

REQUEST FOR PROPOSAL

Hot Water Supply System Design and Installation



MOHAWK GAMING ENTERPRISES, LLC
873 STATE ROUTE 37
AKWESASNE, NY 13655

REFERENCE# RFP2014-9

TABLE OF CONTENTS

I	RFP Instructions	2
II	RFP Timeline	2
III	Introduction and Background	3
IV	Purpose and Key Objectives	3
V	Scope of Work and Services	3
VI	Pricing	3
VII	Proposal Format	4
VIII	Evaluation Criteria	4
IX	Contract Provisions	5-8
X	Standard Contract Terms and Conditions	9-11
	Appendix A – Signature Sheet	12
	Appendix B – Qualifications/Experience Sheet	13-14
	Appendix C – Fee Breakdown Summary	15
	Appendix D – Target Business Policy	16-21

I INSTRUCTIONS

1. **Sealed** proposals must be delivered to the purchasing department, prior to the closing of 4:00 p.m. on **Monday, May 12, 2014**. Please indicate the Reference Number (**RFP2014-9**) on your document. **Appendix A, B and C** must be submitted with the proposal and signed by contracting party. Responses must be signed by an authorized officer of the firm. Please submit one (1) original and five (5) copies of your proposal to:

Mailing Address: Rebecca Pomainville – Purchasing Department
Akwasasne Mohawk Casino – ADMIN BLDG
PO BOX 1179
921 State Route 37
Hogansburg, NY 13655

Owner shall not accept proposals received by fax or e-mail. Late proposals received after the closing date and time will be disqualified from competition and returned to the respondent unopened.

2. A mandatory pre-proposal site visit will be held on April 30, 2014, at 10:00 a.m. at 873 State Hwy 37, Hogansburg, NY. Contractors are to report to the security podium located next to the buffet. The site tour will begin promptly at 10:00 a.m. followed by a question and answer session to be held in the Akwasasne Mohawk Casino Security Briefing Room. The purpose of this conference is to allow potential service providers an opportunity to see the location and environment the hot water system will be servicing.

Attendance at the site visit will be evidenced by the representative's signature on the attendance roster. **No one will be admitted after 10:00 a.m.**

3. Verbal communication shall not be effective unless formally confirmed in writing by specified procurement official in charge of managing this RFP process. In no case shall verbal communication govern over written communication. Inquiries regarding the specifications are to be directed to Rebecca Pomainville, Ph: 518-358-3510 ext.2448 or by email at rpomainville@mohawkcasino.com.

Owner will make a good-faith effort to provide a written response to each question or request for clarification that requires addenda within two (2) business days. Owner will not respond to any questions/requests for clarification that require addenda, if received after May 9, 2014.

4. Contractors wishing to amend an already submitted proposal must submit the amendment to 921 State Route 37, Akwasasne, NY 13665 in writing before the designated closing date/time provided they are properly identified by company name, RFP number and due date and are received prior to the closing date and time.

II RFP TIMELINE (The dates above are subject to change at the sole discretion of MGE.)

Proposals Released	April 18, 2014
<u>Mandatory</u> Pre-Bid Conference	April 30, 2014
Technical Questions/Inquiries Due	May 9, 2014
Proposals Due	May 12, 2014
Proposals Evaluated	May 13-15, 2014
Award Contract	May 16, 2014
Project Plan to Commence	TBD- May 2014

III INTRODUCTION AND BACKGROUND

The Akwesasne Mohawk Casino Resort is located in Upstate New York situated along the St. Lawrence River and bordering Canada in two provinces both Ontario and Quebec. The Akwesasne Mohawk Casino Resort opened its doors in April of 1999 by the St Regis Mohawk Tribe and is the number one entertainment venue in the surrounding area. The Casino currently has 1,800 Class III, Vegas style slot machines, 30 table games, high limit room, and all you can eat Buffet featuring prime rib and seafood, Stick's Sports Bar that can service up to 160 guests, Rapids Food Court which offers fast and convenient options at three stations; the grill, bakery, or pizzeria, and lastly Reflections Gift Shop which sells logoed items, jewelry and more. The Akwesasne Mohawk Casino Resort welcomes over 1 million visitors annually both National and International with a good portion of our customer base from Canada. The Casino has recently expanded to include 20,000 square feet of additional gaming space, a 150 room hotel with banquets facilities, pool and spa, as well as our sister property Mohawk Bingo Palace with 550 seat capacity and Class II machines.

The goal of the Akwesasne Mohawk Casino Resort is to be the first choice for the customer's casino and gambling entertainment. Based on this goal the Akwesasne Mohawk Casino Resort is focusing on building loyalty and real value for our customers. This is accomplished by being a service-oriented entertainment company who offers attractive benefits and rewards to its customers. MGE is unique among gaming facilities in that we achieve over eighty percent of rated play, exceeding industry standards, therefore, enabling us to truly capitalize on our player database. As we continue to understand our rapidly growing markets, we are looking to partner with a company that is in line with MGE's goals as a customer service oriented provider.

IV PURPOSE AND KEY OBJECTIVES

The current hot water supply system was installed approximately five years ago. The original design included six 100-gallon, propane powered hot water heaters (A.O. Smith Model #BTH 199A 101). The hot water heaters have been failing to hold up to the demands and we have only two tanks remaining. An electric hot water heater has been installed as an emergency back-up should the remaining two hot water heaters fail. The piping for all six tanks remains in tack. Mohawk Gaming Enterprises, LLC ("Owner") is seeking proposals from qualified firms to provide professional services for the design and installation of a turnkey, energy-efficient reliable long-term hot water supply system.

