NEW YORK STATE DEPARTMENT OF TRANSPORTATION  
REQUEST FOR PROPOSALS  
CENTRAL PERMITS BUREAU OVERWEIGHT PERMITTING SUPPORT SERVICES  
FOR NYSDOT  
Contract #C037888  

QUESTIONS AND ANSWERS  

GENERAL:  

Question #1: Can the submission deadline be extended to be able to incorporate the answers to these questions?  
Answer: Two weeks is the minimum standard amount of time allocated to incorporate responses to questions and any RFP modifications made in response to questions received on the RFP. NYSDOT believes this amount of time to prepare a response is sufficient.  

Question #2: Is the HOOCS vendor precluded from bidding on this work given that part of the scope of services includes assistance in managing the HOOCS project?  
Answer: Yes, NYSDOT's HOOCS vendor is precluded from submitting a proposal in response to RFP #C037877.  

Question #3: Are third-party permitting services that obtain permits on behalf of trucking companies operating in New York State precluded from bidding on this project?  
Answer: Third-party permitting services that obtain permits on behalf of trucking companies operating in New York State are not precluded from bidding on this project.  

Question #4: Does the RFP contemplate requiring any SpecHaul duties?  
Answer: NYSDOT’s C037877 RFP does not request nor does it require any SpecHaul duties to be performed over the life of the resulting contract.  

Question #5: It is not clear what level of Information Technology support is being requested for this proposal. We understand that the HOOCS program is up and running but how much of the work will be improvement of the program?  
Answer: Regarding HOOCS upgrades: NYSDOT does not expect a significant amount of required IT expertise be required nor do we anticipate a significant amount of effort expended by the selected Consultant’s on-site personnel involvement in this regard. As front-line users, DivLoad Unit personnel may be instrumental regarding the initial identification and reporting of ‘bugs’ associated with the HOOCS performance regarding processing of DivLoad permit applications. It is expected that recommendations to improve HOOCS system performance will also be included in the reporting process.  

RFP SECTION 3.1 PROJECT OBJECTIVES:  


**Question #6:** It appears that the incumbent would be the only one capable of providing the “minimum amount of preparatory and assimilative transition (RFP allows for a 1 to 3 months transition, if necessary). In addition, the Controller has been slow to process contracts so the transition time may be cut short. Can this transition time be extended? Is the incumbent the only viable vendor because of this requirement?

**Answer:** Project objective #8 correctly states that a two to four month transition time period will be allowed if there’s a change in vendor. The first paragraph in RFP Section 4.2 ‘Divisible Load Permitting Process Activities’ is being revised to similarly allow a two to four month transition (please see RFP Modification #1). The incumbent will provide any necessary transition should there be a change in vendor. NYSDOT is on schedule to get the new contract to OSC in a timely manner, to ensure the new contract is awarded before January 5, 2021. RFP Modification #1 revises authorizing extending this transition time (if necessary) in the event OSC approval occur after January 5, 2021.

**RFP SECTION 5.1 Technical and Management Proposal/Submittal:**

**Question #7:** There appears to be inconsistent language referencing the number of calendar days (three vs 30). Can this be clarified?

**Answer:** Section 5.1 part 5 ‘Experience’ has been revised to consistently refer to thirty (30) calendar days, as provided in RFP Modification #1.

**Question #8:** After notice to proceed has been given on January 6, 2021, do my employees work 100% on site within the CPO in NYSDOT’s main offices or will remote work be allowed? If remote work is allowed, how will that be administered?

**Answer:** Employees form the selected Consultant shall work 100% on-site after the notice to proceed has been given unless directed otherwise. Working remote from home is possible but only as directed by NYSDOT and only if working from home is fully capable, effective, safe and secure. Replacement persons will be required to work 100% on site too.

**Question #9:** Could NYSDOT confirm if we should send 2 separate emails to submit our Technical and Cost Proposals, per the instructions in Table 1 and 2?

**Answer:** Yes. Please submit two separate e-mails compliant with the instructions provided in the second row of Table 1 and Table 2.

