May 29, 2015

REQUEST FOR PROPOSALS
AIR QUALITY ANALYSIS AND RELATED SERVICES FOR NYSDOT
Contract #C031380

Dear Sir or Madam:

SUBJECT: MODIFICATION #1 TO REQUEST FOR PROPOSALS – Contract #C031380

Reference is made to the subject solicitation wherein the following clarifications are hereby incorporated:

I. The following change is being made to Attachment 1 “Draft Contract:”

Delete Article 11 in its entirety and Replace it with the following revised Article 11 in its entirety:

“ARTICLE 11. CONSULTANT RESPONSIBILITY.

To the fullest extent permitted by law, the Consultant shall indemnify and save harmless the State, and/or any municipality, public benefit corporation, railroad, and/or public utility whose property or facilities are affected by the work, from suits, claims, actions, damages and costs, of every name and description arising from the work under its contract during its prosecution and until the final acceptance thereof. The Consultant and any assigns, heirs, or successors in interest shall also indemnify and save harmless, to the fullest extent permitted by law, the inspecting engineer or inspector working for the State relative to the project from suits, claims, actions, damages and costs involving personal injury and property damage arising from the Consultant’s work under the contract during its prosecution and until the final acceptance thereof. The State may retain such monies from the amount due the Consultant as may be necessary to satisfy any claim for damages recovered against the State, any municipality and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the work or consultant inspecting engineers or inspectors working for the State relative to the project. The Consultant’s obligation under this paragraph shall not be deemed waived by the failure of the State to retain the whole or any part of such monies due the Consultant, nor where such suit, action, damages and/or costs have not been resolved or determined prior to release of any monies to the Consultant under the contract, nor shall such obligation be deemed limited or discharged by the enumeration or procurement of any insurance for liability for damages imposed by law upon the Consultant, Subconsultant or the State, any municipality and/or any
public benefit corporation, railroad or public utility whose property or facilities are affected by the work, or for any consultants working for the State.

The Consultant has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Section. This obligation shall include the cost of attorneys’ fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Such obligation does not extend to those suits, actions, damages and costs of every name that arise out of the sole negligence of the State, or the negligence of any municipality and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the contract work, or the negligence of any consultants working for the State, their agents or employees, relative to the construction, alteration, or repair or maintenance of a building, highway or structure or appurtenances and appliances thereof including moving, demolition and excavating connected therewith.”

II. The following change is being made to Attachment 1 “Draft Contract:”

Delete Article 12 in its entirety and Replace it with the following revised Article 12 in its entirety:

“ARTICLE 12. INSURANCE.

The Consultant shall procure, at its own sole cost and expense, and shall maintain in force at all times during the term of this contract including any extensions or renewals until Contract Final Acceptance, the policies of insurance covering all operations under the contract whether performed by it or its subconsultants as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York and that have an A.M. Best Company rating of (A-) or better or approved by the Department. The Department may, at its sole discretion, permit the placement of policies with a non-authorized carrier or carriers upon request by the Consultant accompanied by the documentation required by 11 NYCRR §27.0 et seq.; provided that nothing herein shall be construed to require the Department to accept insurance placed with a non-authorized carrier under any circumstances. The Consultant shall deliver to the Department evidence of such policies as the Department deems necessary to verify that the required insurance is in effect. If policies are changed or canceled, the CONSULTANT shall inform the STATE immediately. The STATE will determine whether to issue an order to the CONSULTANT to stop work.

A. Conditions Applicable to Insurance. All policies of insurance required by this agreement must meet the following requirements:

1. Coverage Types and Policy Limits. The types of coverage and policy limits required from the Consultant are specified in Paragraph B, Insurance Requirements, below. General liability insurance shall apply separately on a per-job or per-project basis.

2. Policy Forms. Except as may be otherwise specifically provided herein or agreed in writing by the Department, policies must be written on an occurrence basis. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting period of not less than three (3) years with respect to events that
occurred but were not reported during the term of the policy. **Insurance policies that remove or restrict blanket contractual liability located in the “insured contract” definition (as stated in Section V, Number 9, Item f in the ISO CGL policy) or that remove or modify the “insured contract” exception to the employers liability exclusion so as to limit coverage for claims that arise out of contract work, or that do not cover the additional insured for claims involving injury to employees of the named insured or subcontractors, are not acceptable.** Policy forms must be provided to the Department upon request.