V SCOPE OF WORK AND SERVICES

Owner requests bids for the lump sum fee to design and install a sustainable hot water supply system that will serve the Production Kitchen, Rapids Food Court, Employee Dining Room, and two bathrooms. The ideal plan will include a propane boiler system with holding tank(s). Variations to this plan will also be considered. Proposals must include a brief description of the proposed plan, time frame required to complete the project design, and time frame required to complete the installation.

VI PRICING

Contractor shall provide the services described in this RFP as fixed pricing. Pricing shall be detailed and broken down by labor for the design services, labor for the installation, parts/materials, and travel/accommodations.

1. Pricing shall include all labor, tools, equipment, instrumentation, transportation, delivery/freight charges, fuel and energy surcharges, materials, supervision and fees necessary to complete the work.
2. The pricing, terms, and conditions stated in Contractor's bid must remain valid and irrevocable for a period not less than sixty (60) days after the bid due date herein set forth.

VII PROPOSAL FORMAT

Sealed proposals must be formatted in the same order, providing the information listed below in order to be considered:

1. Signature page – (**Appendix A**) must be completed in its entirety and signed in ink by an authorized officer.
2. Technical Proposals – This section shall include the technical proposals and shall include a breakdown of labor and materials costs (schedule of values) for each applicable section defined in the Scope of Work and a total project cost line.
3. Contractor Qualifications/Experience Sheet– (**Appendix B**)
4. Fee Schedule – (**Appendix C**)

VIII EVALUATION CRITERIA

The following are the evaluation factors and maximum points possible for technical point scores:

1. Technical Presentation (20 Points Possible) – points will be awarded based on thoroughness of understanding of project scope, clarity and detail of information, innovativeness of ideas, and overall “presentation” of bid package.
 2. Corporate Profile/Contractor Qualifications (20 Points Possible) – points will be awarded based on years in business, experience in providing the level and type of service specified in the proposal and further defined under section Contractor Qualifications (**Appendix B**).
 3. References (20 Points Possible) – points will be awarded based on response of at least three (3) references regarding satisfaction with previous work, number of change orders involved with projects, and speed at which both work and change orders were accomplished. Significant points will be deducted for references the committee is unable to contact, or whom provide negative commentary (**Appendix B**).
 4. Cost (40 Points Possible)–The lowest overall project cost will receive 40 points, with deduction increments based on the total number of bids received as outlined below. (**Appendix C**).
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Total 100 Points Possible

Each cost proposal cost will be evaluated by use of the following formula for all vendors who attained the Minimum acceptable technical score only:

$$\frac{\text{Lowest price of all proposals}}{\text{Price of Proposal being evaluate}} \times 40 = \text{Price Score}$$

Minimum Acceptable Score:

Contractors must score a minimum of 70% of the total technical points possible. The minimum qualifying score would be 70% of 60 points (42 technical points) or greater to be eligible for further consideration and to continue in the evaluation process. All contractors not attaining the minimum acceptable score shall be disqualified and removed from further consideration.

- Sealed proposals will be evaluated by a committee of three (3) or more individuals in accordance with the criteria stated. After the evaluation of all qualified Proposals received, Owner reserves the right to enter into negotiations with the Contractor or Contractor(s) that Owner considers the best qualified to meet its requirements. The selection of the successful Contractor will be made by a consensus of the evaluation committee with the approval of the General Manager.

IX CONTRACT PROVISIONS

1. ORIGINAL RFP DOCUMENT

This RFP should not be construed as a contract to purchase goods or services. Owner will not be obligated in any manner to any proponent whatsoever until a written contract has been duly executed relating to an accepted proposal. The successful vendor will be required to sign a contract upon award.

2. CONTRACT APPROVAL

This **RFP2014-9** does not, by itself, obligate Owner or any of its departments to the use of any of proposed services until a valid written contract is awarded and approved by the appropriate authorities. Upon written notice to Contractor, MGE may set a different starting date for the contract. Owner will not be responsible for any work completed by Contractor, even work done in good faith, if it occurs prior to the contract start date set by Owner.

3. PROPOSAL AS A PART OF THE CONTRACT

The RFP and the successful proposal shall be considered to be incorporated into the contract. Owner shall retain the RFP, and all related terms and conditions, exhibits and other attachments, in original form in an archival copy. Any modification of these, in Contractor's submission, is grounds for immediate disqualification.

4. ELECTRONIC MEANS

This **RFP2014-9** is being made available by electronic means. If accepted by such means, the bidder acknowledges and accepts full responsibility to ensure that no changes are made to this **RFP2014-9**. In the event of conflict between a version of the **RFP2014-9** in the bidder's possession and the version maintained by Owner, the version maintained by Owner shall govern.

5. EVALUATIONS

All submissions are subject to evaluation after opening and before award of contract. Submissions may be evaluated not only on the submitted price, but also on quality and quantity of services provided and the capacity of the respondent to meet the requirements of the procurement in accordance with the criteria stated in the RFP document. All buying activity will attempt to seek out best value, which maximizes the effectiveness and profitability to Owner. Owner is not obligated to award the lowest proposal and reserves the right to re-address the requirement should there be reasonable doubt that prices received are not competitive. This RFP implies no obligation on Owner to accept this response or any response submitted.

6. GUIDELINE

While Owner has made considerable efforts to ensure an accurate representation of information in this RFP, the information contained in this RFP is supplied solely as a guideline for proponents. The information is not guaranteed or warranted to be absolutely accurate, nor is it necessarily comprehensive or exhaustive. Nothing in this RFP is intended to relieve proponents from forming their own opinions and conclusions with respect to the matters addressed in this RFP. This document or any portion thereof may not be used for any purpose other than the submission of proposals. Information pertaining to this RFP or any material obtained by the proponent as a result of participation in this project is confidential and must not be disclosed without written authorization from Owner.