**Question #10:** Should Attachment 18 be submitted as a separate Excel file, or as part of the Part II Cost Proposal PDF?

**Answer:** Attachment 18 shall be submitted as a separate Excel file and as part of the PDF document containing a complete Part II Cost and Administrative Proposal submission.

**RFP SECTION 7.8 MEHOD OF PAYMENT:**

**Question #11:** Page 20 of the RFP states that the project may be Cost Plus Fixed Fee, Specific Hourly Rate, or Lump Sum Payment. However, the Draft Contract refers only to Fully Loaded Hourly Rates as the payment method. Please clarify?
Answer: Section 7.8 of the RFP has been revised by RFP Modification #1 to only refer to fully loaded hour rate payment method.

RFP ATTACHMENT 1 DRAFT CONTRACT:

Question #12: Will the State consider amending the amount by which rates may be adjusted during the term of the contract in Article 7 such that the maximum amount is 3% rather than 2%?

Answer: The provisions concerning RFP rate adjustments shall remain unrevised.

Question #13: Will the State consider modifying the first sentence of Article 8 to specify that the Consultant shall be paid in monthly progress payments?

Answer: RFP Modification #1 revises Article 8 to clarify that progress payments are to be monthly. RFP Section 7.8 ‘Method of Payment’ has been revised to clarify that payments are to be monthly.

Question #14: Will the State consider substituting the following language in lieu of the current Consultant Liability language in Article 12, so that the indemnification obligation is predicated on a negligence standard?

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.

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.
Answer: The draft contract remains unrevised in this regard.

Question #15: Based on the nature of the services to be performed under this Contract, will the State consider modifying the first sentence of Article 13 so that it reads as presented below?

The CONSULTANT shall procure, at its own sole cost an expense, and shall maintain in force at all times during the term of the CONTRACT including any extensions or renewals until satisfactory completion of all work under expiration of the CONTRACT, 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.

Answer: The RFP’s draft contract remains unrevised in this regard. Notwithstanding the foregoing contract performance may not extend beyond the contract expiration, unless extended or renewed.

Question #16: Will the State consider modifying Article 13, Section 1.A to read as follows?

Coverage Types and Policy Limits. The types of coverage and policy limits required from the Consultant are specified in Section 2, Insurance Requirements, below. Insurance shall apply separately on a per job or per-project basis.

Answer: The RFP’s draft contract remains unrevised in this regard.

Question #17: Will the State consider modifying Article 13, Section E to read as follows?

The commercial general liability and protective commercial automobile 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.

Answer: The RFP’s draft contract remains unrevised in this regard.

Question #18: Will the State consider modifying Article 13, Section F to read as follows?

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: The RFP’s draft contract remains unrevised in this regard.

Question #19: Will the State consider modifying Article 13, Section G to read as follows:

At least ten (10) calendar days prior to the expiration of any policy required by this CONTRACT, evidence of renewal or replacement policies of such insurance with terms no less favorable to the DEPARTMENT than the expiring policies shall delivered to the DEPARTMENT in the manner required for service of notice in Section C—Certificates of Insurance/Notices above.

Answer: The RFP’s draft contract remains unrevised in this regard.

Question #20: Will the State consider modifying Article 13, Section H to read as follows?
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: The RFP’s draft contract remains unrevised in this regard.

Question #21: Will the State consider deleting the following sentence from Article 13, Section C?

In addition, if required by the Department, the Consultant shall deliver to the Department, within ten (10) business 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.

Answer: The RFP’s draft contract remains unrevised in this regard.

Question #22: Will the State consider modifying Article 18, Section 1 to read as follows?

If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of the CONSULTANT, the STATE shall provide ninety (90) days prior written notice to CONSULTANT of such termination, and final payment shall be made based on the actual work performed by the CONSULTANT prior to termination, including, but not limited to, the number of hours and other authorized costs audited in accordance with the terms of the CONTRACT.

Answer: The RFP’s draft contract remains unrevised in this regard.

Question #23: Will the State consider modifying the references to “agents” in Article 28 so that it reads “agents (not including employees of the State)”, in order to clarify that the Consultant is not responsible for acts of employees of the State?

