

## NEW JERSEY INFRASTRUCTURE BANK

### ANSWERS TO QUESTIONS RFQ FOR TECHNICAL ASSISTANCE SERVICES FOR THE WATER BANK

#### Extensions

1. Would the I-Bank consider an extension of the question submission deadline and/or the proposal submission deadline?

No.

2. RFP Item X.2 notes that questions/exceptions to the Terms and Conditions must be posed during the Q&A period. If a question submission deadline extension is not granted, would the I-Bank please consider an extension of the contract exception deadline, and/or allow contract exceptions to be included with the proposal submission rather than during Q&A period? This would allow proposers sufficient time to obtain legal advice from internal and/or external counsel.

To maintain an open and fair bidding process, all bidders must have access to the same proposed, and alternate, contract terms and conditions. Therefore, we cannot separately negotiate proposed changes to the contracts after proposal submission.

#### Existing Early Engagement Services Pool

3. How will the services described in Pool #1 and #2 fit with the Early Engagement Services currently available to H2Loans applicants? It appears that components of Early Engagement Services are incorporated in Technical Services (Pool #1). Will the current Early Engagement Services be discontinued and replaced by Pool #1?

Yes. The term of the current pool for Early Engagement Services ends on February 27, 2026.

#### Proposal Submissions for Pool #1 and Pool #2

4. Can [a] firm apply to be both in Pool 1 and Pool 2?

Yes.

5. If applying to be in both Pools, should [a] firm submit a separate proposal for each Pool or one proposal covering both Pools?

Firms must submit separate proposals if applying to both Pool #1 and Pool #2.

6. In the three instances below, should "Engineering Consulting Pools" be changed to "Technical Assistance Pools"?

- a. Page 10, last paragraph, "Appointment to the Engineering Consulting Pools does not guarantee that a TSC or FSC will be assigned to a particular assignment,..."
- b. Page 11, Note near the top of the page, "Note: The firms assigned to the Engineering Consulting Pools as a result of this RFQ, and the services rendered by the TSC or FSC are not subject to the reporting requirements of P.L. 2013, Chapter 37 [N.J.S.A. 52:15D-1 et seq]."

- c. Page 12, second to last paragraph, “If more than one firm is qualified and selected for inclusion in the aforementioned Engineering Consulting Pools,…”

No. These references to the defined term “Engineering Consulting Pools” are intentional.

### Subcontractors and Team Members

7. Page 10 of the RF[Q] mentions that “joint ventures will not be considered.” We believe this means there can only be one Prime bidder on a submission and subcontractors are permitted, but request clarification.

Subcontractors are permitted but there can only be one prime bidder. The I-Bank will contract solely with the prime firm, which will be responsible for all subcontractors engaged in the work.

8. Do all subconsultants need to be identified in the proposal, or can they be added upon award or with subsequent project proposals?

Proposals submitted in response to this request for qualifications (“RFQ”) will be evaluated based on the materials provided therein, including the qualifications of any proposed subcontractors identified at that time.

Following selection to a pool, firms may identify or propose additional subconsultants as part of a proposal submitted in response to a future request for proposals (“RFP”), provided such RFP does not state otherwise.

9. Can a subcontractor be permitted to serve more than one prime contractor in the Pool? For instance, a prime contractor determines that it cannot provide Technical Services for a particular community and waives any exclusivity to a subcontractor’s services, so that the subcontractor that specializes in non-engineering services is available to support another pool members “Technical Services” engagement.

Yes.

10. If a firm is selected for both pools, can different sub-teams be used for each pool, or must the same PM / key personnel appear in both?

Different teams may be proposed for each pool.

### Scope and Volume of Work

11. What has been the volume of work – number of projects, number of municipalities, and dollars – performed under the current TSC program over the last two years? Of that work, what has been the volume of work – number of projects, number of municipalities, and dollars – related to the new Fiscal Services, Pool #2 over the last two years?

Over the past two years, 15 communities have been approved to receive services under what is now referred to as the TSC pool, resulting in the issuance of 16 task orders. The total value of this assistance during that period was approximately \$838,000.

Separately, services that would now fall under the FSC pool, Pool #2, were provided to 2 water systems, with a total value of approximately \$1.04 million.

12. While it is understood that there is no guarantee of work under this RFQ, is there an anticipated volume of work in number of projects or number of municipalities under each pool?

No. Please see question 11 for historic volume of work.