7. Subcontractors

All subcontractors must be approved by Owner. The use of subcontractors does not relieve the Contractor of any responsibility to Owner. Additional information about subcontractors may be requested before award. The intention of the Contractor to use subcontractors must be stated in Contractor's Technical Proposal. The subcontractor's qualifications must also be included as an Exhibit to Contractor's Technical Proposal. Failure to disclose the use of subcontractors may lead to disqualification after award of contract.

8. Omissions

Omission in the Proposal of any provision herein described shall not be construed as to relieve the Contractor of any responsibility or obligation to complete and satisfactorily deliver, operate, and support any and all equipment or services.

9. Commencement of Work

Commencement of the Work shall be subject to the discretion of the Owner and the Owner reserves the right to make all decisions regarding such commencement.

10. Project Timelines

The actual sequence and duration of the work activities requested will be coordinated and directed by the Owner's Project Office at its sole discretion.

11. Authority of Owner

Notwithstanding any other provisions of the Contract to the contrary, the Contractor, once its activities begin on the Site, shall comply with the site rules of Owner. The Contractor shall direct its personnel and subcontractors to respect and abide by the authority of the Owner and the Project Manager on all matters related to the Contractor's operation at the Site, including but not limited to:

- A. Use of Site resources such as elevators and loading docks
- B. Connection to and use of utilities
- C. Safety issues
- D. Trash removal and Site cleanliness
- E. Site Security

12. Work Schedule

- A. Contractor's work hours are limited to 8 a.m. to 5 p.m., Monday through Friday. Work cannot be performed on the weekend without prior approval from Owner. However, when Contractor is required to turn the water supply off, Contractor will need to perform this work during grave shift hours between 11:00 pm – 7:00am. Contractor shall prepare and submit to the Akwesasne Mohawk Casino project office a proposed work schedule that includes:
 - a. Estimated days to complete project.
 - b. Number of personnel to be assigned to perform the work.
 - c. Identify when contractor must shut down designated area to install new hot water supply system and the length of time it will take before area can be brought back in service.
- B. Contractor shall submit a proposed work schedule 10 business days prior to starting work under this contract.
- C. Job Meetings – weekly meetings, arranged by Contractor, shall be held at the job site with a principal of Contractor present as well as job superintendent and Owner. The purpose of the meeting shall be to discuss, plan and execute job progress in relation to the progress schedule, purchasing and delivery of materials, shop drawings if applicable, and other pertinent items. Owner's project coordinator shall submit a written report of the meeting to all in attendance. It shall be the principal purpose of these meetings to affect coordination, cooperation, and assistance in every practical way toward the end of maintaining progress of the project on schedule and to complete the project within the specified contract time.

13. Damages

Contractor shall be responsible for any and all damages to portions of the building caused by it, its employees or subcontractors; including but not limited to:

- A. Damage to any portion of the building caused by the movement of tools, materials, or equipment.
- B. Damage to any component, including ceiling tiles, of the construction of spaces in which the Contractor is working.
- C. Other Damage to the materials, tools and/or equipment of Owner, its consultants, subcontractors, Architect, other contractors, agents and leases.

14. Bonding

If any subcontractors are included or involved in your proposal, Owner reserves the right to require a 100% Payment Bond.

- A. Owner requires a surety bond with an A.M. BEST rating of "A".

- B. If required, successful Contractor will have fifteen (15) days from date of notification of award of proposal to furnish to the Owner, including but not limited to, contracts, bonds, certificates of insurance, otherwise the proposal award may be withdrawn and awarded to the next lowest responsible proposal or completely rejected and re-solicited at the discretion of the Owner.

15. Guarantee

The Contractor shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the final acceptance of the work and shall replace such defective materials or workmanship without cost to the Owner.

Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The Contractor shall replace such defective equipment or materials, without cost to the Owner, within the manufacturer's warranty period.

16. Independent Contractor

In performing the obligations required by the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Owner.

17. Contractor-Subcontractor Relationships

The Contractor agrees that the terms of these contract documents shall apply equally to a subcontractor as to the Contractor, and that the subcontractor is bound by those terms as an employee of the Contractor

18. Invoices for Payment

The CONTRACTOR may submit pay applications on Standard AIA form. Application for payment shall be itemized and supported by substantiating data as required by the Owner with a schedule of values for partial payments. Contractor is also required to submit an unconditional waiver and release upon progress payment with every pay application. A 10% retainage will be required.

Final payment will be made upon acceptance of the Contractor's work by the Owner. The Contractor shall forward the application for final payment along with the following documents: Consent of surety to final payment, if required; Contractor's Affidavit of Release of Lien AIA document G706A (properly signed, notarized with no exceptions); Contractor's Affidavit of Payments of Debts and Claims AIA document G706 (properly signed, notarized with no exceptions) and all other documents further described in the closeout check list included in this agreement.

19. Change Orders

Change orders will be approved in writing after notice to the OWNER of the necessary modification. No additional/modified work will commence until the CONTRACTOR has received an approved Change Order, and Purchase Order if required.

20. Target Business Program

Contractor acknowledges that the St. Regis Mohawk Tribe has a policy to establish and implement its Targeted Business Program (the "TBE Program"). This Program will allow additional consideration to be given to Tribal Member Contractor's in selection of qualified Subcontractors for the Project. In consideration of this proposal Contractor agrees to satisfy this policy and to provide information regarding its actions intended to satisfy this policy that is requested by the St. Regis Mohawk Tribe. (See **Appendix D** for policy requirements).

