ATTACHMENT 14
QUESTIONS AND ANSWERS - February 28, 2014

1. On page 42, item number 10, should we provide this information for primes only?
Ans: A CIN is requested of the prime and all subconsultants (if they’re registered with NYSDOT, that is) and DBE’s. If a firm has a NYSDOT CIN, please provide; if a firm does not have a NYSDOT CIN, please register with NYSDOT to obtain a CIN. Please visit https://www.dot.ny.gov/portal/page/portal/main/business-center/consultants/forms-publications-and-instructions to register with NYSDOT. SFS VINs are required only of the proposing prime consultant, since all vendors doing business with the State are required to have an SFS VIN.

2. Do subconsultant team members need to sign and submit Attachment 2 and Attachment 12 with the proposal?
Ans: Attachment 2, PLL forms and Attachment 12, Non-Collusive Bidding Certification, are required from the prime firm only. However, if a subconsultant desired to pose its own questions, then completion and submission of Attachment 2 is required.

3. Regarding the RFP’s draft contract, we request substitution of the following language in lieu of the current Consultant Liability language:

   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 subcontractors, 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.

   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 a 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.

Ans: NYSDOT does not accept this change.

4. Regarding the RFP’s draft contract, we request modification of the Insurance Article in the following respects:
   a. **Coverage Types and Policy Limits.** 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.
   b. **Modify Primary Coverage 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.”
   c. **Modify Waiver of Subrogation 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.”
   d. **Modify Policy Renewal/Expiration in Section 12 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.”
   e. **Modify Self-Insured Retention/Deductibles 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.”

Ans: NYSDOT accepts these changes.

5. Regarding the RFP’s draft contract, we request modification of Article 16 to read in part: “The Consultant shall not 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.”

Ans: NYSDOT accepted this change.

6. Regarding the RFP’s draft contract, we request modification of Articles 12 and 13 such that “technical data” does not include data purchased from third parties which may be provided pursuant to the terms of a mutually acceptable license agreement.

Ans: NYSDOT does not accept this change since Articles 12 and 13 pertain to any data being purchased by NYSDOT/NYMTC funds under Contract #C000791.

7. Regarding the RFP’s draft contract, we request modification of Article 22 to read: “The CONSULTANT agrees that if copyrights, patentable discoveries or inventions or rights in data should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York an irrevocable, nonexclusive, nontransferable, paid-up license to reproduce, publish, make, and use the subject invention and sell each subject invention throughout the world by and on behalf of the Government of the United States and States and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27, and other applicable Federal laws, rules and regulations.”

Ans: NYSDOT does not accept this change.

8. Regarding the RFP’s draft contract (Appendix B-1), we request revision of the FTA terms to delete the following sections:
   a. Rights in Data
   b. Conformance with ITS National Architecture
   c. Access to Services for Persons with Limited English Proficiency
d. Access Requirements for Persons with Disabilities
Ans: NYSDOT does not accept this change. NYSDOT/NYMTC may, however, discuss this issue with the selected Consultant during C000791 contract negotiations.

9. Regarding the RFP’s draft contract, we request deletion of Section 11 in the Special Equal Employment Opportunity Provisions that requires Special Training.
Ans: NYSDOT does not accept this change. However, NYSDOT/NYMTC may discuss this provision with the selected Consultant during C000791 contract negotiations. This discussion could include removing these optional provisions from the final agreement.

10. Can you confirm that a performance bond will not be required for this project?
Ans: NYSDOT/NYMTC can confirm that a performance bond will not be required for this project.

We have searched www.nymtc.org for these documents but have not found them.
Ans: The files can be downloaded from [http://nymtc.org/](http://nymtc.org/). Click on “Downloadable Files” which is located on the left side of the webpage. Then select Request for Proposals and go to second paragraph “NEW YORK BEST PRACTICE MODEL 2012 BASE FILES” and click on Download NYBPM Reports.zip

12. The Project Objectives section of the RFP (page 7 of the RFP) advises offerors to review Article 10, Intellectual Property Developed Under this Agreement” in the RFP’s draft contract. However, Article 10 of the RFP’s draft contract is entitled “Consultant Liability” and no other article has the referenced caption. Was the intent to reference Article 22, Proprietary Rights? If not, please provide the relevant language.
Ans: Project Objectives section of the RFP (page 7) should reference Article 22, Proprietary Rights of the RFP’s draft contract.

13. Our firm has developed and owns an activity based modeling platform which would be delivered to NYSDOT/NYMTC under a standard license agreement. Under the standard license agreement, NYMTC/NYSDOT, its employees, members, modeling partners and third parties working on their respective behalf have the ability to freely use, modify, maintain and update the BPM. Will NYSDOT/NYMTC negotiate changes to existing NYSDOT/NYMTC accordingly?
Ans.: NYSDOT/NYMTC will not accept a change on this matter. Federal language and requirements are involved.

14. Task 1 mentions a project web site. Can you please clarify what you are looking for in terms of the project web site?
Ans. The Consultant shall provide and maintain a project website (BaseCamp, ProjectSolve, Primavera or others) over the course of the project for data cataloging and control, document review and comments, and project team coordination and scheduling. Several Platforms shall be suggested by consultant and NYMTC project team will evaluate them and decide which platform would serve the best for this purpose.

15. Would it be acceptable to submit the required electronic version of the proposal in a PDF format?
Ans.: Yes, Adobe PDF and MS Office compatible submissions are acceptable, with the latter format preferred (facilitates processing the accepted proposal during contract negotiations).