



**REQUEST FOR QUALIFICATIONS FOR
POTENTIAL RESPONSIBLE PARTY INVESTIGATION AND EVALUATION
NEW JERSEY DEPARTMENT OF LAW & PUBLIC SAFETY**

DIVISION OF LAW

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**REQUEST FOR QUALIFICATIONS FOR
POTENTIAL RESPONSIBLE PARTY INVESTIGATION AND EVALUATION**

1.0 INFORMATION FOR RESPONDING PARTIES

1.1 Purpose and Intent

The purpose of this RFQ (“RFQ”) is to solicit proposals from firms with demonstrated success in planning, organizing, and conducting investigations and securing financial information to provide pre-litigation and litigation support to the New Jersey Office of Attorney General, Division of Law (“NJDOJ”) for the identification of potential responsible parties (“PRPs”) in furtherance of efforts made by NJDOJ on behalf of the New Jersey Department of Environmental Protection (“NJDEP”) to enforce the environmental laws of the State of New Jersey, including the recovery of public funds expended to remediate a contaminated Site. The Contractor engaged under this contract shall be responsible for conducting thorough investigations to identify parties that are potentially liable for “cleanup and removal costs”, as that term is defined in the New Jersey Spill Compensation and Control Act (“Spill Act”), N.J.S.A. 58:10-23.11 to -23.11z, incurred by NJDEP to remediate specific properties in the State of New Jersey and any areas where a hazardous substance discharged there has come to be located (“Site”) or who bear responsibility for the remediation of such Sites pursuant to the Spill Act, the Industrial Site Recovery Act (“ISRA”), N.J.S.A. 13:1K-6 to -13.1, and/or the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 to -35.

Background

The NJDEP utilizes public funds to remediate contaminated sites when those entities responsible for such contamination cannot or will not. NJDEP recovers these public funds whenever possible from the entities legally responsible for the contamination. NJDEP works with NJDOJ, Office of Attorney General, Division of Law, which represents NJDEP in Spill Act actions filed in New Jersey Superior Court. Initially, the State has identified several Sites that require investigation to identify PRPs, determine the financial viability of PRPs, and conduct additional investigation and evaluation, during the term of this contract, additional Sites may be identified.

1.2 Contract Term

The term of the contract awarded as a result of this RFQ will be for a period of three (3) years, with options to extend for additional one (1) year periods, up to a total of three (3) additional years, upon the agreement of both parties to the contract; provided however, NJDOJ at its discretion may terminate the contract upon 30 days’ written notice to the Contractor. Should the contract be terminated, the Contractor will be paid for all work performed prior to the termination date.

1.2.1 Price Increases in Optional Years

Prices during the initial three (3) year term shall be fixed. Prior to extending the contract for optional years one and three, if applicable, Contractor may adjust its pricing to account for inflation based on the Professional, Technical and Scientific Services series CPI Index (NAICS 54), subject to approval by NJDOJ. Pricing for optional year two shall be the same as the pricing for optional year one. If the contract is extended for the option year(s), the Contractor is required to hold its pricing, established pursuant to the above, for the duration of each optional year.

1.3 Volume of Investigations

NJDOL anticipates assigning up to 100 Sites for investigation over the initial term of the contract, however NJDOL makes no guarantee of the volume of work. The Contractor may be assigned multiple Sites at one time, under a single Notice to Proceed or individual sites may be assigned pursuant to separate Notices to Proceed. The Contractor shall work on the assigned number of Sites concurrently, however, if necessary NJDOL may prioritize the workload.

2.0 SCOPE OF WORK

The Contractor shall furnish the necessary investigators as well as, vehicles, material, equipment, services, additional personnel and facilities required to perform the investigations. The Contractor shall have experienced investigators available; either as Contractor employees or through subcontracts to take assignment of and complete the investigations.

As directed by NJDOL for a particular Site, the Contractor shall obtain, review and evaluate all relevant files and interpret all existing data for the Site in accordance with Subtask 2.1, where necessary, identify and link each PRP to a discharge, and the discharge to the contamination at issue, as required under N.J. Dep't Env'tl. Prot. v. Dimant, 212 N.J. 153 (2012) and issue a final report of the investigation. For Sites subject to ISRA, the Contractor must identify the ISRA-triggering transaction (e.g., the sale of property or cessation of operations) and the parties to the transaction. Conclusions concerning responsible party identification for each Site will be based upon New Jersey statutes and regulations concerning remediation and must be legally defensible. The Contractor shall also perform financial viability assessments for certain PRPs identified for a Site, whether those parties are identified by NJDEP, NJDOL or the Contractor. NJDOL will indicate which PRPs require a financial viability assessment. In addition, if required, the Contractor shall assist NJDOL, and, if directed by NJDOL, NJDEP, in any Site-related legal or technical matters, (e.g. litigation support, expert testimony, etc.).

The Contractor shall conduct investigations in accordance with specific contract provisions and will follow accepted investigative practices including, but not limited to, procedures and guidance listed at the following internet location <http://www2.epa.gov/sites/production/files/2014-03/documents/rpsearchguide.pdf>.

In general, NJDOL will expect a final report prepared in accordance with Subtask 4.1 on each Site investigation performed under this contract within three to six months of issuance of a Notice to Proceed for an engagement, however, each assignment will have its own agreed upon schedule and due date.

2.1 Work Orders

The services performed by the Contractor for each Site-specific engagement under this contract shall be performed under one or more work orders, with each work order involving one or more tasks/subtasks delineated with a scope of work. The need for subsequent work under a work order may be dependent upon the findings/results of the previous work efforts. Upon consultation with NJDEP, NJDOL may issue a decision to terminate or stop the work being conducted under a work order at any time.