21. Project Closeout

A. General

- a. Furnish to the Owner, operation and maintenance manuals, if applicable.
- b. Contractor and all Subcontractors and interested parties shall be present at all inspections as set forth in this section and as specified elsewhere in agreement.
- c. The project closeout documentation check list, as shown and described in this section, shall be completed by the Prime Contractor and all items required for closeout shall be delivered to the Owner in two (2) copies bound in a three-ring notebook binder.
- d. Comply with all items as listed in this section.

B. Final Inspections

- a. This project shall have both a Pre-Final inspection and a Final Inspections made before it is finally accepted by the Owner.
- b. The Pre-Final Inspection shall be held after all service areas are in place and in operation. Contractor and Subcontractors shall attend this inspection.
- c. The Final Inspection shall be held with the Owner, Contractor and Subcontractors to demonstrate to Owner that all areas are to specifications as defined in proposal and to their satisfaction.

C. Closeout Documentation Checklist

Contractor shall furnish all letters, warranties, reports, certificates, certification and all other items as required on the closeout checklist as shown at the end of this section before contract retainage amount shall be released.

D. Substantial Completion

Substantial completion is the date that the Owner and Designer determine the project is complete enough for the Owner to achieve beneficial occupancy. It is also the date that begins the warranty periods.

The following closeout items must be submitted by the Contractor before final payment. Two copies of each will be required.

- _____ 1. Executed Certificate of Substantial Completion with attached punch list.
- _____ 2. Executed Final Change Order (If applicable).
- _____ 3. Final Application for Payment.
- _____ 4. Consent of Surety to Final Payment (If applicable).
- _____ 5. Contractor's Affidavit of Release of Liens (properly signed, notarized, with no exceptions) AIA document G706A.
- _____ 6. Contractor's Affidavit of Payments of Debts and Claims (properly signed, notarized, with no exceptions) AIA document G706.
- _____ 7. Properly executed release of liens by subcontractors and/or Contractors (If applicable).
- _____ 8. Approved Inspection Certificates by local authorities having jurisdiction (If applicable).
- _____ 9. Contractor's One-Year Warranty (notarized).
- _____ 10. Warranty summary sheet and original warranties for specific items.
- _____ 11. List of all subcontractors and suppliers with names, addresses, and phone numbers (especially emergency numbers).
- _____ 12. Operations and Maintenance Manuals (If applicable).

Contractor's signature

Date

X STANDARD TERMS AND CONDITIONS

1. Term of Contract

The term of the Contract shall commence on the Effective Date (as defined below) and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract.

The Effective date shall be: a) the date the Contract has been fully executed by the Contractor and by the Akwesasne Mohawk Casino herein referred to as MGE and all approvals required by MGE contracting procedures have been obtained or b) the date referenced in the Special Contract Terms and Conditions whichever is later. The Contract shall not be a legally binding contract until after the fully-executed Contract has been sent to the Contractor.

The Contractor shall not start performance until all of the following have occurred: a) the Effective Date has arrived; b) the Contractor has received a copy of the fully-executed Contract; and c) the Contractor has received a purchase order from the MGE Purchasing Department. The MGE shall not be liable to pay the Contractor for any supply furnished or work performed or an expense incurred before the Effective Date or before the Contractor receives a copy of the fully-executed Contract or before the Contractor has received a purchase order. Except as otherwise provided in Paragraph 3, no MGE employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract prior to the Effective Date.

2. Estimated Quantities

It shall be understood and agreed that any quantities listed in the Contract are estimated only and may be increased or decreased in accordance with the actual requirements of the MGE and that the MGE is accepting any bid or portion thereof, contracts only and agrees to purchase only in such quantities as represent the actual requirements of the MGE. The MGE reserves the right to purchase items covered under the Contract through a separate procurement procedure, whenever the Purchasing Department deems it to be in the best interest of the MGE.

3. Purchase Orders

The MGE Purchasing Department may issue purchase orders against the Contract. These orders constitute the Contractor's authority to make delivery. All purchase orders received by the Contractor up to and including the expiration date of the Contract are acceptable and must be performed in accordance with the Contract. Contractors are not permitted to accept purchase orders which require performance extended beyond those performance time periods specified in the Contract but in no event longer than ninety (90) days after the expiration date of the Contract period. Each purchase order will be deemed to incorporate the terms and conditions set forth in the Contract. Purchase orders may or may not include an "ink" signature by the MGE. The electronically-printed name of the purchaser represents the signature of that individual who has the authority, on behalf of the MGE, to authorize the Contractor to proceed.

Purchase orders may be issued electronically or through facsimile equipment. The electronic transmission of a purchase order shall require acknowledgement of receipt of the transmission by the Contractor.

Receipt of the electronic or facsimile transmission of the purchase order shall constitute receipt of an order. Orders received by the Contractor after 3:00 p.m. will be considered received the following business day.

The MGE and the Contractor specifically agree as follows:

Upon receipt of an order, the Contractor shall promptly and properly transmit an acknowledgement in return. Any order which is issued electronically shall not give rise to any obligation to deliver on the part of the Contractor, or any obligation to receive and pay for delivered products on the part of the MGE, unless and until the Purchasing Department transmitting the order has properly received an acknowledgement.

4. Independent Contractor

In performing the obligations required by the Contract, the Contractor

will act as an independent contractor and not as an employee or agent of the MGE.

5. Compliance with Law

The Contractor shall comply with all applicable federal, NY State, Tribal laws, regulations and local ordinances in the performance of the Contract.

6. Gaming Procedures

Gaming Related Vendors are required to submit the appropriate GSR application to the tribal gaming commission. Once application is approved by the commission MGE is notified by the gaming commission that Contractor is approved and can be utilized in procuring gaming related products.

