

## **REQUEST FOR PROPOSALS (RFP) - *Wet Weather Consent Decrees: Protecting POTWs in Negotiations (Handbook)* - 2016 Edition**

**RFP ISSUE DATE: June 3, 2016**

**PROPOSAL DUE DATE: June 20, 2016**

**PROJECT BUDGET: Not to exceed \$20,000**

### **BACKGROUND**

NACWA's *Wet Weather Consent Decree Handbook* is an indispensable resource for clean water utilities currently negotiating an enforcement order, anticipating an enforcement action, implementing a decree or considering modification of an existing order. It provides unparalleled information, analysis, and strategies on wet weather enforcement issues including negotiation, renegotiation, implementation, and modification of wet weather enforcement orders and decrees. Since the original publication of the *Handbook* in 2003, NACWA published two supplements and issued a comprehensive rewrite in 2014. Minor revisions to the *Handbook* were also made in 2015, but because wet weather enforcement issues continue to evolve, the *Handbook* is due for yet another update in 2016.

### **PROJECT OVERVIEW**

Wet weather continues to be a top enforcement priority for EPA and it is anticipated that the Agency will maintain or increase enforcement in this area. EPA and States with delegated Clean Water Act (CWA) authority continue to impose costly regulatory requirements on, and pursue enforcement actions against, the nation's public clean water agencies without fully considering the economic conditions impacting these agencies and the effectiveness of these expenditures in meeting environmental goals. Moreover, considerations related to integrated planning; climate/resiliency; aging infrastructure; energy efficiency/production; water reuse and reclamation; resource recovery; and green infrastructure are changing the landscape of consent decree negotiation. At the same time, more and more utilities already under decree are looking at opportunities to reopen and modify their existing agreements to account for changed circumstances. As the universe of challenges and regulatory requirements continues to expand, the need for regulatory flexibility, prioritization and consideration of affordability becomes far more crucial.

A comprehensive update to the *Handbook* is needed to analyze trends, describe new developments and decrees, and offer enhanced strategies and recommendations in the consent decree arena. The 2016 edition will offer additional case studies and tips to foster partnership-based negotiations that achieve sustainable and cost-effective environmental and public health improvements. The updated *Handbook* will be released at NACWA's 2016 *National Clean Water Law Seminar and Consent Decree Workshop* in November 2016.

### **KEY PROJECT ELEMENTS:**

Request for Proposal – *Wet Weather Consent Decree Handbook*

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- I. ***Handbook Content Update:*** Work on the new edition of the *Handbook* will focus on new decrees (both federal and major state decrees as well as new stormwater decrees), integrated planning and affordability updates, green infrastructure developments, new asset management provisions, new flexibility on deadlines and civil penalties, and reopener and modification provisions. Contractor will be required to review and analyze consent decrees/amendments finalized since the last update of the *Handbook* was published.
- II. ***New Handbook Section on Presumptive Approach:*** The updated *Handbook* will include a new section on EPA's perceived shift away from the presumptive approach of the CSO policy and the potential implications for utilities using that approach.
- III. ***Spreadsheet Update and Functionality Improvement:*** The current *Handbook* contains two spreadsheets of consent decrees containing pre and post-2009 decrees. The spreadsheets need to be merged and expanded to include additional information such as the community's affordability index and receiving waters. The spreadsheets also need to be transitioned from Microsoft Word into Microsoft Excel to improve functionality and usability of the data.

**The anticipated allocation of effort among these three components are:**

- I. 40%
- II. 20%
- III. 40%

**KEY PROJECT DELIVERABLES**

1. A proposed outline of the new presumptive approach section with key points of analysis;
2. A draft *Handbook* update, including updated spreadsheets and presumptive approach discussion;
3. A final *Handbook* update, including updated spreadsheets and presumptive approach discussion; and,
4. An electronic version of the updated and improved spreadsheet.

**CONTRACTOR QUALIFICATION**

NACWA seeks a law firm with a proven track record developing content and analyses similar to that requested by this project. Key characteristics include:

1. Familiarity and experience with the CSO policy and wet weather enforcement;
2. Experience negotiating wet weather consent decrees on behalf of publicly owned wastewater and stormwater utilities; and
3. Experience analyzing complex legal issues.