3. **Certificates of Insurance/Notices.** Consultant shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commissioner, before commencing any work under this contract. Certificates or transmittal correspondence shall reference the NYSDOT Contract D Number. Consultant is strongly encouraged to transmit certificates and other materials concerning insurance coverage, referencing the contract D-number and the name of the Consultant in the Subject Line, by email to: [Insur.consult.contr@dot.ny.gov](mailto:Insur.consult.contr@dot.ny.gov)

Certificates may be mailed to the:

**New York State Department of Transportation**  
Contract Management Bureau  
50 Wolf Road, Sixth Floor  
Albany, NY 12232

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (i) canceled, (ii) materially changed or (iii) permitted to expire or lapse for any reason except upon ten (10) days’ prior written notice to the Department by Certified Mail, Return Receipt Requested at the address stated above. In addition, if required by the Department, the Consultant shall deliver to the Department within ten (10) work days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete. Certificates of Insurance shall:

a. Be in a form satisfactory to the Department. The ACORD 25 Certificate must be accompanied by an ACORD 855 “New York Construction Addendum” completed to indicate information about the liability insurance.

b. Be signed and dated by an authorized representative of the insurance carrier or producer.

c. Disclose any deductible, self-insured retention, aggregate limit.

d. Refer to this Contract by number on the face of the certificate.

If at any time during the term of this contract, it shall come to the attention of the Department that required insurance is not in effect or that adequate proof of insurance has not been provided, the Department may, at its option:

a. Direct the Consultant to suspend work and not re-enter the premises with no additional payment or extension of time due on account thereof, or

b. May withhold further contract payments in accordance with Article 8 **No Payment Due to Consultant’s Non-Compliance** of the contract agreement, or

c. Treat such failure as a breach or default of the contract.

4. **Additional Insureds.** All insurance policies required by these specifications, except workers’ compensation and professional liability shall be endorsed to provide coverage to “The State of New York/New York State Department of Transportation, any
municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees” with respect to any claim arising from the Consultant’s Work under this contract or as a result of the Consultant’s activities. The endorsement shall be effected by endorsement of the applicable policy using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a form(s) that provides equivalent coverage.

5. **Primary Coverage.** The liability and protective liability insurance policies shall provide primary and non-contributory coverage to the Department for any claim arising from the Consultant’s Work under this contract, or as a result of the Consultant’s activities.

6. **Waiver of Subrogation.** As to every type and form of insurance coverage required from the Consultant, 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.

7. **Policy Renewal/Expiration.** At least ten (10) calendar 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 Paragraph A.3. Certificates of Insurance/Notices above.

8. **Self-Insured Retention/Deductibles.** 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, the Consultant or third-party-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-) or better. 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.

9. **Waiver of Indemnities.** The Consultant waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss that is covered by a policy of insurance that is required by this contract. The Consultant waives any right of action it and/or its insurance
carrier might have against the Department (including its employees, officers, commissioners, or agents) for any loss, whether or not such loss is insured.

10. **Subconsultant’s Liability Insurance.** In the event that any portion of the work described in this contract is performed by an approved subconsultant, the insurance requirements of this Article shall be incorporated into the subcontract agreement. Subconsultant insurance requirements shall include the requirements for Workers’ Compensation, Commercial General Liability, and, if applicable, Commercial Auto and/or Professional Liability. Excess or umbrella insurance is not required for subconsultants. Consultant shall require that Certificates of Insurance, meeting the requirements of the Department are provided to the Department documenting the insurance coverage for each and every subconsultant employed by them to do work under this contract.

**B. Insurance Requirements.** The types of insurance and minimum policy limits shall be as follows:

1. **Workers’ Compensation and Disability Insurance.** As required by State Finance Law §142, the Consultant shall maintain in force workers’ compensation insurance upon forms required by or acceptable to the Workers Compensation Board for all of Consultant’s employees. Consultant shall also maintain disability insurance as required by the Disability Benefits Law of the State of New York.

