

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
REQUEST FOR PROPOSALS  
CENTRAL PERMITS OFFICE STAFF AUGMENTATION  
Contract #C031103**

**Attachment 20  
Questions and Answers**

**RFP MAIN BODY:**

**Question 1:** Why, if I were to have bid on this RFP directly and I am a NYS Certified WBE, would I still be required to obtain WBE participation? If the goal of the contract is 20% combined participation wouldn't a WBE directly bidding at 100% participation be greater? Standard Specification Section 102-12(D) states the prime can be counted toward the goal??

**Answer 1:** It is NYSDOT's MWBE Program that contract goals be subcontractable opportunities and that therefore prime participation does not count toward the contract goal (prime consultant participation counts towards NYSDOT corporate MWBE goal). Only certified, qualified MWBE subconsultant participation may count toward C031103's 20% combined MWBE goal.

**Question 2:** The RFP appears to be a bit restrictive in that you are asked to specifically name people who will fill the requisite positions. Other than the incumbent bidder, who would actually have that many employees available, who are not working elsewhere, to plug into this format? Rather than being asked for the proposer's pricing for proposed employees that will be required to meet the specific job descriptions?

**Answer 2:** The RFP requires a responding firm to name its proposed Management Team as well as all proposed on-site Production Staff, and all off-site, home based Support Staff. This requirement remains unchanged as NYSDOT needs to know/examine the specific qualifications of each proposed person, to be able to evaluate the proposed Project Manager and Supervisor, to evaluate the experience of proposed Production Staff on an initial pass/fail basis then examine their technical quality.

**Question 3:** One of the people I spoke to concerning this bid mentioned there might be an extension of the due date of the RFP...has it been extended?

**Answer 3:** NYSDOT is granting an extension to the proposal due date. The extended proposal due date is August 13, 2013 @ 2:00 PM ET.

**Question 4:** Please clarify the contract term. The cover letter in the RFP suggests that it will be a five year base contract with an optional five-year extension. Page

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5 of the RFP indicates that it will be a three year base contract with two optional one year extensions.

**Answer 4: The RFP's cover letter is incorrect: The term of C031103 will be three years with two optional one-year extensions.**

**Question 5:** Please clarify the M/WBE goal. Is it 20% or 7%, as noted in section 4.2.7??

**Answer 5: Contract C031103 has a combined 20% MWBE goal; all RFP Sections should consistently state this goal.**

**Question 6:** The scope of services that is contemplated on pages 7-12 of the RFP extends beyond the services that are currently being provided by the consultant (e.g., reviewing superload permit requests). Previously the Department had determined that for liability reasons, activities like reviewing superload permit requests must be performed by Department staff. Has the Department's position on this changed?

**Answer 6: NYSDOT is correcting the RFP Scope of Services to delete the Consultant requirement of reviewing superload permit requests.**

**Question 7:** Is it a conflict of interest for permit services or other NYSDOT customers doing business with the Central Permits office to be awarded this contract.

**Answer 7: NYSDOT is aware of a potential for conflict of interest should the same firm who was awarded C031103 also be awarded the HOOCS RFP C030786. Should that situation arise, NYSDOT shall require the selected Consultant to propose a Conflict of Interest Management Plan for NYSDOT review and approval. Any firm competing for both contract awards needs to be made aware of this potential situation.**

**Question 8:** Has the Department determined if it is a conflict of interest to award both this contract and the HOOCS contract to the same firm? Please clarify the process that the Department will use to determine a conflict of interest should the same firm be awarded both this contract and the HOOCS contract.

**Answer 8: NYSDOT will wait until the results of the C030786 HOOCS RFP process are known before determining if a conflict of interest situation has indeed arisen. Contract Management shall meet with the sponsoring Program Area and Legal Services at that time.**

**Question 9:** RFP Section 4.3.1 calls for "fully loaded rates by year and by person." Section 4.3.1.1 calls for "not-to-exceed rates for each of the RFPs job titles." Which rates should be provided in Attachment 8A as the rates will differ depending on the approach?

