

RFP 2020-14
ADDENDUM #3
March 26, 2020

QUESTION 1: The RFP indicates/requests a series of technical studies to support the BOAs. We reviewed the Pre-Nomination studies (components of the Albany 2030 Plan) and suspect that the technical studies may have been incorrectly assigned? As an example, the North Warehouse District NYSDOS Work Plan requests a Truck Rerouting Evaluation & Feasibility Study - focusing on 787 to the Port of Albany. Should this be a component of the South Waterfront Project? Similarly, the CSX Rail Crossing study; while there are multiple RR crossings in the Northern District, rail crossings are proposed on the South Waterfront Concept plans included in the Pre-Nomination Study. Can you confirm or clarify whether this component should be for the Northern District, only, or should, rather, be for both BOA study areas?

ANSWER 1: As trucking and rail lines are found in both BOA study areas, the City seeks to better understand the impacts of these modes and their infrastructure in both the North and South study areas.

QUESTION 2: South Waterfront Project CSO Environmental Impact Analysis and Plan for Potential Separation. Analysis of Impacts on water quality from the six CSOs appears overly broad in scope. Given the Albany Pool has been working diligent to address this issue and others as stipulated in the Long Term Control Plan- is it appropriate to focus this effort on identifying green infrastructure options for achieving separating storm sewers? If the intent is to address the six CSO's more specifically, have priority projects been identified? Given that the work plan is several years old, what improvements to the six CSO's have been advanced since the work plan issuance?

ANSWER 2: The City seeks to coordinate the work conducted by the Albany Pool into the document to provide the most up-to-date and comprehensive information relevant to the waterfront.

QUESTION 3: The RFP indicates the City suspended work on preparation of the 2014 LWRP. Is a copy of the Draft LWRP available for review, as well as any NYSDOS comments on the status/content of the product (e.g., if any sections were previously approved by NYSDOS). No. Similarly, Is the scope of work for the LWRP expected to "start over from the beginning", or would it reflect that many of the required Tasks have already been completed? For example - Task 8: Waterfront Area Boundary - has that already been approved or would the consultant need to re-submit this for approval? Would the consultant need to have the "First Public Informational Meeting" again? (etc.)

ANSWER 3: Given the amount of time that has passed, the LWRP is effectively starting over. The unfinished document is not available for viewing at this time.

QUESTION 4: The North Warehouse District and the South Waterfront scopes request infrastructure analysis for water, sanitary sewer and storm sewer collection systems. This is broad in scope and refinement would be helpful. What data and information will be made available to the consultants? Are computer models, hydrant flow testing, sanitary sewer flow monitoring, mapping, etc. available?

ANSWER 4: The City will work diligently to obtain as much information as possible. At this time it is unknown if hydrant flow testing, sanitary sewer flow monitoring, or mapping will be available. The scope is broad – the City seeks to provide respondents with the opportunity to craft a scope that is consistent with the abilities and creativity of the team.

QUESTION 5: For the truck rerouting study, is the City looking for actual truck data, such as delivery times, routes, volumes, etc.?

ANSWER 5: The City would like to obtain as much information as possible.

QUESTION 6: Would the City be willing to consider an electronic submission for the proposal in lieu of hard copy?

ANSWER 6: Per Section 3.1 of the RFP, the City requires four (4) copies and one (1) electronic copy in a portable document format (PDF) on a flash drive of the proposal. The same must be received in a sealed envelope marked “Proposal Enclosed – Planning and Environmental Services” no later than April 10, 2020.

QUESTION 7: What “proof of licensure” to work in NYS is expected?

ANSWER 7: The City expects to see proof of licensure held by members of the proposers’ teams, for example, architectural licenses, etc.

QUESTION 8: North Warehouse District – is the BOA boundary area the nomination study boundary, or the extended study area boundary – it is shown differently on different maps and is listed as the former in the scope of work.

ANSWER 8: The nomination study boundary is the primary area for study, however, the City desires to contract with a proposer who can accommodate the extended area.

QUESTION 9: For the MBE/WBE breakdown, is it a goal or a requirement for the program?

ANSWER 9: This is a requirement for the program.

QUESTION 10: Under Section 9.2: Proposal Evaluation: (a) Are there points assigned to each evaluation criteria? (b) If we are unable to meet the MWBE requirements, is there an opportunity to submit a good faith effort described on the Department of State website?

ANSWER 10: The **required** MWBE percentages described in the RFP are set by the grantor, the New York State Department of State. The City will evaluate all submissions based on the responsiveness of the submissions.

QUESTION 11: Cost Proposal, per Section 8 of the RFP: Can one budget be submitted for both BOAs and one for the LWRP update; therefore two budgets?

