

RFP 2020-27
ADDENDUM #1
September 30, 2020

The following information is provided as a result of question(s) posed by vendor(s):

QUESTION 1: Scope of Services on page 4, Section 4: who is currently providing these services and what is the current rate of compensation? How often are these services utilized – daily, weekly, monthly? What is the approximate amount of time per day/week/month? What type of notice is provided in advance of the services to be performed? Are services to be performed on site at the City of Albany’s locations or can they be done remotely? Or do you need for us to provide conference rooms/locations? How many hearing officers are you looking to have available for this program?

ANSWER 1: (a) We have a list of Hearing Officers whom we contact on an as-needed and rotating basis. (b) The current rate of compensation is \$125/hour. (c) A Hearing Officer under contract with the City can expect to be contacted approximately three (3) times per year for the Hearing Officer’s availability to perform services. Some cases will settle before the scheduled Hearing is conducted. (d) The City tries to contact the Hearing Officers several weeks in advance to check availability before the Hearing is scheduled. (e) Generally the services will be performed at the City’s locations but may be performed remotely due to COVID-19 protocols. Hearing Officers are not required to provide conference rooms or locations to conduct Hearings. (f) We have no limit to the number of Hearing Officers we will add to our rotating list.

QUESTION 2: Scope of Services – can you elaborate upon what types of legal services are being sought, apart from the hearing officer services? That is, are you looking for a lawyer to defend/represent the City in legal matters/litigation or provide a review of legal matters (pluses and minuses)? What is the profile/description of such services? Do you envision that the hearing officer services and general legal services would be performed by the same person?

ANSWER 2: The City may request the selected Proposer(s) to perform general legal services from time to time, as-needed, in the event that Corporation Counsel is conflicted from performing said services.

QUESTION 3: Scope of Services - can an entity submit a proposal for the hearing officer services without submitting a proposal for providing legal representation services for general matters?

ANSWER 3: Yes.

QUESTION 4: Term of Contract on page 4, section 5.2: We would like to request a sample City of Albany Professional Services Agreement.

ANSWER 4: Attached to this addendum you will find a sample copy of the City’s Professional Services Agreement.

AGREEMENT
BY AND BETWEEN
THE CITY OF ALBANY
AND

FOR THE PROVISION OF
_____ SERVICES

This Agreement made _____, 20____ (hereinafter referred to as the "EFFECTIVE DATE") by and between the CITY OF ALBANY, a New York municipal corporation with its principal offices at 24 Eagle Street, Albany, New York, 12207 (hereinafter referred to as "CITY") and _____, a New York _____ with its principal offices located at _____, _____, New York, _____ (hereinafter referred to as "CONSULTANT").

WITNESSETH

WHEREAS, the CITY issued a Request for Proposals dated _____, 20____ (hereinafter referred to as "RFP", which is incorporated herein and made a part of this Agreement) for the provision of _____ services in connection with the _____; and

WHEREAS, the CONSULTANT submitted a Proposal dated _____, 20____ (hereinafter referred to as the "Proposal", which is incorporated herein and made a part of this Agreement) for the provision of said _____ services; and

WHEREAS, the CITY has selected CONSULTANT to provide the said _____ services,

NOW, THEREFORE, THE PARTIES HERETO, IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH IN THIS AGREEMENT, AGREE AS FOLLOWS:

ARTICLE I. SCOPE OF SERVICES

CONSULTANT agrees to provide the Scope of Services for _____ as forth in the CITY's RFP numbered _____ and dated _____, a copy of which is incorporated herein, and the Scope of Services as more specifically set forth on pages _____ of CONSULTANT's Proposal, a copy of which is incorporated herein. All services and deliverables shall be provided within the time period set forth in Section _____ of the CITY's RFP.

ARTICLE II. FEES

In consideration of the terms and obligations of this Agreement, the CITY agrees to pay, and the CONSULTANT agrees to accept, fees as follows:

Any task description that does not have a cost associated must be approved by the Commissioner of the Department of [FILL IN], or his designated representative, upon the submission of a task order by CONSULTANT. Task orders that do not include a “not to exceed” quote for that task will not be accepted.

The CONSULTANT shall submit to the CITY itemized bills, properly executed claim forms, vouchers, and such other necessary information or supporting documentation as may be required by the CITY in order to process payment.

ARTICLE III. TERM OF THE AGREEMENT

The term of this AGREEMENT will be TERM, and will commence on EFFECTIVE DATE and expire on Expiration Date. The CITY will, however, have the right to terminate the agreement at any time, with or without cause. The CITY shall also have the option to extend the contract for Extension terms, upon Budget approval.

ARTICLE IV. RELATIONSHIP

The CONSULTANT is, and will function as, an independent contractor under the terms of the Agreement and shall not be considered an agent or employee of the CITY for any purposes, and the employees of the CONSULTANT shall not in any manner be, or be held out to be, agents or employees of the CITY.

