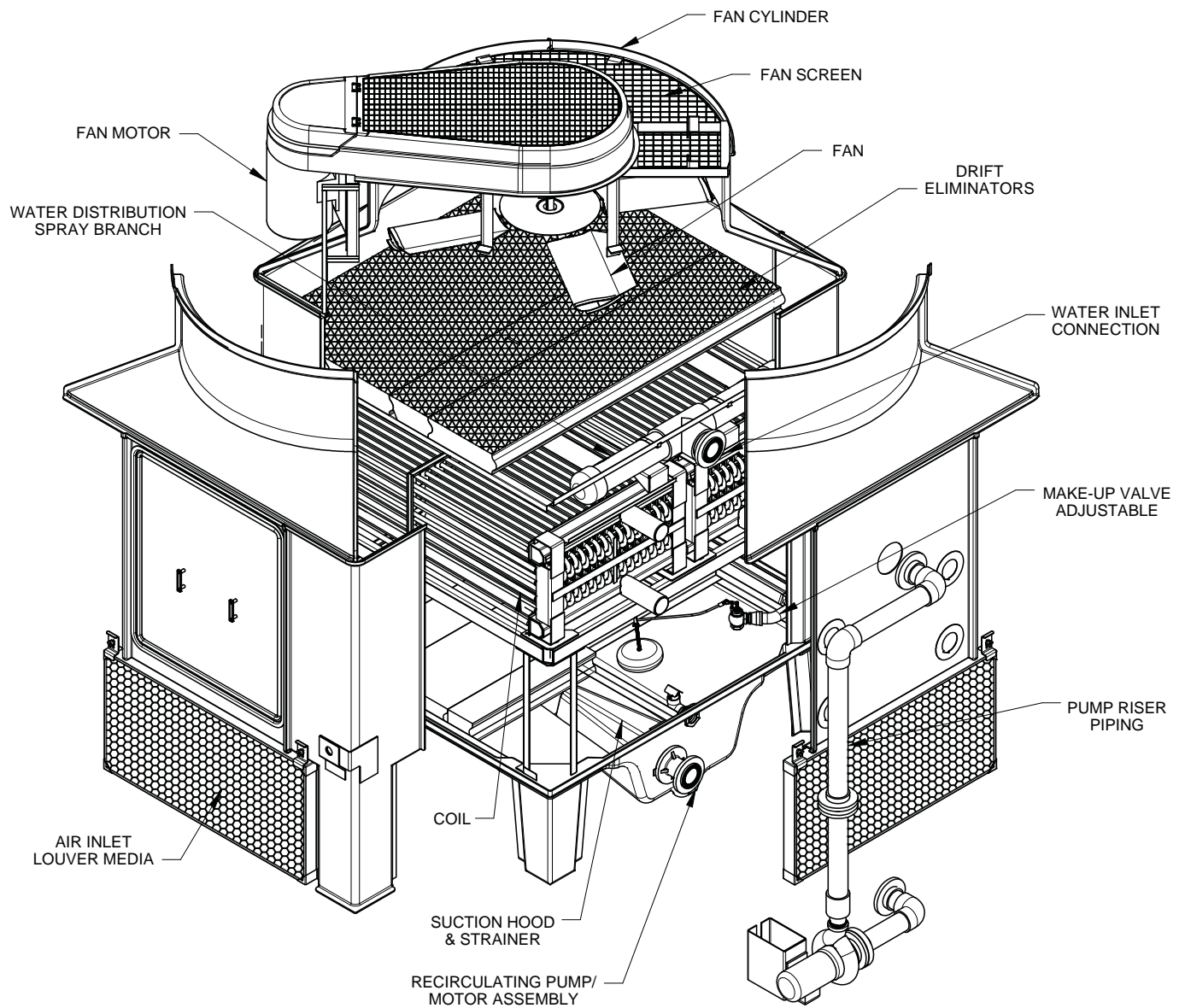
### PAN SECTION



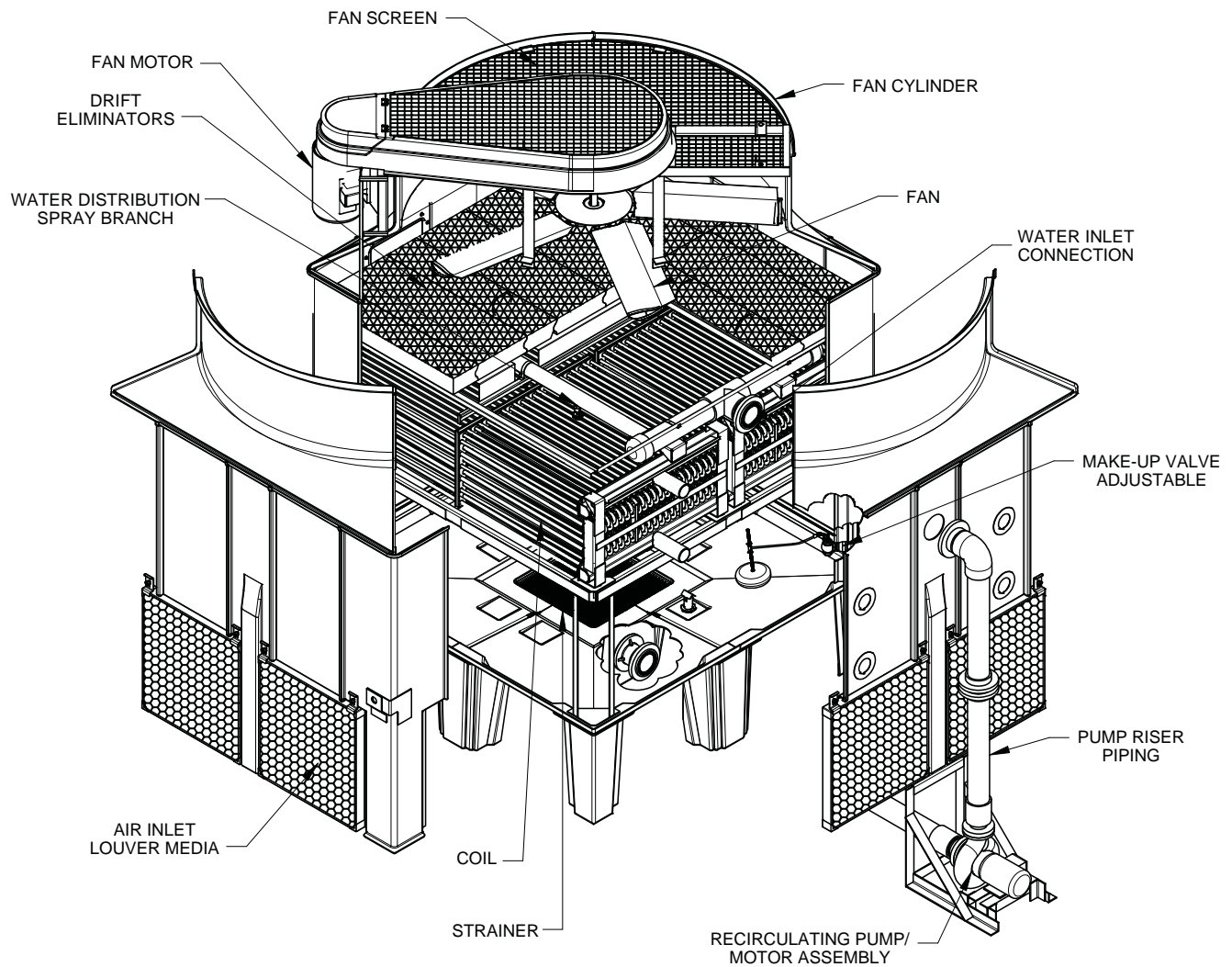
## MTW/C 4' (4' x 6' & 4' x 9') Wide Units