ANSWER 11: The City would like to keep the budgets separate for ease in billing and grant reporting.

QUESTION 12: Geotech: (a) Are you looking for a table top analysis? Meaning the consultant would gather information from existing sources and report rather than conduct soil borings? (b) If it is the latter, is there/are there a location(s) where the City is looking to conduct soil borings? And/or approximately how many borings would the City be anticipating?

ANSWER 12: The City would like to obtain as much information from sites within the project area as possible. A tabletop analysis would be a first step in ascertaining possible areas for soil borings.

QUESTION 13: CSX Crossing: Is there a specific location that the City is looking to be analyzed.

ANSWER 13: No.

QUESTION 14: In Section 7.2, the RFP mentions that a sample City of Albany Professional Services Agreement is available upon request. Can you please share that sample contract with me?

ANSWER 14: Please see the attached sample contract.

AGREEMENT
BY AND BETWEEN
THE CITY OF ALBANY
AND

[INSERT NAME OF SELECTED PROPOSER]
FOR THE PROVISION OF
[INSERT TYPE OF PROFESSIONAL SERVICES]

This Agreement made March _____, 2020 (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 the “CITY”) and [INSERT NAME OF SELECTED PROPOSER] (hereinafter referred to as “CONSULTANT”). The CITY and CONSULTANT may collectively be referred to as the “Parties,” or individually as a “Party.”

WITNESSETH

WHEREAS, the CITY issued a Request for Proposals dated [INSERT DATE OF RFP POSTING] (which is hereinafter referred to as the “RFP” and which is incorporated herein, and made a part of this Agreement and marked “EXHIBIT A”) for the provision of [INSERT TYPE OF PROFESSIONAL SERVICES]; and

WHEREAS, the CONSULTANT submitted a Proposal dated [INSERT DATE OF CONSULTANT’S PROPOSAL], (which is hereinafter referred to as the “Proposal” and which is incorporated herein, and made a part of this Agreement and marked “EXHIBIT B”) for the provision of said [INSERT TYPE OF PROFESSIONAL SERVICES]; and

WHEREAS, the CITY has selected CONSULTANT to provide the said [INSERT TYPE OF PROFESSIONAL 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 [INSERT TYPE OF PROFESSIONAL SERVICES] as set forth on pages [XX] of the CITY’S RFP dated [INSERT DATE OF POSTING] and numbered 2020-[XX], a copy of which is incorporated herein, and further specified by CONSULTANT’S PROPOSAL dated [INSERT DATE OF CONSULTANT’S PROPOSAL] on pages [XX], a copy of which is also incorporated herein. The Scope of Services is as follows: [INSERT ADDITIONAL SCOPE OF SERVICES IF NOT ALREADY PROVIDED IN THE RFP OR THE PROPOSAL].

ARTICLE II. FEES

- A. In consideration of the terms and obligations of this Agreement, the CITY agrees to pay, and CONSULTANT agrees to accept [INSERT FEES] found on pages [XX] of CONSULTANT’S Proposal.
- B. CONSULTANT shall invoice the CITY electronically through an email designated by the CITY.
- C. Any task description, not included in this Agreement, that does not have a cost associated must be approved by the City of Albany [INSERT DEPARTMENT] or designated representative, upon the submission of a task order by CONSULTANT. No task order submitted by CONSULTANT will be accepted that does not include a “not to exceed” quote for that task.
- D. 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 [XX] years. The CITY reserves the right to extend the agreement for [XX] additional [XX] periods upon budget approval.

ARTICLE IV. 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 thirty (30) days’ written notice of such termination. In the event of such termination of this Agreement, 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 CONSULTANT.

ARTICLE V. RELATIONSHIP

CONSULTANT is, and shall 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 CONSULTANT shall not in any manner be, or be held out to be, agents or employees of the CITY.

ARTICLE VI. COPYRIGHT AND OWNERSHIP OF DOCUMENTS

- A. CONSULTANT agrees that any work eligible for copyright protection under any U.S. or foreign law and prepared by CONSULTANT for the CITY shall be a work made for hire and ownership of all copyrights (including renewals and extensions therein) shall vest in the CITY. In the event that such work prepared by CONSULTANT for the CITY is

deemed not to be a work made for hire for any reason, CONSULTANT hereby irrevocably grants, transfers, and assigns to the CITY all right, title, interest, and copyrights in such work including all renewals and extensions thereof. CONSULTANT hereby agrees to reasonably assist the CITY in the establishment, preservation, and enforcement of its copyrights in such work without any additional compensation to CONSUTLANT. CONSULTANT waives all rights of identification of authorship including rights of approval, rejection, or limitation on use or subsequent modifications.

