



# REQUEST FOR COMMENT FEEDBACK

## Information Technology Project Consulting

Solicitation #: 22772

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New York State Procurement, a division of the Office of General Services (NYSPro) thanks the vendors and authorized users that provided comments to the Request for Comment (RFC) for the Information Technology Project Consulting released on July 9, 2014. In reviewing the comments, NYSPRO noted commonality among the responses. Please find the responses below to the RFC respondents.

<b>Topic 1</b>	<b>Periodic Recruitment</b>
<b>Response:</b> NYSPRO received several comments regarding the ability to submit a response under this solicitation. Specifically, NYSPRO had identified a periodic recruitment model that will allow for additional recruitment periods throughout the term of the Project Consulting solicitation. Vendors will be asked to submit to the OGS NYSPRO those same documents as with the first awards, and will adhere to the same process for making an award to responsive and responsible vendors.	
<b>Topic 2</b>	<b>Attachment #2, Submission Requirement for \$250/Hour Rate Cap</b>
<b>Response:</b> NYSPRO received several comments pertaining to the applicability of a \$250/hour rate cap. The \$250/hour rate cap will be removed from the upcoming Project Consulting solicitation.	
<b>Topic 3</b>	<b>Attachment #3, Vendor Sales Requirements</b>
<b>Response:</b> NYSPRO received several comments requesting an alteration to the mandatory criteria that only prime vendor experience be considered to demonstrate the vendor's history. This includes the requirement to "complete 3 (6 or 10) IT Projects as a Prime Vendor." Any vendor receiving an award under this contract will be expected to perform as a prime vendor. It follows that NYSPRO, as part of the submission review process, should only consider those vendors which have demonstrated experience as a contractor as there is a distinct difference between acting as a prime vendor when compared to a subcontractor. As such, NYSPRO respectfully declines to alter any requirements to include consideration of a vendor's subcontracting experience.	
<b>Topic 4</b>	<b>Allowance to Consider Private Sector Sales to Validate a Vendor's Previous Experience</b>
<b>Response:</b> NYSPRO had previously considered the inclusion of demonstrated private sector sales to meet mandatory experience requirements. However, the comments received through the RFC made it clear that most private sector contracts are confidential and/or proprietary in nature and that vendors would be unable to provide for the necessary validation. As NYSPRO will be unable to independently validate the private sector sales, which is required for the Procurement Record, NYSPRO respectfully declines to consider private sector sales.	
<b>Topic 5</b>	<b>Attachment #2, Most Favored Agency Pricing</b>
<b>Response:</b> NYSPRO received comments on the "enforcement" of this provision under any resultant contract. Based on the feedback received, NYSPRO agrees it will be difficult to implement objective criteria to determine a vendor's compliance; therefore this requirement will be removed from the upcoming Project Consulting solicitation. However, the Most Favored Nation clause will be retained.	
<b>Topic 6</b>	<b>Attachment #3, Project Values</b>
<b>Response:</b> NYSPRO received comments about revising the proposed project value range in each of the three (3) proposed lots. NYSPRO will reconsider the project value ranges in each of these lots.	
<b>Topic 7</b>	<b>MBE and WBE Goals</b>
<b>Response:</b> On June 4, 2014 NYS Empire State Development released and published in the NYS Contract Reporter the official compilation of changes made to the New York State Minority and Women Business Enterprise regulations. The updates can be viewed by using the following link:	

[http://esd.ny.gov/MWBE/Data/OFFICIAL\\_COMPILATION\\_OF\\_MWBЕРЕGS.pdf](http://esd.ny.gov/MWBE/Data/OFFICIAL_COMPILATION_OF_MWBЕРЕGS.pdf). It is anticipated that goals will be established and required at the transactional level.

**Topic 8 Requirement for Vendor to Obtain All Insurance Prior to Submittal of Proposal**

**Response:** NYSPPro will reconsider the requirement for bidders to provide all proof(s) of insurance with proposal submission. However, it declines to alter the requirement to submit Workers' Compensation and Disability Benefits Coverage with the submission. NYSPPro is considering mandating other insurance forms (such as Technology Errors and Omissions) be submitted before entering their first Authorized User Request for Quote transaction.

**Topic 9 Section 7.19 of the RFC, Required Insurance**

**Response:** NYSPPro received feedback on the insurance provisions as currently defined in the solicitation. NYSPPro will reconsider the applicability to the scope of this solicitation. However, NYSPPro does not expect to alter the required types of insurance coverage requested.

**Topic 10 Appendix A**

**Response:** These provisions reflect New York State law and public policy, and are subject to the review and approval of the NYS Attorney General/Department of Law and the New York State Office of the State Comptroller.

**Topic 11 Appendix B, Liability and Indemnification**

**Response:** In June 2014, NYSPPro updated its standard terms and conditions for contracts, which was included in the Project Consulting RFC. A key change was made to the limitation of liability provision to provide a significantly lower liability cap. In pertinent part, the liability cap was modified from two times the purchase orders or \$1 million whichever is greater to two times the purchase order or \$500,000, whichever is greater.

Accordingly, in light of these already significant modifications, NYSPPro respectfully declines to include further changes to Contractor's limitation of liability or any changes to Indemnification language.

**Topic 11 Appendix B, Goods and Software License Terms and Conditions**

**Response:** NYSPPro received several comments on the applicability of certain clauses in Appendix B as pertains to a solicitation similar in scope as the IT Project Consulting Solicitation. NYSPPro is reviewing Appendix B clauses to determine relevancy to this solicitation.