Non-Gaming Vendors may be required to submit a GSR application if total annual purchases exceed \$50,000 but only when deemed necessary by the tribal gaming commission.

Licensors (or Contractor) shall adhere to Tribal internal control standards (TICS) of the St. Regis Mohawk Tribal Gaming Commission that are applicable to the goods and services the Licensor (or Contractor) is providing.

7. Covenants Against Kickbacks: MGE will not tolerate Kickbacks in any form.

- MGE defines a "Kickback" as any cash, fee, commission, gift, an item of value or compensation of any kind in exchange for favorable treatment in obtaining or retaining any purchase order or securing a contract with MGE.
- Vendor agrees that its officers or employees have not and will not provide or attempt to provide, either directly or indirectly, any Kickback to any employees of the SRMT, its enterprises, agents, government or any member of the Tribe in an attempt to influence a decision.
- Failure to abide by this specific section shall be sufficient reason for the immediate termination, without further notice, of this and any other purchase order or contract Contractor currently has with MGE.

8. Environmental Provisions

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

9. Hazardous Materials

All vendors that supply hazardous materials must provide the appropriate Material Safety Data Sheets before or at the time of delivery. Contractor must comply with all NY State, federal, tribal and local laws and regulations pertaining to the packaging, handling and transportation of hazardous materials.

10. Compensation/Invoices

The Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in the Contract. All item(s) shall be delivered within the time period(s) specified in the Contract. The Contractor shall be compensated only for item(s) which are delivered and accepted by the MGE.

The Contractor shall send an invoice itemized by purchase order line item to the address reference on the purchase order promptly after the item(s) are delivered. The invoice should include only amounts due under the purchase order. The purchase order number must be included on all invoices.

11. Payment Terms

Payment terms are Net no later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. Payment should not be construed by the Contractor as acceptance of the item(s) furnished by the Contractor. The MGE reserves the right to conduct further inspection after payment, but within a reasonable time after delivery, and reject the item(s) if such post payment inspection discloses a defect or a failure to meet specifications.

12. **Warranty**

The Contractor warrants that all item(s) furnished by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. The Contractor shall pass through to the MGE the manufacturer's warranty for all parts or supplies provided under the Contract. The Contractor shall correct any problem with the service and/or replace any defective part with a part of equivalent or superior quality without any additional cost to the MGE.

13. **Delivery**

All item(s) shall be delivered F.O.B Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the MGE. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in Paragraph 20 (Force Majeure), all item(s) must be delivered within the time period specified on the contract purchase order. Time is of the essence and, in addition to any other remedies; the contract purchase order is subject to termination for failure to deliver as specified. Unless otherwise stated by the Contractor in its Bid or indicated in the Special Contract Terms and Conditions, delivery must be made within thirty (30) days after award of the Contract Purchase Order.

14. **Hold Harmless Provision**

The Contractor shall hold the MGE harmless from and indemnify the MGE against any and all claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract and shall, at the request of the MGE, defend any and all actions brought against the MGE based upon any such claims or demands.

15. **General Indemnity**

The Contractor shall indemnify, defend, and hold harmless MGE, its directors, officers, employees, and agents from and against all liabilities, damages, claims, or suits, including any and all costs and expenses related thereto, including the defense thereof, reasonable attorneys' fees and court costs arising out of or resulting from death, bodily injury, or property damage resulting from the act or omission of the Contractor, its directors, officers, employees and agents, and/or in connection with the performance of this Agreement except to the extent caused by the negligence or willful misconduct of MGE. For the purpose of this Article, the term "Contractor" is deemed to include the Contractor and its affiliated companies, the subcontractors, and suppliers of the goods and/or Services furnished hereunder.

16. **LIMIT OF LIABILITY** Notwithstanding any other provision of this Agreement, except for either party's breach of Confidentiality, a party's liability to the other party pursuant to this Agreement (i) shall be limited to proven direct damages in an aggregate amount not to exceed the total amount payable under this Agreement during the then-current term of this Agreement; and (ii) **shall not include any indirect, special, punitive or consequential damages of any type or nature whatsoever under any legal or equitable theory, including but not limited to damages for lost profits or lost business or business interruption (whether or not a party has been advised of, or could have foreseen, such damages)**. This section shall continue to apply following the termination of this Agreement.

17. **Insurance Coverage**

During the term of the contract, the contractor at its sole cost and expense shall provide proof of commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the contractor shall provide and maintain the following coverage and limits and naming MGE as additional insured:

a. **Worker's Compensation** - The Contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of New York, as well as employer's liability coverage with minimum limits of \$1,000,000.00, covering all of contractor's employees who are engaged in any work under the contract. If any work is sublet, the contractor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.

b. **Commercial General Liability** - General Liability Coverage on a comprehensive broad form on an occurrence basis in the minimum amounts of \$1,000,000.00 combined single limit naming MGE as additional insured.

c. **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles used in connection with the contract. The minimum combined single limit shall be \$1, 000, 000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist.

Requirements - Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of New York. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in New York. The Contractor shall at all times comply with the terms of such insurance policies and all requirements of the insurer under any such insurance policies, except as they may conflict with New York laws or this contract. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.

18. **Audit Provisions**

The MGE shall have the right at reasonable times and at a site designated by the MGE, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract.

The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of one (1) year from date of final payment. The Contractor shall give full and free access to all records to the MGE and/or their authorized representatives.