Answer: The RFP’s draft contract remains unrevised in this regard.
Question #24: Will the State consider adding the following paragraph to Article 29 to allow for a cure period?

**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: The RFP’s draft contract remains unrevised in this regard.

Question #25: Will the State consider modifying the first sentence of Article 35 in order to clarify that it is relevant only to staff working on this project, so that it reads as follows?

The CONSULTANT and its subconsultants/subcontractors shall not engage to perform services under this CONTRACT any person who is, or has been at any time, in the employ of the STATE to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of STATE employees, and the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively the “Ethics Requirements”).

Answer: The RFP’s draft contract remains unrevised in this regard.

Question #26: Will the State consider modifying the Order of Precedence in Article 3 such that the Consultant’s Proposal controls over the terms of the RFP?

Answer: The RFP’s draft contract remains unrevised in this regard.

Question #27: Will the State consider deleting Appendix D, including requirements for an MWBE Utilization Plan, given that there are no MWBE goals for this Contract?

Answer: The RFP’s draft contract remains unrevised in this regard.

RFP ATTACHMENT 5 CONSULTANT DISCLOSURE LEGISLATION FORMS A&B:

Question #28: Should bidders include Attachment 5: Consultant Disclosure Legislation Forms A&B with our proposal?

Answer: Bidders should NOT include Attachment 5: Consultant Disclosure Legislation Forms A&B in a submitted proposal. These forms are brought presented to make the selected Consultant aware that these forms are to be submitted by the selected Consultant after selection and prior to contract award.

ATTACHMENT 17: CONTRACT JOB TITLE DESCRIPTIONS, MINIMUM STAFF DUTIES, RESPONSIBILITIES AND ABILITIES:

Question #29: The RFP seems to be asking respondents to provide one DivLoad Unit Supervisor, one Agent III, one Agent II, and one Agent I. Can you please confirm that this is what NYSDOT is looking for?

Answer: Among other responsiveness requirements, the C037877 RFP requires proposals to be responsive to the performance requirements specified in Section 4.2 ‘Divisible Load Permitting Process Activities’ (pages 7-10) and Attachment 17 ‘Contract Job
Title Descriptions, Minimum Staff Duties, Responsibilities and Abilities’ (pages 95-98) to offer qualified Agent I, Agent II, Agent III and DivLoad Unit Supervisor on-site personnel per NYSDOT’s direction. RFP Attachment 18 also requires proposers to offer rates for each of these four titles. Regarding the specific number of each on-site personnel to be provided to staff NYSDOT’s DivLoad Unit, the RFP requires that: “(d)uring the term of the contract, the Consultant shall provide one (1) DivLoad Unit Supervisor and up to three (3) DivLoad Unit Staff who are fully capable of performing the following the duties, abilities and responsibilities from day one of the contract” therefore the RFP does NOT specify the exact number of DivLoad Unit on-site consultant personnel other than to require one DivLoad Unit Supervisor on-site person and that up to three staff persons shall be provided.

RFP ATTACHMENT 18 COST PROPOSAL:

**Question #30**: Fee is only applied on only the salary rate. Given the fee is limited to 10%, would you confirm that the fee should instead be applied to sum of the salary rate plus the applicable overhead cost?

**Answer**: Fee does not apply to overhead.

**Question #31**: The Year 3 Fully Loaded hourly formula calculates a 4% escalation on the Year 1 rates. Assuming a maximum 2% annual escalation is allowed for Year 3 shouldn’t the rate escalation rate be 1.0404 (1.02^2) when applied to the Year 1 rate?

**Answer**: Please see RFP Modification #1; Attachment 18 has been revised to limit year-to-year rate adjustments to 2%.

**Question #32**: The rate increases for the option years are lower of the Producer Price Index (PPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 2%. Are the rates proposed for the second and third year of the initial contract term limited to a 2% increase over the prior year rates? Will NYSDOT allow for annual escalation of rates during the initial three year base term of the contract?

**Answer**: The RFP and [revised] attachment 18 limit year-to-year rate adjustments to 2%. 