2. **Commercial General Liability Insurance.** The Consultant shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from premises (including loss of use thereof), personal injury or death, advertising injury, liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of Consultant. Such coverage shall be written on an ISO occurrence form (ISO Form CG 00 01 12 07 or a policy form providing equivalent coverage) in an amount of not less than $1,000,000.00 per occurrence and not less than $2,000,000.00 aggregate. Unless otherwise provided, the policy or policies of insurance providing the liability coverage shall include:
   a. Coverage for contractual liability assumed by the Consultant insured under an insured contract (including the tort liability of another assumed in a business contract).
   b. All insurance policies required by these specifications except workers’ compensation and professional liability shall be endorsed to provide coverage to “the State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, or any consultant inspecting engineer or inspector working for or on the project, and their agents or employees” using ISO form CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 37 07 04, or CG 20 33 10 01 or a policy form or forms providing equivalent coverage.
   c. Products-Completed Operations Coverage, as provided in the General Liability Policy, or in certain instances through ISO form CG 26 11 09 99 or suitable equivalent.
d. Where contract work will be performed by unregistered off-road equipment, Consultant shall provide documentation of a blanket Pollution Liability policy, or an endorsement to cover short-term pollution events, ISO form CG 04 33 10 01 or equivalent.

e. Coverage for claims for bodily injury asserted by an employee of an additional insured and any Employer Liability Exclusion which may otherwise operate to exclude such coverage shall be voided in this respect.

f. Explosion, Collapse and Underground Hazards coverage (“XCU”) (for contracts that call for the performance of excavating, underground work, and/or the use of blasting equipment).

3. Commercial Automobile Insurance including liability and required coverage for New York. In the event that automobiles are used in connection with Consultant’s business or operations with the Department, the Consultant shall maintain a commercial or other automobile policy or policies insuring against liability for bodily injury, death, or damage to property and other mandatory coverages, relating to the use, operation, loading or unloading of any of Consultant’s automobiles (including owned, hired and non-owned vehicles) on and around the project. This may be ISO form CA 00 01 10 01, CA 00 01 01 87 or a policy form providing equivalent coverage along with mandatory New York endorsements. Coverage shall be in an amount of not less than $1,000,000 each accident.

4. Umbrella or Excess Liability Insurance. The Consultant shall maintain an occurrence form umbrella liability policy or policies insuring against liability arising from premises (including loss of use thereof), operations, independent Consultants, products-completed operations, personal injury and advertising injury, and liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the premises or occasioned by reason of the operations of Consultant or arising from automobile liability as described above. Such coverage shall be written on an ISO occurrence form CU 00 01 12 07 or a policy form providing equivalent coverage. In the event that umbrella coverage is unavailable, equivalent excess coverage may be substituted. The minimum required limits for the umbrella/excess coverage shall be sufficient to provide a total of not less than $5,000,000 per occurrence/aggregate.

5. Consultant’s Risks. The Consultant shall be responsible for obtaining any insurance it deems necessary to cover its own risks, including without limitation: (a) business interruption, such as gross earnings, extra expense, or similar coverage, (b) personal property, and/or (c) automobile physical damage and/or theft. In no event shall the Department be liable for any damage to, or loss of, personal property, or damage to, or loss of, an automobile that is covered by a policy of insurance that is required by this agreement, even if such loss is caused by the negligence of the Department.

6. Professional Liability/Errors and Omissions. The Consultant shall maintain at its own expense or shall require to be maintained, such insurance as is customary to compensate the Department for any claims or losses that occur because of Consultant’s errors, omissions malpractice or breach of professional obligations. Such policy or policies may be written on a claims-made form so long as coverage is maintained to be in effect to cover claims arising from the performance of services under this contract. Said coverage may be subject to a deductible or self-insured retention level of no more than $250,000. subject to approval by the Department, such approval not to be unreasonably
withheld, except that it is also agreed that the Department may withhold payment for services rendered under this contract in the event, and to the extent of any deductible in the event that a claim is asserted. Such coverage shall be written on a claims-made basis (or a policy form providing equivalent coverage) in an amount of no less than $1,000,000 per claim and $1,000,000 in the aggregate.”