**Answer 9: NYSDOT sees fully loaded and not too exceed rates as the same: both are required to include salary, overhead and profit; all proposed rates can be not too exceed rates to allow for performance-based rate**

**adjustments (ie, the actual person-specific rate could be lower than the max rate for that title).**

**Question 10:** RFP Section 4.2.5 requires proposed staff job titles to correspond either to attachment A8 or attachment 11. Does the Department have a preference on which attachment should be used?

**Answer 10:** **Attachment 11 should govern a firm's staffing response (qualification-wise) while Attachment 8A should guide pricing rates for all proposed consultant personnel. The intent of Attachment 11 was to specify the qualifications for each position regardless of which unit (Special Hauling or Divisible Load) the person was assigned to. Attachment 8A requires rates for each position to be specified. The terms "Program Aide" and "Agent" are interchangeable.**

**Question 11:** Do we need to propose hourly rates for positions that are listed as optional in the RFP or only for positions that must be filled at project inception?

**Answer 11:** **NYSDOT prefers to have a complete set of Consultant personnel rates in the contract from the get-go.**

**Question 12:** When and at what level of effort does NYSDOT expect to use staff that are not on-site (i.e., home office staff)?

**Answer 12:** **NYSDOT only expects use of Consultant home office support staff for functions related to contract administration, billing, and maintenance of CPO staffing throughout the contract's life (ie, assist with getting and pre-training replacement Consultant staff).**

**Question 13:** Should the explanation of confidential and proprietary information designation be included in the cover letter, the executive summary, or both?

**Answer 13:** **A firm's explanation of proposed confidential and proprietary information should be included in the cover letter.**

**Question 14:** RFP Section 4.2 Checklist references completing and submitting Attachment 6 and Attachment 7. Can you please clarify where these attachments should be included in responses? Are these Attachments to be submitted in addition to the requirements of RFP Sections 4.2.5 and 4.2.6?

**Answer 14:** **RFP Sections 4.2.5 and 4.2.6 provide additional, supplementary information to guide a firm's completion and submission of Attachments 6 and 7 in their Part I Technical and Management proposal. A firm can provide cover narrative on top of Attachments 6 and 7.**

**Question 15:** Attachments 6 and 7C include fields to be filled in by the named reference. Do we need to have these reference forms filled out by the reference and returned to us to include in the proposal or should we prepare the forms

with the information in the first portion and leave it to the discretion of NYSDOT which references will be contacted?

**Answer 15:** Please prepare these forms with the information in the first portion and leave it to the discretion of NYSDOT regarding which references to contact.

**Question 16:** In Section 4.2.5 in the first paragraph, the RFP states to “Include resumes for all Management Team personnel...” Are resumes to be submitted in addition to Attachment 7C or is Attachment 7C the format to be used for the individual resumes? Should resumes and/or Attachment 7C be included in appendix to the proposal?

**Answer 16:** The RFP seeks appropriate past and current project experience and expertise via submission of completed Attachment 7C. A proposing firm has liberty to supplement that information with a resume.

**Question 17:** In Section 4.2.6 in the second paragraph, the RFP states to “Provide a list of current and prior references which demonstrate your firm’s relevant experience (Attachment 7).” Is this meant to read Attachment 6 instead of 7 as Att. 6 is the Consultant Experience and Company References?

**Answer 17:** Correct: RFP Section 4.2.6 2<sup>nd</sup> paragraph should open with: Provide a list of current and prior references which demonstrate your proposed Consultant personnel's relevant experience (Attachment 7)...

**Question 18:** In Section 4.2.6, for each of the personnel paragraphs, the RFP states to completing the first portion of Attachment 7A Staffing Plan. Is this meant to read Attachment 7C as that is the Consultant Management Team Personnel Resumes and References, rather than 7A which is the Management and Operations Staffing Plan?

**Answer 18:** Correct: RFP Section 4.2.6 should reference Attachment 7C as the Consultant Management Team Personnel Resumes and References.