19. **Inspection and Rejection**

No item(s) received by the MGE shall be deemed accepted until the MGE has had a reasonable opportunity to inspect the item(s). Any item(s) which is discovered to be defective or fails to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the item(s) or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. It shall thereupon become the duty of the Contractor to remove rejected item(s) from the premises without expense to the MGE within fifteen (15) days after notification. Rejected item(s) left longer than fifteen (15) days will be regarded as abandoned, and the MGE shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale which represents the MGE's costs and expenses in regard to the storage and sale of the item(s). Upon notice of rejection, the Contractor shall immediately replace all such rejected item(s) with others conforming to the specifications and which are not defective. If the Contractor fails neglects or refuses to do so, the MGE shall then have the right to procure a corresponding quantity of such item(s), and deduct from any monies due or that may thereafter become due to the Contractor, the difference between the price stated in the Contract and the actual cost thereof to the MGE.

20. **Default**

a. The MGE may, subject to the provisions of Paragraph 20, Force Majeure, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in Paragraph 21, Termination Provisions) the whole or any part of this Contract including a purchase order, for any of the following reasons:

- 1) Failure to deliver the awarded item(s) within the time specified in the Contract or contract purchase order or as otherwise specified;
- 2) Improper delivery;
- 3) Failure to provide an item(s) which is in conformance with the specifications referenced in the Invitation for Bids;

- 4) Delivery of a defective item;
 - 5) Failure or refusal to remove and replace any item(s) rejected as defective or nonconforming within fifteen (15) days after notification;
 - 6) Insolvency or bankruptcy;
 - 7) Failure to protect, to repair, or to make good any damage or injury to property; or
 - 8) Breach of any provision of this Contract.
- b. In the event that the MGE terminate this Contract in whole or in part as provided in Subparagraph a. above, the MGE may procure, upon such terms and in such manner as it determines, on item(s) similar or identical to those so terminated, and the Contractor shall be liable to the MGE for any reasonable excess costs for such similar or identical item(s) included within the terminated part of the Contract.
- c. If the Contract is terminated in whole or in part as provided in Subparagraph a. above, the MGE, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the MGE in the manner and to the extent directed by the Purchasing Department, such partially manufactured or delivered item(s) as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as it has been terminated. Except as provided below. Payment for any partially manufactured or delivered item(s). Such sum as the MGE determines to be necessary to protect the MGE against loss.
- d. The rights and remedies of the MGE provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- e. The MGE's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the MGE of its rights and remedies in regard to the event of default or any succeeding event of default.

21. Force Majeure

Neither party will incur any liability to the other of its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the MGE orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the MGE may reasonably request. After receipt of such notification, the MGE may effect to cancel the Contract or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

22. Termination Provisions

The MGE has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

- a. **Termination for Convenience:** The MGE shall have the right to terminate the Contract or a purchase order for its convenience if the MGE determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.
- b. **Termination for Cause:** The MGE shall have the right to terminate the Contract for Contractor default under paragraph 19,

Default, upon written notice to the Contractor. The MGE shall also have the right, upon written notice to the Contractor, to terminate the Contract or a purchase order for other cause as specified in this Contract or by law. If it is later determined that the MGE erred in terminating the Contract or a contract purchase order for cause, then at the MGE's discretion, the Contract shall be deemed to have been terminated for convenience under the Subparagraph 21.a.

23. Assignability and Subcontracting

Subject to the terms and conditions of this Paragraph 22, the Contract shall be binding upon the parties and their respective successors and assigns.

24. Integration

The RFP, Bid form, Proposal acceptance agreement and execution form, and proof of insurance documents, as well as the purchase orders constitute the entire agreement between the parties. No agent, representative, employee or officer of either the MGE or the Contractor has authority to make or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties or by a change order signed by the MGE.

25. Changes

The MGE reserves the right to make changes at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the supply within the scope of the contract; 3) to exercise an option to purchase or early payment option; 4) to notify the Contractor that the MGE is exercising any Contract renewal or extension option; or 5) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. **Any such change shall be made by:** a. the contracting officer for changes to purchase orders, **by notifying the Contractor in writing.** The **change** shall be effective as of the date **of the notification of change,** unless the **change** specifies a later effective date. Such increases, decreases, changes, modifications or exercises of purchase options will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the supply in accordance with the **change.**

26. Confidentiality

Confidential Information means any information, in any form, including, without limitation, written documents, oral communications, recordings, videos, software, databases, business plans, and electronic/magnetic media, provided to or observed by the Contractor hereto pursuant to this Agreement, and owned or provided by MGE and/or third parties through MGE, excepting information that is generally available to the public. The Contractor agrees that it will maintain all Confidential Information in confidence and use it solely for purposes of performance under this Agreement. Such Confidential Information may be distributed within the Contractor's organization only to personnel with a need to know such information for purposes relating to this Agreement or in compliance with a court order or statutory requirement. In no event will the Contractor disclose any Confidential Information to any third parties except subcontractors and independent consultants and then only where approved by MGE in advance and subject to the execution of a confidentiality agreement acceptable to MGE.

APPENDIX A

SIGNATURE SHEET

(Please type or print clearly in ink only)

******TO BE COMPLETED BY THE BIDDER AND SUBMITTED WITH PROPOSAL ******

My signature certifies that the bid as submitted complies with all Terms and Conditions as set forth in **RFP2014-8**. My signature also certifies that the accompanying bid is not the result of, or affected by, any unlawful act of collusion with another person or company engaged in the same line of business or commerce.

I hereby certify that I am authorized to sign as Representative for Contractor:

Complete Legal Name of Vendor: _____

Remit to Address: _____

SIN No./Fed ID No.: _____

NAICS Code: _____

Telephone: _____

Fax: _____

Cellular: _____

Email: _____

Name (type/print): _____

Title: _____

Signature: _____

Date: _____

APPENDIX B

Contractor Qualification/Experience Sheet

(Please type or print clearly in ink only)

******TO BE COMPLETED BY THE BIDDER AND SUBMITTED WITH PROPOSAL******

It is essential that the bidder provide adequate experienced personnel, capable of and devoted to the successful accomplishment of services to be performed under this agreement. Please provide the following required information:

- 1. Complete a brief description of your company and state how long you have been operating under your present Company name.