ARTICLE V. OWNERSHIP OF DOCUMENTS

All documents, including original drawings, estimates, specifications, field notes, and data prepared and furnished by the CONSULTANT pursuant to this Agreement shall be the property of the CITY.

ARTICLE VI. LICENSES

The CONSULTANT shall at all times obtain and maintain all licenses required by the State of New York to perform the services contemplated by this Agreement.

ARTICLE VII. ASSIGNMENTS

The CONSULTANT is, as per Section 109 of the New York General Municipal Law, prohibited from assigning, transferring, conveying, subcontracting or otherwise disposing of this Agreement, or of its right, title, or interest therein without the previous consent in writing of the CITY.

ARTICLE VIII. INDEMNIFICATION

To the fullest extent permitted by law, the CONSULTANT shall indemnify, defend and hold harmless the CITY and its officers, directors, boards, employees, and agents from and against any and all claims, damages, losses and expenses, including but not limited to attorney's fees, for any actual or alleged injury to any person or persons, including death, or damage to or destruction of property arising out of any act or omission on the part of the CONSULTANT, its employees, agents or subcontractors for any work or services performed on behalf of the CITY. Both PARTIES shall notify each other in writing within thirty (30) days of any such claims or demands and shall cooperate in the defense of any such actions.

ARTICLE IX. INSURANCE

Notwithstanding the terms, conditions or provisions, in any other writing between the parties, the CONSULTANT hereby agrees to effectuate the naming of the CITY, its boards, officers and employees **as additional insureds on a primary and non-contributory basis** on the CONSULTANT's insurance policies, with the exception of the Worker's Compensation.

- A. All policies of insurance required shall be in the following form and content satisfactory to the CITY:
 - i. Said insurances must be issued by an insurer licensed to do business in the State of New York and must have an A.M. Best rating of not less than "A";
 - ii. The insurance policies shall state that the CONSULTANT's coverage shall be primary coverage for the municipality, its boards, officers and employees;
 - iii. The insurance policies shall state the CONSULTANT agrees to indemnify the municipality for any applicable deductibles;
 - iv. The insurance policies shall not be changed or cancelled until the expiration of thirty (30) days after written notice to the CITY; and
 - v. The insurance policies shall be automatically renewed upon expiration and continued in force unless the CITY is given sixty (60) days written notice to the contrary.
- B. The CONSULTANT will be required to procure and maintain at its own expense the following insurance coverage:

- i. Workers' Compensation and Employer's Liability Insurance: Must show evidence of Worker's Compensation insurance at State statutory limits, a policy or policies providing protection for employees in the event of job-related injuries;
- ii. Commercial General Liability Insurance: A policy or policies of comprehensive general liability insurance of general liability limits of \$1,000,000 per occurrence/\$2,000,000 aggregate;
- iii. Errors and Omissions/ Professional Liability Insurance: A policy or policies of errors and omissions insurance with limits of not less than one million dollars (\$1,000,000.00). Said insurance must be issued by an insurer licensed to do business in the State of New York and must have an A.M. Best rating of not less than "A";
- iv. Excess/Umbrella Insurance: A policy or policies of insurance with limits of \$2,000,000 per occurrence/\$2,000,000 aggregate;
- v. Pollution Liability Insurance: A policy or policies of pollution liability insurance of liability limits of \$2,000,000 per occurrence/\$2,000,000 aggregate; and
- vi. Automobile Liability Insurance: In the event that CONSULTANT is using a vehicle in business, a policy or policies of comprehensive automobile liability insurance with limits of not less than \$1,000,000 for each accident because of bodily injury, sickness, or disease, including death at any time, resulting therefrom, sustained by any person caused by accident; and a policy or policies with limits of not less than \$1,000,000 for damage because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of any automobiles, including owned, non-owned and hired.

No work shall commence under the Agreement until CONSULTANT has delivered to the CITY or its designee proof of issuance of all policies of insurance required by the Agreement to be procured by CONSULTANT. If at any time, any of said policies shall be or become unsatisfactory to the CITY, CONSULTANT shall promptly obtain a new policy and submit proof of insurance of the same to the CITY for approval. Upon failure of CONSULTANT to furnish, deliver, and maintain such insurance as above provided, the Agreement may, at the election of the CITY, be declared suspended, discontinued or terminated. Failure of CONSULTANT to procure and maintain any required insurance shall not relieve CONSULTANT from any liability under the Agreement, nor shall the insurance requirements be constructed to conflict with the obligations of CONSULTANT concerning indemnification.

ARTICLE X. ACCOUNTING RECORDS

Proper and full accounting records shall be maintained by the CONSULTANT. Said records shall clearly identify the services provided under this Agreement. Such records shall be subject to periodic and final audit by the CITY upon request. Such records shall be accessible to

the CITY for a period of six (6) years following the date of final payment by the CITY to the CONSULTANT for the provision of the services contemplated herein.