**Question 19:** Please clarify where the M/WBE Management Plan should be included in responses as it is included/referenced in both the Technical and Cost proposal checklists in the RFP.

**Answer 19:** Please include the MWBE Management Plan in your Part I Technical and Management submission. Information pertinent to Attachment 10 should be included in your Part II Cost and Contract submission.

**Question 20:** Does Attachment 4 of the RFP need to be completed and signed and included in the Cost Proposal Submittal?

**Answer 20:** Attachment 4 State Consultant Services – Contractor’s Planned Employment” Forms A & B do not need to be completed and included in a proposal. These forms are only required to be submitted by the selected Consultant during contract negotiations.

**ATTACHMENT 1 Draft Contract:**

**Question 21:** Can the amount by which rates may be adjusted during the term of the contract be modified such that the maximum amount is 3.5% rather than 1.5%?

**Answer 21:** **In the interests of furthering controlling its expenses, NYSDOT prefers to leave the rate adjustment rule unchanged.**

**Question 22:** Can Item 5 in Article 6 Provision for Payment be deleted? Since the consultant will be held to performance metrics, it is not feasible to include the Training Special Provision. Can Section 11 in the Special Equal Employment Opportunity Provisions that requires Special Training be deleted?

**Answer 22:** **NYSDOT prefers to leave this language in the draft Contract as latent, in case there is an opportunity to invoke these provisions during the life of the Agreement. Should this feature not be invoked, leaving the language in the contract does no harm.**

**Question 23:** Can Insurance 12.A.1 1. Coverage Types and Policy Limits be changed to read: The types of coverage and policy limits required from the Consultant are specified in subarticle B below. ~~Insurance shall apply separately on a per job or per project basis.?~~

**Answer 23:** **NYSDOT accepts this change.**

**Question 24:** Can Modify Primary Coverage in Article 12 be changed to read: All insurance policies, excepting workers' compensation *and professional liability insurance*, shall provide that the required coverage be primary as to any other insurance that may be available to the Department for any claim arising from the Consultant's Work under this contract, or as a result of the Consultant's activities?

**Answer 24:** **NYSDOT accepts this change.**

**Question 25:** Can Modify Waiver of Subrogation in Article 12 be changed to read: As to every type and form of insurance coverage required from the Consultant *except professional liability insurance*, there shall be no right of subrogation against **the State of New York/New York State Department of Transportation, its agents or employees**. To the extent that any of Consultant's policies of insurance prohibit such a waiver of subrogation, Consultant shall secure the necessary permission to make this waiver?

**Answer 25:** **NYSDOT accepts this change.**

**Question 26:** Can Modify Policy Renewal/Expiration in Article 12 be changed to read: ~~At least thirty (30) days~~ Prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Department than the expiring policies shall

be delivered to the Department. ~~in the manner required for service of notice in subdivision (A)(3) above.?~~

**Answer 26: NYSDOT accepts this change.**

**Question 27:** Can Modify Self-Insured Retention/Deductibles in Article 12 be changed to read: Self insured retentions and deductibles shall be approved by NYSDOT which approval shall not be unreasonably withheld. ~~Consultants utilizing self insurance programs are required to provide a description of the program for Department approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the Contract Documents of a particular project, Consultant administered insurance deductible shall be limited to the amount of the bid deposit or \$100,000, whichever is less. Security is not required if it is otherwise provided to an administrator for an approved risk management program. The Department will not accept a self insured retention program without security being posted to assure payment of both the self insured retention limit and the cost of adjusting claims. The Consultant shall be solely responsible for all claim expense and loss payments within any permitted deductible or self-insured retention. If the Consultant's deductible in a self-administered program exceeds the amount of the bid deposit, the Consultant shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by Department must be issued by a guarantor or surety with an AM Best Company rating of "A minus" or higher. If, at any time during the term of this agreement, the Department, in its sole discretion, determines that the Consultant is not paying its deductible, it may require the Consultant to collateralize all or any part of the deductible or self-insured retention on any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the Consultant.?~~

**Answer 27: NYSDOT accepts this change.**

**Question 28:** In Article 12, can the current Consultant Liability language be changed to read?

11. *Consultant's Liability.* Consultant shall be responsible for all damage to life and property due to intentional acts, negligent acts, errors or omissions of the Consultant, its sub-contractors, or employees in the performance of its service under this Agreement. Further, it is expressly understood that the Consultant shall indemnify and save harmless the STATE from claims, suits, actions, damages, and costs of every name and description to the extent resulting from the negligent performance of the services or activities performed by Consultant under this Agreement, and such indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided.