13. For communities where both a TSC and FSC firms are assigned, who has primary coordination responsibility, and how are scope overlaps expected to be managed to avoid duplication?

For communities where both a TSC firm and an FSC firm are assigned, each provider will be responsible for performing the specific scope of services outlined in its respective task order. The scopes are intended to be distinct, and firms are expected to carry out their work independently without duplication of effort.

To the extent coordination is necessary, it will be organized and directed by the NJDEP. The NJDEP will provide guidance to ensure responsibilities remain clearly delineated and that there is no overlap in scope between providers.

14. Would a firm be considered for handling wireless lease management only? For example, a business that does compliance audits for wireless attachments to water tanks, handles all bid writing for new tenancies and sales, market valuations, etc.?

No. Firms must be qualified to provide the full range of services contemplated under the applicable pool. A firm proposing to perform only a limited or specialized function, such as wireless lease management, would not be considered.

#### RFQ Evaluation Criteria and Procedure

15. Do you require the names of the employees working in the State to satisfy the ranking criteria as indicated in the Section V. Pool Selection Process, 1. Ranking Criteria, (iv) Firm's presence in New Jersey, or would the number of employees and the type of business activity conducted in the State suffice, as will be described in the (iii) Business Information section of the response?

Firms may present any aspects of their business to demonstrate their presence in New Jersey.

16. Under Section VII, (v) Experience and Qualifications of Team Members on page 14, can you clarify the intent of requirement (a) The experience of bidding firm (prime or joint venture) and proposer's team members performed in the past three (3) years, relative to the work described within this RFQ? Is this asking for information for the proposer's firm or its featured team members? If the latter, please distinguish this requested information (besides the requirement for references) from what is requested under "(b) The team member's experience and performance on similar programs, including client references for at least three (3) but not more than five (5) projects that the proposing firm believes to be relevant."

Requirement (a) seeks a description of the experience of the bidding firm, which should include the experience of the proposed team members, but may be presented more broadly to reflect the firm's overall relevant experience within the past three years.

Requirement (b), in contrast, requires specific project examples highlighting the proposed team members' experience and performance on similar programs, and must include client references for at least three and no more than five relevant projects.

17. Can you please clarify the number and the period of performance requirements for references? In Section VII(iii)(f), the following is listed: *five (5) references, including at least three clients for whom services have been provided for at least three (3) years. Provide the contact names, positions, email addresses, and phone numbers for each reference.* In Section VII(v)(b), the following is listed: *the team*

*members' experience and performance on similar programs, including client references for at least three (3) (but not more than five (5)) projects that the proposing firm believes to be relevant.*

*Under Section VII(iii)(f), firms must provide five firm-level references, including at least three clients for whom the firm has provided services for a minimum of three years. These references relate to the firm's overall qualifications and business history and should be included in an Appendix.*

*Under Section VII(v)(b), firms must provide project-specific references tied to at least three and no more than five relevant projects demonstrating the experience and performance of the proposed team members on similar programs. There is no minimum three-year service requirement for these project references; they are intended to support the team's relevant experience.*

18. If a firm submits for both pools, will each pool be evaluated independently?

*Yes.*

19. Is it possible that a firm submitting for both pools may only be approved for one of the pools?

*Yes.*

#### Selection from the Engineering Consulting Pools

20. The RFQ indicates that several consultants will be selected into a pool for each of the distinct services, technical and operational services as well as fiscal services. Will the specific tasks be competitive?

*Please see Section VI of the RFQ.*

21. Regarding Section VI. Can you go into more detail on how the RFP process will be conducted?

*For each assignment, the I-Bank distributes a written RFP to all firms within the applicable Engineering Consulting Pool. The RFP defines the specific scope of work, deliverables, project objectives, and anticipated timeframe. Each firm then submits a specific proposal tailored to that scope, including its technical approach, staffing plan, proposed schedule, and cost proposal.*

22. Please clarify whether being included in the pool obligates us to respond to all subsequent RFPs.

*No. Firms selected to be in a pool are not obliged to submit proposals for any subsequent RFPs soliciting bids from pool members.*

#### Fees

23. Are billing rates fixed for the entire pool term (2026–2029), or will annual adjustments be permitted?

*See Section VIII of the RFQ.*

#### Conflicts of Interest

24. Given that the RFQ encompasses two distinct scopes—technical and operational services, as well as fiscal services—we wish to seek clarification on I-Bank's position regarding potential conflicts of interest that may arise from undertaking both scopes. Specifically, we would appreciate guidance on the following points:

a. Scope Overlap and Future Projects:

- (i) If the Selected Consultant provides fiscal, technical and operational services for a project financed by I-Bank, would this preclude us from participating in any future activities related to that same project, or vice versa?