Subsequent to contract award, the Contractor will be provided with the name of a Deputy Attorney General (“DAG”) who will serve as the NJDOL Coordinator for the contract. The NJDOL Coordinator may select any or all of the tasks/subtasks described below in a specific engagement. The tasks and subtasks serve as a menu and represent examples of effort that may be required during different phases of a PRP investigation. The NJDOL Coordinator may engage the Contractor for a task/subtask but reduce the level of effort or level of

detail for that effort. The Contractor shall submit a proposal for each engagement based upon the scope of services requested by the NJDOL Coordinator, in accordance with Section 2.2

2.2 Engagement Acceptance and Timeframe

For each engagement, the NJDOL Coordinator will notify the Contractor by telephone and/or electronic mail of the following information:

- a. the name and NJDEP Program Interest number for the Site;
- b. the location of the Site;
- c. the estimated size of the NJDEP file for the Site, if applicable; and
- d. the purpose and intent of the assignment and outline of anticipated tasks.

The Contractor shall respond by submitting a quote in electronic format (PDF) via e-mail to the NJDOL Coordinator, within ten business days of notification:

- a) a Certification of Conflict of Interest Form (Exhibit C). If the Contractor is a joint venture, the certification must be submitted by both parties to the joint venture;
- b) a scope of work, cost estimate and schedule for tasks and subtasks associated with the work order, including, at a minimum, the following elements:
 - i. Site task and subtask outline;
 - ii. Site team, including all subcontractors;
 - iii. Schedule detailing work efforts; and
 - iv. Cost estimate to include:
 1. Breakdown of hours per task, including projected maximum number of hours per task;
 2. Breakdown of cost per task;
 3. Applicable contract labor rates;
 4. Applicable equipment rental costs, if necessary;
 5. All subcontractor costs; and
 6. Estimated travel and per diem costs

In consultation with NJDEP, NJDOL will review the proposed scope of work and cost estimate and may approve it and issue a Notice to Proceed, or may provide comments to the Contractor, which may include comments on, and/or, changes to the work and task outline, the schedule, the deliverables, the projected hours, and/or, the projected costs. Within ten business days following receipt of NJDOL's comments, the Contractor shall finalize the scope of work, cost estimate and schedule in conformity with those comments. The Contractor shall not perform any billable work until issuance of a Notice to Proceed.

The Contractor shall periodically review the work effort of an engagement to assess the hours expended. If the Contractor expects to exceed the maximum number of hours allocated in the original scope of work for the engagement, the Contractor, in a timely manner, shall notify the NJDOL Coordinator of the proposed change in the number of hours and provide the justification for the proposed change. The Contractor's proposed change must be approved in advance by the NJDOL Coordinator prior to the Contractor undertaking any additional work. In the event the Contractor exceeds the maximum number of hours for a task within the original scope of work without the prior approval of the NJDOL Coordinator, compensation for the additional work, if any, shall be determined by the NJDOL Coordinator, at his or her sole discretion. If the NJDOL Coordinator approves the proposed change in hours in advance of the work, the Contractor shall be entitled to compensation.

2.3 Conflict of Interest

The Contractor shall notify the NJDOL Coordinator of any business relationship between the Contractor and any PRP that occurred during the five-year period preceding the date of the individual assignments, as well as any work performed by the Contractor at an assigned Site during that period and provide a Conflict of Interest Form (Exhibit C). For purposes of this RFQ, the Contractor shall be deemed to have had a business relationship with a PRP if, during the five-year period, the Contractor had a for-profit relationship with a parent, subsidiary, predecessor or successor of such a PRP, or if the Contractor was retained by independent legal representatives on behalf of any PRP. If the Contractor notifies the NJDOL Coordinator of any business relationship with a PRP and/or Site work, NJDOL will evaluate that relationship and/or work, and will determine whether the relationship or work constitutes a conflict of interest, so that the Contractor should be disqualified from working on the assigned Site.

In evaluating specific engagements under this contract, NJDOL will consider the extent of Contractor's work on the Site or the nature and extent of its business relationships with the PRP(s), to determine whether that work or those relationships should disqualify Contractor from any engagement for the Site(s) at issue. The Contractor shall provide the nature, extent and volume of, and time frames for, any such business relationships to the NJDOL Coordinator, so that an evaluation can be made as to whether the potential conflict warrants disqualification.

Where the Contractor seeks to be disqualified from Site work because the Contractor desires to work prospectively with a PRP at the Site, the Contractor shall provide the NJDOL Coordinator with the reasons why that work is of such importance to Contractor as to warrant a release from the Contractor's contractual obligations for the Site. The decision to release the Contractor for Site-specific obligations under this contract shall be made solely by NJDOL, after consultation with NJDEP. The Contractor agrees not to contest NJDOL's decision. If NJDOL assigns a Site to the Contractor, the Contractor must undertake the work at that Site and avoid future business relationships with any PRP for that Site and future Site work, unless specifically approved by NJDOL.

The Contractor agrees that NJDOL may reject or terminate an engagement under this contract, if and when NJDOL determines that a conflict of interest exists between Contractor and the State's interest in pursuing an enforcement action, including a cost recovery action. NJDOL will make such determination on a case-by-case basis, using information it deems relevant, including information supplied by the Contractor, and possibly information obtained elsewhere. The Contractor agrees to accept as final any and all determinations by NJDOL relevant to this issue.

If, during the course of an engagement under this contract, the Contractor becomes aware of any previously undisclosed contractual or other business relationship between the Contractor and a PRP(s) that occurred during the five-year period prior to the date of this RFQ, the Contractor shall immediately convey that information to the NJDOL Coordinator and submit the Certification of Conflict of Interest Form to the NJDOL Contact (Exhibit C).