- 2. Provide a copy of your license/certification.

- 3. Have you ever defaulted on a contract? If so where and why?

- 4. Resumes of senior company officials and the proposed project manager who will be in charge of this project if awarded. Vendors are also encouraged to include any detailed training, awards, etc. pertaining to their company or company personnel in this section. Overall, experience in providing the level and type of service specified in the proposal.

APPENDIX B (Continued)

5. How many employees do you currently have?

6. Please provide a list of contracts (similar in scope to this RFP) recently completed by your firm list up to five (5) contracts over the past five (5) years. Include the company name, customer contact person and their title, company phone number and a brief description of the services provided to the customer, approximate gross cost for each, and the month and year completed.

Company Name	Customer Contact Person and Title	Company Phone Number	Brief Description of Services

APPENDIX C

FEE BREAKDOWN SUMMARY

Please provide your estimate for each category in the sections below. **Estimates shall include all cost for labor, materials and indirect costs (i.e. overhead, material mark-up or any additional charges/services).**

Design Services (Lump Sum Fee): \$ _____

 Straight Time Hourly Rate: \$ _____

 Over Time Hourly Rate: \$ _____

Construction/Installation (Lump Sum Fee): \$ _____

 Straight Time Hourly Rate: \$ _____

 Over Time Hourly Rate: \$ _____

Parts/Material Cost Markup _____ %

Miscellaneous: \$ _____

Company Name: _____

Authorization: _____

Signature

Title

Date

Reference: RFP2014-9 Hot Water Supply Design and Installation

Appendix D

Target Business Policy

POLICY ON MOHAWK PREFERENCE CONSTRUCTION CONTRACTING

GENERAL POLICY

It is the policy of the St. Regis Mohawk Tribe to adopt a strong Mohawk Preference policy for the award of all construction contracts and subcontracts of the Tribe and all tribally owned and operated entities. This policy will apply to all construction contracts and subcontracts for projects on tribal lands and funded exclusively by the St. Regis Mohawk Tribe and all State and Federally funded projects on tribal land or within the jurisdiction of the Tribe.

A. DEFINITIONS

1. "Director"-the individual or department, appointed by Tribal Council to ensure that this policy is implemented and complied with and certify that a particular company is Member or Mohawk-Owned.
- 2."Tribal Lands" shall mean any lands now or hereafter within the jurisdiction of the St. Regis Mohawk Tribe.
3. "Qualified business or company" shall mean a Business or Company meeting the minimum requirements for a contract or subcontract. A Qualified Business or Company shall have proper insurance coverage, including liability, workmen's compensation and other essential coverage and meet all other requirements contained in the Request for Bids. A Qualified Business also means the practical, technical, administrative and financial ability of a firm to perform or provide by itself, if permitted, through subcontracts, the services or goods specially set out in the bid or request for proposal package.
4. Qualified worker shall meet all of the requirements of a job description.
5. "Mohawk-Owned business or company" shall mean an entity which is:
 - a. Fifty-one percent (51%) or more Mohawk-owned, such that Mohawks provide real value for their ownership interest, obtain majority voting rights regarding decisions of the entity, are entitled to and receive at least fifty-one percent (51%) of all profits, and are entitled to at least fifty-one (51%) of the assets on dissolution of the entity.
 - b. Under significant Mohawk management, such that at least one Mohawk is substantially involved in the day-to-day management of the firm as his or her primary employment.
 - c. Not created solely or primarily to take advantage of Mohawk preference.
 - d. Employs Mohawks in all or most positions for which qualified Mohawks are available, which means those Mohawks who've applied for an available position.
6. "Preference" means the process of providing advantage, or limiting bidding to Certified Mohawk business entities to provide a means by which certified, qualified firms receive contracts and that Mohawk employees are hired, in the following order:

Mohawk Preference shall be applied in the following manner:

- a. First Preference —Enrolled members of the St. Regis Mohawk Tribe.
- b. Second Preference-Akwesasne Mohawks
- c. Third Preference-Members of Mohawk or other Tribes or First Nations.

7. "Responsive bid" means at a minimum that the bid shall comply with all bid requirements stated in writing and shall be a reasonable price.

C. SOLICITATION OF BIDS

1. Open Solicitation. The Tribe shall solicit bids from qualified non-Mohawk as well as qualified Mohawk-owned companies.

D. AWARD OF BIDS

1. The award shall be made to the qualified Mohawk-owned company with the lowest responsive bid if the bid is within the maximum total contract price established for the specific project or activity being solicited. Otherwise, the contract shall be award to the lowest qualified bid, with the preference outlined in Exhibit A being utilized for any Qualified Mohawk-owned company.

E. MOHAWK PREFERENCE PLANS

1. Preference Plan Required. All companies who bid on a tribal construction project shall include in their bid a Mohawk Preference Plan for the prime contract and any subcontracts (Exhibit B).

2. Contents of Plan. The Mohawk Preference Plan shall indicate the name of the company's proposed subcontractors, whether the proposed sub-contractor(s) is/are a Mohawk company and if not, information on the company's good faith steps taken to identify Mohawk companies for the subcontract. The Mohawk Preference Plan shall be approved by the Director prior to commencement of any construction activities.

3. Plan Contracting/Subcontracting Requirements. The Tribe expects that all contractors will submit a plan that will include all qualified Mohawk subcontractors and that will include the maximum number of Mohawk workers for the project.