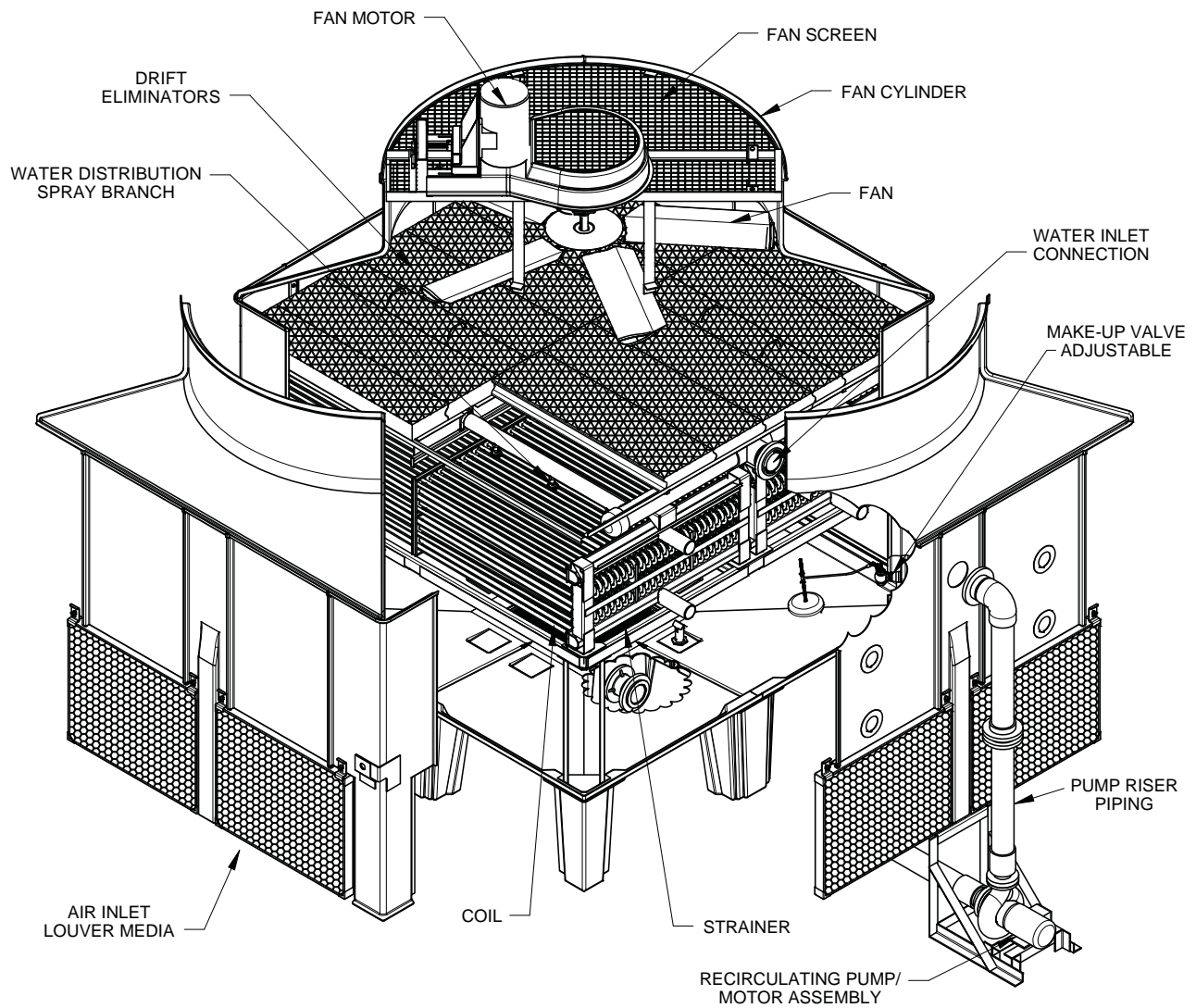
## MTW/C 8' Wide Units



## MTW/C 10' Wide Units

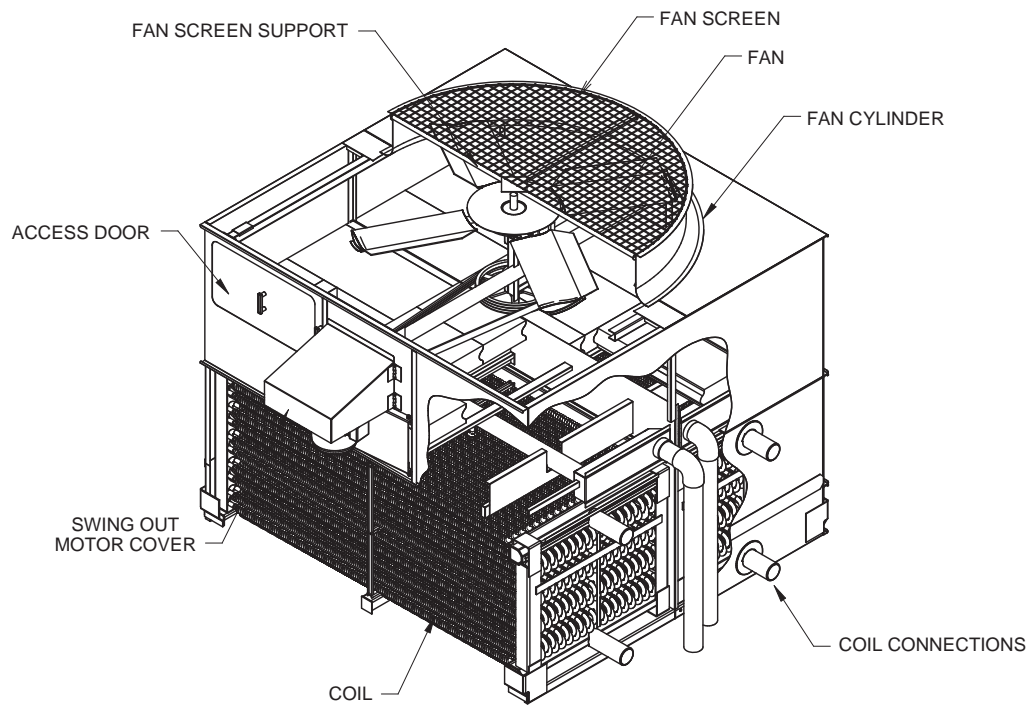


## MTW/C 12' Wide Units

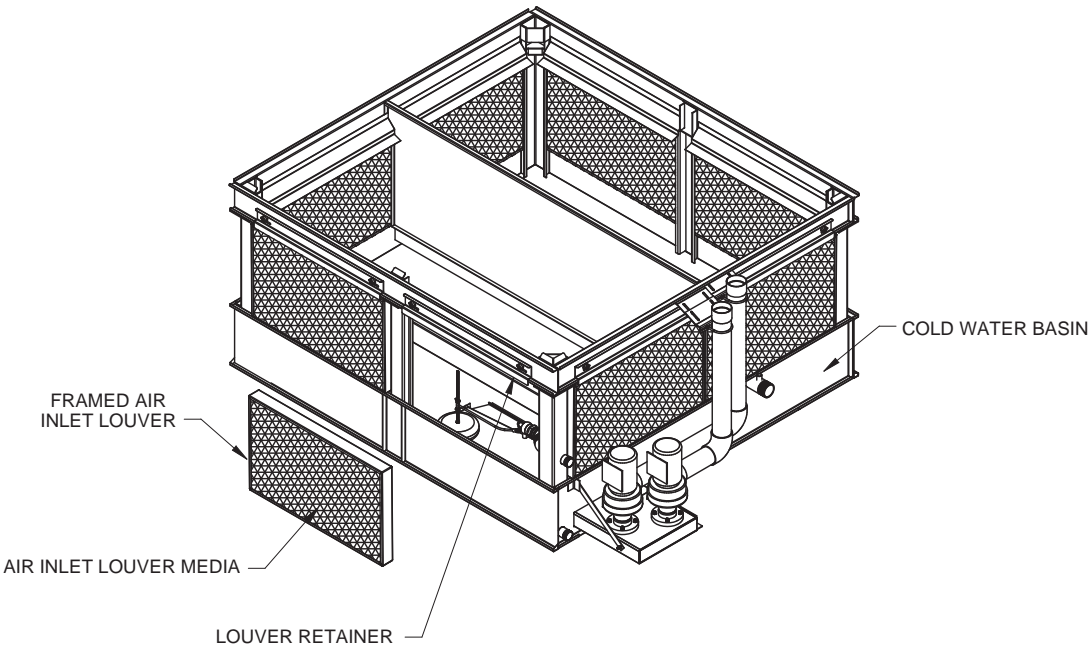


**eco-ATWE 8.5' Wide Units**

**FAN & COIL CASING SECTION**

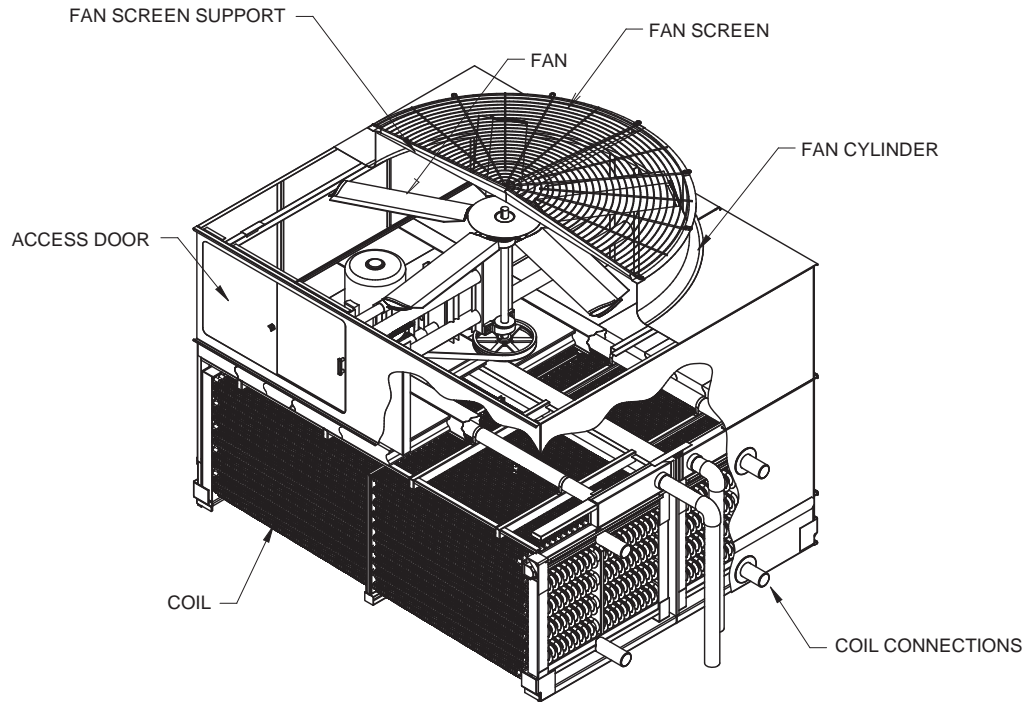


**PAN SECTION**

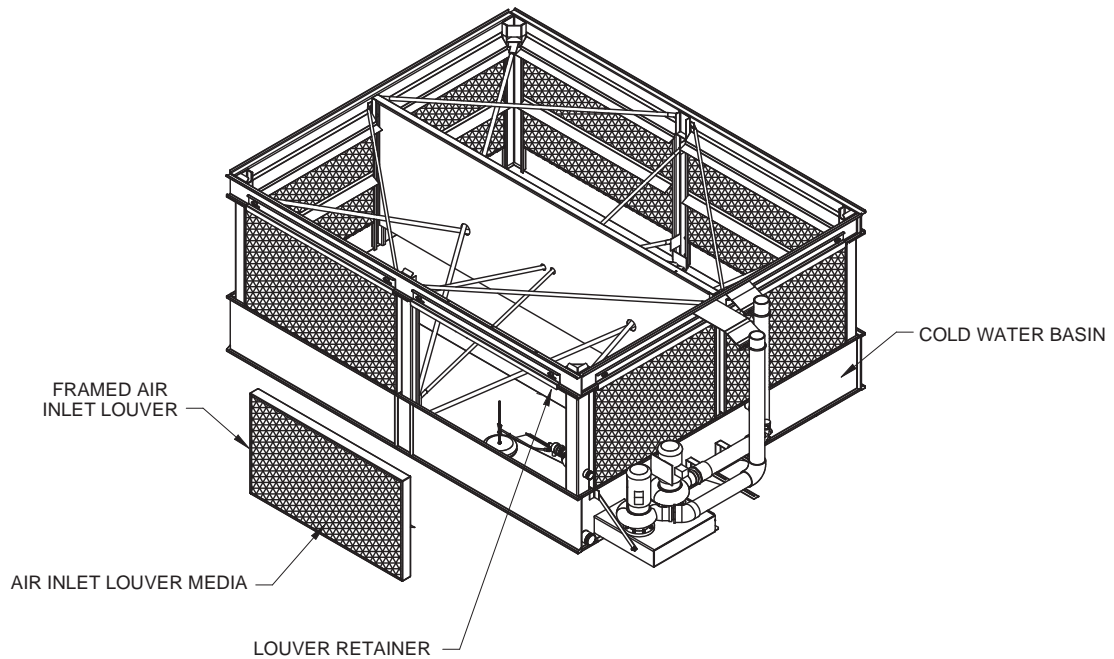


## eco-ATWE 10' Wide Units

### FAN & COIL CASING SECTION

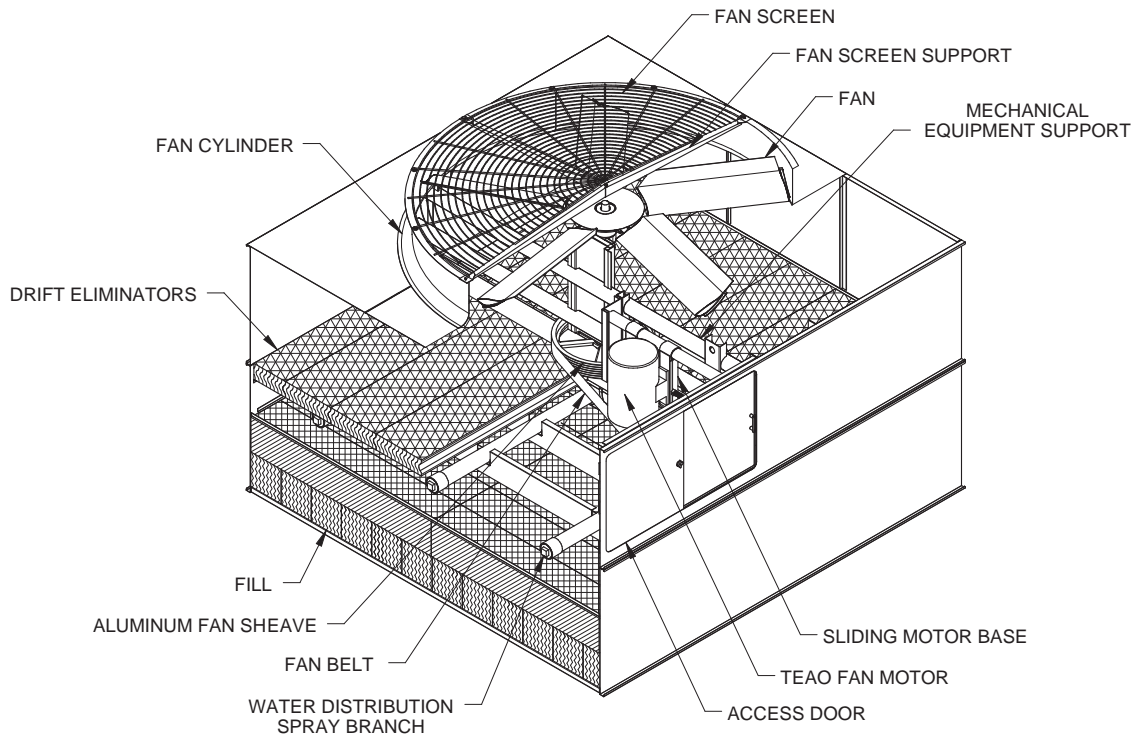


### PAN SECTION

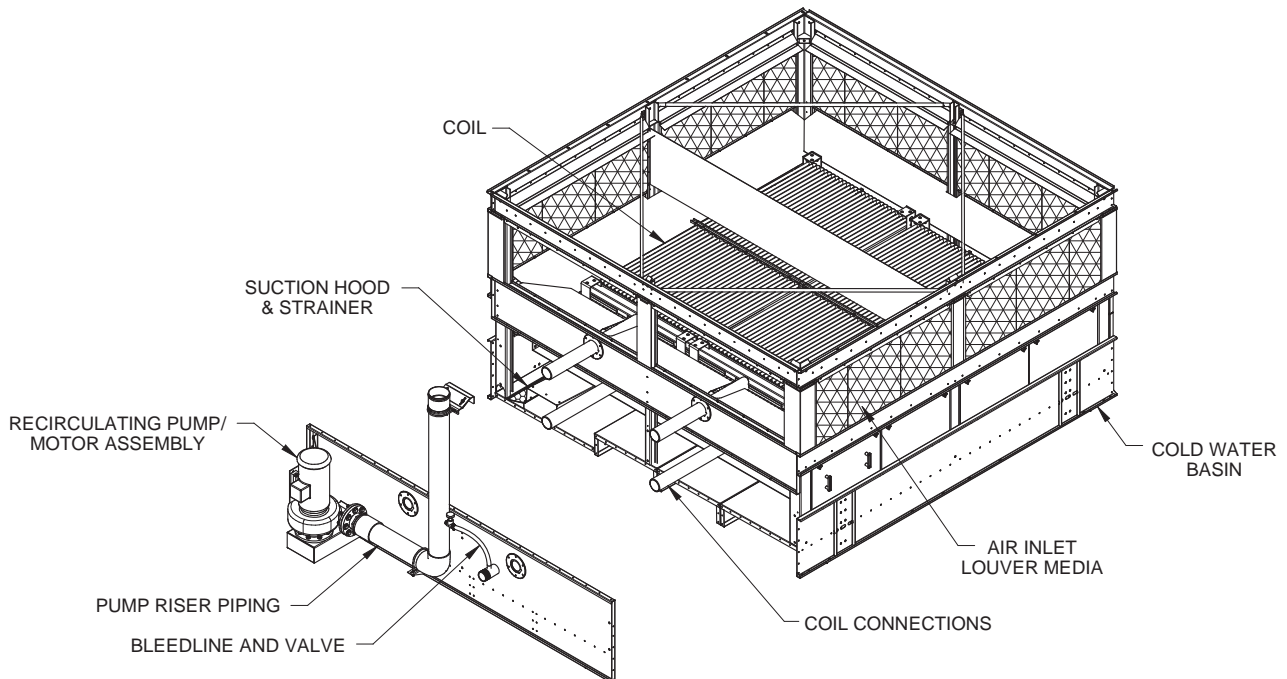


## ESWA 12' Wide Units

### FAN & FILL CASING SECTION

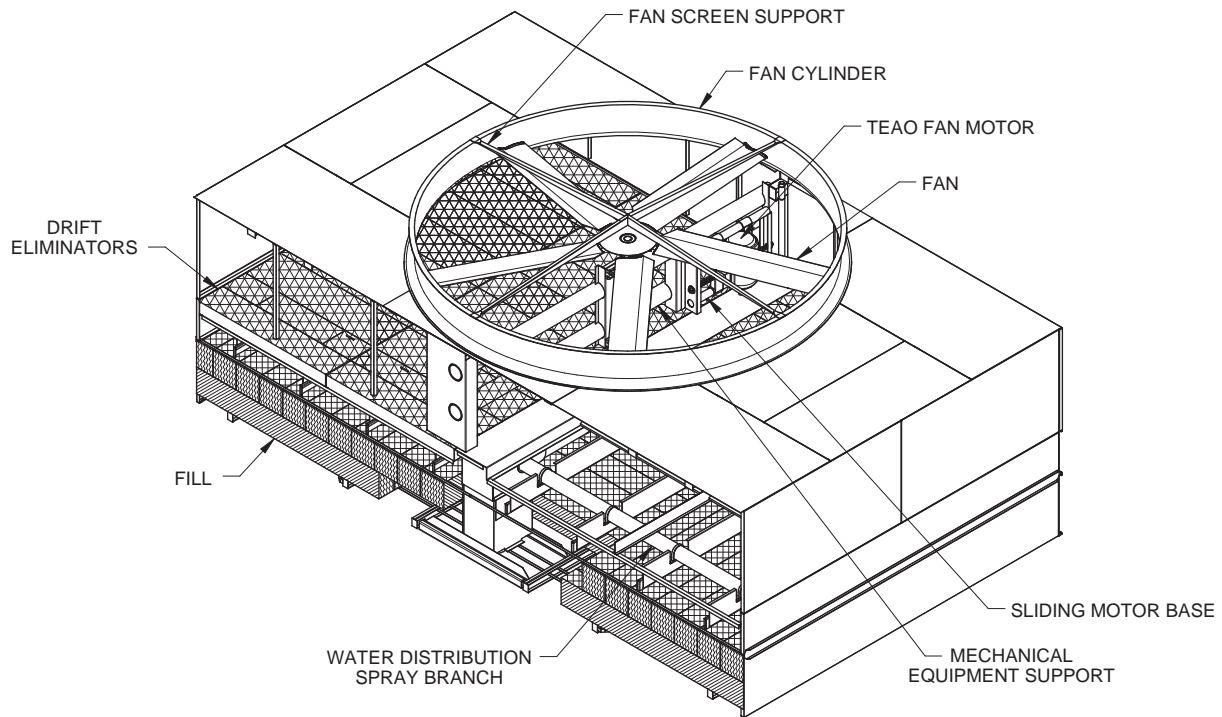


### PAN SECTION

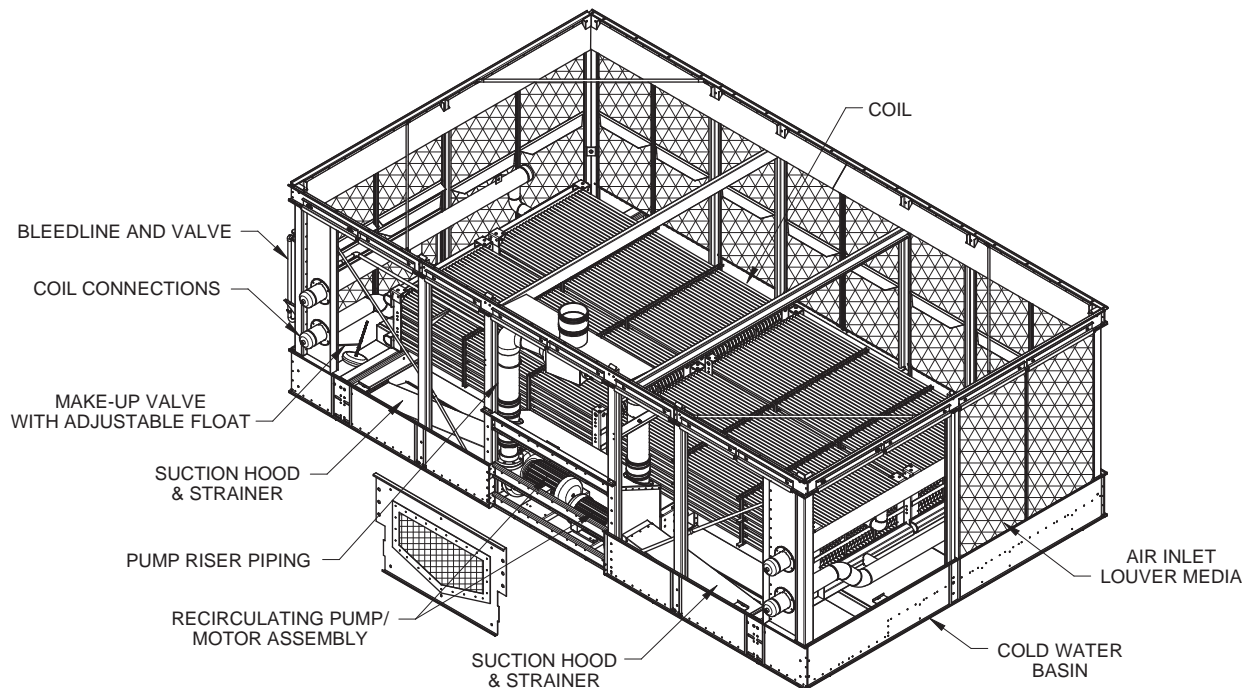


## ESWA 14' Wide Units

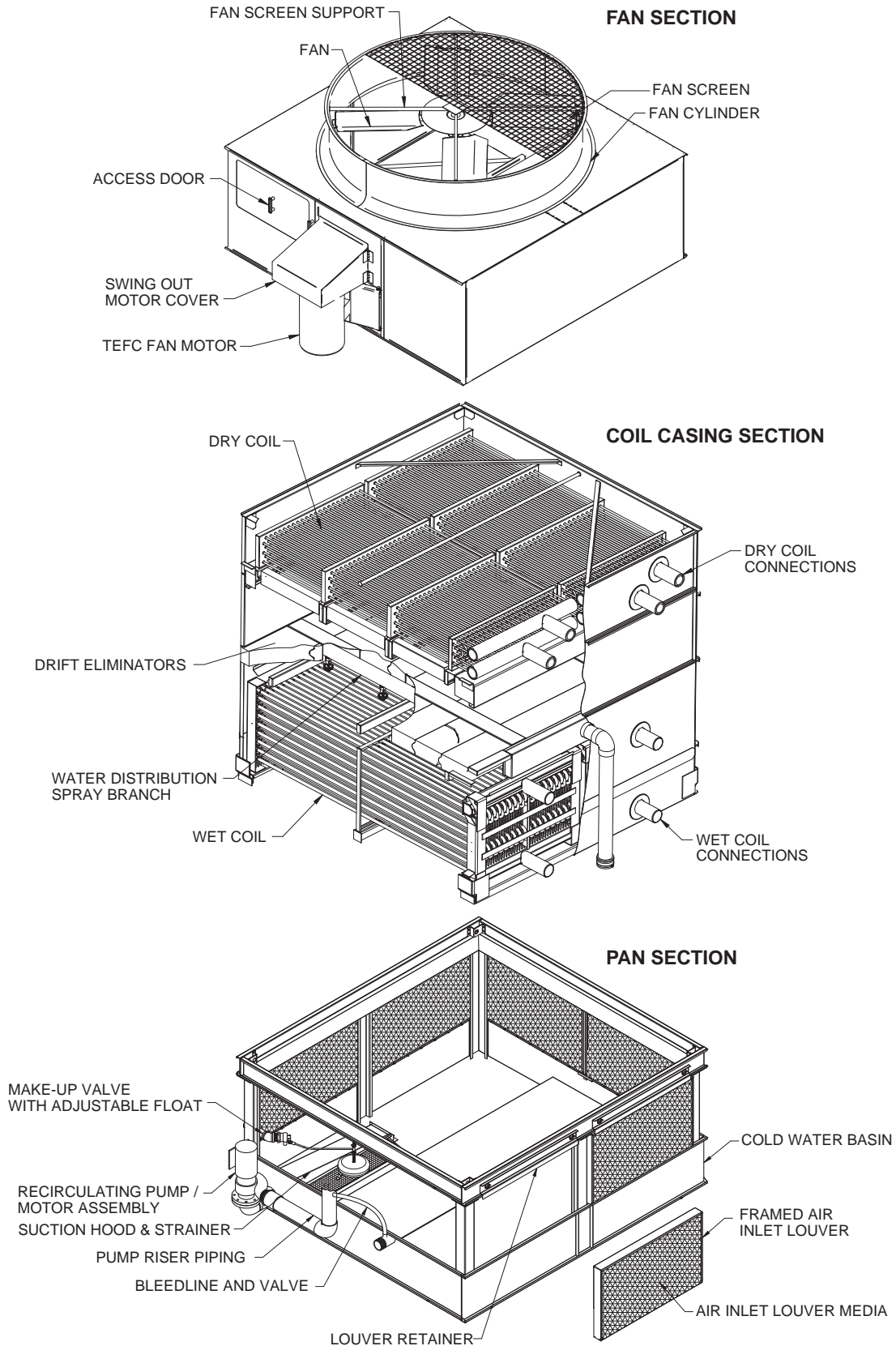
### FAN & FILL CASING SECTION



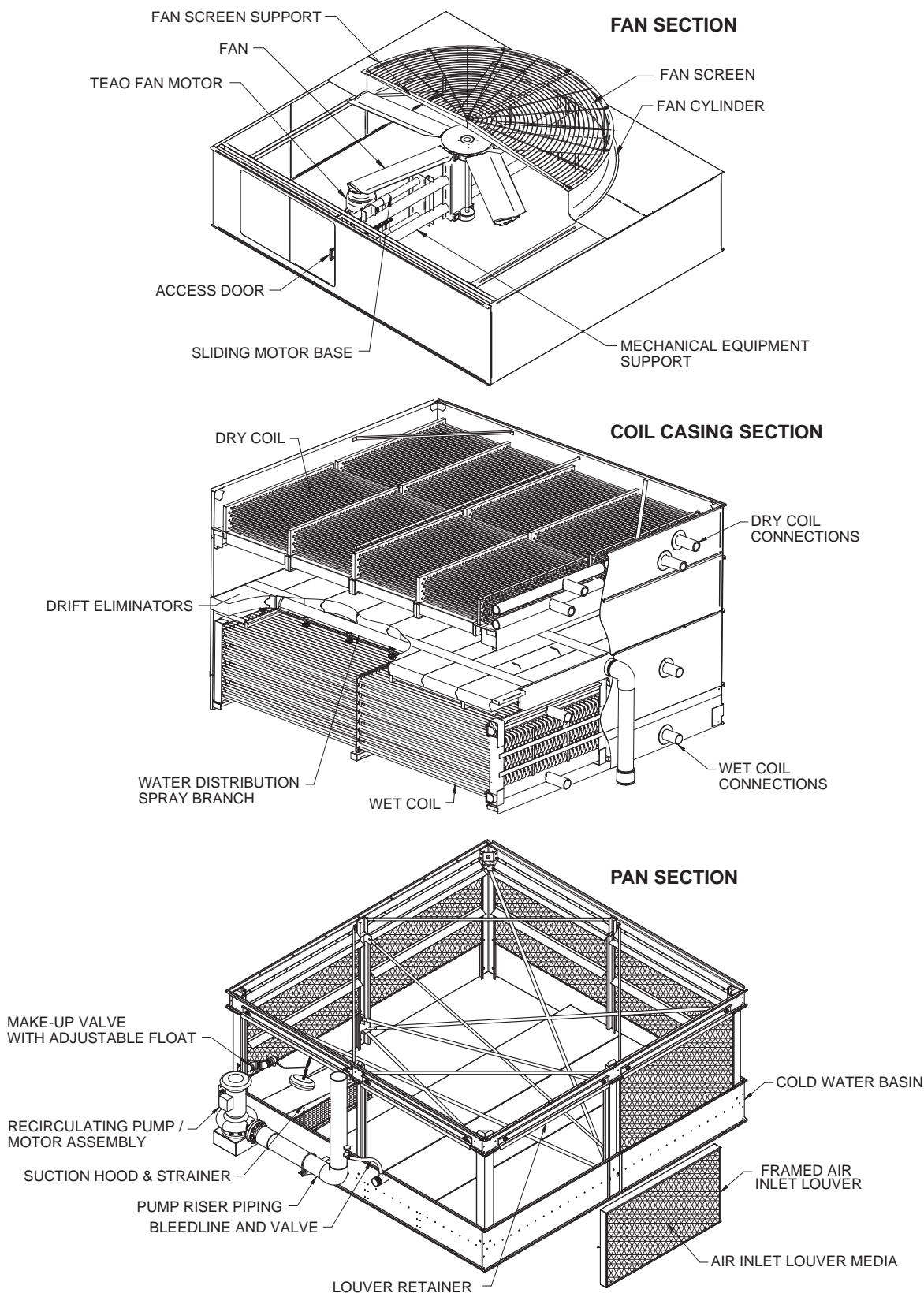
### PAN SECTION



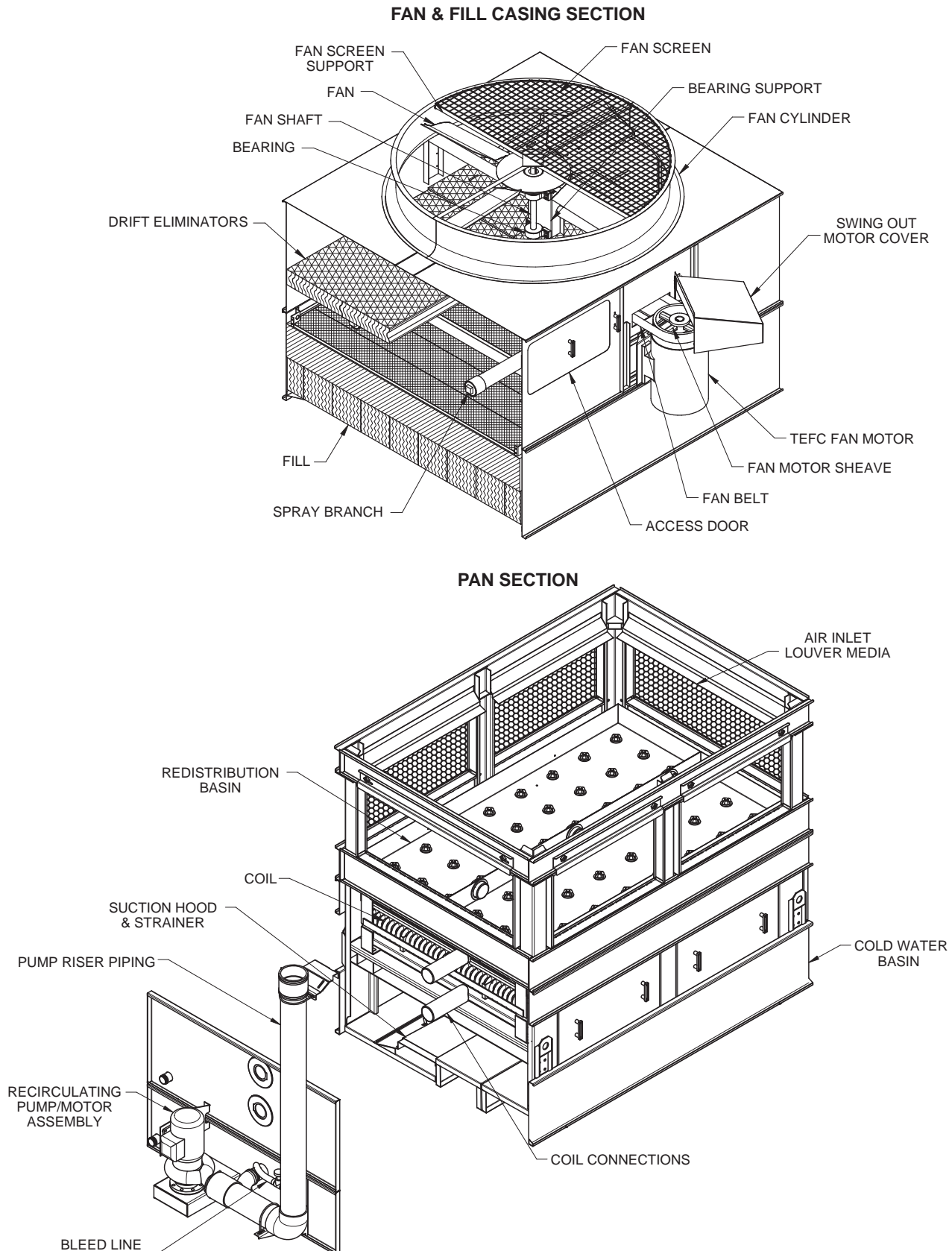
## eco-ATWB-H 8.5' Wide Units



## eco-ATWB-H 10' and 12' Wide Units

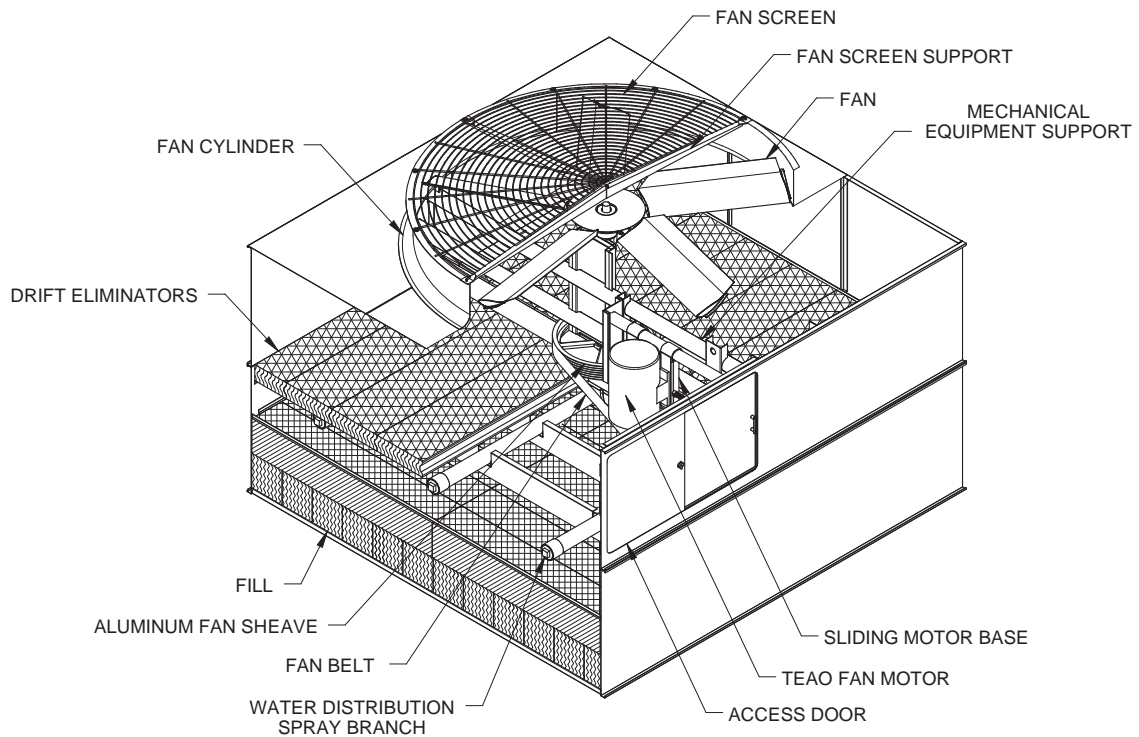