To the extent that the question relates to services being provided in both Consulting Engineering Pools for the same community, a Selected Consultant is not precluded from providing services under both scopes of work. To the extent the question is asking about performing future work directly for a community for which it provided services through one or both Consulting Engineering Pools, assignment to a community under the technical assistance program does not, in and of itself, preclude a Selected Consultant from pursuing or performing future work for that same community outside of the technical assistance program. Firms are advised to be mindful of potential conflicts in performing services for an assigned community pursuant to future solicitations for engineering services and adhere to applicable professional standards and regulations including the State Board of Professional Engineers and Land Surveyors, N.J.A.C. 13:40 et seq.

However, a Selected Consultant that has served as the engineer of record for a community within the past two years will not be assigned to that community to perform TA services.

- (ii) Regarding wording in Pool #1, Task 5: Does submitting for this pool prevent us from bidding on future projects under it?

See response to 24(a) (i) above.

- (iii) Does the Bank consider such dual involvement to constitute a conflict of interest, even if the services are rendered at different stages or under separate contracts?

The Water Bank Program does not take the position that dual involvement, in and of itself, constitutes a conflict of interest. A consultant's participation in multiple roles or at different stages of work does not automatically create a conflict.

b. Third-Party Engagements:

- (i) In the event that the Selected Consultant is engaged to audit or monitor a project where another client (with whom we have a separate professional relationship) is performing technical or operational services, would this scenario be viewed as a conflict of interest by I-Bank?

No.

c. Right to Refuse Tasks Due to Conflict:

- (i) Should a situation arise where the Selected Consultant reasonably believes that undertaking a particular task or scope element would result in a conflict of interest, does I-Bank's policy permit us to decline or recuse ourselves from that specific task without penalty or prejudice to our overall engagement?

If a Selected Consultant identifies a potential or actual conflict of interest with respect to an assignment, the consultant must promptly disclose the issue to the I-Bank.

The I-Bank does not contemplate partial recusals within a single assignment, as the scope is evaluated and awarded as a unified engagement. Following disclosure, the I-Bank will determine, in its sole discretion, whether recusal is required and whether the assignment should be offered to the next eligible firm. Where a conflict of interest is determined to

exist, the Selected Consultant must recuse itself from the entire assignment, not merely a discrete task or scope element.

25. Please clarify whether a firm that performs technical and/or fiscal assistance services for a community under this RFQ, such as asset management reviews, capital planning, or financial assessments, would be precluded, either permanently or for a defined period, from subsequently serving as engineer of record or providing planning, engineering, design, or construction-phase services for that same community or utility after the completion of the review.

The Water Bank program would not preclude such work. See also response to question 24(a)(i).

26. Would this RFP (sic) [RFQ] work exclude a firm from pursuing other related engineering, asset management or financial work for a different NJDEP/IBANK RFP?

No. See also response to question 24(a)(i).

27. Is this opportunity for both CWSRF and DWSRF affordability Clients?

Yes.

28. Confirming we would be able to perform the project design and construction efforts, if selected, for any affordability clients we assist under pool #1 and pool #2?

Please see response to question 24(a)(i).

29. If we're the engineer of record for sewer utility engineering but not municipal engineering, can we work with affordability clients on non-sewer utility efforts?

Yes.

30. If we are not the engineer of record but a part of a municipal pool of engineers for special projects, does that limit our involvement in these opportunities as well?

If such engineer has served as the engineer of record for a community within the past two years, it will not be assigned to that community to perform TA services.

31. If we are currently representing clients through the TA program, can we continue to work in this capacity?

Work currently assigned and ongoing will terminate upon a determination by the Water Bank that the work is completed. Such work is distinct from work assigned under these to be established Consulting Engineering Pools.

32. [A firm] has prepared application submissions for clients which are currently active in H2Loans, and a variety of projects with funding authorization requests which are anticipated for FY2027. Does this activity affect [the firm's] eligibility to participate in the subject proposal process?

No. This activity does not impact the firm's eligibility to be a member of one or both Engineering Consulting Pools, but it may impact the firm's eligibility for selection from a pool for assignment to those specific communities.