2.4 Conflict of Obligations

The Contractor hereby affirms that it shall not, during the contract term, perform any other work on the Sites assigned under this contract or enter into, or continue any, contract, subcontract or business relationship of any kind, whether or not related to the subject matter of this contract, with persons or entities identified as PRPs or any of their parent corporations, subsidiaries or successors, or with any independent legal representative acting on behalf of such parties, without the express written permission of the NJDOL Coordinator.

As to each of the PRPs identified, unless stated otherwise in writing by NJDOL, the above restriction shall extend from the date Contractor is notified of an engagement under this contract until the later of: (1) five years from the date NJDOL certifies that the work under the engagement has been completed; or (2) a final judgment, including all potential appeals in a court of competent jurisdiction, for any claims for a Site, including but not limited to claims for cleanup and removal costs and damages, filed by the State of New Jersey against the PRP, provided that such claims are made in a court of law within five years after the completion of the work. The judgment-related restriction shall be terminated only upon written notice from the NJDOL Coordinator that any such claims have been finally adjudicated, which notice may be requested by the Contractor at any time post judgment.

2.5 Statutory and Regulatory Framework

For each PRP identified, the Contractor must provide evidence sufficient to establish the liability of the PRP, pursuant to applicable statutes and implementing regulations, including but not limited to:

- a. The Spill Act, N.J.S.A. 58:10-23.11 et seq.;
- b. The Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.;
- c. ISRA, N.J.S.A. 13:1K-6 et seq.;
- d. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.;
- e. The Site Remediation Reform Act (“SRRA”), N.J.S.A. 58:10C-1 et seq.; and
- f. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq.
- g. Any new law that may become effective during the term of the Contract that similarly entitles the State to seek the costs of environmental cleanup, remediation, or appropriate reuse of Sites in the State of New Jersey.

In order to establish liability, it may be necessary to interpret data and evidence in accordance with applicable New Jersey environmental statutes, regulations, and guidance. These include, but are not limited to, the following:

- a. SRRA;
- b. The Technical Requirements for Site Remediation, N.J.A.C. 7:26E;
- c. New Jersey’s Remediation Standards, N.J.A.C. 7:26D;
- d. New Jersey’s Ground Water Quality Standards, N.J.A.C. 7:9-C;
- e. New Jersey’s Surface Water Quality Standards, N.J.A.C. 7:9-B;
- f. The Federal Surface Water Quality Criteria, 40 CFR Part 131; and
- g. The following cases:
 - N.J. Dep’t Env’tl. Prot. v. Dimant, 212 N.J. 153 (2012).
 - N.J. Dep’t Env’tl. Prot. v. Ventron, 94 N.J. 473 (1983).
 - Marsh v. N.J. Dep’t Env’tl. Prot., 152 N.J. 137 (1997).
 - SDA v. Marcantuone, 428 N.J. Super. 546 (App. Div. 2012).
 - Any new, applicable case law that may be issued during the term of the contract.

Except for the cases noted above, the references noted above may be accessed at www.nj.gov/dep/srp/. Cases may be found in the official State reporters at the New Jersey State Library.

2.6 Task and Subtask Menu

The Contractor shall have the ability to perform the following ten tasks and the associated subtasks associated with this contract.

Task 1 – Work Order Management

Subtask 1.1 – Site Engagement Management

The Contractor shall assign the management of each Site-specific engagement to one Project Manager who shall act as the main contact for the execution of this work. The Project Manager shall provide direction, coordination and have a thorough knowledge of the day-to-day status of the work in progress. The Project Manager shall be present at all meetings requested by the NJDOL Coordinator. The Project Manager shall establish and manage the budget for each engagement to ensure that all work stipulated in each work order is successfully completed within budget. The Project Manager shall manage and certify each invoice submitted to the NJDOL Coordinator for payment under each engagement. The Project Manager shall include a narrative summary and detailed progress report of all work completed, by both the Contractor and any subcontractors within the invoice period with each monthly invoice package.

Subtask 1.2 – Site Engagement Schedule

The Contractor shall meet the agreed-upon schedule for each Site engagement. If the Contractor determines, at any point, that a scheduled milestone will not be met, the Contractor must inform the NJDOL Coordinator via phone or email, submit a written justification for the delay, and propose an adjusted schedule. The NJDOL Coordinator will determine whether to accept or reject the proposed adjustment to the schedule.

Subtask 1.3 – Contract Coordination

The Contractor's primary State contact for all contract-related matters, throughout the course of each engagement will be the NJDOL Coordinator. The NJDOL Coordinator, in consultation with NJDEP, will issue each specific engagement Notice to Proceed and approve for payment all Contractor invoices. The Contractor shall receive all contract engagements and approvals through the NJDOL Coordinator. The Contractor shall not communicate about the Site progress to anyone outside of NJDOL and NJDEP unless otherwise directed by the NJDOL Coordinator.

The Contractor shall submit all analyses, options, recommendations, reports and any other work product in draft form for review to the NJDOL Coordinator, with a copy to an assigned NJDEP representative (“NJDEP Contact”). The NJDOL Coordinator will make all final legal decisions resulting from Contractor-provided advice and assistance under this RFQ and in consultation with NJDEP and/or NJDOL management, all final decisions regarding compliance determinations, or the existence or violation of, any order, law, or regulation. The Contractor shall work under this contract only as directed by the NJDOL Coordinator.

Task 2 – Information Compilation

Subtask 2.1 – File Review and Background Investigation

Where directed by the NJDOL Coordinator, the Contractor shall complete a file review for a Site and develop a site background summary. The objectives are to:

1. Prepare a history of the Site, including, but not limited to, current and former land use, and industrial or commercial operation history; and
2. As set forth below, collect and review information and data generated previously on the Site from past investigations.

The file review/background Investigation shall be conducted and conform to the requirements as described in the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, as applicable.