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Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon Consultant's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work.

Consultant's responsibility and indemnity shall also include but not be limited to liability resulting from any infringement violation by Consultant of proprietary rights, copyrights, trademarks, or right of privacy arising out of the intellectual property furnished by Consultant under this Agreement, except when attributable to the fault or negligence of the STATE, its officers, employees or agents.

Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against Consultant or the STATE beyond such as may legally exist irrespective of this Article or this Agreement.

In case an action shall at any time be brought against the State, asserting an allegation or cause of action for which Consultant is putatively liable, the Consultant shall, at its own cost and expense, and without any cost or expense whatever to the STATE, defend such suit and indemnify and save harmless such parties against all costs and expenses thereof, including reasonable attorney fees and expenses, and promptly pay or cause to be paid any final judgment recovered against the STATE; provided, however, that the STATE gives notice to Consultant and thereafter provide all such information as may from time to time be requested by Consultant or its representatives. The STATE shall furnish to Consultant all such information relating to claims made for injuries, deaths, losses, damages, or destruction of the type covered by this Article as Consultant may from time to time request. The provisions of this Article shall not impinge on the right of any of the State to pursue its own defense in any filed or threatened actions?

**Answer 28: Consultants' Liability in Article 12 remains unchanged.**

**Question 29:** Can **Article 29** be modified to read: *Security and Confidentiality of Information*. Information received as part of this contract shall be considered Confidential Information. The Consultant warrants that it will take the appropriate steps as to its personnel, agents, officers, and any Subcontractors/Subconsultants regarding the obligations arising under this clause to ensure such confidentiality. The Consultant shall have written policies and/or business procedures in place which will protect Confidential Information from unauthorized disclosure, use, access, loss, alteration, or destruction. The Consultant may disclose to other parties, as authorized by the NYSDOT Project Manager, or as described in the scope of services, only the information necessary to perform services under this contract. However, the Consultant, under no circumstance, shall communicate with the public or news media without prior authorization from the State's designee. Neither shall the Consultant disclose information deemed

confidential by the State nor disclose any other information obtained or developed in the performance of services under this agreement without the written authorization of the State. This warranty shall survive termination of this Contract. Provided, the foregoing shall not preclude the Consultant from referencing the work performed under this Agreement for purposes of evidencing its qualifications?

**Answer 29:** Article 29 of the Draft Contract remains unchanged, as this concern is addressed via this sentence: “The Consultant may disclose to other parties, as authorized by the NYSDOT Project Manager, or as described in the scope of services, only the information necessary to perform services under this contract” within Article 36.

**Question 30:** Can Article 19.A. 3 be deleted?

**Answer 30:** Article 9.A.3 of the Draft Contract remains unchanged.

**Question 31:** Can the references in the contract terms be changed that describe specific requirements from specifying the information contained in the “RFP” to the negotiated Statement of Work which will be incorporated into the agreement as Exhibit A?

**Answer 31:** These terms of the Draft Contract remains unchanged.

**Question 32:** Can Article 19 be clarified such that the last paragraph is relevant only to staff working on this project? Suggested language is: “The Consultant shall not ~~engage~~ assign to perform work under this Agreement, on a full or part-time or other basis any professional or technical personnel who are or have been at any time during the period of this Agreement in the employ of the Federal Highway Administration or the highway organizations of any public employer, except regularly retired employees without the consent of the public employer of such person.”