## ESWB 8.5' Wide Units

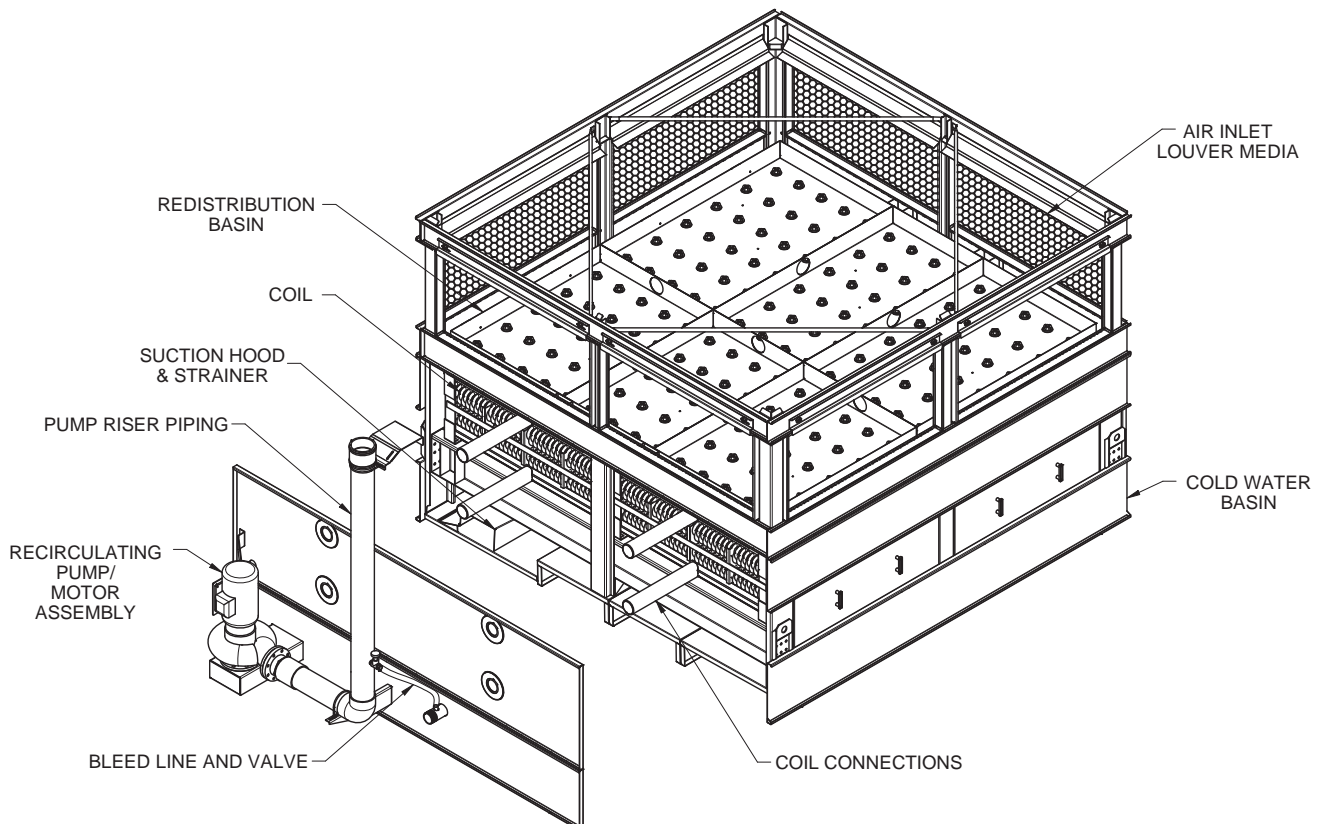


## ESWB 12' Wide Units

## FAN & FILL CASING SECTION

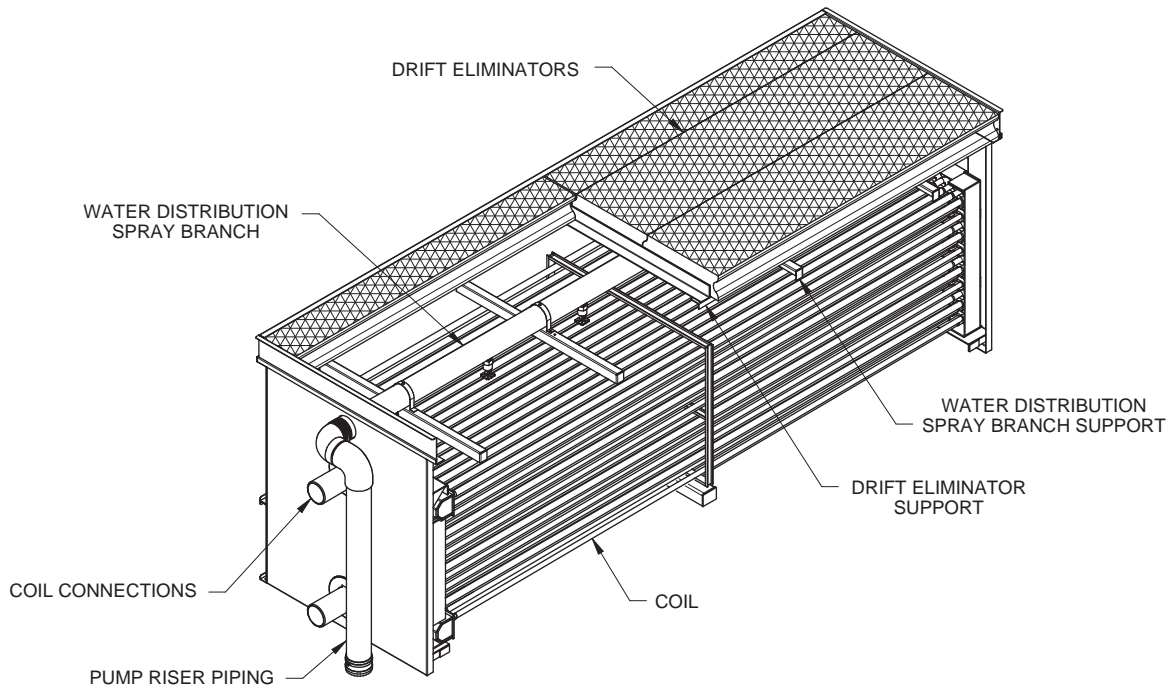


## PAN SECTION

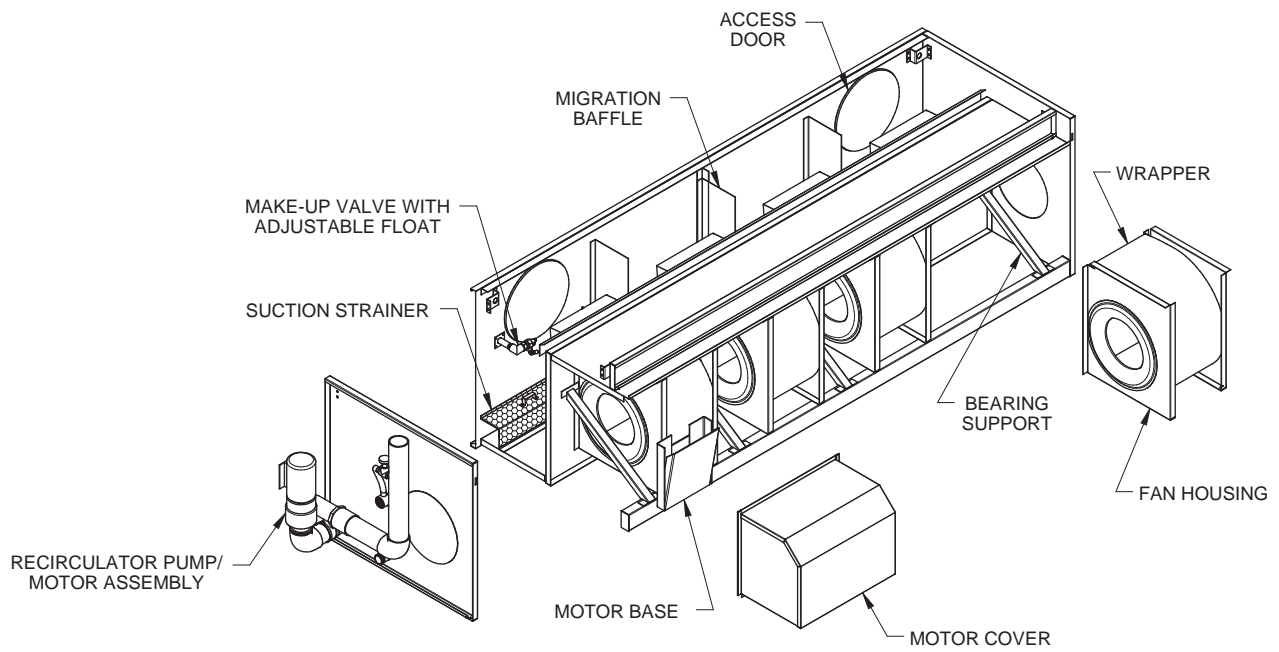


## LSC-E/LSWE/eco-LSWE 4' Wide Units

### COIL CASING SECTION

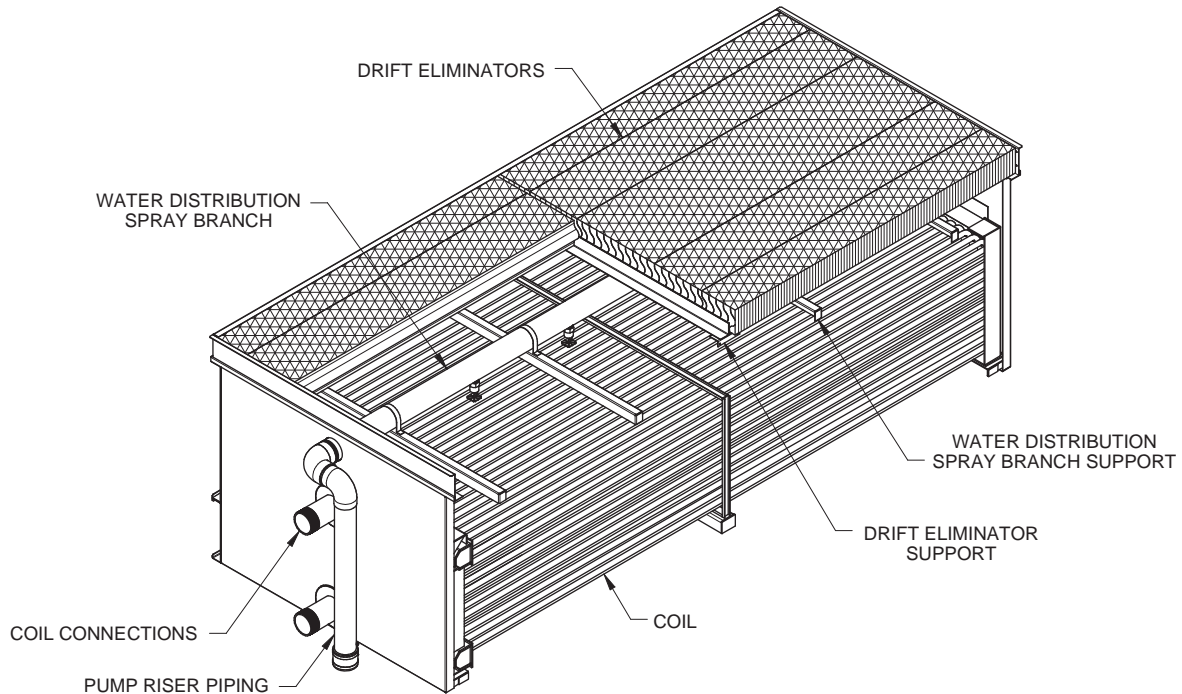


### PAN SECTION

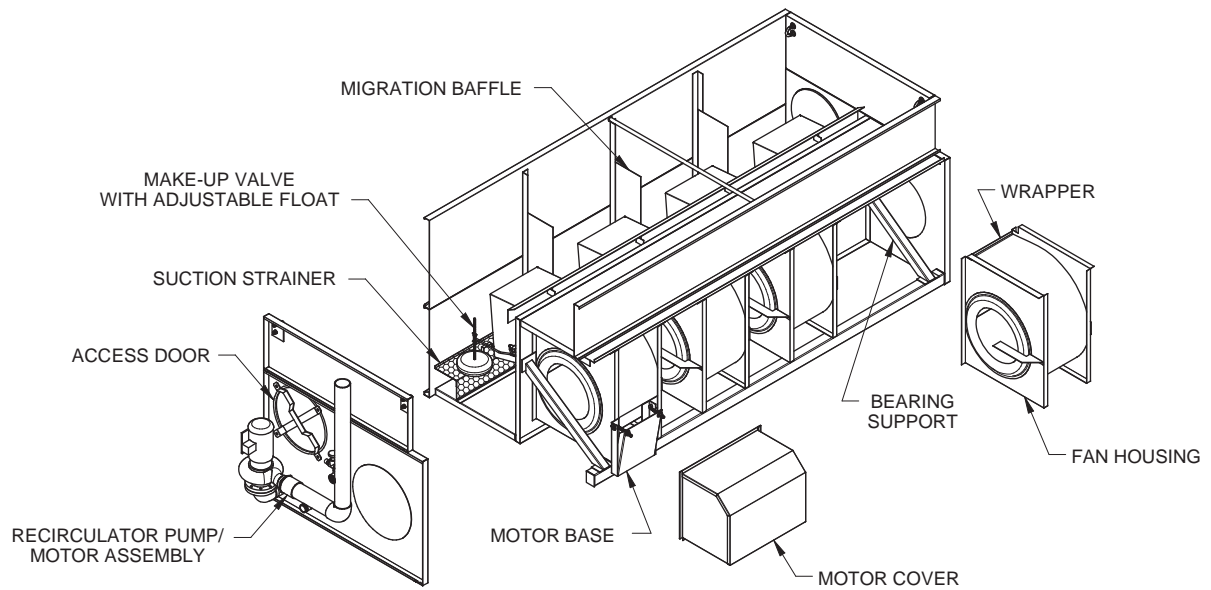


## LSC-E/LSWE/eco-LSWE 5' Wide Units

### COIL CASING SECTION

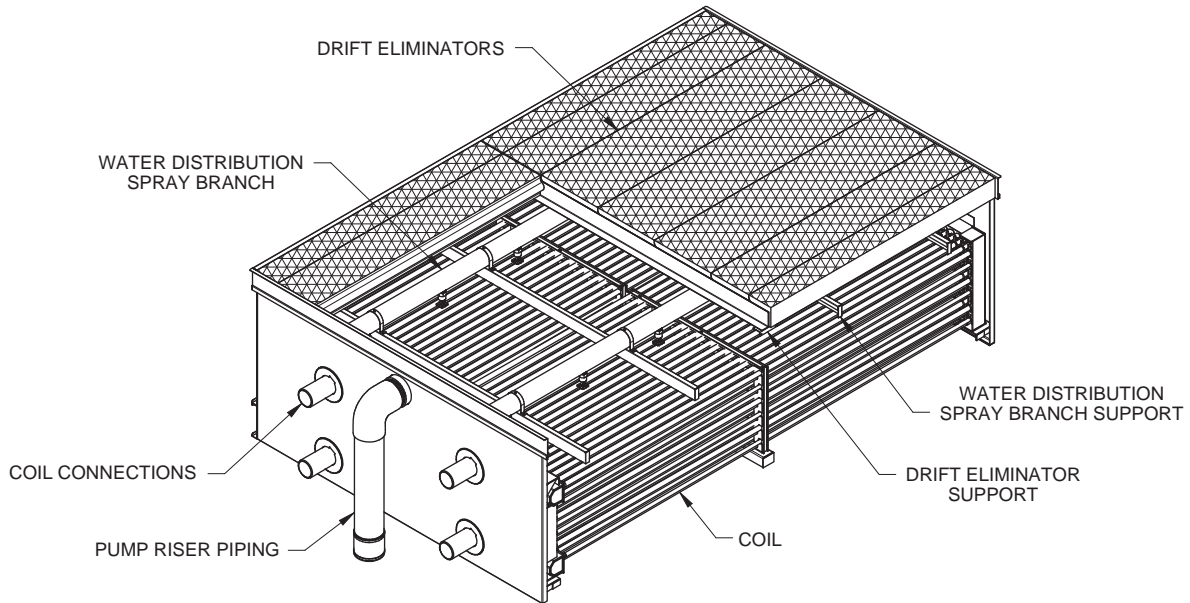


### PAN SECTION

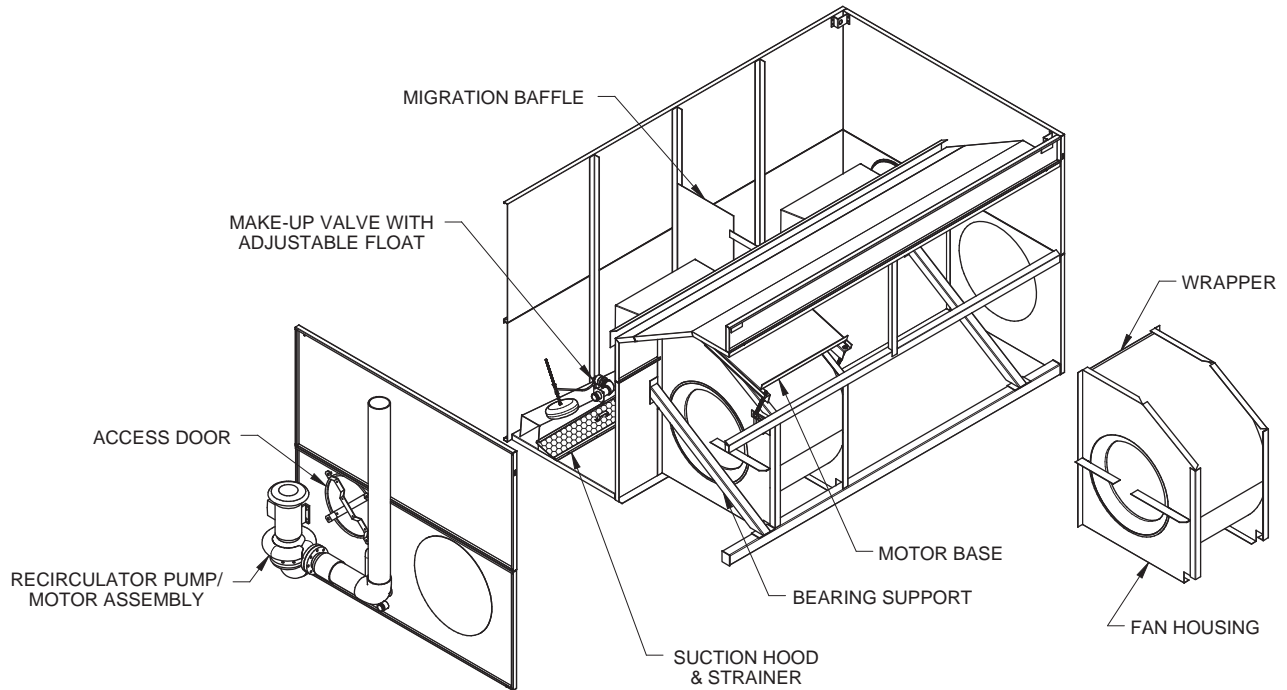


## LSC-E/LSWE/eco-LSWE 8' Wide Units (Single Side Fans)

### COIL CASING SECTION

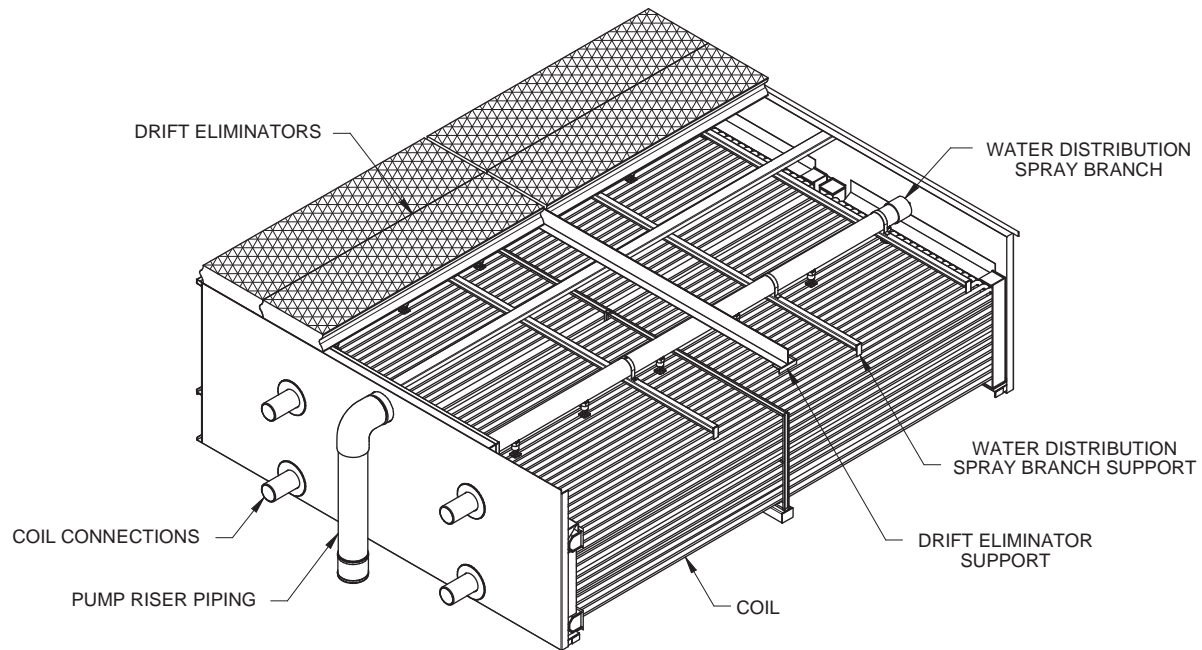


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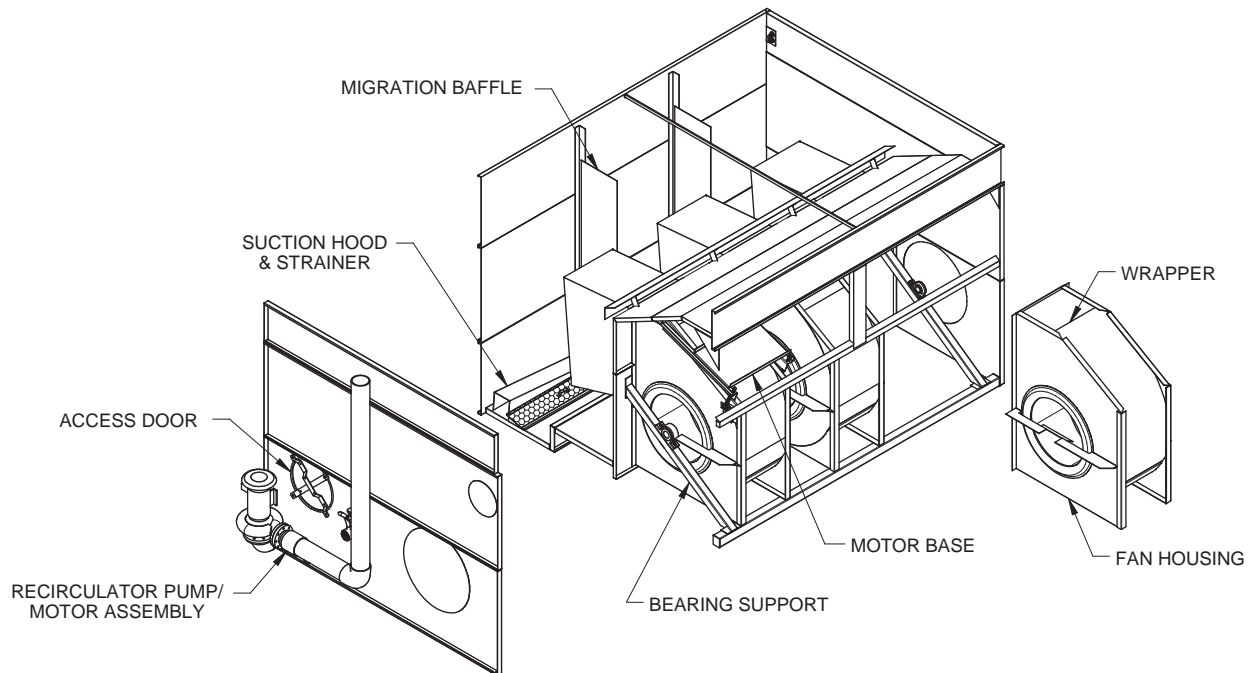


## LSC-E/LSWE/eco-LSWE 10' Wide Units

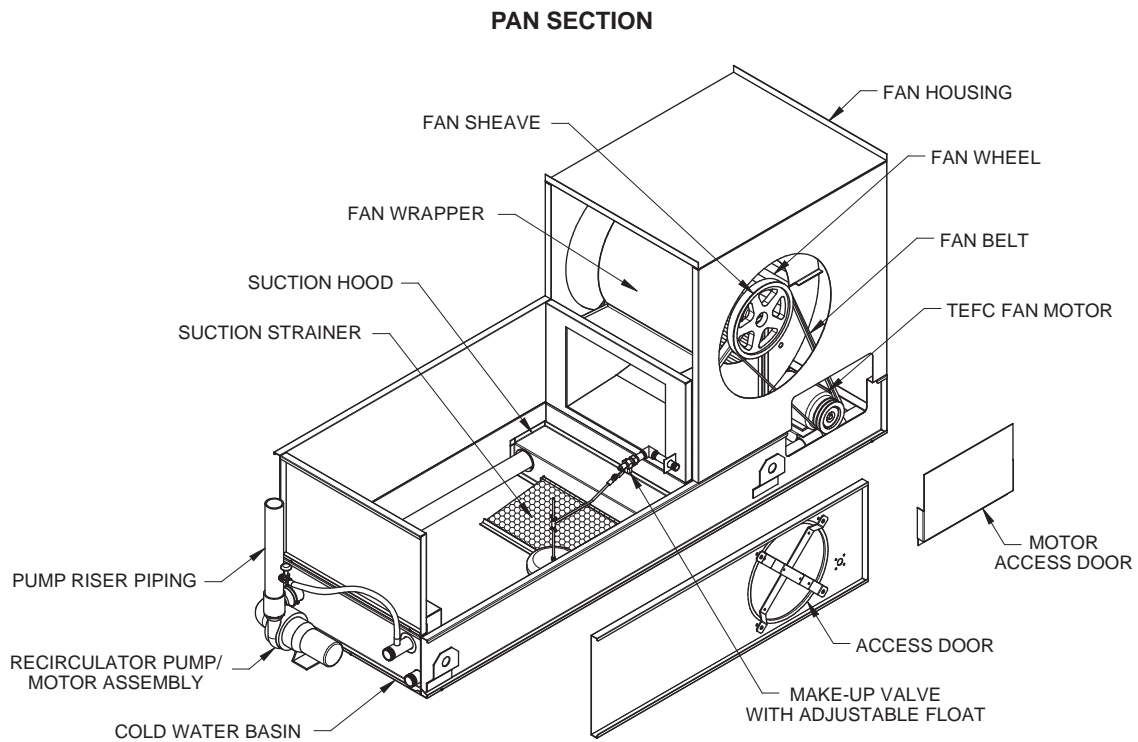
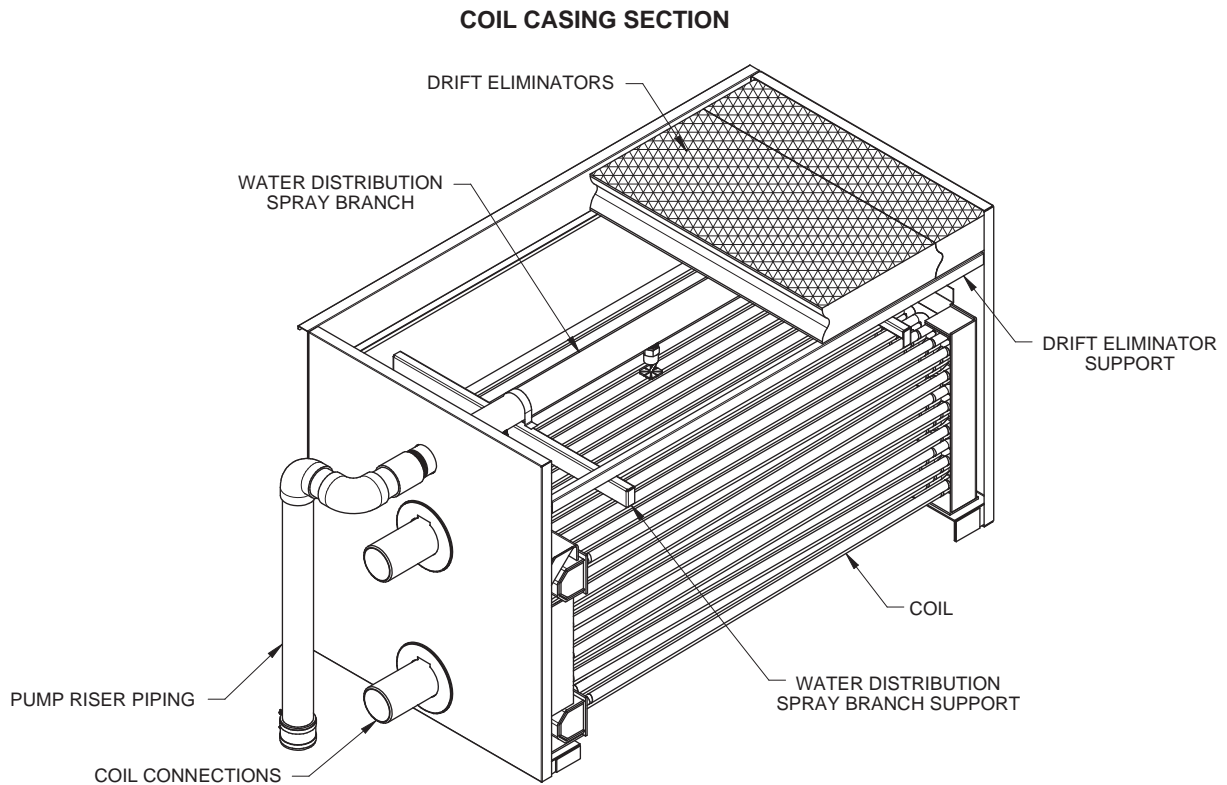
### COIL CASING SECTION