33. In the event that [a firm] assists [the] I-Bank in drafting and/or publishing RFP's on behalf of third-party utilities [assigned communities], would this authorship (either full or partial) disqualify [the firm] from bidding as engineering service provider to any such utilities?

No. See RFQ Section III, Task 5 for Pool #1.

Proposal Preparation and Formatting

34. With respect to proposal preparation and formatting:
- a. The RFQ states that “Charts, spreadsheets and oversize exhibits are permissible.” Assuming this pertains to the 10-page narrative, would, for example, a typical 11 x 17 spread count as two pages?  
**Yes.**
  - b. Is there a size limit on “...oversize exhibits...”? i.e., scroll plots of presently undetermined width.  
**16” by 20”.**
  - c. Does the 12pt minimum type size apply to graphic exhibits such as organization charts, tables, infographics, etc.? If smaller type is permissible for figures, is there a minimum?  
**The 12pt minimum type size does not apply to graphic exhibits, tables or infographics. There is no minimum type size for these figures.**
  - d. Please confirm that a cover and back cover, table of contents, along with sections tabs do not count towards the page count.  
**These do not count towards the page limit.**
35. Is the transmittal letter limited to one page total, or one page per Pool if proposing on both Pools?  
**The transmittal letter is limited to one page total.**
36. The instructions on page 13 under Section VII. Required Components of the RFQ Proposal indicate “In the proposal, please respond to each of the following questions by repeating the question at the top of the response and referring to the question by the numbers used below in this RFQ:”. Please clarify what is meant by “question.” Additionally, can please (sic) if the numbers and subsequent text need to be repeated for each sublevel requirement, and whether text can be abbreviated to maximize the use of the 10 page limit for offeror responses For example, is the following text for the (a), (b), and (c) level requirements below considered a “question” and does all text/numbering have to be repeated in the proposal:
- (iii) Business Information
- (a) the firm’s commitment to environmental and consulting engineering.
  - (b) The firm’s experience and presence within the State, including the number of offices, the number of employees and the type of business activities conducted in the State. Also include a description of the participation of women and minorities in management positions within the firm;
  - (c) A description of any material agreements, relationships, retainers, or other employment that the firm or any employee of the firm has with any local government units in the State; etc.

“Question” is referring to (iii)(a), (iii)(b), (iii)(c), etc. Numbers and subsequent text can be abbreviated to maximize the page limit. Numbers and subsequent text need not be repeated for each sublevel requirement.

37. Section VII(iii)(f) asks responders to include reference information in an Appendix. Is this referring to name and contact information only? Or are they looking for project descriptions?  
Only the name and contact information.
38. Do resumes also need to be in size 12 Times New Roman font?  
No.

#### State Required Forms

39. Please provide the bid solicitation number associated with this RFQ? That is a requested piece of information in some of the forms.  
Please leave blank the space(s) on any forms that request a bid solicitation number.

#### Suggested Changes to Standard Terms and Conditions

40. The Standard Contract Terms note they may be updated during the Pool term. Will firms be given the opportunity to review and object to substantive changes prior to task order issuance?  
Any updated Standard Contract Terms will be presented as part of future RFPs soliciting proposals from the Consulting Engineering Pools. The terms of the opportunity to review such changes shall be set forth in those RFPs.
41. Bidders’ Proposed Edits to Standard Terms and Conditions

**Note:** Proposed changes by a bidder appear in blue. The I-Bank response appears below bidder’s suggestion in red.

#### **Article I(C)**

With the exception of CONTRACTOR Property, Ownership of all data, material and documentation originated and prepared for the I-BANK pursuant to this Agreement shall belong exclusively to the I-BANK. All such data, materials or documentation shall be delivered to the I-BANK without any additional charge upon demand after termination of this Agreement, except as otherwise provided under the terms of this Agreement. CONTRACTOR Property shall mean all documents, materials, and other intellectual property created by the CONTRACTOR prior to, or separately from the services provided under the Agreement, plus any modifications thereto or enhancements thereof, as well as any tools used by the CONTRACTOR in its performance of services under the Agreement.