**Answer 32:** NYSDOT agrees to this change.

**Question 33:** Can Article 25 Order of Precedence be revised such that the Consultant’s Proposal controls over the terms of the RFP?

**Answer 33:** Article 25 of the Draft Contract remains unchanged.

**Question 34:** Can the word ‘agents in the 2<sup>nd</sup> line of Article 29 Security and Confidentiality of Information be deleted?

**Answer 34:** Article 29 of the Draft Contract remains unchanged.

**Question 35:** Can Article 36 Responsibility Provisions be revised to read as follows?

- *General Responsibility.* The Consultant shall, at all times during the Agreement, remain responsible. The Consultant agrees, if requested by the Commissioner of NYSDOT or his or her designee, 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.



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- *Suspension or Work (for Non-Responsibility).* The Commissioner of NYSDOT (or his or her designee), in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement at any time when he or she discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant shall comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of NYSDOT (or his or her designee) issues a written notice authorizing the resumption of performance under the Agreement.

- *Termination (for Non-Responsibility).* Upon written notice to the Consultant, and a reasonable opportunity to be heard with appropriate NYSDOT or staff, the Agreement may be terminated by Commissioner of NYSDOT (or his or her designee) at the Consultant's expense where the Consultant is determined by the Commissioner of NYSDOT (or his or her designee) to be non-responsible. In such event, the Commissioner of NYSDOT (or his or her designee) may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

- *Opportunity to Cure.* In the event of Suspension of Work for Non-Responsibility or Termination for Non-Responsibility, NYSDOT shall provide not less than fourteen days written notice to Consultant during which time Consultant may cure the circumstances giving rise to the determination by NYSDOT of non-responsibility.

**Answer 35: Article 36 of the Draft Contract remains unchanged (comes from the Governor's Office) and shall be renumbered as Article 35.**

**Q&A From July 15, 2013 Pre-Proposal Conference:**

**Question 36:** Will there be a DMWBE goal?

**Answer 36: Yes; the new CPO staffing contract .C031103 has a combined 20% MWBE goal.**

**Question 37:** What if NYSDOT only receives one proposal?

**Answer 37: NYSDOT will follow its standard process, polling all firms who expressed interest but did not bid plus contact firms who might be interested. NYSDOT efforts to let the vendor community know are documented. If only one firm proposes, the evaluation process shall still be followed in full to produce a meaningful result, to ensure a responsive proposal is received; to ensure that each proposed Consultant staff person is qualified; to ensure a viable approach to fill retired or additional "seats".**

**Question 38:** How will NYSDOT determine if there's a conflict of interest?

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**Answer 38:** At this point, NYSDOT has yet to determine that a conflict of interest situation exist (between RFP C031103 and the HOOCS RFP C030786). NYSDOT will wait until later on to make this determination. At this point, both competitive playing fields are open. Should NYSDOT determine that a conflict of interest does arise, a way to manage it will be established (like firewalls, etc).

**Question 39:** Does the RFP state the correct MWBE goal?

**Answer 39:** The MWBE goal for C031103 is combined 20% MWBE participation over the life of the Agreement.

**Question 40:** The RFP's Scope of Services differs from services currently being provided (superload permits). Was that intentional?

**Answer 40:** See answer to Question 6 above.

**Question 41:** Cost proposal: is there a preference regarding proposing job titles to correspond to Attachment 8 vs Attachment 11? Do we need to provide hourly rates now for optional year 1?

**Answer 41:** See answer to Question 10 above.

**Question 42:** Do you accept not too exceed (NTE) rates?

**Answer 42:** See answer to Question 9 above.

**Question 43:** Do you have any expectations for Level of Effort for home office staff or is it strictly sight training, succession?

**Answer 43:** See answer to Question 12 above.

**Question 44:** Can you tell us who is on the evaluation committee?

**Answer 44:** Relevant NYSDOT subject matter experts (technical, program, and management) will staff the Technical Evaluation Committee (TEC). The TEC will evaluate technical proposals; Contract Management will evaluate cost proposals. It is not NYSDOT practice to let firms know who sits on the TEC.