### PAN SECTION

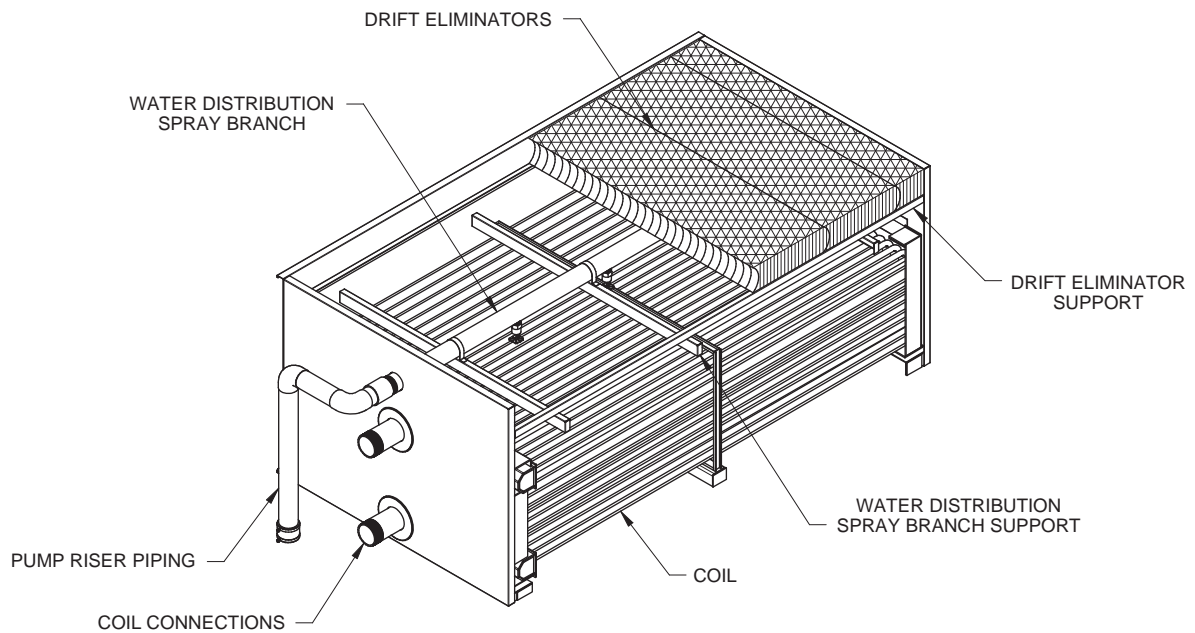


## LRC/LRWB/eco-LRWB 3' Wide Units

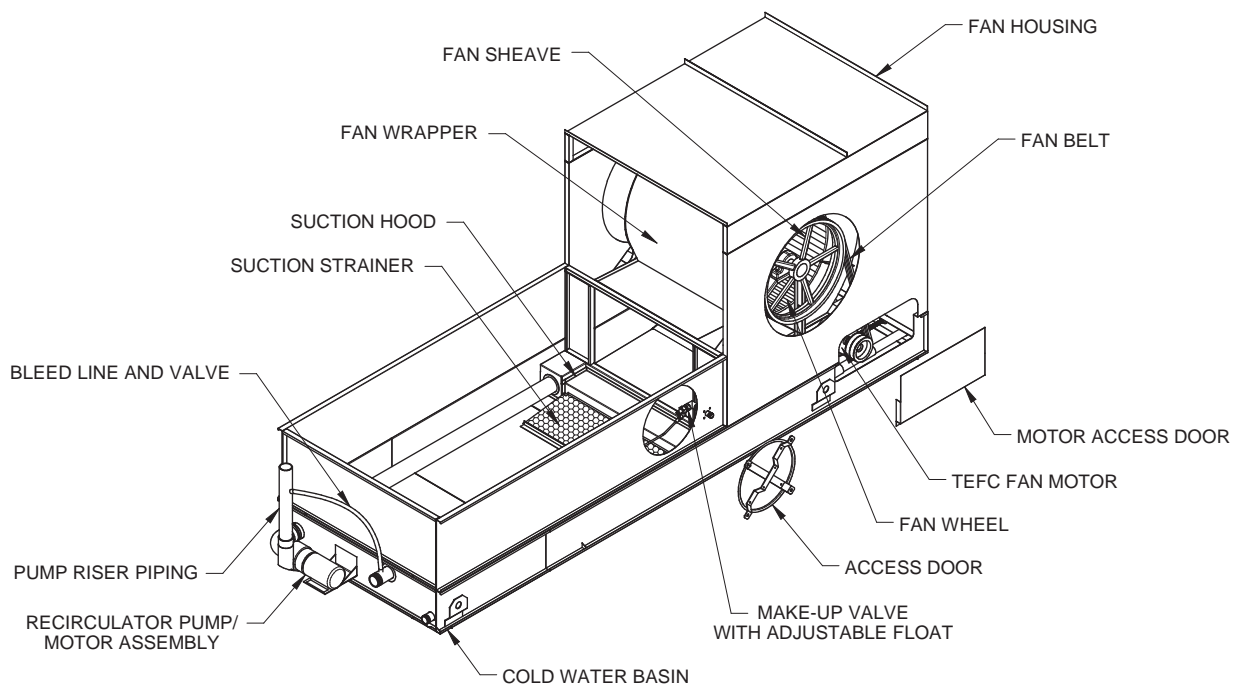


## LRC/LRWB/eco-LRWB 5' Wide Units

### COIL CASING SECTION

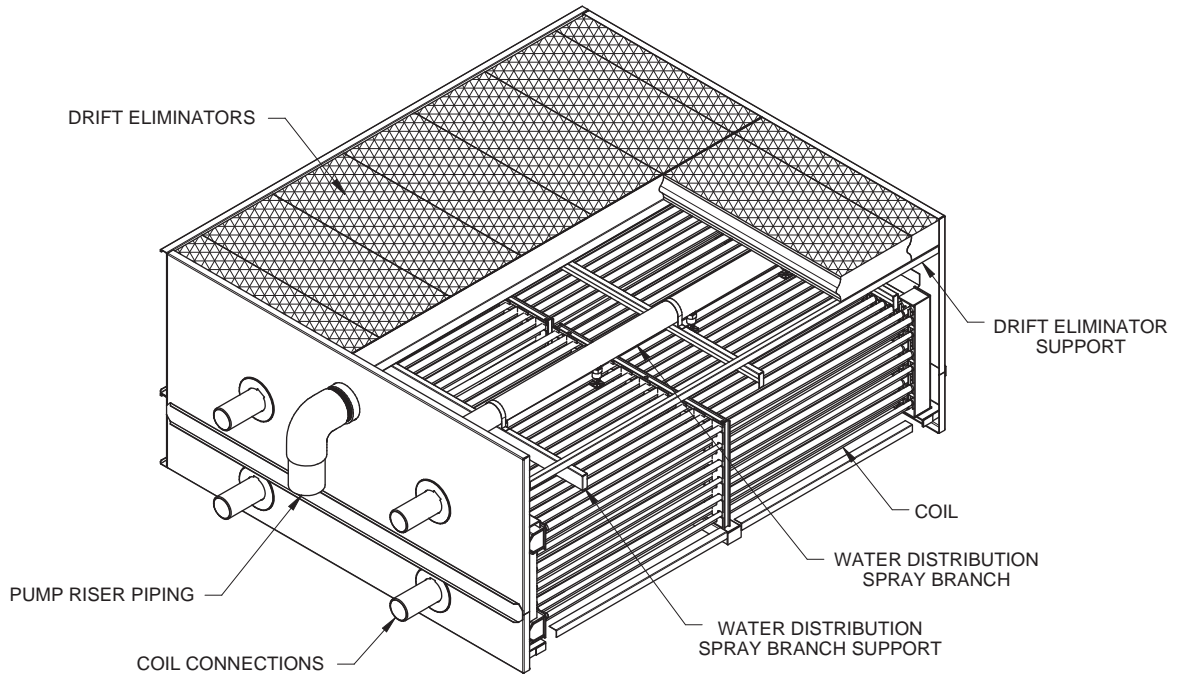


### PAN SECTION

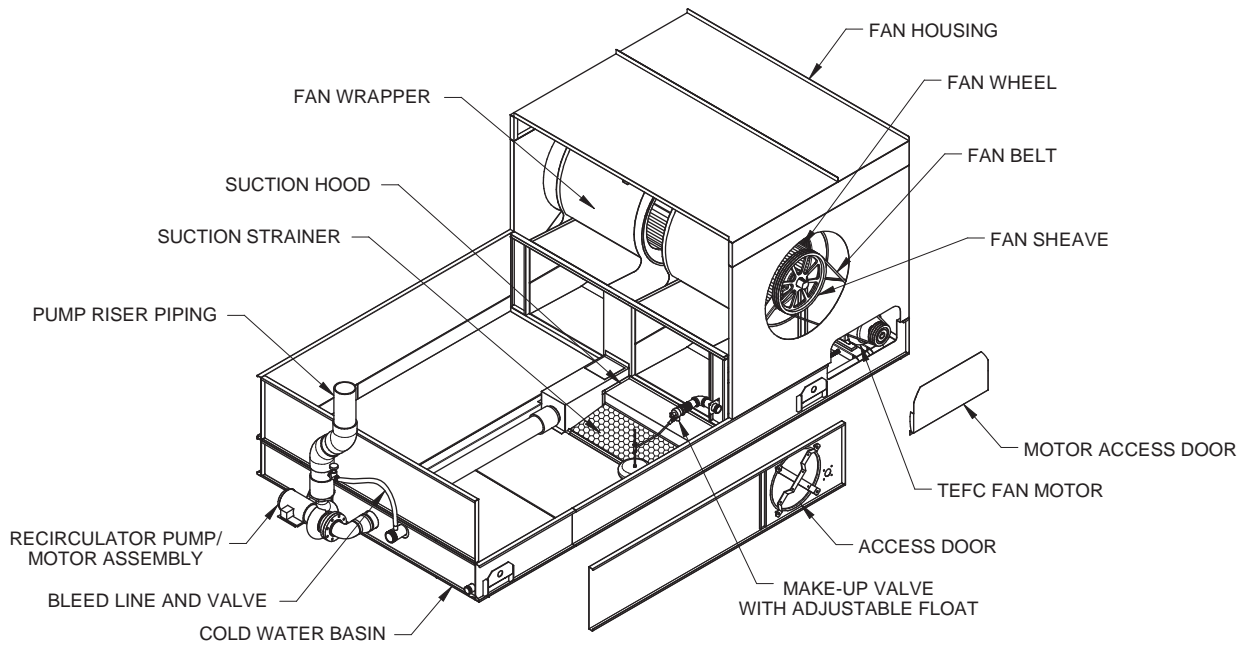


## LRC/LRWB/eco-LRWB 8' Wide Units

### COIL CASING SECTION

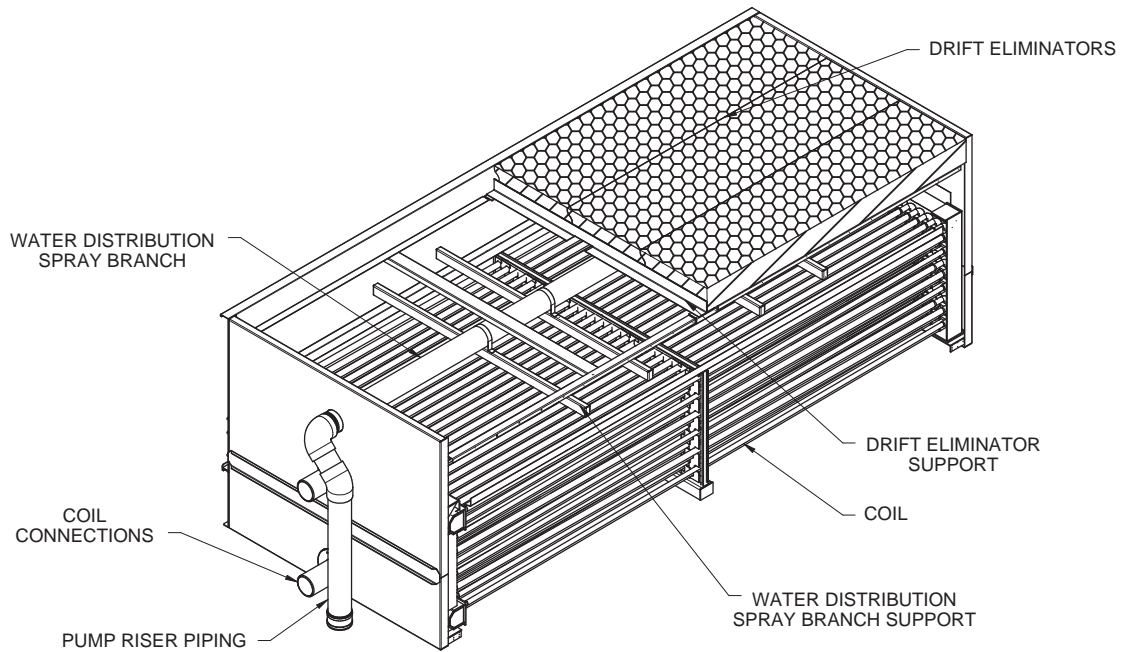


### PAN SECTION

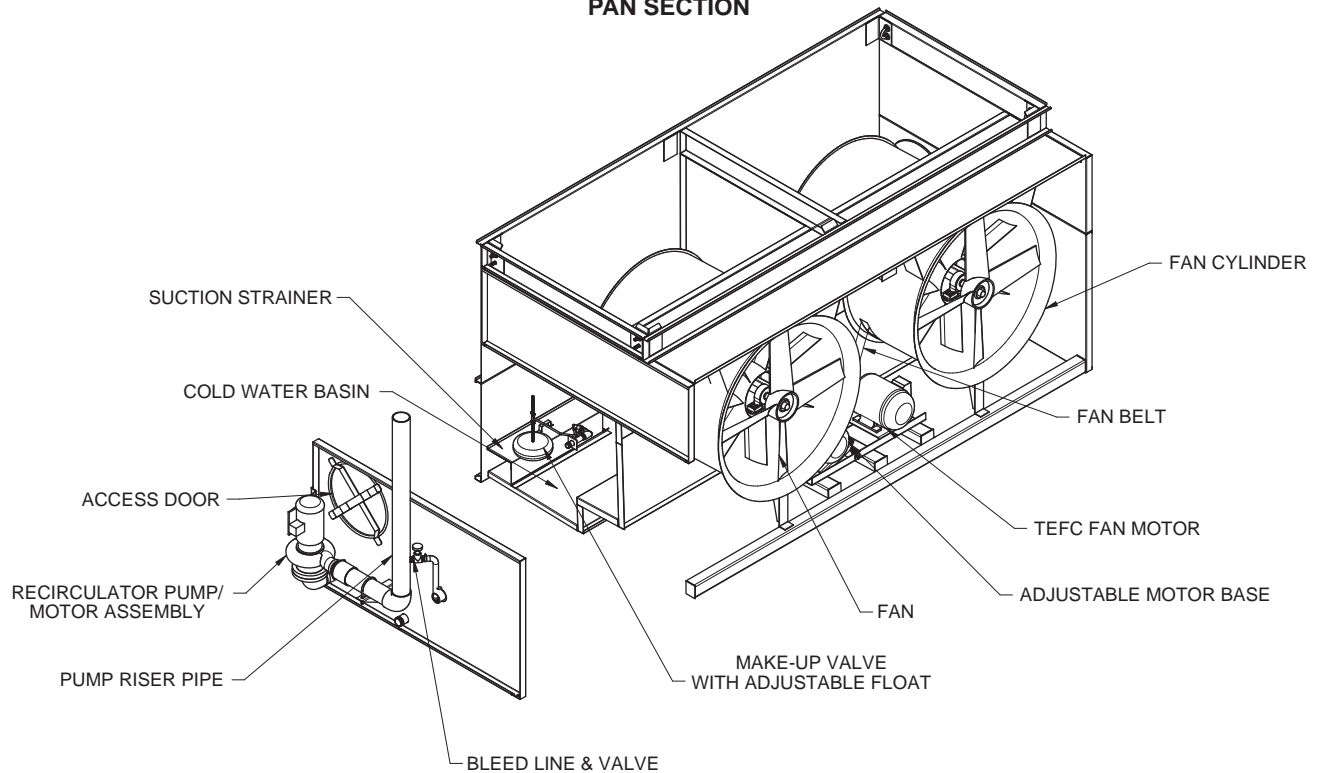


## PMC-E 5' Wide Units

### COIL CASING SECTION

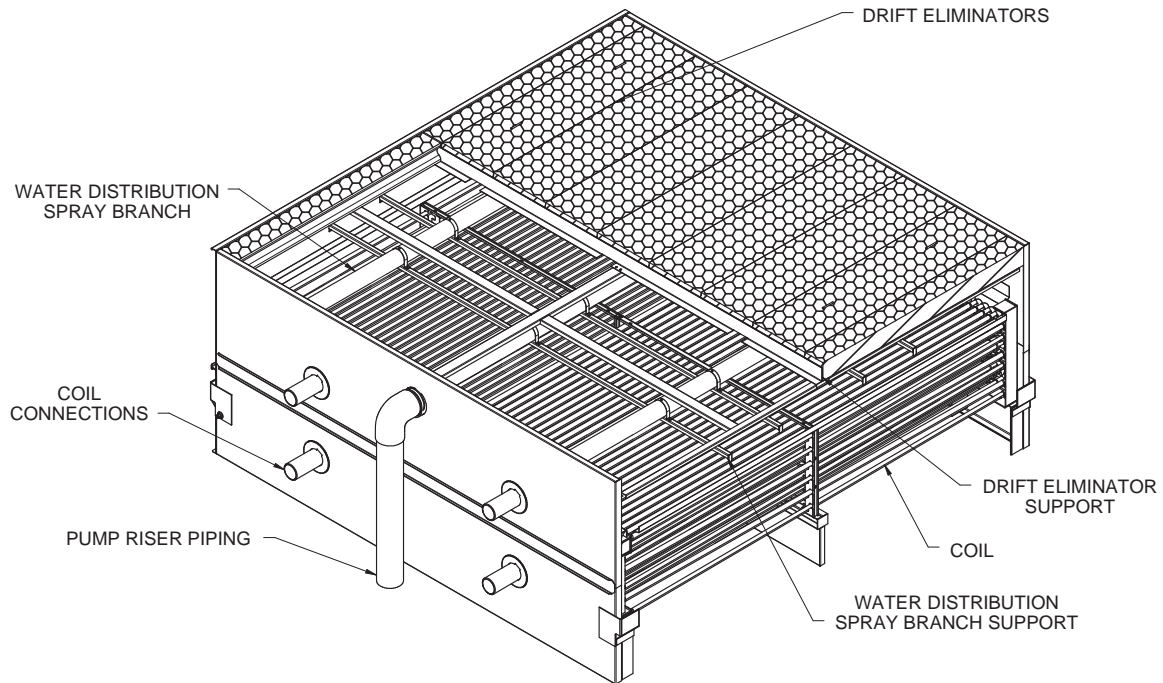


### PAN SECTION

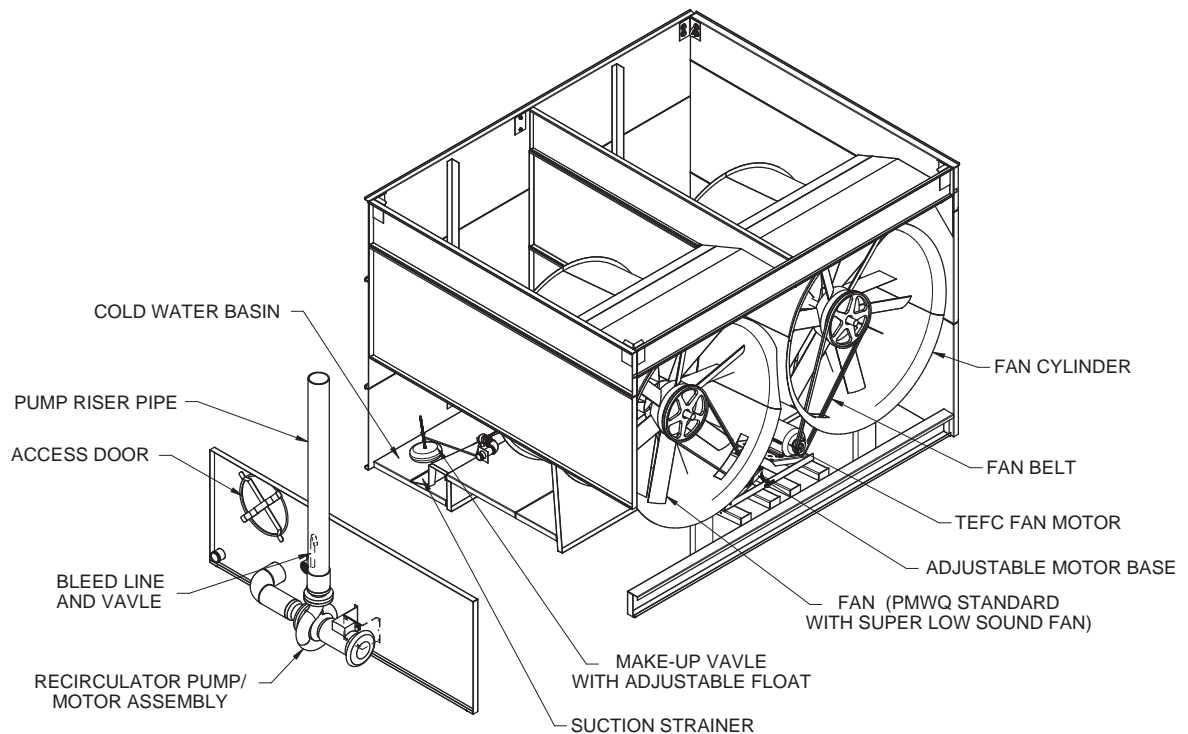


## PMC-E/PMWQ 10' and 12' Wide Units

### COIL CASING SECTION



### PAN SECTION





Notes:



## EXHIBIT 1 Operation and Maintenance Instructions

---

Notes:



Notes:

EXHIBIT 1



**EVAPCO, Inc.** • P.O. Box 1300 • Westminster, MD 21158 USA  
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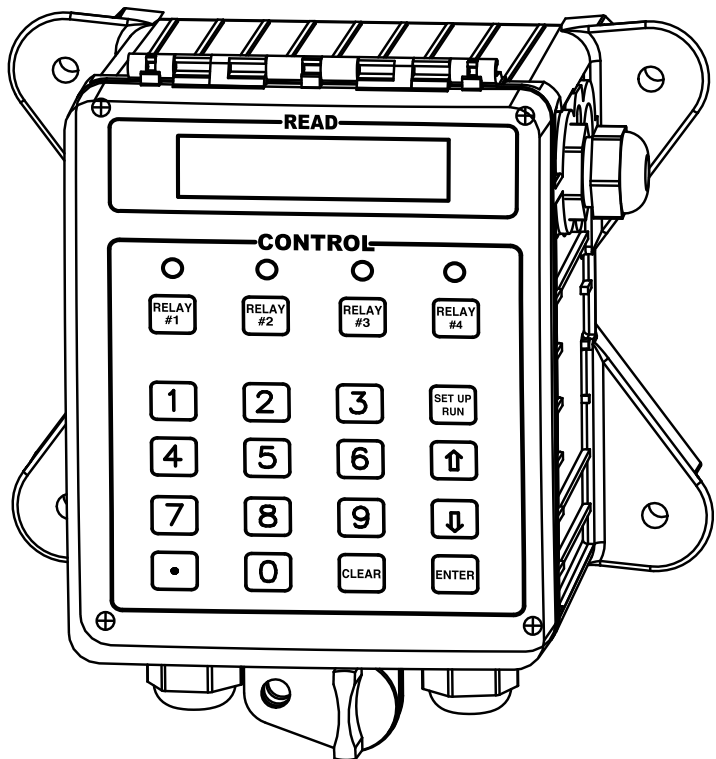
Printed on recycled paper  
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**Advantage**  
Controls

**Manual**

# MicroTron Tower Controller

***Installation  
Maintenance  
Repair  
Manual***



Advantage Controls  
P.O. Box 1472  
Muskogee, OK 74402  
Phone: 800-743-7431  
Fax: 888-686-6212  
[www.advantagecontrols.com](http://www.advantagecontrols.com)  
email: [support@advantagecontrols.com](mailto:support@advantagecontrols.com)

5/09

**Advantage**  
Controls

# **MicroTron Tower Controller Instruction & Maintenance Manual Table of Contents**

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*Instructions herein apply to all MicroTron tower controllers.  
Additional options described in this manual may or may  
not be present on your unit. Refer to Model Numbering on Page 3.*

## I. Introduction

MicroTron controllers are microprocessor based menu driven units for control of recirculating and other water applications. All settings are entered into the controller through a simple front panel keypad which includes relay test keys.

### Model Numbering

MicroTron controllers have several base functions and optional features available. Your unit may be supplied with one or more of the options that are described in this manual. To determine what features apply to your unit, check the model number label located on the controller enclosure.

#### Base Functions

All model numbers can be broken down as follows and will start with an **M** or **L**.

<b>M</b>	MicroTron with a VFD display
<b>L</b>	MicroTron with an LCD display
<b>C</b>	Conductivity Control
<b>C-0</b>	Conductivity Monitor only
<b>C-2</b>	Adds make-up conductivity function
<b>F</b>	Single programmable feed timer
<b>F-2</b>	Dual feed timers
<b>F-3</b>	Triple feed timers
<b>F-4</b>	Quadruple feed timers
<b>F-5</b>	Five feed timers
<b>B</b>	Single 28 day timer
<b>B-2</b>	Dual 28 day timers
<b>B-3</b>	Triple 28 day timers
<b>B-4</b>	Quadruple 28 day timers
<b>P</b>	pH control
<b>P-0</b>	pH monitor only
<b>P-2</b>	pH control with dual set points
<b>R</b>	ORP control

#### Optional Features

This list represents our most popular options.

<b>A</b>	Conduit connections
<b>A-6</b>	On/Off power switch
<b>A-7</b>	Lower enclosure
<b>C-1</b>	0-5V non-isolated output
<b>C-4</b>	Single 4-20mA non-isolated output
<b>C-6</b>	Single isolated 4-20mA output
<b>D</b>	220 V service (conduit only)
<b>E</b>	Mounted flow switch assembly
<b>M</b>	Alarm relay options
<b>M-1S</b>	Sonic alarm buzzer with silence switch
<b>N</b>	Non standard conductivity scales
<b>Q</b>	Alternate electrodes
<b>R</b>	Molex connector on conductivity electrode
<b>V</b>	Digital input for bleed-off water meter
<b>W</b>	Power relay 1.5 HP max, 25 amps
<b>X</b>	Tank low level alarms
<b>Y</b>	Bleed flow alarm (requires flow switch)
<b>Z-6</b>	One water meter input for each chemical feed timer
<b>Z-11</b>	Lockout chem feed with low conductivity alarm
<b>9</b>	Paddle wheel flowmeter input

**Note:** The list of functions and options represents past and current offerings. Some of these may no longer be available on new units, but are listed for reference.

## II. Description

### Control Functions

Each of the control functions is based on an analog input from a probe and will include user settable relay control settings along with a High and Low Alarm setting and Limit Timer. Each control function will include a control relay output. When the reading reaches the Set Point the control relay is activated until the reading changes by the Differential amount.

1. **Conductivity** - The conductivity function of the controller is designed to monitor and control Total Dissolved Solids (TDS) in a recirculating system like a cooling tower in terms of electrical conductivity measured in MicroSiemens/cm. This control function is also referred to as bleed. Units with conductivity and the make-up conductivity function can control the TDS of the tower system to a cycles of concentration by calculating the difference between the incoming make-up water's conductivity and the system's conductivity
2. **pH** - The pH function monitors and controls pH on a scale of 0-14 pH units.
3. **ORP** - The ORP function monitors and controls ORP on a scale of +/- 999 mV.

### Chemical Feed Timers

Selectable Chemical feed timers (base function F) are designed to automate the addition of various chemicals by activating a relay output. Multiple timers can be supplied depending upon the model number and each timer will include a relay output. All timers can be programmed to be one of the following types.

1. **Pulse Time** - This timer accepts dry contact pulses from a make-up water meter (supplied separately). It can accumulate 1-99 pulses to activate the timer to run from 0-99 minutes in minutes and seconds.
2. **Feed with Bleed** - This timer activates the relay output simultaneously with the bleed. The timer can limit the amount of time the relay output will be on during the bleed cycle, thereby preventing chemical overfeed.
3. **Feed after Bleed** - This timer activates the relay output based on a user defined percentage of the bleed off time. The relay is activated after a bleed cycle and runs for the set percentage of that bleed cycle. A limit time can also be set for the maximum amount of time the timer can run for one cycle.
4. **Percentage** - The relay is on for a percentage of a continuously repeating cycle time. The percentage timer can be set from 1 to 99% and the cycle time can be set from 1 second to 99 minutes and 59 seconds.

### 28-Day Feed Timers

28-day feed timers, typically used for biocide feed are based on a 28 day cycle with two independent programmable feed cycles allowing for feed on selectable days and weeks. The biocide timers also include prebleed and bleed lockout settings. Multiple timers can be supplied depending upon the model number and each timer will include a relay output.

### III. Installation

#### Electrical Wiring

The standard MicroTron Tower controller has an internal regulated power supply that will operate in the range of approximately 100 to 240 VAC on the incoming wiring. Output relay(s) are protected with a replaceable fuse. Each relay's output voltage will equal incoming line voltage.

Prewired units are supplied with a 16 AWG cable with 3-wire grounded USA 115 volt plug for incoming power and 18 AWG 3-wire grounded U.S.A. 120 volt receptacle cords for all control relay outputs.

Conduit units are supplied with connectors located in the lower section of the controller. Remove the screws of the lower panel for access and to view wiring diagram.

**NOTE: Liquid tight fittings and labeled signal lead cables are provided for all signal (low voltage) connections, such as water meter, low drum level, flow switch and 4-20mA outputs.**



#### **WARNINGS:**

1. The controller should be connected to its own isolated circuit breaker, and for best results, the ground should be a true earth ground, not shared. Wiring must be done according to all applicable local codes.
2. Power (line voltage) must be disconnected while making any connections. If power is supplied to the unit, line voltage will be present on the relay cards.
3. Low voltage signal wires (probes, flow switch, water meter, etc.) should never be run in conduit with high voltage wires.

**NOTE: Liquid tight fittings and some labeled signal leads are provided for all signal (low voltage) connections for both pre-wired and conduit units.**

#### Mounting Instructions

Select a mounting location that provides the operator easy access to the unit and a clear view of the controls through the cover of the controller. The location should be convenient to grounded electrical connections, the required sample line plumbing, and installed on a stable vertical surface.

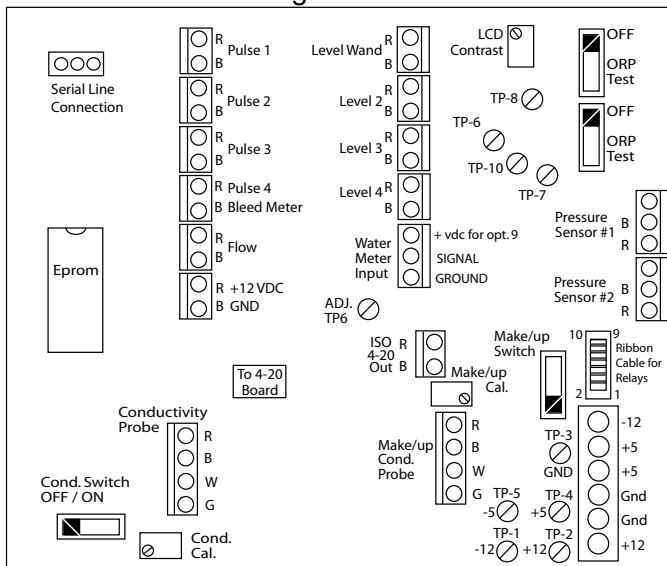


#### **WARNINGS:**

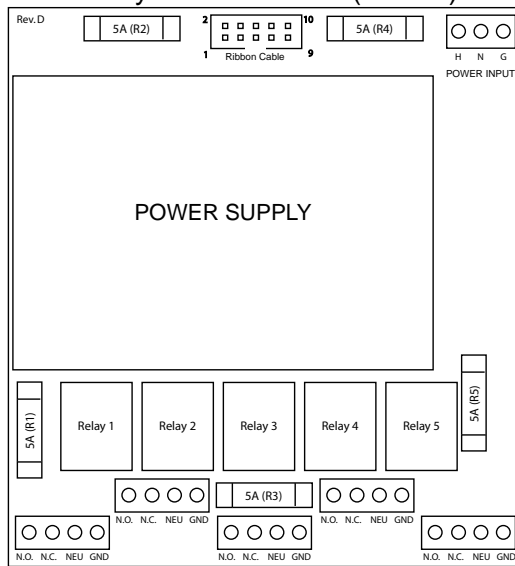
Avoid locations that expose the controller to direct sunlight, vapors, vibration, liquid spills or extreme temperatures; less than 0°F (-17.8°C) or greater than 120°F (50°C). EMI(electromagnetic interference) from radio transmissions and electric motors can also cause damage or interference and should be avoided.

## EXHIBIT 1

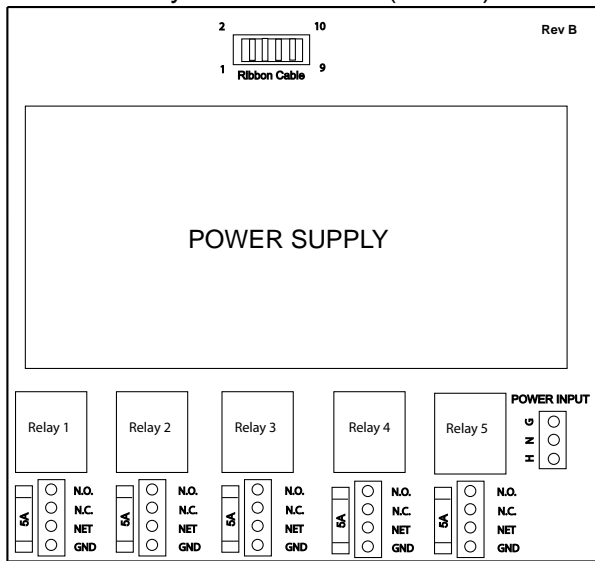
## Logic Board



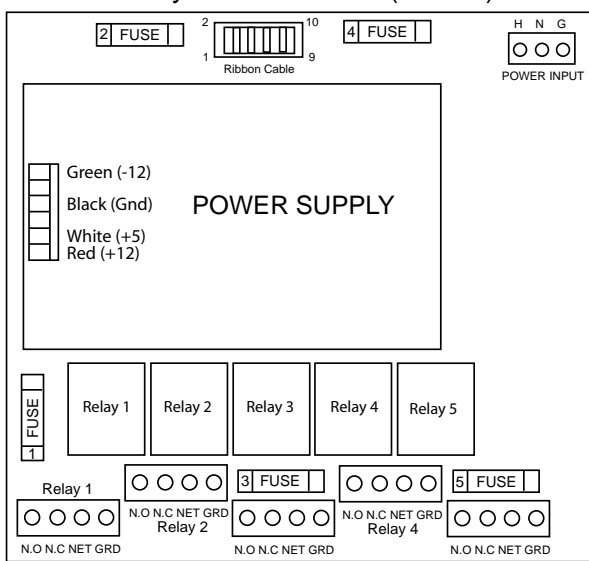
## Relay / Power Board (Rev. D)



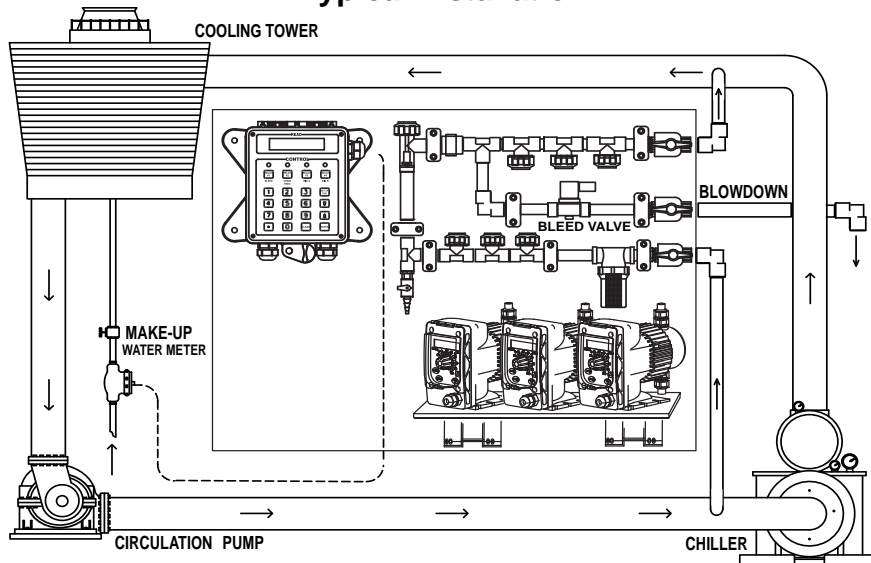
## Relay / Power Board (Rev. B)



## Relay / Power Board (Rev. C)



## Typical Installation



## Electrode Installation

MicroTron tower controllers may come configured for various recirculating water systems. Listed below are instructions for typical cooling tower installations. Your specific installation requirements may differ but should conform to these instructions as much as possible for proper operation.