This change is acceptable in part. This provision is amended to read as follows:

With the exception of CONTRACTOR Property, Ownership of all data, material and documentation originated and prepared for the I-BANK pursuant to this Agreement shall belong exclusively to the I-BANK. All such data, materials or documentation shall be delivered to the I-BANK without any additional charge upon demand after termination of this Agreement, except as otherwise provided under the terms of this Agreement. CONTRACTOR Property shall mean all documents,

materials, and other intellectual property created by the CONTRACTOR prior to, or separately from the services provided under the Agreement, plus any modifications ~~thereo~~ or enhancements thereof of pre-existing CONTRACTOR Property, as well as any tools used by the CONTRACTOR in its performance of services under the Agreement.

**Article I(E)(b)**

**Termination of Contract**

**(b) For Cause:**

1. Where the CONTRACTOR fails to perform or comply with the contract or a portion thereof, the I-BANK may terminate the contract, in whole or in part, upon ten (10) days' notice to the CONTRACTOR with an opportunity to ~~respond~~ cure during such ten (10) days; and
2. Where, in the reasonable opinion of the I-BANK, the CONTRACTOR continues to perform a contract poorly as demonstrated by e.g., late delivery, poor performance of service, short-shipping, and there has been a failure on the part of the CONTRACTOR to make progress towards ameliorating the issue(s) or problem(s) after being advised of the poor performance, the I-BANK may terminate the contract, in whole or in part, upon ten (10) days' notice to the CONTRACTOR with an opportunity to respond, after being provided an opportunity to cure pursuant to Section E(1)(b)(1).

This is not an acceptable change.

**Article IV(F)**

If it becomes necessary for the CONTRACTOR, either as principal or by agent, subcontractor, or employee, to enter upon the premises or property of the I-BANK or the State for any purpose whatsoever pursuant to this Agreement, the CONTRACTOR hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence of happenings of any accidents, injuries or damages to any person or property in connection with performance of the services under this Agreement, and to be responsible for, and to indemnify, defend, and save harmless the I-BANK and the State, its agents, servants and employees, from the payment of all sums of money, including the cost of defense, by reason of all, or any, such accidents, bodily injuries or damages to tangible personal property that are caused by its negligent or willful acts may happen in connection with the performance of services under this Agreement while on-site at the premises or property of the I-Bank or the State.

This is not an acceptable change.

**Article IV(G)**  
**Indemnification**

**Suggested Change #1:**

1. The CONTRACTOR's liability to the I-BANK and/or the State and its employees, officers and agents in third party suits shall be as follows:
  - a. The CONTRACTOR shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the State of New Jersey, the I-BANK and its officers, officials, agents, servants, and employees from and against any and all third-party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith arising out of the gross negligence or willful misconduct of the CONTRACTOR in the performance of its services and activities pursuant to the [A]greement which:

**Suggested Change #2:**

1. The CONTRACTOR's liability to the I-BANK and/or the State and its employees, officers and agents in third party suits shall be as follows:
  - a. The CONTRACTOR shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the State of New Jersey, the I-BANK and its officers, officials, agents, servants, and employees from and against any and all third-party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which:
    - i. For or on account of the loss of life, ~~property or~~ bodily injury or damage to ~~the tangible personal, body or~~ property of any person or persons whatsoever, ~~which shall arise from or result directly or indirectly to the extent caused by the negligent or willful acts of the CONTRACTOR during the performance of services from the work and/or products~~ supplied under this Agreement or the order while on-site at the premises or property of the I-Bank or the State; and
    - ii. For or on account of the ~~use violation or misappropriation~~ of any patent, copyright, trademark, trade secret or other proprietary right of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance ("Intellectual Property Rights") by the deliverables that are furnished to the I-Bank by the CONTRACTOR ~~or used~~ in the performance of this Agreement, except to the extent that such violation or misappropriation is based on (i) materials or other information provided by the or on behalf of I-BANK that have been incorporated into such deliverables, or (ii) I-BANK's specifications, requests to instructions in the production and/or delivery of such deliverables.

**Suggested Change #3:**

1. The CONTRACTOR's liability to the I-BANK and/or the State and its employees, officers and agents in third party suits shall be as follows:
  - a. The CONTRACTOR shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the State of New Jersey, the I-BANK and its officers, officials, agents, servants, and employees from and against any and all third-party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which:
    - i. For or on account of the loss of life, **real or tangible personal** property or **bodily** injury or **physical** damage to the person, body or **real or tangible personal** property of any person or persons whatsoever, which shall arise from or result directly or **indirectly proximately** from the work and/or products supplied under this Agreement or the order, **to the extent caused by the CONTRACTOR's negligence or intentional misconduct**; and