- a. The General Contractor and all Sub Contractors shall hire qualified Mohawk workers to the fullest extent possible. Exceptions for "key employees" defined as one who is in a top supervisory position or performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to that employer. A maximum of 25% of a Contractor or Sub Contractor's workforce may be considered key employees.
- b. The General Contractor, shall through Contract, require all subcontractors to hire at least Forty Percent (40%) qualified Mohawk workers in the project workforce.
- c. A contractor may not refuse to employ a Mohawk subcontractor for the reason that a non-Mohawk firm is more qualified so long as the Mohawk firm satisfies the threshold requirements for qualifications.
- d. Exceptions: If the Tribe's mandate of Mohawk preference in subcontracting and work force employment cannot be achieved, the contractor shall report that to the Director, with the reasons why that goal was not attained. An exception to this mandate may be granted only upon proof that there are fewer than 40% qualified Mohawk workers in a particular category of worker trades available and that the Contractor has made all reasonable efforts to comply with this requirement.

F. CERTIFICATION OF ELIGIBLE MOHAWK COMPANIES

1. Fifty-one Percent (51%) Owned. In order to be entitled to preference under this policy as a Mohawk firm, the firm must submit an application to the Tribe proving that the company is at least fifty-one (51) percent owned by a Mohawk and that the management of daily operations of the applicant is controlled by a Mohawk. In addition, for those industries requiring professional licensing (i.e., public accountancy, law, professional engineering, insurance, etc.), the Mohawk shall hold a license in such industry and individuals employed by the applicant shall hold any requisite license in such industry.

2. Director Makes Determination. All decisions on whether a firm meets the requirements with respect to eligibility for certification as a Mohawk firm shall be made by the Director. The Director shall also maintain an updated list of ALL certified Mohawk firms that it will provide to all contract bidders. This list shall include the specific types of contracts that the firm is certified to bid on. Any firm not included on the list at the time a Request for Bids "RFB" is issued, cannot challenge the bid process due to failure to receive the RFB.

Contract Award: Award shall be made under unrestricted solicitations to the lowest responsive bid from a qualified Mohawk-owned economic enterprise or organization within the maximum total contract price established for the specific project or activity being solicited, if the bid is no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. The factor "X" is determined as follows:

When the lowest responsive bid is:

Less than \$100,000	10% of the bid, or \$9,000
At least \$100,000, but less than \$200,000	9% of the bid, or \$16,000
At least \$200,000, but less than \$300,000	8% of the bid, or \$21,000
At least \$300,000, but less than \$400,000	7% of the bid, or \$24,000
At least \$400,000, but less than \$500,000	6% of the bid, or \$25,000
At least \$500,000, but less than \$1 million	5% of the bid, or \$40,000
At least \$1 million, but less than \$2 million	4% of the bid, or \$60,000
At least 24 million, but less than \$4 million	3% of the bid, or \$105,000

Factors other than Price. Often factors, other than pricing, may affect whether a firm is "qualified" to be awarded a contract. In these instances, the RFP (request for proposals) shall clearly identify the relative importance of price and other evaluation factors and sub-factors, including the weight given to each technical factor and sub-factor. The proposals shall be evaluated only on the criteria stated in the request for proposals

Mohawk Preference shall be applied in the following manner

- a. First Preference —Enrolled members of the St. Regis Mohawk Tribe.
- b. Second Preference-Akwesasne Mohawks

- c. Third Preference-Members of Mohawk Tribes or other Tribes or First Nations.

MOHAWK PREFERENCE
COMPLIANCE PLAN & AGREEMENT:

Main Contractor _____ Sub Contractor _____

Name: _____

Address: _____

Contact person: _____

Title: _____

Phone: _____ Fax: _____

Cell: _____ Office: _____

Project Name: _____

Project No: _____

Location: _____

Project Owner: _____ Phone: _____

Project Funding Agency:

Funding Agency Contact:

Project Cost: _____

Project Start Date: _____

Completion Date: _____

Pre-Construction Meeting Date: _____

Sub-Contractor Meeting (Place, Days, and Times):

Provide a numerical hiring goals and timetables that specify the number of Mohawks the employer will hire by craft or skill level or specify a set percentage of hiring goals by craft or skill level:

List all permanent key employees you are requesting for the project(s). A key employee is defined as: "an employee that is by business necessity, essential to the successful operation of the project and one without whom the project or the business would suffer substantial financial or time loss".

KEY EMPLOYEES

Do you or your sub-contractor have a collective bargaining agreement with one or more unions?

Name	Job Title	Rate Of Pay	Length of Employment	Attach Proof TRIBAL (YIN)

YES

NO

If yes, please attach a written agreement from said unions indicating that they (Union) will comply with Mohawk preference requirements.

LIST OF SUBCONTRACTORS: All Subcontractors need a Compliance Plan

Company	Contact Person	Phone#	Native (Y/N)

Attach additional sheets if needed.

What wage scale will be used (please explain or submit wage scale)?

Mohawk Preference Policy Received:

YES

NO

Received prior to project

Understanding and Acceptance

I understand that Certified Payroll shall be submitted on a timely manner for each contractor/subcontractor to the Compliance Office on a monthly basis or as agreed upon.

On behalf of _____, I hereby certify that I have received and

understand the St. Regis Mohawk Tribe's Mohawk Preference Policy as set forth in this Compliance Plan and Agreement, and hereby agree to accept the responsibility of compliance with the described obligations and requirements.

Authorized Signature for Employer/Contractor/Sub Contractor, Title

Date

Notice To Proceed:

The attached Compliance Plan and Agreement has been received, reviewed and is fully acceptable. On behalf of the St. Regis Mohawk Tribe, authorization to begin work on the above described project is hereby granted.

Elliot Lazore, Compliance Director

Date