The Contractor, through the NJDEP Office of Record Access, shall arrange for a comprehensive review of all existing Site files within NJDEP. Additionally, the Contractor shall review records from a variety of other sources, including, without limitation, county and local government agency files, and where accessible, public and private archives and any highly specialized collections. The Contractor shall have knowledge of records management practices and library science principles, in addition to the federal, state, and local agencies, departments, bureaus, and offices that obtain or collect information pertinent to the identification of PRPs. The Contractor shall develop sources of information tailored to the needs of specific PRP Site investigations. The Contractor shall, when conducting record searches, interview record custodians to obtain an understanding of the uses and manner in which documents are or were received, created, processed, stored, preserved, and destroyed. All investigators used by the contractor shall have demonstrated success in planning, organizing, and conducting investigations and securing information and cooperation from a variety of people.

The Contractor shall, as appropriate, contact local utilities for information regarding the location of underground utility lines and obtain and review:

- a. Aerial photos for the Site
- b. Sanborn Fire Insurance Maps;
- c. Industrial Directories;
- d. Property Title and Deed;
- e. Federal, State and/or local files and permits;
- f. USGS 7.5-minute topographic quadrangle;
- g. Current Site and area zoning approvals and proposals; and
- h. NJDEP databases, including without limitation, Geographic Information System (GIS) data.

Upon completion of this subtask, the Contractor shall have a complete understanding of the Site and the surrounding community and be able to present a comprehensive description of the Site ownership history, operational/land use history, physical and environmental setting and existing environmental data. The Contractor shall compile all appropriate analytical data necessary to establish a nexus between the discharge and the PRP.

Subtask 2.2 – Deed Search

Where directed by the NJDOL Coordinator, the Contractor shall perform a deed search to document ownership history. Deed searches must be conducted in accordance with existing professional standards.

Subtask 2.3 – Operational History

Where directed by the NJDOL Coordinator, the Contractor shall compile an operational history of the property in question, noting the property use over time, as well as any information of the specific commercial or industrial operations on the property over time.

Subtask 2.4 – Viability Assessments

Financial Viability Assessments

The Contractor shall perform financial viability assessments for the requested PRPs for each Site, including such tasks as developing pro forma balance sheets, cash flow statements, and income statements, reviewing

financial statements, calculating financial ratios, analyzing trends from year to year, and providing experienced, expert opinions regarding a PRP's ability to pay cleanup and removal costs. This information will assist NJDOL and NJDEP to determine if cost recovery or other enforcement action is appropriate for the assigned Site.

In order to perform these tasks, the Contractor shall provide experienced personnel with comprehensive knowledge of and experience with the principles of corporate finance, financial and cost accounting, and financial analysis. These personnel must have experience in assessing the ability of a PRP to pay a claim or debt, or a portion thereof, as well as be able to forecast future financial performance of a PRP. At a minimum, the contractor will be expected to obtain, review and analyze the financial documents listed in Exhibit D.

Successorship

After PRPs are identified, the Contractor shall research and trace the business entity and/or the individual identified and provide that information to NJDOL and NJDEP so that they may notify, communicate, and negotiate with PRPs, and if necessary, pursue cost recovery and/or other enforcement options. The Contractor shall identify and obtain, all pertinent records from appropriate jurisdictions or record custodians, when available, sufficient to prove the identity of the businesses and individuals that may be PRPs. The information obtained for individuals, unincorporated companies, and other entities shall include such information as current addresses, association with other PRPs (e.g., interlocking directorates); corporate history (mergers, parent/subsidiary) and involvement and relationship with a Site. Such information may be used by NJDOL to, among other purposes, develop direct liability, successor liability, or alter ego theories of liability.

Subtask 2.4 – Responsible Party Contact Information

The Contractor shall provide all current contact information for all PRPs identified. This will include, but not be limited to, telephone numbers, postal addresses, email addresses and secondary residences.

Task 3 – Property Depiction

Property depiction may be required to verify the Site's metes and bounds, and/or to correlate contaminated areas of concern with known or suspected Site activities and operations. This task must take into account historic changes to the Site address, Blocks and Lots, use and configuration.

Task 4 – Investigation Reports

Subtask 4.1 – Report Details

Investigation reports submitted to the NJDOL shall summarize the findings of the investigation. Depending on the scope of the Site work, the investigation report shall include, but may not be limited to, the following information:

- a. Site location including address, nearby intersection, block and lot, municipality and county, historic changes to the Site address, designation, use and configuration must be identified;
- b. Site description, including acreage, current use, surrounding area use (including potential receptors), and existing improvements;
- c. Site Ownership History- The chain of title shall be traced to a date prior to development or a date prior to the likely existence of contamination;