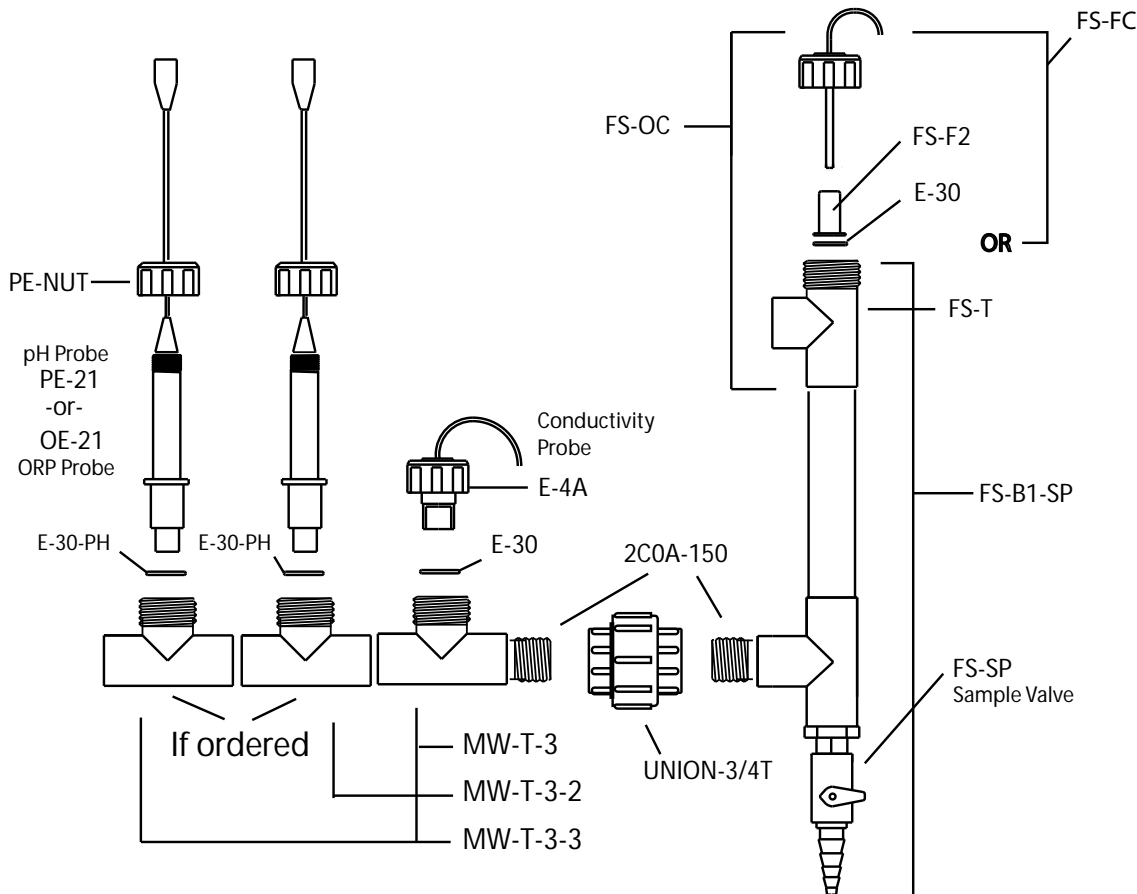
The standard probe(s) and/or flow assembly for cooling tower installations is constructed of schedule 80 PVC and supplied with  $\frac{3}{4}$ " slip fittings for installing into a sample line. To insure proper operation the sample line must have a flow rate of 3-10 gpm. Inlet pressure must be higher than outlet pressure in order for water to flow past the electrode(s) at the required rate. The probes are temperature compensated for increased accuracy.

### NOTES:

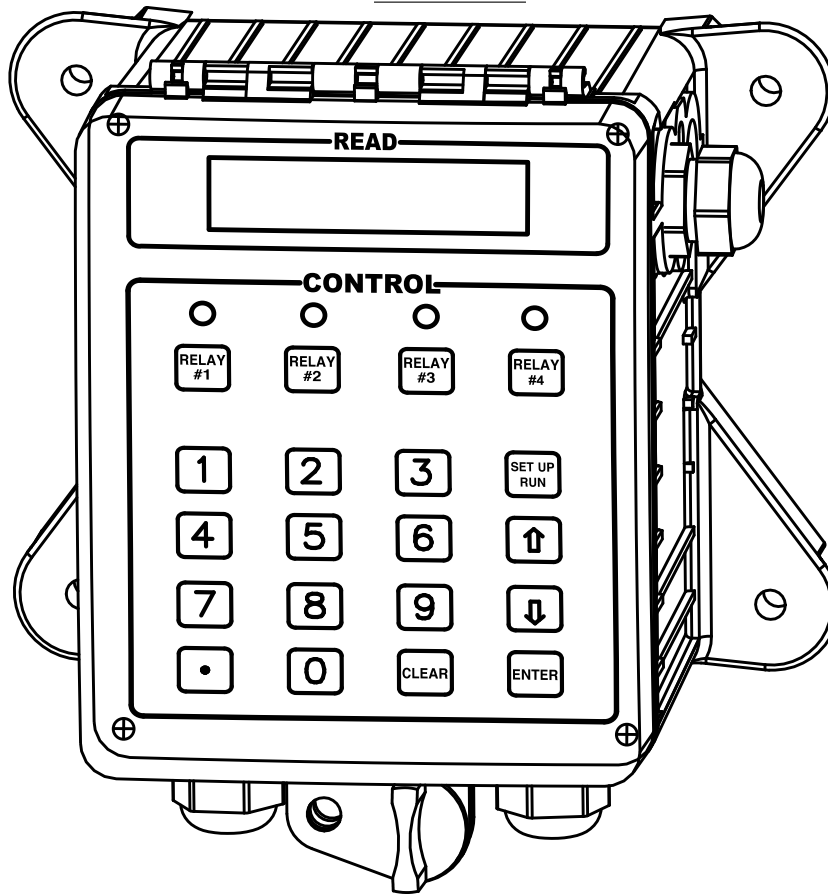
1. Install an isolation valve on either side of the flow assembly so electrodes can be easily isolated for removal and cleaning.
2. A line strainer is recommended upstream from the probes to protect against fouling and damage.
3. Mount pH electrodes vertically.
4. Units with a flow switch require the needed flow rate to operate the relay outputs.
5. Tap points for sample line should not be at the top or bottom of the supply piping to reduce air or debris introduction to sample line.

### WARNINGS:

1. Electrodes are O-ring sealed, which if damaged will cause a leak.
2. Do not allow pH sensor tips to dry out, damage will occur.
3. Do not exceed a water temperature range of 32°F to 140°F.
4. Do not exceed a maximum pressure of 150 psi.



## EXHIBIT 1



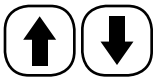
### IV. Front Panel Description

READ: 1x16 (1/4") Alpha Numeric Display.

CONTROL: Relay 1, Relay 2, Relay 3, Relay 4 - HOA switches for control relays.



**SET UP/RUN key** - System initializes into RUN mode. Press this switch to toggle the controller from SET UP mode to RUN mode.



**UP/DOWN arrows** - Used to change the display from one line to the next. All menus are circular, so when all items in a menu have been displayed, the display will return to the originally displayed item.



**ENTER key** - Used to access a menu and to log a changed value into the program.



**CLEAR key** - Used to clear numerical values from items being changed in the SET UP mode.



**DECIMAL key** - Used at certain places to change a function or displayed items. For example, when temperature is being displayed, pressing the DECIMAL key will change the reading from Fahrenheit to Celsius or visa versa.



**NUMERICAL keys** - Used to enter new values in the SET UP mode.

## **V. System Operation Overview**

MicroTron controllers have two modes of operation, RUN and SET UP. Both the RUN and SET UP menus are circular. Pressing the DOWN key in either menu will display the next line of information on the display. After the last item in a menu has been displayed, pressing the DOWN key will return the display to the top line of that menu.

**RUN MODE -** This mode is for normal operation. The control relays will only be automatically activated in this mode. In the RUN mode the display will read system values. If an alarm is present the display flashes with the alarm status.

The RUN menu will display values such as conductivity, pH, day, time, date and other values depending upon the features present on the unit. The unit will automatically return to the RUN mode if no keys are pressed for three minutes.

**SET UP MODE -** This mode is used to make adjustments to settings and readings on the controller. To access the SET UP mode from the RUN screen, press the SETUP/RUN key. Use the up or down arrow to scroll through the various SET UP menus. When you want to enter a specific SET UP menu, press the ENTER key. Once you have entered a SET UP sub menu you will be able to step through that menu's options with the down arrow key.

Relays may be forced on while in the SET UP mode. Press the desired relay test key to force it on. Press it a second time to turn it off. Once the unit returns to the RUN mode, relays will activate automatically.

The relay 4 test key will activate relay 4 on the first press, then will activate relay 5 on the second and will turn both 4 and 5 off on the third.

## **A. Description of SET UP Menu Screens**

The SET UP menu is the main menu circle of set up sub-menus used to customize your unit to the particular parameters needed for your installation. Listed on the following pages is a description and menu map of each SET UP menu.

### **NOTES:**

1. Your unit may not have all of the SET UP menus listed depending upon your model number.
2. After you press ENTER or CLEAR to change a numerical value in the SET UP menu, use the number keys to define the new value. Press ENTER again to enter the new value.
3. When entering new numeric values, all available digits (characters) must be entered. The number of available digits depends upon the scale of operation. Position of cursor indicates number of digits to be entered.

For example, when entering a run time value for a timer in the minute and seconds scale (10:30 would equal 10 minutes and thirty seconds). You would need to key in a number of 0030 to make it 0 (zero) minutes and 30 seconds.

## 1. CALIBRATION

All MicroTron controllers are factory calibrated for temperature, conductivity, pH and/or ORP (if present). These values should be verified for accuracy, and adjusted as per the instructions listed below and to the side.

**Calibrating the temperature** reading, press SET UP/ RUN button. The "CALIBRATION" screen will appear. Press ENTER and the screen will read "CALIBRATE F". Press ENTER to log in the new reading. To display the reading in degrees Celsius, press the decimal key.

**High Temp Alarm Set** - If this is exceeded the Alarm will activate, set to 0 to disable.

**Calibrating the Conductivity** with the probe in a known solution, select "CALIBRATE uS" from the "CALIBRATION" menu. Press CLEAR, then key in the corrected conductivity value. Press ENTER to log in that reading.

**Calibrating the pH** with the probe in solution on line. Select "CALIBRATE PH" from the "CALIBRATION" menu. Press CLEAR, then key in the corrected pH value. Press ENTER to log in that reading.

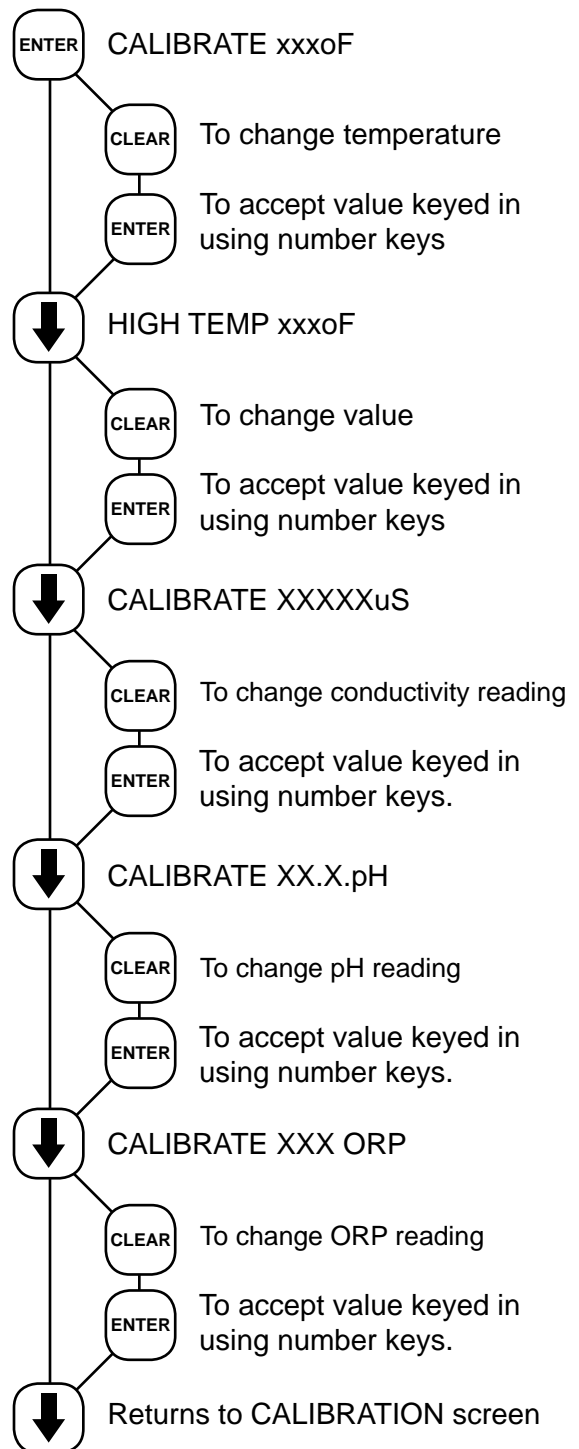
**Calibrating the ORP** with the probe in solution on line. Select "CALIBRATE ORP" from the "CALIBRATION" menu. Press CLEAR, then key in the corrected ORP value. Press ENTER to log in that reading.

The limits on this factor are from 50% to 200% and any entry which would lead to a factor outside this range will cause it to default back to the previous value.

### NOTES:

1. After entering a new numerical value hit the ENTER key to accept value and advance.
2. For severe calibration problems, see Reset Zero and Recentering pH on page 22 & 23.

## -- CALIBRATION --



## 2. BLEED SET

This menu is used to set bleed control parameters including set point, differential, high and low alarms plus a feed limit timer.

**BleedTrip** - A reading above this value will activate the blowdown relay until the reading falls by the amount of the differential below the trip point.

**Differential** - With a rising trip point the bleed relay comes on if conductivity exceeds the trip point and goes off when it falls below the trip point minus the differential value.

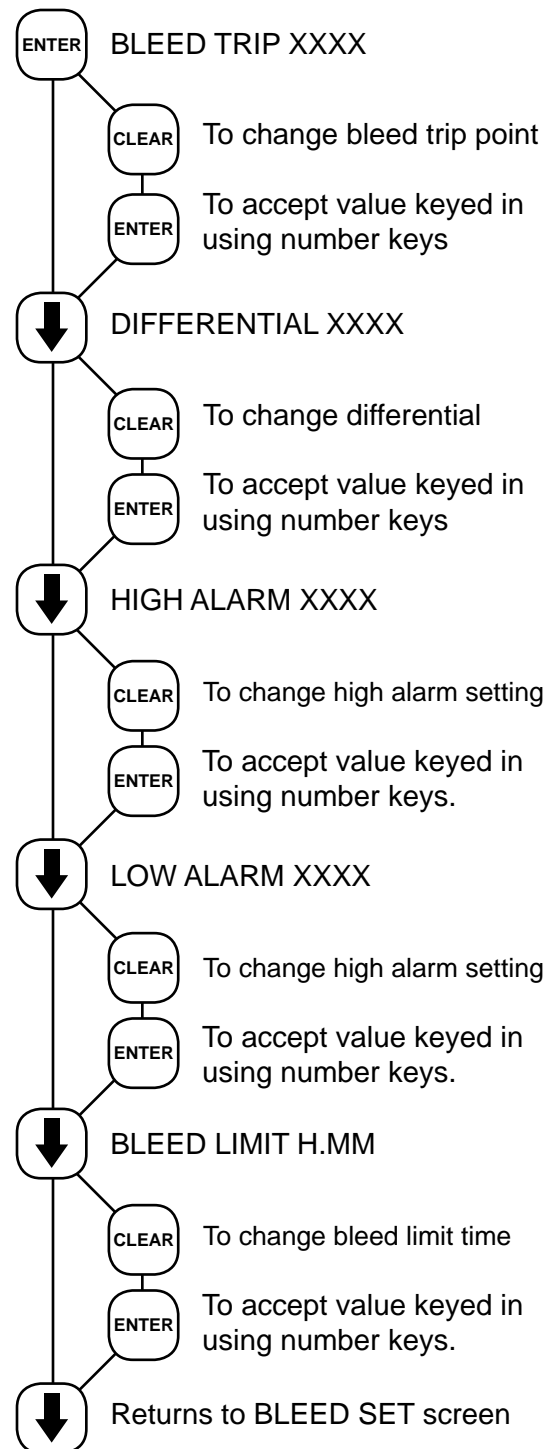
The differential may be made negative by using the DECIMAL key during edit. If negative, the Trip Point changes from rising to falling.

**High Alarm Setting** - Setting for a high conductivity alarm condition.

**Low Alarm Setting** - Setting for a low conductivity alarm condition.

**Bleed Limit Timer** - The bleed limit timer is set in hours and minutes. If the unit bleeds longer than the limit timer is set for an alarm is given. Maximum value is 9 hours and 59 minutes. A setting of zero disables the timer.

## -- CALIBRATION --



### 3. PH FEED SET

This menu is used to set pH control parameters including set point, differential, high and low alarms plus a feed limit timer. (This menu choice will be present only if you have the pH control option, see model numbering on page 3.)

**pH Trip** - The pH reading value that will activate the pH relay.

**pH Diff** - Normally a rising trip point, the pH relay comes on if pH exceeds the trip point and goes off when it falls below the trip point minus the differential.

The differential may be made negative by pressing the DECIMAL key when changing differential setting. When the differential is negative, the Trip Point changes from rising to falling.

**High Alarm Setting** - Setting for a high pH alarm condition.

**Low Alarm Setting** - Setting for a low pH alarm condition.

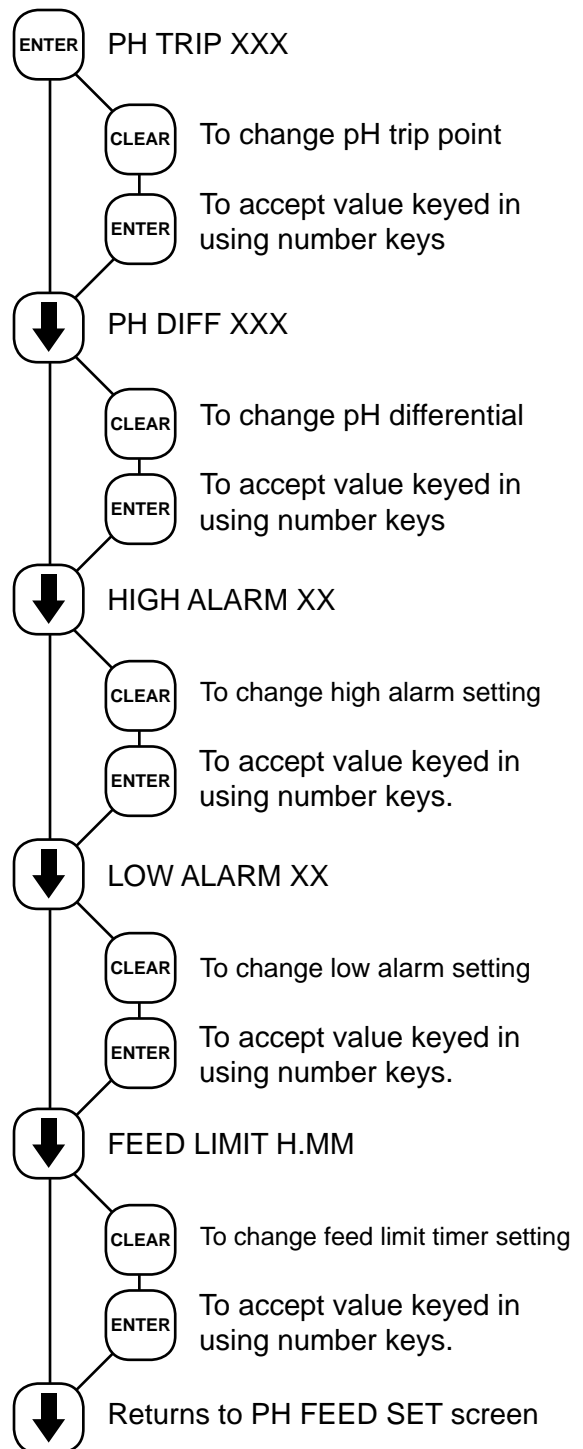
**pH Limit Timer** - The pH limit timer is set in hours and minutes. If the unit calls for feed longer than the limit timer is set for, an alarm is given and the pH feed is stopped. Maximum value is 9 hours and 59 minutes. A setting of zero disables the timer.

After entering a new numerical value hit the ENTER key to accept value and advance.

#### NOTES:

**If a unit has dual pH trip points, there will be a group of settings for "PH A" followed by the settings for "PH B".**

### -- PH FEED SET --



#### 4. ORP FEED SET

This menu is used to set ORP control parameters including set point, differential, high and low alarms plus a feed limit timer. (This menu choice will be present only if you have the ORP control option, see model numbering on page 3.)

**ORP Trip** - The ORP reading value that will activate the ORP relay

**ORP Diff** - Normally a falling trip point, the ORP relay comes on if ORP falls below the trip point and goes off when it rises above the trip point plus the differential.

The differential may be made positive by pressing the DECIMAL key when changing differential setting. When the differential is positive, the Trip Point changes from falling to rising.

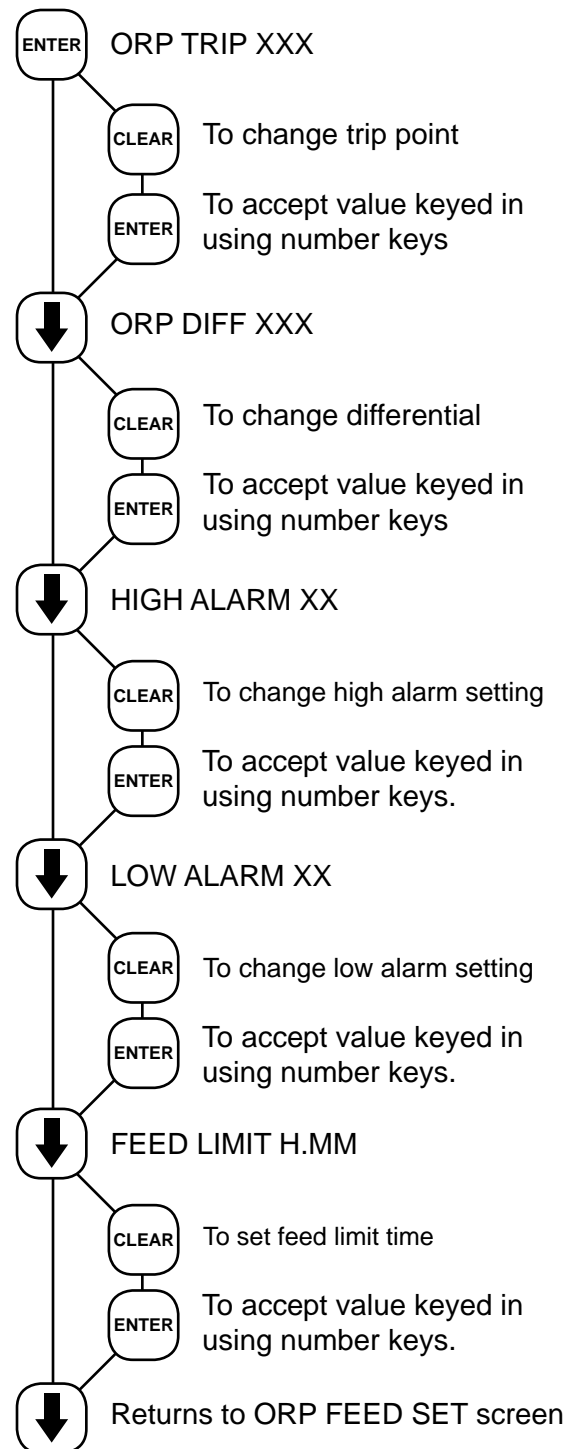
**High Alarm Setting** - Setting for a high ORP alarm condition.

**Low Alarm Setting** - Setting for a low ORP alarm condition.

**ORP Limit Timer** - The ORP limit timer is set in hours and minutes. If the unit calls for feed longer than the limit timer is set for, an alarm is given and the ORP feed is stopped. Maximum value is 9 hours and 59 minutes. A setting of zero disables the timer.

After entering a new numerical value hit the ENTER key to accept value and advance.

#### -- ORP FEED SET --

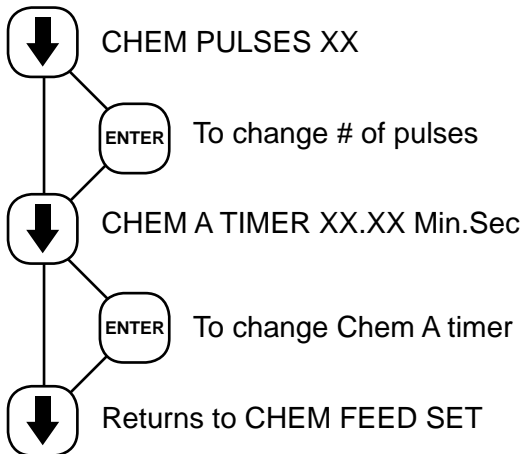


## 5. CHEM FEED SET

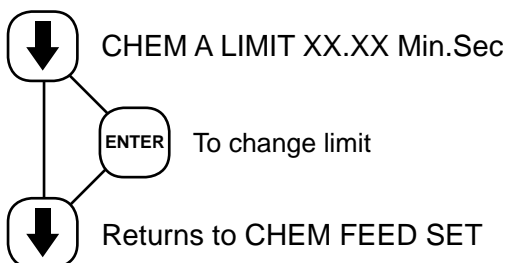
Units with selectable feed timer(s) will have this SET UP menu for selecting the chemical feed method and setting the feed time. A selectable feed timer can be programmed to be one of the following:

1. **PULSE TIME** - A timer activated by dry contacts from a contacting head water meter and includes an accumulator for counting the number of pulse (contacts) before starting the timer.
2. **WITH BLEED** - A feed limit timer that runs during a bleed cycle. The chemical feed will run for as long as the bleed occurs or until the limit time is reached.
3. **POST BLEED** - This timer counts how long a bleed cycle lasts then runs the chemical feed after the cycle is over for a user defined percentage of the bleed time. A limit timer prevents over feeding.
4. **PERCENTAGE** - A continuously repeating timer where the cycle timer can be programmed along with the percentage of ON time for the cycle.