**Suggested Change #4:**

2. The CONTRACTOR's indemnification and liability under this subsection "1." is not limited by but is in addition to, the insurance obligations contained in Section G subsection (b). The provisions of this indemnification clause shall in no way limit the CONTRACTOR's obligations assumed in this Agreement, nor shall they be construed to relieve the CONTRACTOR from any liability, nor preclude the I-BANK and/or the State from taking any other actions available to it under any other provisions of this Agreement or otherwise at law or equity. ~~The CONTRACTOR agrees that any approval by the I-BANK and/or the State of the work performed and/or reports, plans or specifications provided by the CONTRACTOR shall not operate to limit the obligations of the CONTRACTOR assumed in this Agreement.~~

**Suggested Change #5:**

2. The CONTRACTOR's indemnification and liability under this subsection "1." is not limited by but is in addition to, the insurance obligations contained in Section G subsection (b). The provisions of this indemnification clause ~~shall in no way limit the CONTRACTOR's obligations assumed in this Agreement, nor shall they be construed to relieve the CONTRACTOR from any liability, nor preclude the I-BANK and/or the State from taking any other actions available to it under any other provisions of this Agreement or otherwise at law or equity~~ are limited to claims arising out of the gross negligence or willful misconduct of the CONTRACTOR in the performance of its services and activities. The CONTRACTOR agrees that any approval by the I-BANK and/or the State of the work performed and/or reports, plans or specifications provided by the CONTRACTOR shall not operate to limit the obligations of the CONTRACTOR assumed in this Agreement.

None of these are acceptable changes. The provision is amended to read as follows:

G. **Indemnification and Insurance**

(a) **INDEMNIFICATION**

2. The CONTRACTOR's liability to the I-BANK and/or the State and its employees, officers and agents in third party suits shall be as follows:

b. The CONTRACTOR shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the State of New Jersey, the I-BANK and its officers, officials, agents, servants, and employees from and against any and all third-party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which:

i. For or on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly ~~or indirectly~~ from the work and/or products supplied under this Agreement or the order; and

**Article IV(G)(b)**

(b) **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 ~~or the equivalent rating from another nationally recognized ratings provider~~. All policies must be endorsed to provide thirty (30) days' written notice of cancellation or ~~adverse~~ material change to the I-BANK at the address shown below ~~unless replacement coverage meeting the terms and conditions hereunder are obtained without lapse~~. The CONTRACTOR shall provide the I-BANK with current ~~industry standard ACORD~~ certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within ~~thirty ten (30-10)~~ days of the expiration of the insurance. The CONTRACTOR shall not begin to provide services or goods to the I-BANK until evidence of the required insurance is provided. The certificates of insurance shall reference the title of this Agreement or purchase order number in the Description of Operations box and shall list the I-BANK, 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, NJ 08648 and the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the I-BANK at: [Procurement@njib.gov](mailto:Procurement@njib.gov).

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

1. Occurrence Form Commercial 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 Commercial General Liability Insurance policy or its equivalent shall ~~name~~ include the I-BANK, the State, its officers and employees as "Additional Insureds" with respect to CONTRACTOR's acts or omissions in performance under this Agreement 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 Insurance Services Office (ISO) Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
2. 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 \$1,000,000 per ~~occurrence~~ accident as a combined single limit. The I-BANK must be ~~named~~ included as an "Additional Insured" with respect to CONTRACTOR's acts or omissions in performance under this Agreement and a blanket additional insured endorsement, or its equivalent must be provided when the services being procured involve vehicle use on the I-BANK's behalf or on I-BANK controlled property.
3. Worker's Compensation Insurance applicable to the laws of the State and Employers Liability Insurance with limits not less than:
  - i. \$1,000,000 BODILY INJURY, EACH ~~OCCURRENCE-ACCIDENT~~;
  - ii. \$1,000,000 DISEASE EACH EMPLOYEE; and
  - iii. \$1,000,000 DISEASE AGGREGATE LIMIT.
4. This \$1,000,000 amount may have been raised by the RFP when deemed necessary by the I-BANK.
5. **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 of the professional obligations performed pursuant to the requirements of this Agreement. The insurance shall be in the amount of not less than \$1,000,000 ~~and in such policy forms as shall be approved by the I-BANK~~. If the CONTRACTOR has claims-made coverage and subsequently changes carriers during the term of this Agreement, it shall obtain from its new Errors and Omissions, Professional Liability Insurance, ~~and/or Professional Malpractice Insurance~~

carrier an endorsement for retroactive coverage or in the alternative, purchase an extended reporting period or “tail” for the legacy policy.