- d. Operational history - The operations at the facility shall be chronicled from the oldest operations to the newest, with an eye towards identifying operations that may have contributed to the documented contamination. All operators shall be identified that could have potentially contributed to the documented contamination;
- e. Site History/Case Summary - The Site history/case summary is a descriptive, chronological synopsis of key events (i.e., documented discharges), operations, transactions and circumstances that resulted in or may have contributed to Site contamination. The Site history/case summary weaves the Site ownership, ownership history, and Site operator information (including types of operations and a description of known or suspected chemical usage) into a narrative that will enable the investigator to correlate key events and circumstances with the appropriate Site owner and operator. A brief synopsis of Site contamination with emphasis on identifying the contaminants of concern shall also be provided in the Site history/case summary;
- f. Enforcement History - All known State and federal environmental enforcement actions
- g. Notices of Violation, Directives, Administrative Orders, Administrative Consent Orders and similar documents relating to the Site shall be described; and the disposition of each action noted;
- h. Permits - All environmental and other applicable permits shall be identified and summarized;
- i. Description of Site Contamination - This section shall provide a detailed description of known Areas of Concern (“AOC”), known or suspected contamination and the media impacted in each AOC and throughout the Site in general. Areas of concern are defined in the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.8. The report shall reference sensitive locations potentially impacted by discharges or releases of hazardous wastes, hazardous substances or pollutants. Sampling data shall be summarized in tables and include the contaminants and concentrations as needed to provide a nexus between the contamination and the PRP;
- j. PRP Information and Conclusions - The Contractor shall identify each PRP under New Jersey law. The following information shall be provided for each PRP: name; address (street and mailing); phone number (if available); type of organization (corporation, LLC, partnership, proprietorship, individual, etc.); general status of the organization, including information bearing on successor liability, as applicable; identity of the registered agent, if applicable; results of the financial assessment of the PRP (name of officers, managers, principals, partners, members, etc. as appropriate for the organization at issue). The Contractor shall also provide all support evidence that a party is a discharger or in any way responsible for the discharged hazardous substance under the Spill Act, for example, the PRP was the property owner at the time of the discharge of hazardous substances. The Contractor shall also include recommendations to collect additional evidence/information necessary to prove a PRP's liability under the Spill Act. The Contractor must be prepared to defend its conclusions; and
- k. In the event that data is lacking to establish a nexus between documented contamination and a responsible party, the Contractor must provide recommendations for additional investigations not specified in the RFQ that may be necessary to establish responsibility. This may include soil and/or ground water sampling, ground water modeling, etc.

Subtask 4.2 – Supporting Documentation

The Contractor shall properly cite and provide copies of all supporting documentation used to compile the investigation report. Supporting documentation includes, without limitation: reports (electronic copies), photographs, interviews, maps, deeds, etc.

Subtask 4.3 – Tables, Graphs and Figures

The Contractor shall organize, evaluate, tabulate and present all results of any data that was used in support of the investigation report. As necessary, the data shall be presented in tables, charts, figures and other graphic displays. All tables, figures and graphic presentations shall be clearly labeled, shaded, highlighted, colored and scaled as applicable and appropriate to the results being presented.

Subtask 4.4 – Ad Hoc Reports

The Contractor may be required to sort administrative or site management data generated under this contract by different fields and to provide to the NJDOL Coordinator and, if requested, NJDEP, information in the form of ad hoc reports. An ad hoc report provides information in a format that is other than the deliverables typically specified in the contract.

Task 5 – Progress Reports

The Contractor shall prepare and submit to the NJDOL Coordinator a detailed monthly progress report for each Site-specific engagement and participate in regular status calls with DEP and DOL. Each progress report shall include, without limitation, the following information:

- a. A narrative description of work accomplished during the reporting period under each Task Subtask item, including work being conducted by subcontractors;
- b. Status (percent complete) of Task/Subtask items with labor budget utilization, including work being conducted by subcontractors;
- c. Problems or delays experienced during the reporting period;
- d. Actions being taken to rectify problems;
- e. Schedule adjustment requests with justification, if needed;
- f. Activities projected over the next month;
- g. If applicable, a request for any changes of the Contractor's key personnel. All key personnel changes require prior NJDOL approval;
- h. Billing to date showing a detailed breakdown of costs incurred for the month on a task by task basis;
- i. Copies of receipts, subcontractor invoices, rental receipts (equipment, vehicle), etc.;
- j. Lists of personnel who attended out-of-office meetings or conducted Site work during a particular period.

Task 6 – Submissions and Deliverables

Engagement-specific submissions and deliverables to the NJDOL shall be determined on a work order specific basis, and the Contractor shall estimate costs for submissions and deliverables accordingly.

The Contractor shall provide deliverables in the following manner:

- a. Investigation Report: one electronic copy in Microsoft Word or PDF and, upon request, one hard copy;

- b. Invoices and progress reports: electronic only; and
- c. Schedules: one electronic copy in Microsoft Word or PDF and, upon request, one hard copy.

Task 7 – Legal and Technical Support

If requested by the NJDOL Coordinator during the contract term, the Contractor shall assist in any Site related legal or technical matters including, but not limited to legal actions by NJDOL against parties deemed responsible for remediation at a Site to recover cleanup and removal costs expended by the State at the Site. Such assistance may include the preparation of reports, assisting Deputy Attorneys General in the preparation of the State's case, testimony in court (expert and/or other types of testimony), testimony at deposition, the preparation and execution of interrogatory responses and affidavits, the preparation of the (official) record and other similar activities.

The Contractor shall serve, if requested by NJDOL, as an expert witness for the State in any litigation or other legal proceedings involving work efforts under this contract.

To the extent that the requested legal and technical support work is beyond the term of this contract, the Contractor shall continue to provide such legal and technical support pursuant to one or more new contract(s) with a budget and price schedule based on this Contract but updated to take into account the Professional, Technical and Scientific Services series CPI Index (NAICS 54) and other cost increases documented by neutral third party sources. In such an event the Contractor shall make good faith efforts to have the personnel that worked on the initial investigation report available for the legal and technical support required by any new contract or shall provide equally qualified staff who is fully familiar with the investigation and report of any other materials submitted to the Court.

Task 8 – Submission Review and Comments

Contractor shall submit all investigative reports and other submissions by the date established in the work order. NJDOL, in consultation with NJDEP, will review all investigation reports and other submissions, to determine if the goals and objectives of the work order and contract are satisfied by the investigative report(s) and or other submissions. The NJDOL Coordinator may respond with comments and/or revisions. The Contractor shall revise the submission in conformity with NJDOL's/NJDEP's comments/revisions and resubmit the submission within 15 working days from receipt of NJDOL's/NJDEP's comments/revisions. If the Contractor does not fully understand a comment or revision or the comment/revision is ambiguous, the Contractor should discuss the comment/revision with the NJDOL Coordinator, who will consult with NJDEP, if necessary, and clarify the comment/revision or resolve any ambiguity. The Contractor shall bear the expense of resubmitting any investigation report or other submission required to be resubmitted because of a deficiency on the part of the Contractor.