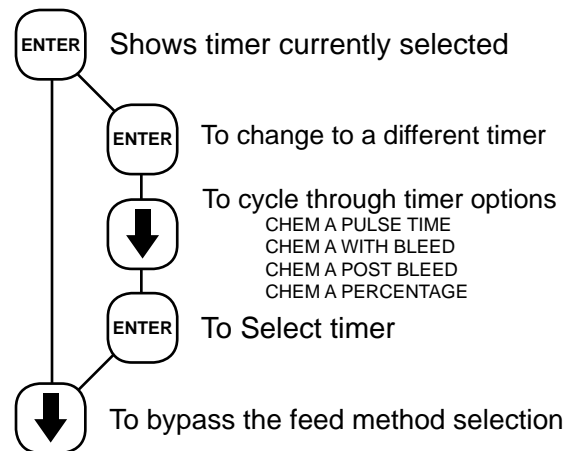
### -- CHEM A PULSE TIME --



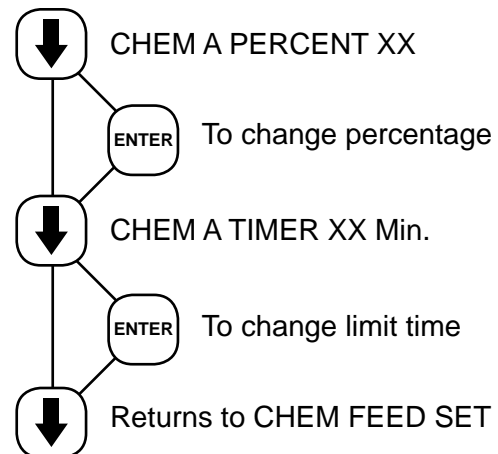
### -- CHEM A WITH BLEED --



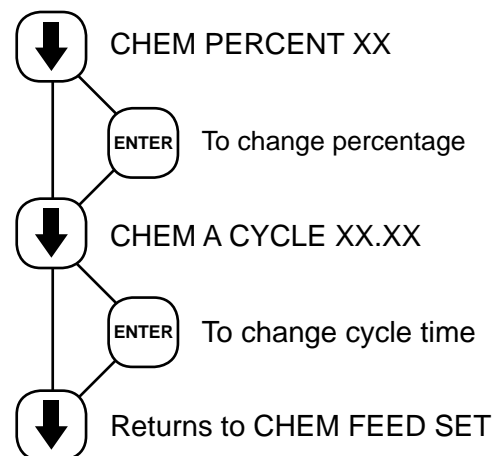
## -- CHEM FEED SET --



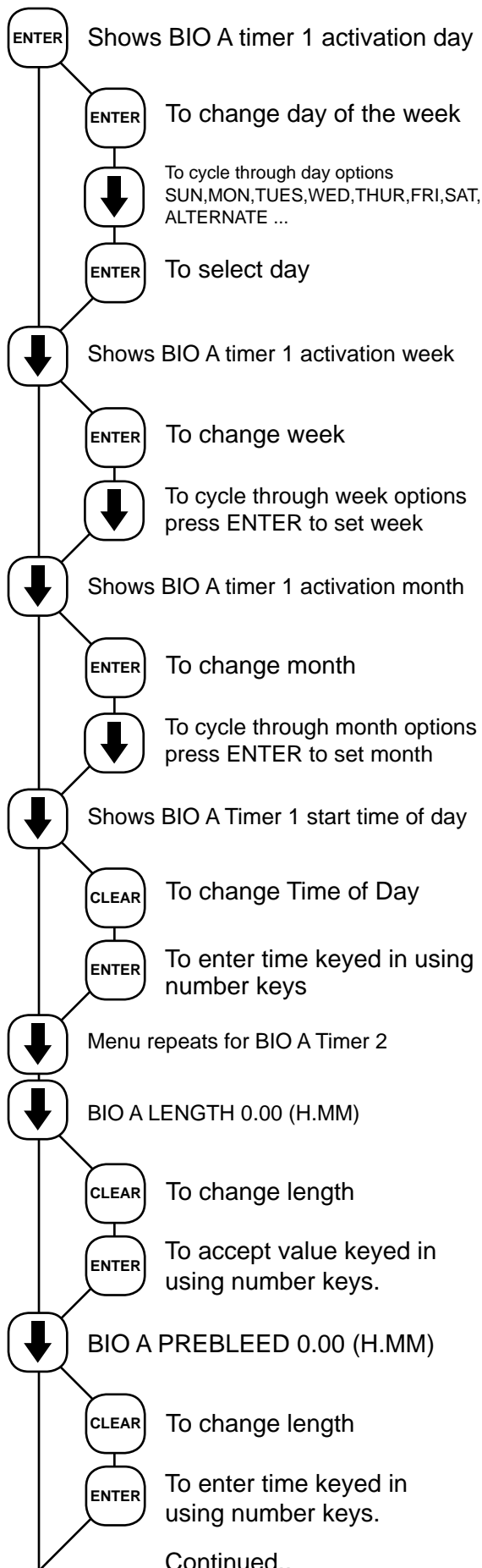
### -- CHEM A POST BLEED --



### -- CHEM A PERCENTAGE --



## -- BIOCIDE SET --



Units with a biocide timer will have this SET UP menu for setting biocide feed times. Biocide Set Menu consists of two weekdays, week and start times, one feed length time and an overall prebleed and lockout setting for each biocide.

**BIO \_\_ (A1,A2,B1,B2...) WEEKDAY** - Select from Sunday through Saturday, or TuesThrSat, MonWedFri, Every Other day, Every Day or No Day. A setting of No Day disables timer.

**BIO\_\_(A1,A2,B1,B2 ...) WEEK** - Select week (1-4), Even Weeks, Odd Weeks, or Every Week. A setting of No Week disables timer.

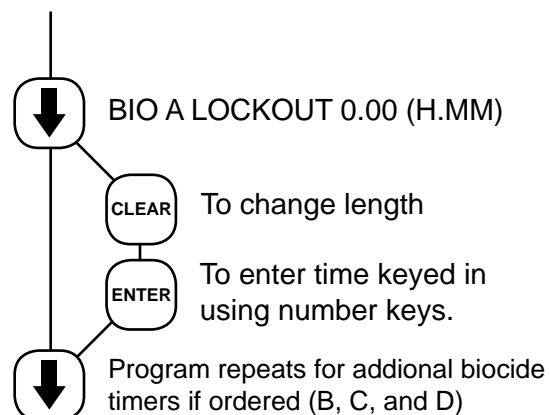
**BIO\_\_(A1,A2,B1,B2 ...) MONTH** - Select month (1-12), Even Month, Odd Month, or Every Month. A setting of No Month disables timer.

**BIO\_(A,B,C...)TIME HH.MM** - Start time based on 24 hour clock, in hours and minutes.

**BIO\_(A,B,C...) LENGTH H.MM** - Feed time in hours and minutes can be set up to 9 hours and 59 minutes, 0 (zero) disables both start times for that biocide.

**BIO\_(A,B,C...) PREBLEED H.MM** - Prebleed and lockout settings are in hours and minutes, with a maximum of 9 hours and 59 minutes, 0 (zero) disables timer. When the clock reaches a start time for any of the four timers, the Prebleed is begun.

**BIO\_(A,B,C...) LOCKOUT H.MM** - The lockout timer is a timer that starts after the biocide feed time is finished. The timer can be set for a time up to 9 hours and 59 minutes to lock out the bleed.



## 7. CLOCK SET

The CLOCK SET menu is for adjusting the time, date and day of the week.

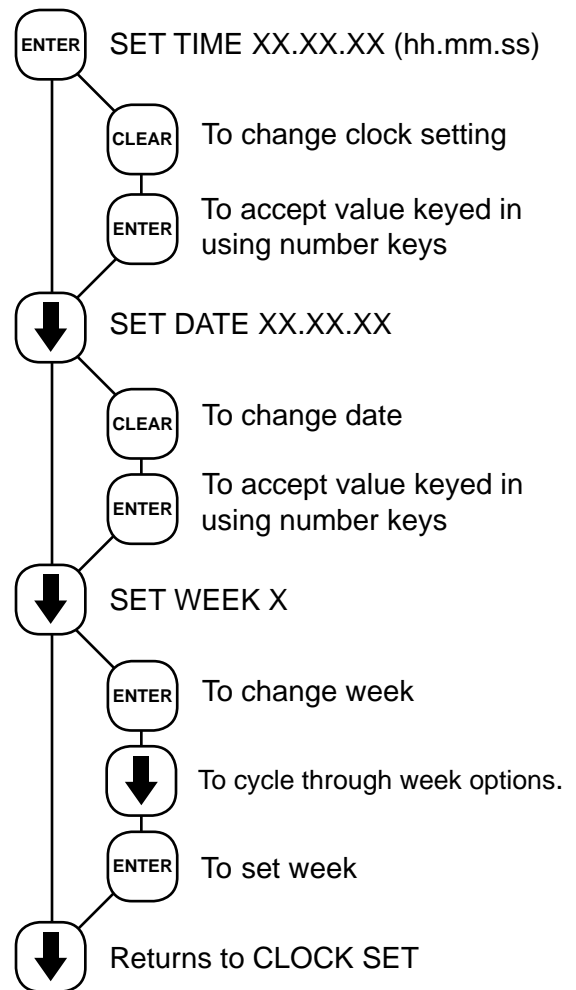
After entering a new value, hit the ENTER key to accept the value and advance.

The clock time is based on a 24 hour clock. So, a time of 1 pm would be shown as 13.00.00.

### NOTES:

**If unit doesn't have a biocide timer, there will not be a SET WEEK selection.**

-- CLOCK SET --



## 8. SYSTEM SET MENU

This menu is used to configure the controller to specific operational needs. All of the items in this menu may not apply depending on the controller model but will always be present.

**NOTE: Do not use this menu to make calibration adjustments. Use the Calibration screen.**

**PASSWORD** - If a value of 0000 is entered, a password is not required. If a password is entered, it must be used to operate the controller. If the first digit is zero, relays may be activated without a password.

**RESET WATER METER COUNT** - Does not apply unless the unit has selectable feed timer.

**DRY CONTACT HEAD** - Select a contacting head water meter or a hall effect paddle wheel meter. Anytime this setting is changed the GAL/PULSE value will need to be re-entered.

**GAL/PULSE** - If a feed timer is using a contacting head water meter this tracks make-up volume by entering the number of gallons a contact equals. Use • key to change to pulse/gal for flowmeter.

**STRAIGHT/PROPORTIONAL OUTPUTS** - A straight output setting means the optional 4-20 output span will be the same as the full scale. The proportional setting allows the span of the 4-20 mA output to be selected by the user based on the setpoint and differential.

**LOW DRUM NO PUMP/PUMP LOW DRUMS** - If unit has low level alarms, allows the associated feed timer to be forced off when drum is low.

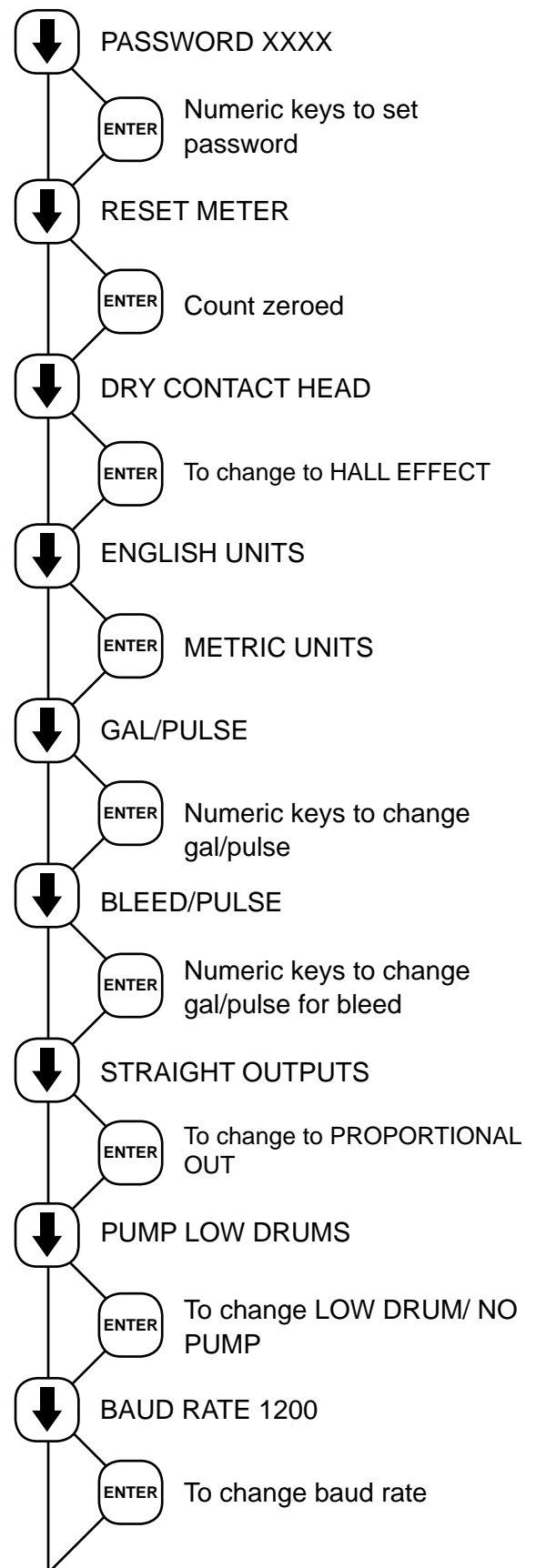
### COMM Setup:

**BAUD RATE** - For units ordered with the serial line or modem option.

**ALARM CALL** - For units with modem.

**FLOW WHEN CLOSED** - For flow switches.

## -- SYSTEM SET --



System Set continued on next page.

**SYSTEM SET (continued)**

**FLOW ALARM** - With FLOW ALARM ON when the system loses flow, an alarm signal can be sent. FLOW ALARM OFF means that no alarm signal is sent in the event of loss of system flow.

**CONCURRENT** - Only applies if there are two or more feed timers. This allows all feed timers to become active simultaneously together.

**SEQUENTIAL** - Allows the feed timer to become active in a chronological order based on settings.

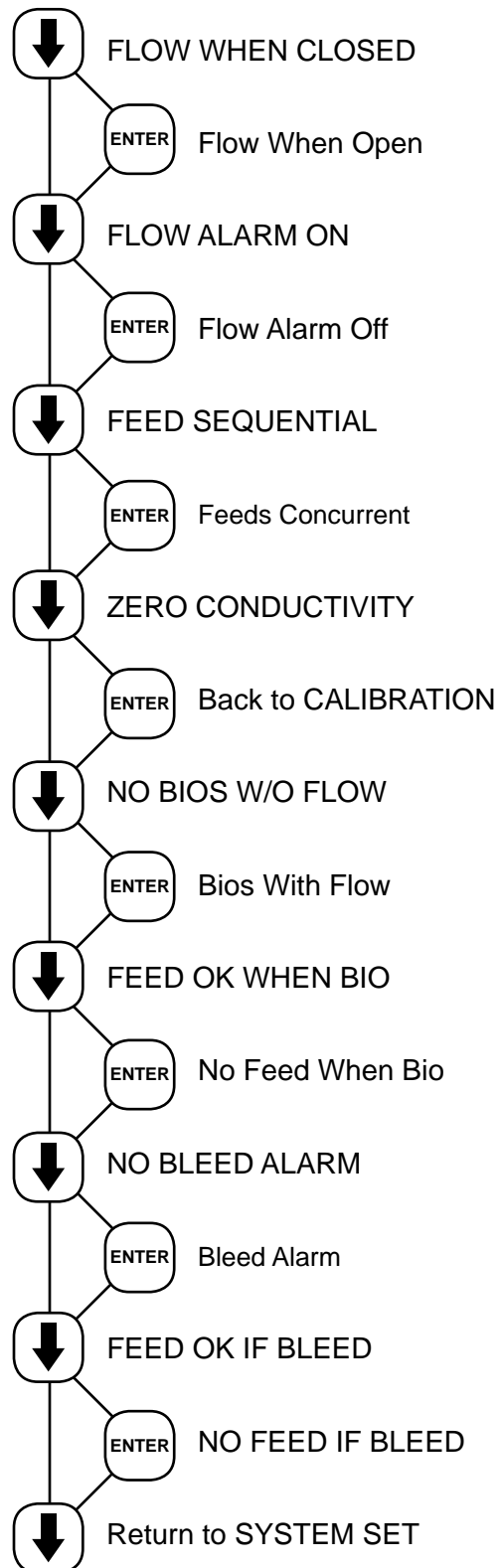
**ZERO CONDUCTIVITY** - This is normally not required, and is not recommended to use this function unless instructed to do so by the factory.

**NO BIOS WITHOUT FLOW** - Allows the biocide timer(s) to run only with a flow condition or to ignore the flow and always run even without flow.

**FEED OK WHEN BIO** - The chemical feed timer can be prevented from activating during a biocide timer run time.

**NO BLEED ALARM** - With the optional bleed flow alarm, the unit can produce an alarm if it is not sensing flow in the bleed line when bleeding.

**FEED OK IF BLEED** - Lets the unit feed chemical only when not bleeding or at anytime it is bleeding if called for.



## 9. DIAGNOSTICS MENU

This menu is used to select, enter and test the following items.

**MODEL NUMBER** - Read only screen.

**SOFTWARE VERSION NUMBER** - Read only screen. Please have this number should you need to contact customer service.

Have both available for service

**TEST DISPLAY** - Press ENTER and all pixels will flash. Make a visual check to see that all pixels are lit.

**TEST KEYPAD** - Press ENTER, then press each individual key to test its function. NOTE: Pressing the SET UP/RUN key returns display to the main menu. Pressing ENTER again returns to TEST KEYPAD.

**RESET CALIBRATE** - Resets ALL calibration data to factory default calibration.

**LEVELS INACTIVE** - Press ENTER to select between having level alarms active or inactive.

**TEMP A/D** - Shows the raw analog to digital value for the temperature reading.

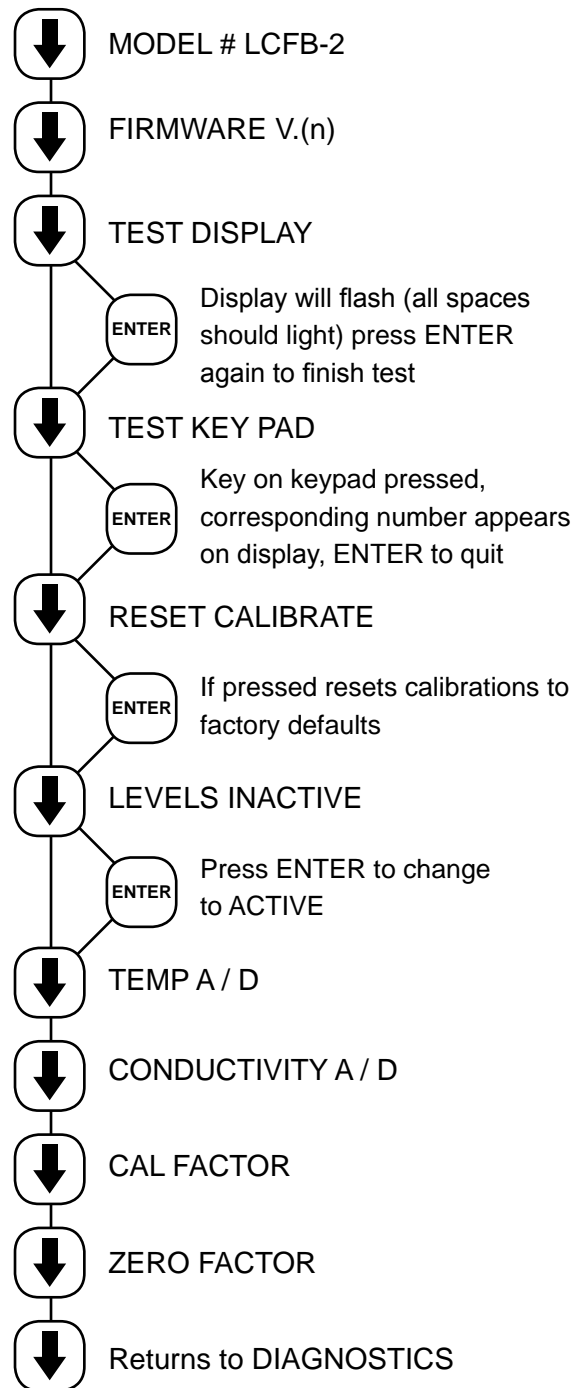
**COND A/D** - Shows the raw analog to digital value for the conductivity reading.

**CAL FACTOR** - Shows internal calibration variable. (slope of conductivity line) Default = 1000

**ZERO FACTOR** - Similar to calibration factor. (zero point of conductivity line) Default = 0

These 4 screens aid in troubleshooting, please have this information available if you require service concerning conductivity readings.

-- SYSTEM SET --



## **B. Run Menu**

During normal operations the controller will be in the RUN mode where current values are displayed. If left in the SET UP mode the display will revert to the RUN mode screen if no keys are touched for 3 minutes. If an alarm is present it will be flashed on the screen in the RUN mode.

While in the RUN mode if you hit the down arrow the following items may be shown:

<b>COND</b>	Current conductivity value.
<b>PH</b>	Current pH value.
<b>ORP</b>	Current ORP value.
<b>TEMP</b>	Current water temperature.
<b>DAY-TIME</b>	Current day of the week and time.
<b>DATE</b>	Current date.
<b>BLEED TIME</b>	If bleeding, how long it has been bleeding off.
<b>CHEM (A)</b>	If a chemical feed relay is on, how long it has been on.
<b>GALLONS</b>	If a water meter is being use, total number of gallons made up.
<b>WATER METER</b>	If a water meter is being used, number of contacts
<b>BLEED METER</b>	If a bleed-off water meter is being used, total number of gallon. If bleed/pulse = 0 bleed pulses is displayed otherwise bleed gallons

## **VI. Maintenance**

The only required maintenance for normal uninterrupted operation of your MicroTron controller is cleaning of the electrode(s).

After initial start up, it is a good idea to clean the electrode(s) frequently until a schedule based on need has been developed. Since each application is unique, it is difficult to estimate the required frequency of cleaning. To determine the required cleaning frequency, record the reading on the controller before the electrode is removed for cleaning. After cleaning, record the new reading. If a change is observed in the two readings, the electrode was dirty. The more significant the change, the dirtier the electrode. If no change occurs, cleaning can be done less often.

### **Conductivity Electrode Cleaning Procedure**

1. Record the current conductivity reading.
2. Turn off water flow from tower to the electrode loop, bleed pressure from the line, and remove electrode.
3. Use a clean cloth and a mild cleaning solution to clean the flat surface of the electrode.
4. If deposits such as scale are attached to the electrode surface, use a more aggressive cleaning approach. There are several ways to do this, the preferred method is the one that is easiest for the user.
  - a. Use a mild acid solution to dissolve deposits.
  - b. Scrape probe surface perpendicular to the electrodes. Using sand paper (200 grit or finer) sand the electrode on a flat surface to remove stubborn deposits.
5. Reinstall the electrode in the system. When reading stabilizes, calibrate the unit to a reliable test reading.

### **pH & ORP Electrode Cleaning Procedure**

Prior to servicing, the electrode must be removed from the system.

1. Remove the pH/ORP electrode from the system by turning counter-clockwise until fully released.
2. Spray with water and/or detergent, using a soft brush to dislodge any particulate matter. (Cold water applied to a hot probe may cause damage.).
3. Visually inspect the electrode for signs of damage.
4. Calibrate the electrode.
5. Replace the PTFE tape and re-mount into the system, avoid twisting on the cable.

The pH glass is susceptible to coating by many substances. The speed of response, normally 95% of the reading in less than 10 seconds, is dramatically degraded when the pH glass is coated.

Slow response or non-reproducible measurements are signs that the electrode has become coated, clogged or dead. pH probes should be replaced annually under good conditions.

## VII. Troubleshooting

The Advantage Microtron controller is designed for many years of trouble free operation. Should a problem occur, refer to the following chart to help identify the problem.

SYMPTOM	POSSIBLE CAUSE	SOLUTION
False reading	Bad or dirty electrode Out of calibration	Clean as needed Calibrate unit, see Page 10
Will not calibrate	Dirty electrode Faulty electrode Faulty wiring to electrode Out of calibration	Clean electrode Replace controller or electrode as needed. Calibrate unit see Page 10 Check diagnostics menu - Pg 19
No system power	Power source Cable from power supply board to relays or fuse	Check power source Secure cable
No output power	Check relay fuse Check ribbon cable from login board to relays	Replace as needed Secure ribbon cable & orientation
Not receiving water meter contacts	Connection between unit and water meter	Check cable between water meter and unit

If problem persists, contact our customer service department with the model number and serial number of unit for free factory technical assistance at 800-743-7431.

### Reset Zero Conductivity

It may be necessary to reset the zero value of the conductivity scale if the calibration is not responsive.

1. Remove the probe from the line and make sure it is clean and dry. Leave it out, or disconnect black and red wire at probe.
2. Make note of current blowdown settings (trip, diff, Hi/lo Alarms and Limit) as they will be reset by this procedure. Also, make note of cal factor and zero factor from diagnostics.
3. Push SET UP/RUN key and arrow to DIAGNOSTICS.
4. Push ENTER and arrow down to RESET CALIBRATE.
5. Make sure probe is clean and dry before going on.
6. Push ENTER and arrow up to SYSTEM SET.
7. Push ENTER and arrow down to ZERO CONDUCTIVITY.
8. Push the decimal key • and your current conductivity scale will appear. Continue to hit the decimal key until the conductivity scale loops through the various scale settings and comes back to your scale, then push ENTER twice.
9. Reenter you blowdown settings under the BLEED SET menu.
10. Reinstall the probe in the line and check conductivity against the actual reading.
11. Calibrate as needed using the CALIBRATION menu.

## EXHIBIT 1

### **Recentring the pH**

Prior to servicing, the electrode must be removed from the system.

1. Remove the pH electrode from the line and clean the sensor tip with a clean, non-abrasive cloth.
2. Place the electrode in a buffer solution with a known and accurate pH of 7. Solution must be grounded by placing temp comp ground probe in solution also.
3. Scroll through the set up menu until you reach the "SYSTEM SET" screen.
4. Press ENTER and use the DOWN arrow to find the "CENTER PH" option. Press ENTER while the electrode is in the buffer solution.
5. Replace the pH electrode in the line and make any necessary adjustments to the pH reading using the normal pH calibration procedure.
6. Press the SET UP/RUN key to resume normal operation

## **VIII. Advantage Controls' Product Warranty**

Advantage Controls warrants control systems of its manufacture to be free of defects in material or workmanship. Liability under this policy extends for 24 months from date of installation. Liability is limited to repair or replacement of any failed equipment or part proven defective in material or workmanship upon manufacturer's examination. Removal and installation costs are not included under this warranty. Manufacturer's liability shall never exceed the selling price of equipment or part in question.

Advantage disclaims all liability for damage caused by its products by improper installation, maintenance, use or attempts to operate products beyond their intended functionality, intentionally or otherwise, or any unauthorized repair. Advantage is not responsible for damages, injuries or expense incurred through the use of its products.

The above warranty is in lieu of other warranties, either expressed or implied. No agent of ours is authorized to provide any warranty other than the above.

### **30 Day Billing Memo Policy**

Advantage Controls maintains a unique factory exchange program to ensure uninterrupted service with minimum downtime. If your in warranty controller malfunctions, call 1-800-743-7431, and provide our technician with Model and Serial Number information. If we are unable to diagnose and solve your problem over the phone, a fully warranted replacement unit will be shipped, usually within 48 hours, on a 30 Day Billing Memo.

This service requires a purchase order and the replacement unit will be billed at current list price for that model less any applicable resale discount. Upon return of your old unit, credit will be issued to your account if the unit is in warranty. If the unit is out of warranty or the damage not covered, a partial credit will be applied based upon a prorated replacement price schedule dependent on the age of the unit. Any exchange covers only the controller or pump. **Electrodes, liquid ends and other external accessories are not included.**

### **FCC Warning**

This equipment generates and uses radio frequency energy and if not installed and used properly, that is, in strict accordance with the manufacturer's instruction, may cause interference to radio communications. It has been type tested and found to comply with the limits for a class A computing device pursuant to subpart J of part 15 of FCC Rules, which are designed to provide reasonable protection against such interference when operated in a commercial or industrial environment. Operation of this equipment in a residential area is likely to cause interference in which case the user, at his own expense, will be required to take whatever measures necessary to correct the interference.

# Get the Advantage in Water Treatment Equipment

Advantage Controls can give you the *Advantage* in products, knowledge and support on all of your water treatment equipment needs.