III. The following change is being made to Attachment 1 - Draft Contract:

Delete item IV from Article 6 in its entirety.

IV. The following change is being made to Appendix C Special Equal Employment Opportunity Provisions of Attachment 1 – Draft Contract:

Delete Section 11 Training Special Provisions in its entirety.

V. NYSDOT is hereby publishing the questions received by the RFP question submission deadline of May 22, 2015 along with the answers to those questions:

A. VARIOUS QUESTIONS regarding insurance as included in Attachment 1 of the RFP, the Draft Contract.

ANSWER: NYSDOT has modified, via Modification #1, its terms and conditions as they relate to insurance requirements/specifications. No other changes relative to insurance shall be made.

B. QUESTION: Relative to Article 19, Code of Ethics, will NYSDOT consider changing the first sentence of the second paragraph to read “The Consultant shall not assign to perform work under the Agreement…”

ANSWER: NYSDOT shall not change the language of Article 19 but provides that the draft terms and conditions included in the RFP as Attachment 1 applies to the potential contract award resulting from the RFP for C031380 Air Quality Analysis and Related Services for NYSDOT.

C. QUESTION: Based on the highly technical skills will NYSDOT consider modifying Appendix C Section 11?

ANSWER: NYSDOT is hereby removing Section 11 Training Special Provisions from Appendix C, reference Modification #1 for additional details.

D. QUESTION: There is a woman owned business with qualifications specifically relevant to this RFP which we would like to include in our proposal. They are currently in the process of getting certified as a DBE and we anticipate that they would be certified prior to the contract’s commencement or early on. Are there any specific details which we should include in our proposal in that regard? Can we include a percentage of the work we intend to allocate to them in Attachment 6 with a note stating that this assumes
they will be certified, and if not, this work would be allocated to another DBE included in our proposal (either way, we intend to meet the 20% goal)?

ANSWER: As published in the RFP, NYSDOT has established a 20 percent DBE contract participation goal. This 20 percent goal shall be met and/or a NYSDOT good faith effort to meet the goal demonstrated. Firms shall propose the team intended to work under the contract if awarded the contract. Proposals shall be evaluated based on the specifications/requirements in the RFP. NYSDOT welcomes the inclusion of any/all qualified entities. The complete team submission shall follow the guidelines established in the RFP and shall be evaluated as such.

E. QUESTION: Can we list a PIC and/or PM for subcontractor firms in addition to the prime PIC and/or PM? This is important because we need to have high-level oversight of work within each firm, which would be at the PM level, and it would be good to also have a PIC in each firm who is an officer of the company and can step in if only if needed – typically PIC would hardly be billing to a project if at all.

ANSWER: NYSDOT’s ultimate contract will be with the Prime firm. However, NYSDOT agrees that each subconsultant firm should have a contact that the Prime firm shall work with while the Prime firm is under contract with NYSDOT. Such arrangements shall be between the Prime firm and any/all subconsultant firm (s).

NYSDOT reiterates that which appears in RFP Attachment 12: only one entry or level of effort per title or title series shall be included in the Prime firm’s proposal, and as published in the RFP and Attachment 13: Direct Labor Rates provided represent an average of all persons expected to perform work under the contract in each specific title/title series for the Proposing team during the base term of the contract. This rate per title/title series, shall be included in the Contract resulting from the RFP. Proposals shall include one direct labor rate for each of the six published titles/series of titles published in the RFP and included in the Title column.

No other provision of the solicitation is otherwise changed or modified.
Please update your records accordingly.
An authorized representative of your firm or organization MUST acknowledge receipt and acceptance of this Modification #1 by including a signed copy of this form with the Part II Cost and Contract Submission as a separate tab item.

ACKNOWLEDGED AND TRANSPORTATION ACCEPTED:

BY: ______________________________
NAME: ______________________________
TITLE: ______________________________
FIRM: ______________________________

NYS DEPARTMENT OF
William A. Howe

BY: ______________________________
NAME: ______________________________
TITLE: Director, Contract Management
FIRM: ______________________________

RFP: Air Quality Analysis and Related Services for NYSDOT– C031380 - Modification #1