

May 14, 2014

TO: ALL OFFERORS

FROM: Christopher L. Brown, P.G.
Hydrologist, DNREC Tank Management Section

SUBJECT: ADDENDUM TO INVITATION TO BID - CONTRACT No. NAT14002-PFPRemed;
Pay for Performance Environmental Remediation Services

ADDENDUM # 1

- Answers to questions received from prospective vendors
- Corrected text in Appendix B, Paragraph 3.1.1, Page 38

All other terms and conditions remain the same.

If you have any questions, please contact me at 302-395-2500; Christopher.Brown@state.de.us.

Answers to Questions Submitted

Question 1:

[Consultant] typically select our subcontractors (i.e. drillers, disposal firms, MIP) for each task order based on our understanding of the site-specific needs. In the CONTRACT proposal, do we need to disclose any and all subcontractors in Attachment 6-Subcontractor Information Form for each subcontractor -- we may use throughout the duration of the contract? We are assuming that Attachment 6 is filled out during a site-specific project proposal alone as stated in the sentence on page 9, correct? If this information is needed in the CONTRACT proposal, can we provide a list of subcontractors by service with which we have relationships in lieu of Attachment 6?

Section Number: Section IV Professional Services RFP Administrative Information

Paragraph Number: 2nd paragraph on page 9; Attachment 6 reference on page 25 and 26

Page Number: page 9 and page 25/26

Text of passage being questioned: "Use of subcontractors must be clearly explained in the site-specific project proposal, and major subcontractors must be identified by name." on page 9 AND "Attachment 6-Subcontractor Information Form" on page 25 as well as "Attachment 6 must be included in your proposal if subcontractors will be involved" on page 26.

Answer:

Vendors providing a response to this RFP may provide the DNREC-TMS with a list of potential subcontractors they may use during the course of the contract in lieu of submitting Attachment 6 for multiple vendors providing the same services. Vendor(s) selected for this contract, will be

required to submit a list of subcontractors with a completed Attachment 6 when they submit a site-specific project proposal.

Question 2:

Section number: Appendix B, Section 3, Pay-for-Performance Site Specific Provisions

Paragraph number: 3.2.2

Page number: 39

Text of passage being questioned: This section states, “If, at the end of the “extended time” the cleanup goals have not been achieved, the Contractor may be released from any further obligation under this contract and the payment for any unachieved milestones shall not be due the Contractor.” Please clarify that a release under this section is not abandonment of the project and not a breach of the contract. Proposed alternative: At the end of section add, “...and such a release shall not be considered an abandonment of the project nor a breach of this Agreement.”

Answer:

No modifications to the RFP language will be made. However, if a Contractor is released from obligation as described in Appendix B, Section 3, Paragraph 3.2.2 of the RFP, it will not be considered abandonment of a project, nor will it be considered a breach in the terms of the Agreement, as described in Appendix B, Section 3, Paragraph 3.5.3 of the RFP.

Question 3:

Part IV, Section B.2 indicates “Please provide a separate electronic pricing file from the rest of the RFP proposal responses.” As the projects issued through this contract will be performance based and presumably will not be invoiced in a traditional time and materials basis. Can DNREC provide clarity on the pricing file request? If pricing is required, is there a preferred format?

Answer:

Appendix C, Paragraph 3.3 describes “Payment Option B” which may be agreed upon for certain site-specific projects. Start-up costs are paid on a Time and Materials basis in Payment Option B. Therefore, an electronic pricing file must be submitted. There is no specific format preferred for the pricing file.

Question 4:

Please provide the total dollars awarded during the previous contract period.

Answer:

\$1,775,032.00 total was awarded through the previous contract period.

Question 5:

It is [Consultant's] understanding that multiple awards may be issued by DNREC-TMS. Please provide a list of the incumbent consultants and the number of projects awarded to each during the last contract period.

Answer:

EA Engineering, Science and Technology – 2 projects
BrightFields – 1 project
Environmental Alliance – 1 project
Groundwater and Environmental Sciences – 1 project
Tetra Tech – 0 projects

Question 6:

Will DNREC-TMS consider alternative performance based criteria on a per project basis than those listed in Appendix C?

Answer:

Yes, on a site-specific project basis.

Question 7:

[Consultant] interpreted Part IV, Section D, Paragraph 5.e “Indemnification” as asking the selected contractor to indemnify against ALL actions regardless of whether the claims are based upon the State’s acts. In other words, is [Consultant] expected to indemnify the State for actions that are beyond what we (or subcontractors) may control of? If this is the case would DNREC consider alternate language regarding this condition?

Answer:

No modifications to the RFP language will be made. However, the indemnification language in the Professional Services Agreement that selected vendors will sign is provided below. The language, which cannot be changed, is different than the language in the RFP.

Indemnification; Limitation of Liability.

9.1 VENDOR NAME shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys’ fees) directly arising out of (A) the negligence or other wrongful conduct of the VENDOR NAME, its agents or employees, or (B) VENDOR NAME’s breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) VENDOR NAME shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) VENDOR NAME shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If Delaware promptly notifies VENDOR NAME in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, VENDOR NAME will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. VENDOR NAME will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the Deliverable; (2) Delaware's failure to use corrections or enhancements made available by VENDOR NAME; (3) Delaware's use of the Deliverable in combination with any product or information not owned or developed by VENDOR NAME; (4) Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in VENDOR NAME's opinion is likely to be, held to be infringing, VENDOR NAME shall at its expense and option either (a) procure the right for Delaware to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and VENDOR NAME's entire liability with respect to infringement.

9.3 Delaware agrees that VENDOR NAME' total liability to Delaware for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or VENDOR NAME negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to VENDOR NAME.

In no event shall VENDOR NAME be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, and even if VENDOR NAME has been advised of the likelihood of such damages.

Correction of Error in Request for Proposals

Section Number: Appendix B

Paragraph Number: 3.1.1

Page Number: 38

Correct Text:

Appendix C provides the framework for establishing Cleanup Goals and payment structure for milestone attainment. Cleanup Goals are assigned by the Department's Project Officer and will be in accordance to Delaware's Risk-Based Corrective Action Program (DERBCAP) and other applicable referenced Standards. The specific Cleanup Goals will be specified in the Site Data Package.