Task 9 – File Maintenance

The Contractor shall maintain accurate working files on all work documentation, including assumptions, interpretations of regulations, sources of information, and other raw data required in the performance of this contract. NJDOL reserves the right to review and evaluate those files to ensure that the Contractor's investigation of a Site was conducted properly. The Contractor shall provide its working files to NJDOL upon request of the NJDOL Coordinator. NJDOL may share those files with NJDEP. Any files the Contractor provides to NJDOL shall be returned to the Contractor upon completion of NJDOL's evaluation of the information contained therein. Based on NJDOL's evaluation, which may be made in consultation with NJDEP,

the Contractor may have to perform corrective work as directed by the NJDOL Coordinator. Corrective work shall be performed at the Contractor's expense.

The Contractor shall grant access to these files during the performance of engagement work if deemed necessary, at the request of the NJDOL Coordinator or other authorized NJDOL official. Within 60 days of the Contractor's receipt of final payment for a completed engagement, the Contractor shall turn over the applicable files to the NJDOL Coordinator in PDF format, but may retain one copy for its records.

Task 10 – Subcontractor Oversight and Management

Subcontracting is allowed under this RFQ. NJDOL will not contract directly or indirectly with any subcontractor that the Contractor deems necessary for the performance of the Contractor's work under this contract. The Contractor shall contract directly with any subcontractors. It is the responsibility of the Contractor to oversee all of the subcontractor work efforts, cost controls, and subcontractor scheduling, and the Contractor is solely responsible for all payments to subcontractors. The duration of subcontractor field efforts will vary for each Site-specific engagement. The Contractor is responsible for ensuring that all subcontractors complete the work within the timeframes established and the line-item and cost provisions of this contract. The Contractor is also responsible for verifying the qualifications of all subcontractors. Every subcontractor that the Contractor uses must be registered to perform work in the State of New Jersey, as per N.J.S.A. 52:32-44. Proof of this New Jersey Business Registration must be provided to the NJDOL Coordinator prior to any subcontractor performing any work under this RFQ.

2.7 Invoices and Payment

Invoices

The Contractor shall invoice for work performed on a monthly basis. Separate invoices shall be submitted to the NJDOL Coordinator for each separate contract engagement made. Invoices shall include the following minimum information:

- a. Time period of work performed;
- b. Listing of all individuals, by labor category, hourly rate, total hours worked, and subtotals for each individual for the time period being invoiced for;
- c. Travel & Per Diem costs, itemized, with copies of supporting documentation such as receipts; rental agreements, etc. to support each item of cost;
- d. Equipment Rental costs, itemized, with supporting documentation such as rental receipts; and
- e. Subcontract costs, itemized, with supporting documentation such as Subcontractor Invoices, etc.

Payment

Upon review and certification of the Contractor's properly submitted invoices and supporting documentation, payment will be made to the Contractor.

(a) Payment for Labor

The Contractor will be paid for labor costs based on hours expended and Loaded Hourly Rates bid. Loaded Hourly Rates will include all Contractor direct and indirect rates and profits, with the exception of those cost items listed below.

(b) Payment for Subcontractors

The Contractor will be paid for subcontracted work at the subcontractor's actual cost. Documentation of all costs shall be submitted as part of the invoice submission.

(c) Payment for Equipment Rental Costs

Although in general the scope of services does not envision the need for the rental of equipment, if it is agreed that certain equipment becomes necessary at any time, the Contractor will be paid based on the actual rental cost. Documentation of all costs shall be submitted as part of the invoice submission.

(d) Payment for Travel & Per Diem Costs

Travel and Per Diem expenses will be reimbursed in accordance with current federal General Services Administration (GSA) Travel Requirements. Documentation of all costs shall be submitted with the invoice submission.

(e) Payment for Ancillary Purchases

If during the course of the performance of the scope of services of this RFQ, the Contractor needs to purchase an item that would not normally be considered an overhead item, the need for such a purchase will be discussed with the NJDOL Coordinator and if agreed-upon, will be reimbursed at actual cost.

(f) Payment for partially completed Tasks, and/or Subtasks

Should the NJDOL Coordinator instruct the Contractor to stop, or terminate, either an entire engagement, or any engagement individual tasks or subtasks, the Contractor will be paid for the work performed up to the point in time the Contractor is notified to stop or terminate work. If there are costs incurred by the Contractor after notification to stop or terminate work is given, due to subcontract agreements or other contractual obligations, such costs shall be discussed with the NJDOL Coordinator as soon as it is known they may occur. Such costs will generally be approved if proof is given that they could not be avoided. In such instances the Contractor shall do everything in its power to limit such costs.

Prompt Payment

If a properly submitted invoice is not paid to the Contractor within sixty (60) days of submission, the Contractor will automatically be paid Prompt Payment interest in accordance with N.J.S.A. 52:32-32, et seq. A properly submitted invoice is defined as an invoice that is free of errors and includes all information and supporting documentation specified in Section 2.7. If an invoice is submitted that is not correct, or does not contain the required documentation, the NJDOL Coordinator will inform the Contractor what revisions, and/or supplemental information, is needed for the NJDOL Coordinator to consider the invoice proper. For invoices requiring correction, the date that the Prompt Payment timeframe is based upon will now become the date that the NJDOL Coordinator receives all of the required corrective information from the Contractor.

2.8 Audits

The Contractor shall cooperate in maintaining records and in presenting information required by the State in the event that the contract is audited.