**PROPOSAL REVIEW & AWARD**

All proposals will be reviewed to verify that interested contractors have the requisite qualifications. Proposals that do not comply with submittal instructions and contractors

that do not possess the necessary qualifications will be eliminated from further consideration.

Proposals will then be reviewed, and the selected contractor will be contacted by the Project Manager to enter into contract negotiations, at which time proposals from other contractors will be held in abeyance until contract negotiations have been completed.

All responses, inquiries, or correspondence relating to or in reference to this RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by contractor will become the property of NACWA when received.

### **PROJECT OVERSIGHT**

The project team will be subject to ongoing oversight by a Project Manager, and interim deliverables and periodic communication/conference calls with the Project Manager will assure that the ultimate project deliverables are fit for their intended purposes. The Project Manager will provide the contractor with an outline establishing the needed content updates for the *Handbook*. However, NACWA is open to suggestions by the contractor regarding other updates/improvements to the *Handbook*. The Project Manager will also engage a review team of NACWA members to provide input on the *Handbook* drafts.

Project Manager(s): Amanda Waters, National Association of Clean Water Agencies  
Erica Spitzig, National Association of Clean Water Agencies

### **PROJECT DELIVERABLES**

All project deliverables will be transferred to the Project Manager as electronic files. Final work products will be delivered in electronic files suitable for additional editing for publication and re-use in print and electronic media.

### **PROJECT SCHEDULE**

The exact project schedule will be determined by the Project Manager in consultation with the selected contractor. The estimated project timeline is as follows:

| <b>On or Before</b> | <b>Action</b>  |
|---------------------|--|
| June 3, 2016        | RFP Release  |
| June 20, 2016       | RFP Response   |
| June 23, 2016       | Contractor / Project Team Selected for Negotiation                 |
| June 29, 2016       | Contract signed  |
| July 7, 2016        | Initial call with Project Manager completed                        |
| July 20, 2016       | Content outline provided by Project Manager                        |
| August 1, 2016      | Outline of presumptive approach section submitted for review       |
| September 12, 2016  | First Draft of Handbook Key Elements I and II submitted for review |
| September 19, 2016  | First Draft of Key Element III submitted for review                |
| September 23, 2016  | Project Manager comments on first draft returned                   |
| October 3, 2016     | Final Draft submitted  |

The target contract period duration is 4 months.

### **PROPOSAL SUBMITTAL INSTRUCTIONS**

Please conform to the following instructions for submitting proposals; proposals not conforming to these instructions will be rejected without further consideration. Any costs incurred by the contractor in preparing or submitting proposals are the contractor's sole responsibility.

#### **Contractor Provided Information:**

All interested contractors must provide the following requested information as part of their response to this proposal:

- Name and address of company.
- A single point of contact for contract negotiation and oversight.
- Information on the proposed project team, including resumes or curriculum vitae.

#### **Content:**

Proposals shall provide a straightforward, concise description of contractor's abilities to satisfy the requirements of this request. Proposals should discuss the contractor's experience with similar projects and reflect familiarity with the prior editions of the *Handbook* and wet weather enforcement trends.

#### **Page Limit:**

Proposals must contain no more than five (5) typewritten pages. Additional information on the proposed project team, including resumes or curriculum vitae, may be attached as appendices but should not exceed ten (10) pages.

#### **Questions:**

Any questions regarding this RFP may be submitted via e-mail by Friday, June 10, 2016. No telephone inquiries will be accepted. Written responses to all questions will be posted by Wednesday, June 15, 2016 at <http://www.nacwa.org/rfp>.

Questions should be directed to Amanda Waters at [awaters@nacwa.org](mailto:awaters@nacwa.org) and/or to Erica Spitzig at [espitzig@nacwa.org](mailto:espitzig@nacwa.org).

#### **Deadline & Delivery:**

Proposals will be received until midnight on June 20, 2016. Late proposals will not be accepted.

Final proposals must be submitted by PDF electronically to [espitzig@nacwa.org](mailto:espitzig@nacwa.org). Submittal of proposals by fax or regular mail is not acceptable. Proposal must be signed electronically and dated by an official authorized to make a contractual offer.

**Copyright**

All work products will acknowledge the project team members, but copyright will be held by NACWA. Any graphics or images used in the project will be copyrighted through the project or be open access and not subject to a prior copyright.

**END**