- Cooling Tower Controllers
- Boiler Blow Down Controllers
- Blow Down Valve Packages
- Solenoid Valves
- Water Meters
- Chemical Metering Pumps
- Corrosion Coupon Racks
- Chemical Solution Tanks
- Solid Feed Systems
- Feed Timers
- Filter Equipment
- Glycol Feed Systems
- Pre Fabricated Systems

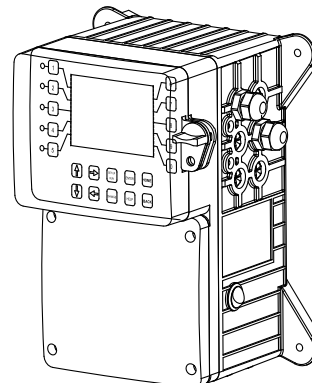
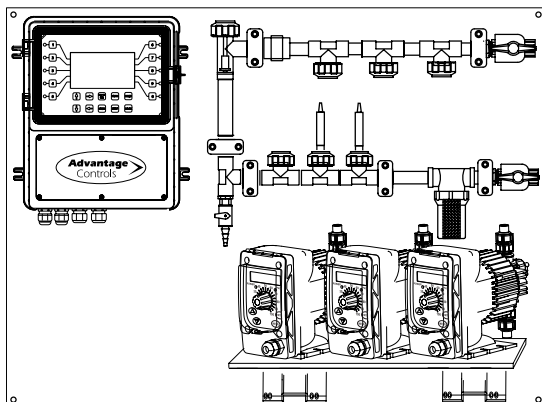
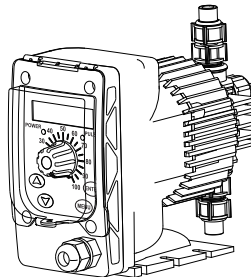
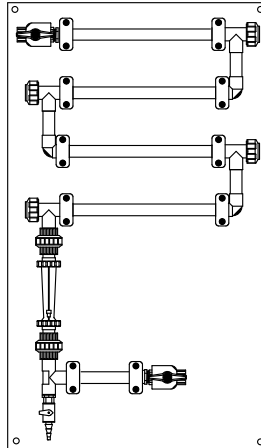
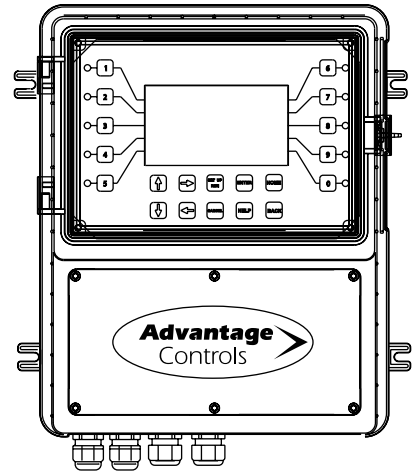
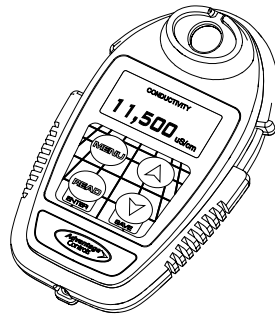


EXHIBIT 1

*Cooling Tower Maintenance Program and Plan*

**Appendix G**

**Material Safety Data Sheets for Chemicals**



7035 Van Buren Road  
Syracuse, New York 13209  
Phone (315) 635-4630  
Fax (315) 635-3263

APPENDIX G  
Material Safety Data Sheets for Chemicals

SAFETY DATA SHEET  
JEMCO TOWER SHIELD

1: IDENTIFICATION

Product Name; JEMCO TOWER SHEILD

DOT Shipping Name; CORROSIVE LIQUID, ACIDIC, ORGANIC, NOS, 8, (Carbamide hydrochloride)

Shipping ID # ; UN 3265, PG III

General Use; Acid base Cooling Water Scale and Corrosion Inhibitor

Company: JEMCO WATER TREATMENT SERVICES, INC.

7035 Van Buren Road

Syracuse; NY 13209

315-635-4630

FOR CHEMICAL EMERGENCY ONLY call ChemTel 1-800-255-3924

2. HAZARD(S) IDENTIFICATION

Physical hazards :	Not Classified	
Health hazards :	Skin corrosion/irritation	category 1
	Serious eye damage/ irritation	category 1
OSHAQ defined hazards:	Not classified	
Label Elements:		



Signal word:	Danger
Hazard statement:	Causes severe Skin burns and eye damage.
Precautionary Statement:	
Prevention	Keep in original container. Wear protective gloves/protective clothing eye protection/face protection. Do not eat, drink or smoke when using this product. Do not breathe mist or vapor. Wash thoroughly after handling.
Storage	Store Locked up
Disposal	Dispose of contents/container in accordance with local/regional/international regulations
Hazards(s) not otherwise	None Known
Supplemental information	None.

### 3. COMPOSITION / INFORMATION ON INGREDIENTS

	<u>CAS Number</u>	<u>% by weight</u>
Masurf Ar-300 (carbamide hydrochloride)	506-89-8	40%
Maleic Anhydride polymer with ethylacrylate and vinyl acetate, hydrolyzed 50%	113221-69-5	15%
Hydroxyphosphono Acetic Acid 50%	23783-26-8	10%
Sodium Tolytriazole 50%	64665-57-2	4.4%
Hydroxyethylidine Diphosphonic acid 60%	2809-21-4	5%

### 4. FIRST AID MEASURES

**Eyes:** Causes Burns. May cause permanent eye injury unless cared for immediately. Flush Immediately with large quantities of water for at least 15 minutes. Get Medical Attention.

**Skin:** Take off immediately all contaminated clothing. Wash area with warm water and soap several times. If irritation, redness, or swelling seek medical attention.

**Swallowing:** Call Physician or poison control center immediately. Rinse mouth. Do not induce vomiting. If vomiting occurs, keep head low so that stomach content doesn't get into lungs

**Inhalation:** Move to fresh air. Call Physician if symptoms develop or persist

### 5. FIRE FIGHTING MEASURES

**Suitable extinguishing media:** Water fog. Foam. Dry Chemical powder. Carbon Dioxide (CO2)

**Unsuitable extinguishing media:** Do not use water jet as an extinguisher, as this will spread fire.

**Specific hazards arising from the chemical:** During fire, gases hazardous to health may be formed.

**Special protective equipment and precautions for firefighter:** Self-contained breathing apparatus and full protective must be worn in case of fire.

**Firefighting equipment/instructions:** Move containers from fire area if you can do so without risk.

**General fire hazards:** No unusual fire or explosion hazards noted.

### 6. ACCIDENTAL RELEASE MEASURES

**Personal precautions, protective equipment and emergency procedures:** Keep people away from and upwind of spill/leak. Wear appropriate protective equipment and clothing during clean up. Do not breath mist or vapor. Do not touch damaged containers or spilled material unless wearing appropriate protective clothing. Ensure adequate ventilation.

**Methods and materials for containment and cleaning up:** Large spills: Stop the flow of material. Dike the spilled material and absorb in vermiculite, dry sand or earth and place into containers. Flush area with water. Small spills: wipe up with absorbent material and remove residual contamination.

**Environmental precautions:** Prevent further leakage and avoid discharge into drains, water courses or onto ground.

### 7. HANDLING AND STORAGE

**Storage :** Store in a cool dry well ventilate place. Store in corrosive resistant container

**Container Disposal:** Do Not Allow Product To Freeze. Triple Rinse Containers before Disposal or Recycling.

### **8. EXPOSURE CONTROL / PERSONAL PROTECTION**

Engineering Controls: Good ventilation should be used, eye wash station and emergency shower should be available

Personal Protection: Eye protection should be used

Wear appropriate chemical resistant gloves

Wear appropriate chemical resistant clothing

If ventilation is poor use respiratory protection

### **9. PHYSICAL AND CHEMICAL PROPERTIES**

pH < 1

Specific gravity: 1.16-1.24 @ 20 deg C

Weight: 10.5lbs/ gal density

Solubility in Water; Excellent

Appearance; Dark Amber Liquid

Odor; Chemical Odor ( tolyltriazole odor)

Flash Point; > 199.4 F ( >93.0 C)

Hazardous Polymerization

Will Not Occur

Materials To Avoid;

Alkaline

### **10. STABILITY AND REACTIVITY**

Reactivity: Reacts violently with strong alkaline substances. Product may react with reducing agents

Chemical stability: Material is stable under normal conditions

Possibility of hazardous: No dangerous reaction known under conditions of normal use.

Reactions.

Conditions to avoid: Avoid temperatures exceeding the flash point. Do not mix with incompatible chemicals.

Incompatible materials: Bases and reducing agents.

Hazardous decomposition products: No hazardous decomposition products are known.

### **11. TOXICOLOGICAL INFORMATION**

Acute	Species	Test Results
LD50	Mouse	11500-13000mg/kg

### **12. ECOLOGICAL INFORMATION**

This product is toxic to fish

Aquatic:

Acute		Species	Test Results
Algae	EC50	Algae	>10000 mg/l, 192h
Fish	EC50	Daphnia	>10000 mg/l 24h
Crustacea	LC50	Fish	>6810 mg/l 96h

### **13. DISPOSAL CONSIDERATIONS**

Dispose of container in accordance with all federal, State and local regulations regarding waste disposal.

**14. TRANSPORT INFORMATION**

N/A

**15. REGULATORY INFORMATION**

N/A

**16. OTHER INFORMATION**

NFPA ratings: Health: 2  
Flammability: 0  
Instability: 1

**Disclaimer:** The information provided in this safety Data Sheet is correct to the best of our knowledge. Information and belief at the date of its publication. The information given is designed only as a guidance for safe handling, use, processing, storage , transportation, disposal and releases and is not to be considered a warranty or quality specification. The information relates only to the specific material designed and may not be valid for such material used in combination with any other materials or in any process, unless specified in text.

Page 4 of 4



## SAFETY DATA SHEET

### 1. PRODUCT AND COMPANY IDENTIFICATION

**Product Code:** 210914  
**Product Name:** K-BROM T  
**Category:** Biocide  
**Company Name:** Water Science Technologies, LLC  
5520 Parkwood Circle  
Bessemer, AL 35022  
**Phone Number:** (866)284-9244  
**Emergency Contact:** ChemTel, Inc. (US) (800)255-3924  
ChemTel, Inc. (Int'l) (813)248-0585  
**Information:** Company EPA #: 88714  
**Intended Use:** A biocide used to control bacteria, algae, slime, and fungi.

### 2. HAZARDS IDENTIFICATION

**Acute Toxicity:** Oral, Category 4  
**Skin Corrosion/Irritation,** Category 1B  
**Skin Sensitization,** Category 1  
**Aquatic Toxicity (Chronic),** Category 1



**GHS Signal Word:**

**Danger**

**GHS Hazard Phrases:**

H302 - Harmful if swallowed.  
H314 - Causes severe skin burns and eye damage.  
H317 - May cause an allergic skin reaction.  
H410 - Very toxic to aquatic life with long lasting effects.

**GHS Precaution Phrases:**

P264 - Wash hands thoroughly after handling.  
P270 - Do not eat, drink or smoke when using this product.  
P260 - Do not breathe dust/fume/gas/mist/vapors/spray.  
P280 - Wear protective gloves/protective clothing/eye protection/face protection.  
P261 - Avoid breathing dust/fume/gas/mist/vapors/spray.  
P272 - Contaminated work clothing should not be allowed out of the workplace.  
P362+364 - Take off contaminated clothing and wash it before reuse.  
P273 - Avoid release to the environment.

**GHS Response Phrases:**

P303+361+353 - IF ON SKIN (or hair): Remove/take off immediately all contaminated clothing. Rinse skin with water/shower.  
P310 - Immediately call a POISON CENTER or doctor/physician.  
P363 - Wash contaminated clothing before reuse.  
P305+351+338 - IF IN EYES: Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing.  
P310 - Immediately call a POISON CENTER or doctor/physician.  
P301+330+331 - IF SWALLOWED: Rinse mouth. Do NOT induce vomiting.  
P310 - Immediately call a POISON CENTER or doctor/physician.  
P304+340 - IF INHALED: Remove victim to fresh air and keep at rest in a position comfortable for breathing.  
P311 - Call a POISON CENTER or doctor/physician.  
P391 - Collect spillage.

**GHS Storage and Disposal**

P501 - Dispose of contents/container to accordance with national and international



## SAFETY DATA SHEET

**Phrases:**

regulations.  
P405 - Store locked up.

**Hazard Rating System:**

HEALTH	3
FLAMMABILITY	0
PHYSICAL	1
PPE	F

**HMIS:**

**Potential Health Effects  
(Acute and Chronic):**

**Inhalation:**

Irritating to respiratory system.

**Skin Contact:**

May cause sensitization. May cause skin irritation.

**Eye Contact:**

May cause temporary or permanent eye damage.

### 3. COMPOSITION/INFORMATION ON INGREDIENTS

CAS #	Ingredient(s)	Concentration
32718-18-6	Bromochloro-5,5-dimethylimidazolidine-2,4-dione	96.0 -99.5 %

### 4. FIRST AID MEASURES

**Emergency and First Aid  
Procedures:**

**In Case of Inhalation:**

Move victim to fresh air. If not breathing, give artificial respiration. Call 911 or emergency medical service.

**In Case of Skin Contact:**

Flush skin with plenty of water for at least 15 minutes while removing contaminated clothing and shoes. Immediately call a POISON CENTER or doctor/physician.

**In Case of Eye Contact:**

Flush eyes with plenty of water for at least 15 minutes, occasionally lifting the upper and lower eyelids. Remove contact lenses, if present and easy to do. Continue rinsing. Immediately call a POISON CENTER or doctor/physician.

**In Case of Ingestion:**

If swallowed, do NOT induce vomiting. Give victim a glass of water or milk. Call a physician or poison control center immediately. Never give anything by mouth to an unconscious person.

**Note to Physician:**

No specific antidote. Treat symptomatically and supportively. Probable mucosal damage may contraindicate the use of gastric lavage.

### 5. FIRE FIGHTING MEASURES

**Flash Pt:**

No data.

**Explosive Limits:**

LEL: No data.

UEL: No data.

**Autoignition Pt:**

No data.

**Suitable Extinguishing Media:** Dry chemical or CO<sub>2</sub>. In case of exothermic decomposition and appearance of smoke, water should be used to suppress it.

**Fire Fighting Instructions:**

Wear a self-contained breathing apparatus (SCBA) to prevent contact with thermal decomposition products.

**Flammable Properties and  
Hazards:**

Dusts or fumes may form explosive mixtures in air. Forms explosive mixtures with combustible, organic or other easily oxidizable materials.



## SAFETY DATA SHEET

### 6. ACCIDENTAL RELEASE MEASURES

<b>Protective Precautions, Protective Equipment and Emergency Procedures:</b>	Wear appropriate protective clothing to minimize contact with skin. Use respirators and components tested and approved under appropriate government standards such as NIOSH (US) or CEN (EU).
<b>Environmental Precautions:</b>	Avoid release to the environment.
<b>Steps To Be Taken In Case Material Is Released Or Spilled:</b>	Evacuate area. Sweep up or absorb material, then place into a suitable clean, dry, closed container for disposal. Ventilate the area. Wash area with soap and water.

### 7. HANDLING AND STORAGE

<b>Precautions To Be Taken in Handling:</b>	Avoid prolonged or repeated contact with eyes, skin, or clothing. Wash thoroughly after handling. Avoid breathing in dust from product. Use with adequate ventilation. Keep containers closed when not in use.
<b>Precautions To Be Taken in Storing:</b>	Keep away from sources of ignition. Store at temperatures not exceeding 50°C/120°F. Keep container tightly closed. Store in a cool dry place. Store away from incompatible material.

### 8. EXPOSURE CONTROLS/PERSONAL PROTECTION

CAS #	Components (Chemical Name)	OSHA TWA	ACGIH TWA	Other Limits
32718-18-6	Bromochloro-5,5-dimethylimidazolidine-2,4-dione	No data.	No data.	No data.
<b>Respiratory Equipment (Specify Type):</b>	A respiratory protection program that meets OSHA's 29 CFR 1910.134 and ANSI Z88.2 requirements must be followed whenever workplace conditions warrant a respirator's use.			
<b>Eye Protection:</b>	Chemical safety goggles.			
<b>Protective Gloves:</b>	Impervious gloves.			
<b>Other Protective Clothing:</b>	Lab coat and/or apron.			
<b>Engineering Controls (Ventilation etc.):</b>	Local exhaust ventilation may be necessary to control any air contaminants to within their TLVs during the use of this product. Facilities storing or utilizing this material should be equipped with an eyewash facility and a safety shower.			
<b>Work/Hygienic/Maintenance Practices:</b>	Wash hands before breaks and immediately after handling the product.			



## SAFETY DATA SHEET

### 9. PHYSICAL AND CHEMICAL PROPERTIES

**Physical States:** ☐ Gas ☐ Liquid ☒ Solid  
**Appearance and Odor:** White to Off-White, Tablet.  
faint halogenous odor.  
**Melting Point:** No data.  
**Boiling Point:** No data.  
**Decomposition Temperature:** > 160.00 C (320.0 F)  
**Autoignition Pt:** No data.  
**Flash Pt:** No data.  
**Explosive Limits:** LEL: No data. UEL: No data.  
**Specific Gravity (Water = 1):** 1.8 - 2.0  
**Vapor Pressure (vs. Air or mm Hg):** 9.35x10<sup>(-3)</sup> PA at 25.0 C (77.0 F)  
**Vapor Density (vs. Air = 1):** No data.  
**Evaporation Rate:** No data.  
**Solubility in Water:** 0.22g/100mL at 25.0 C (77.0 F)  
**Solubility Notes:** Benzene: 2.5g/100g at 25C  
**Percent Volatile:** No data.

### 10. STABILITY AND REACTIVITY

**Reactivity:** Oxidizing agents, Bases, combustible materials.  
**Stability:** Unstable ☐ Stable ☒  
**Conditions To Avoid - Instability:** heating to decomposition. Moisture.  
**Incompatibility - Materials To Avoid:** Oxidizing agents, Bases.  
**Hazardous Decomposition Or Byproducts:** Nitrogen oxides, hydrogen chloride. hydrogen bromide. chlorine. Carbon oxides.  
**Possibility of Hazardous Reactions:** Will occur ☐ Will not occur ☒  
**Conditions To Avoid - Hazardous Reactions:** Product will not undergo polymerization.



## K-BROM T

Printed: 03/24/2015  
Revision: 03/24/2015  
Supersedes Revision: 09/04/2014

### SAFETY DATA SHEET

#### 11. TOXICOLOGICAL INFORMATION

**Toxicological Information:** No data available.  
CAS# 32718-18-6:  
Acute toxicity, LD50, Oral, Rat, 929.0 MG/KG.  
Result:  
Behavioral: Somnolence (general depressed activity).  
Gastrointestinal: Other changes.  
  
Acute toxicity, LC50, Inhalation, Rat, 1.100 MG/L, 4 H.  
Result:  
Skin and Appendages: Other: Hair.

CAS #	Ingredient(s)	NTP	IARC	ACGIH	OSHA
32718-18-6	Bromochloro-5,5-dimethylimidazolidine-2,4-dione	n.a.	n.a.	n.a.	n.a.

#### 12. ECOLOGICAL INFORMATION

**Results of PBT and vPvB assessment:** No data available.  
CAS# 32718-18-6:  
LC50, Rainbow Trout (*Oncorhynchus mykiss*), 0.400 MG/L, 96 H.  
Result:  
Age Effects.  
  
LC50, Water Flea (*Daphnia magna*), 0.750 MG/L, 48 H.  
Result:  
Age Effects.

#### 13. DISPOSAL CONSIDERATIONS

**Waste Disposal Method:** RCRA: It is the responsibility of the product user to determine at the time of disposal whether a material containing the product or derived from the product should be classified as a hazardous waste (40 CFR 261.20-24).  
  
Disposal: Biocide or Pesticide wastes are acutely hazardous. Improper disposal or excess product or rinsate is a violation of Federal law. If these wastes cannot be disposed of by use according to label instructions, contact your State Biocide/Pesticide or Environmental Control Agency, or the Hazardous Waste representative at your nearest EPA Regulation Office for guidance.

#### 14. TRANSPORT INFORMATION

##### LAND TRANSPORT (US DOT):

DOT Proper Shipping Name: Oxidizing solid, n.o.s. (Bromo-Chloro-5,5-DimethylHydantoin)  
DOT Hazard Class: 5.1 OXIDIZER  
UN/NA Number: UN1479

Packing Group: III





## SAFETY DATA SHEET

### LAND TRANSPORT (Canadian TDG):

TDG Shipping Name: Oxidizing solid, n.o.s.(Bromo-Chloro-5,5-DimethylHydantoin)  
UN Number: 1479 Packing Group: III  
Hazard Class: 5.1 - OXIDIZER TDG Classification:

### MARINE TRANSPORT (IMDG/IMO):

IMDG/IMO Shipping Name: Oxidizing solid, n.o.s.(Bromo-Chloro-5,5-DimethylHydantoin)  
UN Number: UN1 Packing Group: III  
Hazard Class: 5.1 - OXIDIZER

IMDG EMS Page: 1 IMDG MFAG Number: 1

### AIR TRANSPORT (ICAO/IATA):

ICAO/IATA Shipping Name: Oxidizing solid, n.o.s.(Bromo-Chloro-5,5-DimethylHydantoin)  
UN Number: 1479 Packing Group: III  
Hazard Class: 5.1 - OXIDIZER

## 15. REGULATORY INFORMATION

### EPA SARA (Superfund Amendments and Reauthorization Act of 1986) Lists

CAS #	Ingredient(s)	S. 302 (EHS)	S. 304 RQ	S. 313 (TRI)
32718-18-6	Bromochloro-5,5-dimethylimidazolidine-2,4-dione	No	No	No

This material meets the EPA ☒ Yes ☐ No Acute (immediate) Health Hazard  
'Hazard Categories' defined ☒ Yes ☐ No Chronic (delayed) Health Hazard  
for SARA Title III Sections ☐ Yes ☒ No Fire Hazard  
311/312 as indicated: ☐ Yes ☒ No Sudden Release of Pressure Hazard  
☐ Yes ☒ No Reactive Hazard

CAS #	Ingredient(s)	Canadian NPRI	Canadian IDL	Canadian DSL
32718-18-6	Bromochloro-5,5-dimethylimidazolidine-2,4-dione	No	No	No

CAS #	Ingredient(s)	Other US EPA or State Lists
32718-18-6	Bromochloro-5,5-dimethylimidazolidine-2,4-dione	CAA HAP, ODC: No; CWA NPDES: No; TSCA: No; CA PROP.65: No

CAS #	Ingredient(s)	International Regulatory Lists
32718-18-6	Bromochloro-5,5-dimethylimidazolidine-2,4-dione	

### Canadian WHMIS Classification:

No data available.

### Regulatory Information:

US Regulatory information:  
Primary EPA Registration #: 88714-4  
This product is subject to registration under FIFRA.  
All ingredients are reported in the EPA TSCA Inventory.

### Canada Regulatory information:

This product complies to the Pest Control Products Act and is considered exempt from from WHMIS classification.

Registration No.: 31033 Pest Control Products Act.

Canadian regulations: This product has been classified in accordance with the hazard criteria of the Canadian Controlled Products Regulations (CPR) and the SDS contains all the information required by the CPR.



## SAFETY DATA SHEET

### 16. OTHER INFORMATION

**Revision Date:** 03/24/2015

**Additional Information About This Product:** No data available.

**This Product:**

**Company Policy or**

**Disclaimer:**

The information accumulated herein is believed to be accurate based on the information provided, although no guarantee or warranty, either expressed or implied is made as to the accuracy or completeness of this information, whether originating with this company or not. Recipients are advised to confirm in advance of need that the information is correct, applicable and suitable to their circumstances. The conditions or methods of handling, storage, use and disposal of the product and container are beyond our control and may be beyond our knowledge. For this and other reasons, we do not assume responsibility and expressly disclaim liability for loss, damage or expense arising out of or in any way connected with the handling, storage or use of this information or product. If the product is used as a component in another product, this information may not be applicable.

XJ815

## Section 1. Identification

GHS product identifier : XJ815  
Other means of identification : Biocides  
Product type : Liquid.

Relevant identified uses of the substance or mixture and uses advised against  
See label and/or technical data sheet, if available.

Supplier's details : Jemco Water Treatment Services, Inc.  
7035 Van Buren Road  
Syracuse, NY 13209  
315-635-4630

Emergency telephone number (with hours of operation) : 24 Hour Emergency Phone 1-800-255-3924

## Section 2. Hazards identification

OSHA/HCS status : This material is considered hazardous by the OSHA Hazard Communication Standard (29 CFR 1910.1200).

Classification of the substance or mixture : ACUTE TOXICITY (oral) - Category 4  
ACUTE TOXICITY (inhalation) - Category 4  
SERIOUS EYE DAMAGE/ EYE IRRITATION - Category 2B

### GHS label elements

Hazard pictograms



Signal word : Warning

Hazard statements : Harmful if swallowed or if inhaled.  
Causes eye irritation.

### Precautionary statements

General : Read label before use. Keep out of reach of children. If medical advice is needed, have product container or label at hand.

Prevention : Wear eye or face protection. Use only outdoors or in a well-ventilated area. Avoid breathing vapor. Do not eat, drink or smoke when using this product. Wash hands thoroughly after handling.

Response : IF INHALED: Remove victim to fresh air and keep at rest in a position comfortable for breathing. Call a POISON CENTER or physician if you feel unwell. IF SWALLOWED: Call a POISON CENTER or physician if you feel unwell. Rinse mouth. IF IN EYES: Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing. If eye irritation persists: Get medical attention.

Storage : Not applicable.

Disposal : Dispose of contents and container in accordance with all local, regional, national and international regulations.

**Section 2. Hazards identification**

Hazards not otherwise classified : None known.

**Section 3. Composition/information on ingredients**

Substance/mixture : Mixture  
Other means of identification : Biocides

Product code : XJ815

Ingredient name	%	CAS number
Poly[oxyethylene(dimethyliminio)ethylene(dimethyliminio)ethylene dichloride]	15	31512-74-0

Any concentration shown as a range is to protect confidentiality or is due to batch variation.

While some substances are claimed as trade secret in accordance with the provision of OSHA 29 CFR 1910.1200(i), all known hazards are clearly communicated within this document.

Per Appendix D 1919.1200 OSHA, ranges can be used when there is batch-to-batch variability in a mixture or a trade secret claim.

There are no additional ingredients present which, within the current knowledge of the supplier and in the concentrations applicable, are classified as hazardous to health or the environment and hence require reporting in this section.

**Section 4. First aid measures**Description of necessary first aid measures

- Eye contact** : - Hold eye open and rinse slowly and gently with water for 15-20 minutes.  
- Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye.  
- Call a poison control center or doctor for further treatment advice.
- Inhalation** : - Move person to fresh air.  
- If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably by mouth-to-mouth if possible.  
- Call a poison control center or doctor for further treatment advice.
- Skin contact** : - Take off contaminated clothing.  
- Rinse skin immediately with plenty of water for 15-20 minutes.  
- Call a poison control center or doctor for treatment advice.
- Ingestion** : - Call poison control center or doctor immediately for treatment advice.  
- Have person sip a glass of water, if able to swallow.  
- Do not induce vomiting unless told to do so by the poison control center or doctor.  
- Do not give anything by mouth to an unconscious person.

Notes to physician : Not available.

See toxicological information (Section 11)

**Section 5. Fire-fighting measures**Extinguishing media

- Suitable extinguishing media** : Use an extinguishing agent suitable for the surrounding fire.
- Unsuitable extinguishing media** : None known.

## Section 5. Fire-fighting measures

- Specific hazards arising from the chemical** : In a fire or if heated, a pressure increase will occur and the container may burst. Fire water contaminated with this material must be contained and prevented from being discharged to any waterway, sewer or drain.
- Hazardous thermal decomposition products** : Decomposition products may include the following materials:  
carbon dioxide  
carbon monoxide  
nitrogen oxides  
halogenated compounds
- Special protective actions for fire-fighters** : Promptly isolate the scene by removing all persons from the vicinity of the incident if there is a fire. No action shall be taken involving any personal risk or without suitable training.
- Special protective equipment for fire-fighters** : Fire-fighters should wear appropriate protective equipment and self-contained breathing apparatus (SCBA) with a full face-piece operated in positive pressure mode.