2.9 Confidentiality

All work done under this RFQ shall be confidential and shall only be discussed with the NJDOL and NJDEP or with those persons to whom NJDOL and/or NJDEP have directed the Contractor. All investigative notes and materials, draft reports, supporting documentation, including but not limited to, images, data, tables, and graphics, that are compiled during a Site engagement may be considered deliberative and enforcement sensitive and therefore subject to confidentiality protection under applicable law, including the Open Public Records Act (“OPRA”), N.J.S.A. 47: 1A-1to -13. The confidentiality of any final report or other materials will be determined by NJDOL in accordance with applicable law, including OPRA.

2.10 Ownership of Material

All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including, but not limited to, all deed searches, viability assessments, reports, literature, analyses, graphic representations, notes and memoranda, regardless of the state of completion, whether in paper or electronic format, which are prepared for or are as a result of the services required under this contract shall be and remain the property of the State of New Jersey but the Contractor may retain a file during the pendency of a work order and, upon completion of the work order, may maintain one copy for its records.

2.11 Indemnification and Insurance

Indemnification

The contractor's liability to the State and its employees in third party suits shall be as follows:

- (a) Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.
- (b) The contractor's indemnification and liability under subsection (a) is not limited by, but is in addition to, the insurance obligations noted below.

Insurance

The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof, and the certificates shall reflect that the insurance policies shall not be canceled for any reason except after sixty (60) days written notice to the State. Certificates of renewals shall be provided within thirty (30) days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of Public Safety, Division of Law, P.O. Box 093, Trenton, New

Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancelation shall be emailed to the NJDOL Coordinator.

The insurance to be provided by the contractor shall be as follows:

- a. Occurrence Form Comprehensive General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Comprehensive General Liability Insurance policy or its equivalent shall name the State its officers, and employees as “Additional Insureds” and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic unamended, and unendorsed Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
- b. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit. The State must be named as an “Additional Insured” and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State’s behalf or on State controlled property.
- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
 - \$1,000,000 BODILY INJURY, EACH OCCURRENCE
 - \$1,000,000 DISEASE EACH EMPLOYEE
 - \$1,100,000 DISEASE AGGREGATE LIMIT
- d. This \$1 million amount may have been raised by the RFQ when deemed necessary by the NJDOL

Professional Liability Insurance

The Contractor shall carry Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out the professional obligations performed pursuant to the requirements of the contract. The insurance shall be in the amount of not less than \$5,000,000 and in such policy, forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of the contract, it shall obtain from its new Errors and Omissions Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

2.12 Replacement of Key Employees during the term of the Contract

Contractor shall endeavor to maintain the same team of Key Employees during the term of the Contract. If a Key Employee must be replaced, Contractor shall provide the NJDOL Coordinator with the resume of the proposed replacement for a Key Employee, and the State shall have the right to determine if the proposed replacement has substantially equivalent or higher qualifications that the outgoing Key Employee and if so, shall approve the replacement Key Employee. The State shall not unreasonably withhold its approval pursuant to this paragraph.

3.0 PROPOSAL REQUIREMENTS

The information described in this section is requested for the purpose of evaluating which responding party is to be considered the best qualified firm to perform the services outlined in this RFQ, as well as providing the best value to the State.

3.1 Methods of Accomplishing Task Work

The responding party shall provide narrative descriptions of how each Task and Subtask will be accomplished by the responding party when assigned. This description can include, but not be limited to, how the responding party plans to use specific labor categories to accomplish the work, what tools the responding party will utilize to accomplish the work, and a description of how the responding party will accomplish the work in the most effective and efficient manner.

The responding party should provide specific information regarding the references, computer programs, computer models, software, on-line services, etc. that they have used in the past, and intend on using, to accomplish the goals of this RFQ. Specific attention should be given to the description of the methods and tools utilized to accomplish the Financial Viability Assessments in Task 2, Subtask 2.4 in this RFQ.

3.2 Experience with Contracts that are Similar in Scope of Services to this RFQ

The responding party should provide descriptions of contracts it has performed, or is currently in the process of performing, that have similar scopes of services, either in whole or part, to this RFQ. The responding party should be as descriptive as possible when describing the goal of these contracts, the work performed under these contracts, and the end results of their work on these contracts.

The responding party should identify the client(s), monetary amount(s), and scope(s) of these contracts. The responding party should provide a reference for each contract identified, with contact names and phone numbers for reference verification by NJDOL.

3.3 Labor Categories

The responding party should propose the specific Contractor Employee Labor Categories it intends on using during the performance of this RFQ work. Each Contractor Employee Labor Category should have a description of the role and responsibility of the position. The description should also include the type of degree, license, certification, etc. that an individual in that labor category has. The description should also include the approximate amount of related work experience an individual in that labor category has. The responding party should also propose the anticipated tasks that will need to be fulfilled by a subcontractor. The identity of the specific subcontractor can be indicated during the engagement and work order process, and prior to the Notice to Proceed.

3.4 Resumes

The responding party should designate its employees who will serve as Key Employees and provide resumes for them indicating education, experience in the fields necessary to conduct the work outlined in this RFQ, and years of experience. Any specific individual responsibilities, and/or accomplishments, that would relate to the scope of services outlined in this RFQ should be highlighted.

3.5 Subcontractors

The responding party should also propose the anticipated specific Tasks and Subtasks outlined in this RFQ that will need to be fulfilled by a subcontractor, including a description of the services. If known, the identity of the subcontractor should be provided. If unknown, the identity of the subcontractor can be indicated during the engagement and work order process, and prior to issuance of any Notice to Proceed.

3.6 Loaded Hourly Rates

The responding party shall propose Loaded Hourly Rates for each Contractor Employee Labor Category identified by the responding party in response to Section 2.7. These Loaded Hourly Rates shall include all of the responding party's overhead costs and profit. The exceptions to the Loaded Hourly Rates will be travel, per diem, equipment rental costs and subcontractor costs, as discussed in Section 2.7.

4.0 RFQ PROCESS

4.1 Submission

Proposals must be submitted in PDF format to the following email address:

OutsidecounselRFQ@law.njoag.gov.