ARTICLE XI. CONFIDENTIALITY

The CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than the CONSULTANT's employees, subcontractors and the general contractor and subcontractors, if appropriate, any data or information not previously known to and generated by the CONSULTANT or furnished to the CONSULTANT and marked "CONFIDENTIAL" by the CITY. These provisions shall not apply to information in whatever form that is in the public domain, nor shall it restrict the CONSULTANT from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other legitimate authority, or if disclosure is reasonably necessary for the CONSULTANT to defend itself from any legal action or claim. CONSULTANT shall promptly notify the CITY in writing of such required disclosures.

ARTICLE XII. TERMINATION OF AGREEMENT

Notwithstanding any provisions of this agreement, the CITY shall have the right at any time, with or without cause, to terminate the services contemplated by this Agreement upon written notice of such termination. In the event of such termination of this Agreement, the CONSULTANT shall be entitled to prorated compensation for all services provided and authorized by the CITY pursuant to this Agreement prior to the written termination notice. Once such prorated compensation has been paid, the CITY shall have no further obligations to the CONSULTANT.

ARTICLE XIII. MODIFICATIONS

This Agreement may only be modified by a formal written amendment executed by the CITY and the CONSULTANT.

ARTICLE XIV. PARTIAL INVALIDITY

If any term, part, provision, section, subdivision, or paragraph of this Agreement shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions, or paragraphs thereof.

ARTICLE XV. CONTRACT DOCUMENTS

It is understood and agreed by the parties hereto that the following documents are incorporated into this Agreement and become as fully a part of this Agreement as if fully set forth herein:

- A. The RFP dated [redacted], 20__ ; and
- B. The Proposal dated [redacted], 20__ .

In the event of any discrepancy, disagreement, or ambiguity among the documents referenced above, said documents shall be given preference in the following order to interpret and to resolve any such discrepancy, disagreement, or ambiguity:

- A. This Agreement;
- B. The RFP dated [redacted], 20__ ; and
- C. The Proposal dated [redacted], 20__ .

ARTICLE XVI. NO WAIVER

The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of the Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

ARTICLE XVII. NOTICES

Any notice required or contemplated herein shall be made upon the parties as follows:

CITY: Department of [redacted]
Attn: [redacted]
City of Albany
[address]
Albany, New York [redacted]

CONSULTANT: [Name]
[Address]
[Address]

With a copy to: Corporation Counsel
Department of Law
City Hall, Room 106
Albany, New York 12207

ARTICLE XVIII. NON-DISCRIMINATION REQUIREMENTS

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the CONSULTANT will not discriminate against any employee, applicant or anyone in the performance of this Agreement because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status.

Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, CONSULTANT agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 230 thereof, CONSULTANT agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. CONSULTANT is subject to fines of \$50 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all monies due hereunder for a second or subsequent violation.

ARTICLE XIX. LIVING WAGE

When providing the services contemplated by this Agreement, the Consultant must comply with Sect 42-161 of the City of Albany Code, which requires payment of a living wage to all its employees working on a service contract. See Exhibit C: Living Wage Compliance Form.

ARTICLE XX. EXECUTORY

This Agreement shall be deemed executory only for the extent of monies available to the CITY for the performance of the terms hereof and no liability on account thereof shall be incurred by the CITY beyond monies available to or appropriated by the CITY for the purpose of the Agreement and, if applicable, that this Agreement shall automatically terminate upon the termination of State or Federal funding available for such contract purpose.

ARTICLE XXI. GOVERNING LAW

This AGREEMENT shall be governed by and construed according to the laws of the State of New York and City of Albany.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed on the day and year first written above.

CITY OF ALBANY

CONSULTANT

Katherine M. Sheehan
Mayor

[Name]
[Title]

Date: _____

Date: _____

NOTARY ACKNOWLEDGEMENT

STATE OF NEW YORK)
COUNTY OF _____) ss.:

On this _____ day of _____, 20__, before me personally appeared _____, to me known to be the individual who executed the foregoing instrument, and who, being duly sworn by me did say that he/she is _____ of the architectural/engineering firm _____, and that he/she has the authority to sign same, and acknowledged that he/she executed the same as the act and deed of the firm.

Notary Public, State of New York
Qualified in _____
Commission Expires _____

NOTARY ACKNOWLEDGEMENT

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:
CITY OF ALBANY)

On this _____ day of _____, 20__, before me personally came Katherine M. Sheehan, to me known and known to me to be the Mayor of the City of Albany, New York and the same person who executed the foregoing instrument; and she acknowledged that she executed the foregoing instrument on behalf of the City of Albany, New York as said Mayor pursuant to the authority vested in her.

Notary Public, State of New York
Qualified in _____
Commission Expires _____

EXHIBIT A

EXHIBIT B