## Section 6. Accidental release measures

### Personal precautions, protective equipment and emergency procedures

- For non-emergency personnel** : No action shall be taken involving any personal risk or without suitable training. Evacuate surrounding areas. Keep unnecessary and unprotected personnel from entering. Do not touch or walk through spilled material. Avoid breathing vapor or mist. Provide adequate ventilation. Wear appropriate respirator when ventilation is inadequate. Put on appropriate personal protective equipment.
- For emergency responders** : If specialised clothing is required to deal with the spillage, take note of any information in Section 8 on suitable and unsuitable materials. See also the information in "For non-emergency personnel".
- Environmental precautions** : Avoid dispersal of spilled material and runoff and contact with soil, waterways, drains and sewers. Inform the relevant authorities if the product has caused environmental pollution (sewers, waterways, soil or air). Water polluting material. May be harmful to the environment if released in large quantities.

### Methods and materials for containment and cleaning up

- Small spill** : Stop leak if without risk. Move containers from spill area. Dilute with water and mop up if water-soluble. Alternatively, or if water-insoluble, absorb with an inert dry material and place in an appropriate waste disposal container. Dispose of via a licensed waste disposal contractor.
- Large spill** : Stop leak if without risk. Move containers from spill area. Approach release from upwind. Prevent entry into sewers, water courses, basements or confined areas. Wash spillages into an effluent treatment plant or proceed as follows. Contain and collect spillage with non-combustible, absorbent material e.g. sand, earth, vermiculite or diatomaceous earth and place in container for disposal according to local regulations (see Section 13). Dispose of via a licensed waste disposal contractor. Contaminated absorbent material may pose the same hazard as the spilled product. Note: see Section 1 for emergency contact information and Section 13 for waste disposal.

## Section 7. Handling and storage

### Precautions for safe handling

- Protective measures** : Put on appropriate personal protective equipment (see Section 8). Do not ingest. Avoid contact with eyes, skin and clothing. Avoid breathing vapor or mist. Avoid release to the environment. Use only with adequate ventilation. Wear appropriate respirator when ventilation is inadequate. Keep in the original container or an approved alternative made from a compatible material, kept tightly closed when not in use. Empty containers retain product residue and can be hazardous. Do not reuse container.

## Section 7. Handling and storage

### Advice on general occupational hygiene

: Eating, drinking and smoking should be prohibited in areas where this material is handled, stored and processed. Workers should wash hands and face before eating, drinking and smoking. Remove contaminated clothing and protective equipment before entering eating areas. See also Section 8 for additional information on hygiene measures.

### Conditions for safe storage, including any incompatibilities

: Store in accordance with local regulations. Store in original container protected from direct sunlight in a dry, cool and well-ventilated area, away from incompatible materials (see Section 10) and food and drink. Keep container tightly closed and sealed until ready for use. Containers that have been opened must be carefully resealed and kept upright to prevent leakage. Do not store in unlabeled containers. Use appropriate containment to avoid environmental contamination.

### Satisfactory Materials of Construction

:  
Buna-N rubber  
Butyl rubber  
Polypropylene  
Plexiglas  
Teflon  
PVC - rigid  
Viton  
EPDM rubber  
PVC - flexible  
Fiberglass  
Neoprene  
Polyethylene - low density  
Tygon  
Tyril 880  
Gum rubber  
Silicone rubber  
Hypalon  
Polyethylene - high density  
Stainless steels 304 and 316  
ABS (Plastic)  
Morton test liner (108 T 44LV)  
6/6 Nylon  
FRP lined mild steel

NOTE: With respect to all other materials not listed above, user should be aware that use of such materials with this product may be hazardous and result in damages to such materials and other property and personal injuries. No data concerning such materials not listed above should be implied by the user.

## Section 8. Exposure controls/personal protection

### Control parameters

#### Occupational exposure limits

None.

### Appropriate engineering controls

: Use only with adequate ventilation. Use process enclosures, local exhaust ventilation or other engineering controls to keep worker exposure to airborne contaminants below any recommended or statutory limits.

### Environmental exposure controls

: Emissions from ventilation or work process equipment should be checked to ensure they comply with the requirements of environmental protection legislation. In some cases, fume scrubbers, filters or engineering modifications to the process equipment will be necessary to reduce emissions to acceptable levels.

### Individual protection measures

## Section 8. Exposure controls/personal protection

- Hygiene measures** : Wash hands, forearms and face thoroughly after handling chemical products, before eating, smoking and using the lavatory and at the end of the working period. Appropriate techniques should be used to remove potentially contaminated clothing. Wash contaminated clothing before reusing. Ensure that eyewash stations and safety showers are close to the workstation location.
- Eye/face protection** : Safety eyewear complying with an approved standard should be used when a risk assessment indicates this is necessary to avoid exposure to liquid splashes, mists, gases or dusts. If contact is possible, the following protection should be worn, unless the assessment indicates a higher degree of protection: chemical splash goggles.
- Skin protection**
- Hand protection** : Chemical-resistant, impervious gloves complying with an approved standard should be worn at all times when handling chemical products if a risk assessment indicates this is necessary. Considering the parameters specified by the glove manufacturer, check during use that the gloves are still retaining their protective properties. It should be noted that the time to breakthrough for any glove material may be different for different glove manufacturers. In the case of mixtures, consisting of several substances, the protection time of the gloves cannot be accurately estimated.
- Body protection** : Personal protective equipment for the body should be selected based on the task being performed and the risks involved and should be approved by a specialist before handling this product.
- Other skin protection** : Appropriate footwear and any additional skin protection measures should be selected based on the task being performed and the risks involved and should be approved by a specialist before handling this product.
- Respiratory protection** : Use a properly fitted, air-purifying or air-fed respirator complying with an approved standard if a risk assessment indicates this is necessary. Respirator selection must be based on known or anticipated exposure levels, the hazards of the product and the safe working limits of the selected respirator.

## Section 9. Physical and chemical properties

### Appearance

- Physical state** : Liquid.
- Color** : Clear, pale yellow
- Odor** : Mild.
- Odor threshold** : Not available.
- pH** : 6 to 8
- Melting point** : <0°C (<32°F)
- Boiling point** : >100°C (>212°F)
- Flash point** : Closed cup: >100°C (>212°F) [Tagliabue.]
- Evaporation rate** : Not available.
- Flammability (solid, gas)** : Not available.
- Lower and upper explosive (flammable) limits** : Not available.
- Vapor pressure** : Not available.
- Vapor density** : Not available.
- Relative density** : 1.13 to 1.16
- Dispersibility properties** : Not available.
- Solubility** : Easily soluble in the following materials: cold water and hot water.
- Partition coefficient: n-octanol/water** : Not available.
- Auto-ignition temperature** : Not available.

## Section 9. Physical and chemical properties

**Decomposition temperature** : Not available.  
**viscosity** : Dynamic (room temperature): 125 mPa·s (125 cP)  
**VOC** : 0 % (w/w)

## Section 10. Stability and reactivity

**Reactivity** : No specific test data related to reactivity available for this product or its ingredients.

**Chemical stability** : The product is stable.

**Possibility of hazardous reactions** : Under normal conditions of storage and use, hazardous reactions will not occur.

**Conditions to avoid** : No specific data.

**Incompatible materials** : No specific data.

**Hazardous decomposition products** : Under normal conditions of storage and use, hazardous decomposition products should not be produced.

## Section 11. Toxicological information

### Information on toxicological effects

#### Acute toxicity

Product/ingredient name	Result	Species	Dose	Exposure
Poly[oxyethylene (dimethyliminio)ethylene (dimethyliminio)ethylene dichloride]	LD50 Oral	Rat	1850 mg/kg	-
XJ815	LC50 Inhalation Dusts and mists	Rat	2.9 mg/l	4 hours
	LD50 Dermal	Rabbit	>2000 mg/kg	-
	LD50 Oral	Rat - Male	1951 mg/kg	-

#### Irritation/Corrosion

Product/ingredient name	Result	Species	Score	Exposure	Observation
XJ815	Eyes - Mild irritant	Rabbit	-	-	-
	Skin - Mild irritant	Rabbit	-	-	-

#### Sensitization

Product/ingredient name	Route of exposure	Species	Result
XJ815	skin	Guinea pig	Not sensitizing
	skin	Human	Not sensitizing

#### Mutagenicity

Not available.

#### Carcinogenicity

This product has not been tested unless noted in summary results.

**Conclusion/Summary** : A two year rat carcinogenicity study showed a slight increase in c-cell adenomas in female rats. Studies with male rats and male and female mice did not show any evidence of carcinogenic response. This product is not considered a carcinogen.

#### Reproductive toxicity

**Section 11. Toxicological information**

Not available.

**Teratogenicity**

Product/ingredient name	Result	Species	Dose	Exposure
XJ815	Negative - Oral Negative - Unreported	Rat Rabbit	- >125 mg/kg	- -

**Specific target organ toxicity (single exposure)**

Not available.

**Specific target organ toxicity (repeated exposure)**

Not available.

**Aspiration hazard**

Not available.

**Information on the likely routes of exposure** : Routes of entry anticipated: Oral, Dermal.  
Routes of entry not anticipated: Inhalation.

**Potential acute health effects**

**Eye contact** : Causes eye irritation.  
**Inhalation** : Harmful if inhaled.  
**Skin contact** : No known significant effects or critical hazards.  
**Ingestion** : Harmful if swallowed.

**Symptoms related to the physical, chemical and toxicological characteristics**

**Eye contact** : Adverse symptoms may include the following:  
irritation  
watering  
redness  
**Inhalation** : No specific data.  
**Skin contact** : No specific data.  
**Ingestion** : No specific data.

**Delayed and immediate effects and also chronic effects from short and long term exposure****Short term exposure**

**Potential immediate effects** : Not available.

**Potential delayed effects** : Not available.

**Long term exposure**

**Potential immediate effects** : Not available.

**Potential delayed effects** : Not available.

**Potential chronic health effects**

Product/ingredient name	Result	Species	Dose	Exposure
XJ815	Sub-chronic NOEL Oral Sub-acute NOEL Dermal	Rat Rabbit	3000 mg/kg >1000 mg/kg	90 days 90 days

**General** : No known significant effects or critical hazards.  
**Carcinogenicity** : No known significant effects or critical hazards.  
**Mutagenicity** : No known significant effects or critical hazards.

## Section 11. Toxicological information

Teratogenicity	: No known significant effects or critical hazards.
Developmental effects	: No known significant effects or critical hazards.
Fertility effects	: No known significant effects or critical hazards.

### Numerical measures of toxicity

#### Acute toxicity estimates

Not available.

## Section 12. Ecological information





### Toxicity

Product/ingredient name	Result	Species	Exposure
XJ815	Acute LC50 13 mg/l Marine water Acute LC50 >600 mg/l Marine water	Crustaceans Fish	96 hours 96 hours

## Section 13. Disposal considerations

Disposal methods	: The generation of waste should be avoided or minimized wherever possible. Disposal of this product, solutions and any by-products should at all times comply with the requirements of environmental protection and waste disposal legislation and any regional local authority requirements. Dispose of surplus and non-recyclable products via a licensed waste disposal contractor. Waste should not be disposed of untreated to the sewer unless fully compliant with the requirements of all authorities with jurisdiction. Waste packaging should be recycled. Incineration or landfill should only be considered when recycling is not feasible. This material and its container must be disposed of in a safe way. Care should be taken when handling emptied containers that have not been cleaned or rinsed out. Empty containers or liners may retain some product residues. Avoid dispersal of spilled material and runoff and contact with soil, waterways, drains and sewers.
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## Section 14. Transport information

	DOT Classification	IMDG	IATA
UN number	Not regulated.	3082	3082
UN proper shipping name	-	ENVIRONMENTALLY HAZARDOUS SUBSTANCE, LIQUID, N.O.S. (Poly[oxyethylene(dimethyliminio)ethylene(dimethyliminio)ethylene dichloride]). Marine pollutant (Poly[oxyethylene(dimethyliminio)ethylene(dimethyliminio)ethylene dichloride])	ENVIRONMENTALLY HAZARDOUS SUBSTANCE, LIQUID, N.O.S. (Poly[oxyethylene(dimethyliminio)ethylene(dimethyliminio)ethylene dichloride])
Transport hazard class(es)	-	9  	9  
Packing group	-	III	III

## Section 14. Transport information

Environmental hazards	No.	Yes.	Yes.
Additional information	-	<p>The marine pollutant mark is not required when transported in sizes of ≤5 L or ≤5 kg.</p> <p><b>Emergency schedules (EmS)</b> F-A, S-F</p> <p><b>Remarks</b> ERG Guide 171, HazMat Code 4960131</p>	<p>The environmentally hazardous substance mark is not required when transported in sizes of ≤5 L or ≤5 kg.</p> <p><b>Remarks</b> ERG Guide 171, ERG Code 9L</p>

**Special precautions for user** : **Transport within user's premises:** always transport in closed containers that are upright and secure. Ensure that persons transporting the product know what to do in the event of an accident or spillage.

**Transport in bulk according to Annex II of MARPOL 73/78 and the IBC Code** : Not available.

## Section 15. Regulatory information

Potential impurities present in trace quantities are included in the regulatory listings of this section.

**U.S. Federal regulations** : **United States inventory (TSCA 8b):** This product is subject to regulation under the US Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and is therefore exempt from US Toxic Substances Control Act (TSCA) Inventory listing requirements.

**Clean Water Act (CWA) 307:** bis(2-chloroethyl) ether

**Clean Water Act (CWA) 311:** bis(2-chloroethyl) ether

### SARA 302/304

#### Composition/information on ingredients

Name	%	EHS	SARA 302 TPQ		SARA 304 RQ	
			(lbs)	(gallons)	(lbs)	(gallons)
Dichloroethyl ether	0.001	Yes.	10000	981.5	10	0.98

**SARA 304 RQ** : 1000000 lbs / 454000 kg [104745.9 gal / 396506.6 L]

### SARA 311/312

**Classification** : Immediate (acute) health hazard

#### Composition/information on ingredients

Name	%	Fire hazard	Sudden release of pressure	Reactive	Immediate (acute) health hazard	Delayed (chronic) health hazard
Poly[oxyethylene(dimethyliminio)ethylene(dimethyliminio)ethylene dichloride]	15	No.	No.	No.	Yes.	No.

☒ Not available.

### CERCLA

: CERCLA: Hazardous substances.: 1,4-dioxane: 100 lbs. (45.4 kg); bis(2-chloroethyl) ether;

## Section 15. Regulatory information

FDA

: This product is not allowed for food contact uses.

NSF

: This product is listed by the NSF under NSF/ANSI Standard 60 for use in potable water applications with the following maximum allowable use rates : Concentrations of 2-5 ppm can be used at the initiation of treatment for up to 21 days. Thereafter, the maximum use rate is 0.5 ppm for potable water systems.

EPA Reg. No.

: 1448-212-73319

FIFRA

: This chemical is a pesticide product registered by the United States Environmental Protection Agency and is subject to certain labeling requirements under federal pesticide law. These requirements differ from the classification criteria and hazard information required for safety data sheets (SDS), and for workplace labels of non-pesticide chemicals. The hazard information required on the pesticide label is reproduced below. The pesticide label also includes other important information, including directions for use.

*For Residential Use:***CAUTION:** Harmful if swallowed or absorbed through the skin. Causes moderate eye irritation. Avoid contact with skin, eyes, or clothing. Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, using tobacco, or using the toilet. Remove and wash contaminated clothing before reuse.**ENVIRONMENTAL HAZARDS:** This pesticide is toxic to fish, aquatic organisms and clams. Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans or other waters unless in accordance with the requirements of a National Pollutant Discharge Elimination System (NPDES) permit and the permitting authority has been notified in writing prior to discharge. Do not discharge effluent containing this product to sewer systems without previously notifying the local sewage treatment plant authority. For guidance contact your State Water Board or Regional Office of the EPA.*For Occupation Use:***CAUTION:** Harmful if swallowed or absorbed through the skin. Causes moderate eye irritation. Avoid contact with skin, eyes, or clothing. Wear long-sleeved shirt, long pants, shoes, socks, and chemical resistant gloves made of any waterproof material (such as any waterproof material, such as Barrier Laminate, Butyl Rubber, Nitrile Rubber, Neoprene Rubber, Natural Rubber, Polyethylene, Polyvinyl Chloride (PVC) or Viton).**USER SAFETY RECOMMENDATIONS:** User should wash hands before eating, drinking, chewing gum, using tobacco, or using the toilet. User should remove clothing/ PPE immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing. User should remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.**USER SAFETY REQUIREMENTS:** Follow manufacturer's instructions for cleaning/ maintaining PPE. If no such instructions for washables exists, use detergent and hot water. Keep and wash PPE separately from other laundry.

Discard clothing and other absorbent materials that have been drenched (except as required by directions for use) or heavily contaminated with this product's concentrate. Do not reuse them.

**PERSONAL PROTECTIVE EQUIPMENT (PPE):** Wear protective eyewear (goggles or face shield). Wear long sleeved shirt and long pants, socks, shoes, chemical-resistant apron and chemical resistant gloves (such as any waterproof material, such as Barrier Laminate, Butyl Rubber, Nitrile Rubber, Neoprene Rubber, Natural Rubber, Polyethylene, Polyvinyl Chloride (PVC) or Viton).**ENVIRONMENTAL HAZARDS:** This pesticide is toxic to fish, aquatic organisms and clams. Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans or other waters unless in accordance with the requirements of a National Pollutant Discharge Elimination System (NPDES) permit and the permitting authority has been notified in writing prior to discharge. Do not discharge effluent containing this product to sewer systems without previously notifying the local sewage treatment plant authority. For guidance contact your State Water Board or Regional Office of the EPA.

## Section 15. Regulatory information

State regulationsCalifornia Prop. 65

**WARNING:** This product contains less than 0.1% of a chemical known to the State of California to cause cancer.

<u>Ingredient name</u>	<u>Cancer</u>	<u>Reproductive</u>
1,4-dioxane	Yes.	No.
bis(2-chloroethyl) ether	Yes.	No.

## Section 16. Other information

Hazardous Material Information System (U.S.A.)

Health	1
Flammability	1
Physical hazards	0

Caution: HMIS® ratings are based on a 0-4 rating scale, with 0 representing minimal hazards or risks, and 4 representing significant hazards or risks. Although HMIS® ratings are not required on SDSs under 29 CFR 1910.1200, the preparer may choose to provide them. HMIS® ratings are to be used with a fully implemented HMIS® program. HMIS® is a registered mark of the National Paint & Coatings Association (NPCA). HMIS® materials may be purchased exclusively from J. J. Keller (800) 327-6868.

The customer is responsible for determining the PPE code for this material.

National Fire Protection Association (U.S.A.)

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Copyright ©2001, National Fire Protection Association, Quincy, MA 02269. This warning system is intended to be interpreted and applied only by properly trained individuals to identify fire, health and reactivity hazards of chemicals. The user is referred to certain limited number of chemicals with recommended classifications in NFPA 49 and NFPA 325, which would be used as a guideline only. Whether the chemicals are classified by NFPA or not, anyone using the 704 systems to classify chemicals does so at their own risk.

History

Date of printing	: 4/27/2015.
Date of issue/Date of revision	: 4/27/2015.
Date of previous issue	: 4/24/2015.
Version	: 0.05
Prepared by	: Jason Markham / Jemco
Key to abbreviations	: ATE = Acute Toxicity Estimate BCF = Bioconcentration Factor GHS = Globally Harmonized System of Classification and Labelling of Chemicals IATA = International Air Transport Association IBC = Intermediate Bulk Container IMDG = International Maritime Dangerous Goods LogPow = logarithm of the octanol/water partition coefficient

## Section 16. Other information

MARPOL 73/78 = International Convention for the Prevention of Pollution From Ships, 1973 as modified by the Protocol of 1978. ("Marpol" = marine pollution)  
UN = United Nations

Indicates information that has changed from previously issued version.

### Notice to reader

To the best of our knowledge, the information contained herein is accurate. However, neither the above-named supplier, nor any of its subsidiaries, assumes any liability whatsoever for the accuracy or completeness of the information contained herein.

Final determination of suitability of any material is the sole responsibility of the user. All materials may present unknown hazards and should be used with caution. Although certain hazards are described herein, we cannot guarantee that these are the only hazards that exist.

Buckman Laboratories, Inc. warrants that this product conforms to its chemical description and is reasonably fit for the purpose referred to in the directions for use when used in accordance with the directions under normal conditions. Buyer assumes the risk of any use outside of such directions.

Seller makes no other warranty or representation of any kind, express or implied, concerning the product, including NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS OF THE GOODS FOR ANY OTHER PARTICULAR PURPOSE. No such warranties shall be implied by law and no agent of seller is authorized to alter this warranty in any way except in writing with a specific reference to this warranty.

The exclusive remedy against seller shall be in a claim for damages not to exceed the purchase price of the product, without regard to whether such a claim is based upon breach of warranty or tort.

Any controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, and judgment upon the rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

## **Appendix H**

### **DOH Notification Log**

Regulation Reference Section: 4.10 Electronic registration and reporting.

All cooling towers required registration by September 17, 2015. In addition, any new cooling towers or changes in Ownership require registration with the NYS Department of Health. The following registration information is required;

- date of last routine culture sample collection, sample results, and date of any required remedial action;
- date of any legionella sample collection, sample results, and date of any required remedial action;
- date of last cleaning and disinfection;
- dates of start and end of any shutdown for more than five days;
- date of last certification and date when it was due;
- date of last inspection and date when it was due;
- date of discontinued use; and
- such other information as shall be determined by the department.

Regulation Reference Section: 4.8 Discontinued use.

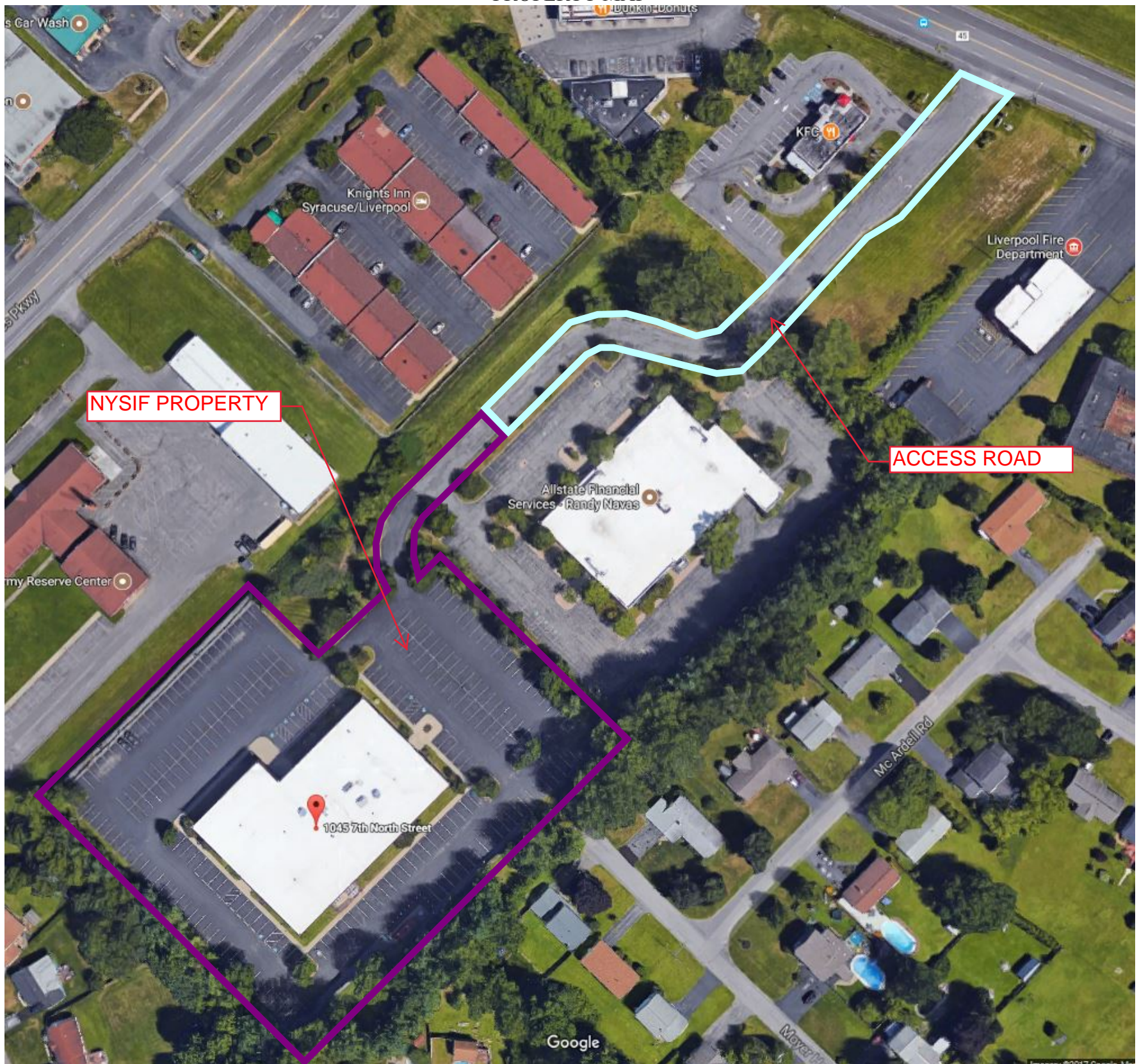
The owner of a cooling tower shall notify the NYS State Department of Health within 30 days after removing or permanently discontinuing use of a cooling tower. Such notice shall include a statement that such cooling tower has been disinfected and drained in accordance with the same procedures as set forth in the shutdown plan, as specified in the maintenance program and plan.

EXHIBIT 1

***Cooling Tower Maintenance Program and Plan***

<b>Date</b>	<b>Initials</b>	<b>Summary</b>
8/31/15		Initial CT registration

EXHIBIT 2  
PROPERTY MAP



## EXHIBIT 3

### SEAL COATING AND STRIPING SPECIFICATIONS

#### **SEAL COATING**

##### **PROJECT CONDITIONS**

Seal coating must be completed in order to provide access to the building at all times. The parking lot is to be done on consecutive weekends.

Do not apply sealant when the air temperature is 50 degrees F or lower and falling, when the pavement is wet, or when rain is anticipated within eight hours.

##### **MATERIALS**

Must comply with DOT approved Material List (if applicable)

<https://www.dot.ny.gov/divisions/engineering/technical-services/materials-bureau/materials-and-equipment>.

##### **PREPARATION**

Remove all dust, dirt, salt, paint, loose pavement markings, and other foreign matter. Scrape, burn, or wash with detergent solution to remove accumulations of oil or grease. Flush away residue with clean water and allow to dry.

##### **APPLICATION**

Apply sealant by squeegee, brush, or mechanical equipment in accordance with the Manufacturer's printed instructions. Allow sealant to cure 24 hours prior to opening to traffic.

#### **STRIPING**

##### **CONDITIONS**

Striping to be completed within 24 hrs of seal coating. Striping must comply with American with Disabilities Act requirements. Perform the painting operations after working hours, on weekends or at such time so as not to interfere with the flow of traffic. Provide temporary barriers to prevent vehicles from driving over newly painted areas.

Apply paint on dry pavement surface, when the air temperature is above 40 degrees F. Paint shall be applied in strict accordance with the manufacturer's recommendations for use.

##### **MATERIALS**

Paint: DOT Section 640-2, yellow or white as directed by NYSIF's Building Manager. Blue paint will be used for marking handicapped parking spaces.

### EXHIBIT 3

Rapid Dry Paint: Aexcel Corp., [www.aexcelcorp.com](http://www.aexcelcorp.com), 12W-D310 White, 12W-D330 Yellow; Sherwin-Williams, [www.swpavementmarkings.com](http://www.swpavementmarkings.com), TM5126 White, TM5127 Yellow; Franklin Paint Company, Inc., [www.franklinpaint.com](http://www.franklinpaint.com), 2040 White, 2041 Yellow.

#### **PREPARATION**

Remove dust, dirt, and other foreign material detrimental to paint adhesion. Mark layout of stripes and lines with chalk or paint.

#### **APPLYING PAVEMENT MARKING**

Apply paint to match current configuration or as directed by NYSIF's Building Manager and to be in compliance with the Americans with Disabilities Act.