The subject line must be marked "RFQ for PRP Investigation and Evaluation." In addition, one original executed copy, including the cover sheet provided in Exhibit B and all forms and certifications required in Exhibit A, must be marked "RFQ for PRP Investigation and Evaluation" and delivered no later than 2:00 p.m. on the proposal due date appearing on the cover of this RFQ to:

Aaron Kleinbaum
Assistant Attorney General
Division of Law
Robert J. Hughes Justice Complex
Seventh Floor-West Wing
P.O. Box 093
25 Market Street
Trenton, New Jersey 08625-0093

4.2 Question And Answer Period

NJDOL will accept questions pertaining to this RFQ from all potential bidders electronically. Questions shall be directed to Aaron Kleinbaum, Assistant Attorney General, Division of Law at the following e-mail address:

rfquestions@law.njoag.gov

Please note that the "subject" line of your e-mail must specifically reference this RFQ as follows: "RFQ for PRP Investigation and Evaluation."

Questions will be accepted until 5:00 pm on the date for question and answer cut off appearing on the cover of this RFQ.

In the event NJDOL determines that additional clarification to this RFQ or additional information is necessary, NJDOL reserves the right to hold a conference call with eligible firms for the purpose of providing the same.

4.3 Addenda To The RFQ

In the event that it becomes necessary to clarify or revise this RFQ, such clarification or revision will be by addendum. Any addendum to this RFQ will become part of this RFQ.

All RFQ addenda will be posted on NJDOL's website.

4.4 Sole Responsibility Of The Bidder To Monitor For Addenda.

It is the sole responsibility of the bidder to make itself knowledgeable of any addendum to this RFQ. Any addendum will be published solely on the NJDOL's website: <http://www.nj.gov/oag/law/rfqs.htm>. No addendum will be mailed to any bidder, even if the bidder received the RFQ by mail.

4.5 Public Records

Contractor is advised that all documents and information submitted in response to this RFQ may be made available to the general public as required by applicable law, including but not limited to OPRA.

4.6 State Not Responsible For Costs

The State shall not be responsible for any expenses in the preparation and presentation of the proposals and oral interviews, if any, or for the disclosure of any information or material received in connection with the solicitation, whether by negligence or otherwise.

5.0 ADDITIONAL TERMS

5.1 Additional Requirements For All Office Of Attorney General, Division of Law Consultant Retention Agreements, Exhibit A

The Additional Requirements set forth in Exhibit A are material terms of any Retention Agreement resulting from this RFQ. Your proposal must include all of the forms and/or certifications required by Exhibit A

5.2 No Endorsement

Selection to provide services under this RFQ does not constitute an endorsement by the State of New Jersey, the Attorney General, or the Department of Law and Public Safety. The firm selected may not promote or advertise its designation without permission of NJDOL.

5.3 Effect Of Submitting A Proposal

Submission of a proposal in response to this RFQ will not bind or otherwise obligate the State of New Jersey to retain the firm.

5.4 Attorney General Authority Not Constrained

Nothing in this RFQ is intended to limit or constrain the discretion of the New Jersey Attorney General or the NJDOL in exercising any authority, duty, prerogative or power established or recognized by the Constitution, statutes, executive orders, regulations, case law, or other applicable law.

6.0 SELECTION PROCESS

6.1 Proposal Responsiveness

All proposals will be reviewed to determine responsiveness. NJDOL may reject non-responsive proposals without evaluation, but may waive minor non-compliance.

6.2 Proposal Minimum Qualifications

Proposals that fail to meet the Minimum Qualifications set forth in Section 2.0 above will be immediately rejected and will not be evaluated or ranked.

6.3 Evaluation Of Proposals

NJDOL will evaluate the proposals of all responding parties to this RFQ. The evaluation will take into consideration the methodology proposed by the responding parties to accomplish the RFQ scope of services, the experience of the responding parties on similar contracts, the qualifications of the Key Employees, and the labor unit costs. In addition, the required RFQ presentation, Section 3.0, will factor into the overall responding parties' evaluations. The responding party who is determined to offer the State the best combination of qualifications and cost will be awarded the contract.

6.4 Optional Oral Presentations

Any responding party wishing to be considered for contract award may be required to give a presentation to NJDOL and NJDEP, at the offices of the NJDEP located at 401 East State Street, Trenton, NJ, 08608, at an agreed upon date subsequent to the proposal submission due date. The form of the presentation will be determined by the responding party, but at a minimum should include a discussion of the methodology that will be used in the completion of the scope of services outlined in this RFQ. Examples of past work on similar contracts are also recommended.

6.5 Designation And Approval

The recommendation(s) are submitted to the Attorney General for his determination, in his discretion, as to which firm(s), if any, shall be designated as the Contractor and his designations must be approved by the Governor, in his discretion.

6.6 Notification

NJDOL shall notify in writing any firm that is selected of its selection as the Contractor and the firms designated as the Contractor shall be posted on the NJDOL's website at: <http://www.nj.gov/oag/law/rfqs.htm>.

6.7 Reserved Rights

NJDOL reserves the right to reject any and all proposals received in response to this RFQ when determined to be in the State's best interest, and to waive minor noncompliance in a proposal. NJDOL further reserves the right to make such investigations as it deems necessary as to the qualifications of any and all firms submitting proposals in response to this RFQ. In the event that all proposals are rejected or if NJDOL, at any time, deems the number of qualified firms submitting proposals as the result of this RFQ to be insufficient to meet the potential needs of NJDOL, NJDOL reserves the right to re-solicit proposals.

Exhibit A: Additional Requirements for all Office of Attorney General, Division of Law Consultant Retention Agreements

Exhibit B: Cover Sheet

Exhibit C: Conflict of Interest Form

Exhibit D: Types of Financial Information