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

C. This Article shall survive termination of the Agreement.

ARTICLE VII. LICENSES

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 VIII. ASSIGNMENTS

CONSULTANT is 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 IX. INDEMNIFICATION

To the fullest extent permitted by law, each CONSULTANT shall defend, indemnify, and save harmless the CITY, its boards, employees, agents and volunteers, from and against any and all claims, liabilities, actions, demands, damages, losses and expenses (including but not limited, without limitation reasonable attorney's fees and all other costs of defense) arising out of, or in consequence of, any act or omission of CONSULTANT, its employees or agents, including subcontractors, in the direct or indirect performance of the CONSULTANT'S services. 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. CONSULTANT agrees to indemnify the municipality for any applicable insurance deductibles for the polices further stated in Article X to this Agreement.

ARTICLE X. INSURANCE

Notwithstanding the terms, conditions or provisions, in any other writing between the parties, 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 CONSULTANT'S insurance policies, with the exception of the Worker's Compensation and Errors and Omissions/Professional Liability Insurance Policies.

All policies of insurance required shall be in the following form and content satisfactory to the CITY:

- a) 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".
- b) The insurance policies shall state that the organizations coverage shall be primary coverage for the municipality, its boards, officers and employees.
- c) The insurance policies shall not be changed or cancelled until the expiration of thirty (30) days after written notice to the CITY.
- d) 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.

CONSULTANT will be required to procure and maintain at its own expense the following insurance coverage:

- (a) 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;
- (b) Commercial General Liability Insurance: A policy or policies of comprehensive general liability insurance of general liability limits of one million dollars (00/100) (\$1,000,000) per occurrence and two million dollars (00/100) (\$2,000,000) in the aggregate;
- (c) Errors and Omissions/ Professional Liability Insurance (including Cyber Liability): A policy or policies of errors and omissions insurance with limits of not less than one million dollars (00/100) (\$1,000,000);
- (d) Excess/Umbrella Insurance: A policy or policies of insurance with limits of two million dollars (00/100) (\$2,000,000) per occurrence and two million dollars (00/100) (\$2,000,000) in the aggregate; and

No work shall commence under the contract until CONSULTANT has delivered to the CITY or its designee proof of issuance of all policies of insurance required by the Contract to be procured by the selected proposer. 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 contract 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 contract, nor shall the insurance requirements be constructed to conflict with the obligations of the selected proposer concerning indemnification.

ARTICLE XI. ACCOUNTING RECORDS

Proper and full accounting records shall be maintained by 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 CONSULTANT for the provision of the services contemplated herein.

ARTICLE XII. CONFIDENTIALITY

CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than CONSULTANT's employees, subcontractors and the general contractor and subcontractors, if appropriate, any data or information not previously known to and generated by CONSULTANT or furnished to 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 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 CONSULTANT to defend itself from any legal action or claim.

ARTICLE XIII. MODIFICATIONS

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

1. The RFP dated [INSERT DATE OF RFP POSTING];
2. The Proposal dated [INSERT DATE OF CONSULTANT'S PROPOSAL];
and
3. The Completed Living Wage Form.

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:

- i. This Agreement;
- ii. The RFP dated [INSERT DATE OF RFP POSTING];
- iii. The Proposal dated [INSERT DATE OF CONSULTANT'S PROPOSAL];
and
- iv. The Completed Living Wage Form.

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:

CONSULTANT: [INSERT NAME AND ADDRESS OF CONSULTANT]

CITY: [INSERT NAME OF DEPARTMENT]

City of Albany
24 Eagle Street
Albany, New York 12207

With a copy to: City of Albany Corporation Counsel
Department of Law
24 Eagle Street
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 REQUIREMENT

When providing the services contemplated by this Agreement, CONSULTANT must comply with Section 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.

ARTICLE XXII. COUNTERPARTS, FACSIMILE AND ELECTRONIC COPIES

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Any facsimile or electronically transmitted copies hereof or signature hereon shall, for all purposes, be deemed originals.

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]

NOTARY ACKNOWLEDGEMENT

STATE OF _____)
COUNTY OF _____) ss.:

On this _____ day of _____, 2020, before me personally appeared [INSERT NAME OF BINDING AGENT] to me known to be the individual who executed the foregoing instrument, and who, being duly sworn by me did say that he/she/they is [INSERT TITLE OF BINDING AGENT] of [INSERT NAME OF CONSULTANT], and that he/she/they has the authority to sign same, and acknowledged that he/she/they executed the same as the act and deed of the firm.

Notary Public, State of _____

NOTARY ACKNOWLEDGEMENT

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

On this ____ day of _____, 2020, 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

EXHIBIT A

EXHIBIT B

EXHIBIT C