These are not acceptable changes. The provision is amended to read as follows:

(b) **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. All policies must be endorsed to provide thirty (30) days’ written notice of cancellation or material change to the I-BANK at the address shown below. The CONTRACTOR shall provide the I-BANK with current **industry standard ACORD** certificates of insurance for all coverages and renewals thereof. Renewal certificates 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 I-BANK until evidence of the required insurance is provided. The certificates of insurance shall reference the title of this Agreement or purchase order number in the Description of Operations box and shall list the I-BANK, 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, NJ 08648 and the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the I-BANK at: [Procurement@njib.gov](mailto:Procurement@njib.gov).

**Article IV(M)**

~~Because the CONTRACTOR and its affiliates comprise a consulting firm (the “Firm”) that serves clients on a global basis in numerous cases, both in and out of court, it is possible that the Firm may have rendered or will render services to or have business associations with other entities or people which had or have or may have relationships with the I-BANK and/or the State. The Firm will not be prevented or restricted by virtue of providing the services under this Agreement from providing services to other entities or individuals with respect to matters unrelated to the services being provided under this Agreement, including to entities or individuals whose interests may be in competition or conflict with I-BANK and/or the State’s, provided the Firm makes appropriate arrangements to ensure that the confidentiality of information is maintained. It is agreed and understood that the I-BANK reserves the right under this Agreement to determine whether a conflict of interest or the appearance of a conflict of interest exists which would under State law adversely affect this Agreement or would otherwise be contrary to the best interest of the I-BANK and the State.~~

This addition and deletion are not acceptable changes.

**Article IV(S)(h)**  
**Confidentiality**

Notwithstanding the requirements of nondisclosure described in this Section S, either party may release the other party’s Confidential Information (i) if directed to do so by a court or arbitrator

of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (iii) in the case of the I-BANK, if the I-BANK determines the documents or information are subject to disclosure and the CONTRACTOR does not exercise its rights as described in subsection (f), or if the CONTRACTOR is unsuccessful in defending its rights as described in subsection (f), or (iv) in the case of the CONTRACTOR, if the CONTRACTOR determines the documents or information are subject to disclosure and the I-BANK does not exercise its rights as described in subsection (g), or if the I-BANK is unsuccessful in defending its rights as described in subsection (g).

**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 reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the I-BANK and/or the State and shall be delivered to the I-BANK and/or the State upon 30 days' notice by the I-BANK. With respect to software computer programs and/or source codes developed for the I-BANK and/or the State, the work shall be considered "work for hire", i.e. the I-BANK and/or the State, not the CONTRACTOR or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of law, be a work made for hire in accordance with the terms of this Agreement, CONTRACTOR or subcontractor hereby assigns to the I-BANK and/or the State all right, title and interest in and to any copyright, and the I-BANK and/or the State shall have the right to obtain and hold in its own name any copyrights, registrations and any other proprietary rights that may be available.

Notwithstanding anything to the contrary, the CONTRACTOR shall retain all right, title and interest in and to (1) all of its pre-existing patent, copyright, trademark and other intellectual property rights in any and all deliverables and other work product that is prepared and/or delivered as part of the services under this Contract (collectively, "Work Product"); and (2) all methodologies, processes, techniques, ideas, concepts, trade secrets, and know-how embodied in the Work Product or that the CONTRACTOR may develop or supply in connection with this Agreement. All Work Product is intended solely for the benefit and use of I-BANK in considering matters relating to the purpose of the services as set out in the RFP. I-BANK agrees that no such Work Product shall be used for any other purpose or reproduced, disseminated, quoted or referred to third parties at any time in any manner or for any purpose without the CONTRACTOR's prior approval (which shall not be unreasonably withheld), except as required by law (including any freedom of access laws). The Work Product is not being rendered by the CONTRACTOR as an agent or as a fiduciary of I-BANK and/or the State or any of its constituents and the CONTRACTOR shall not have any liability or obligation with respect to its services hereunder to such constituents or to any other person, firm or public or private entity.

This change is acceptable in part. This provision is amended to read as follows:

~~Notwithstanding anything to the contrary, the CONTRACTOR shall retain all right, title and interest in and to (1) all of its pre-existing patent, copyright, trademark and other intellectual property rights in any and all deliverables and other work product that is prepared and/or delivered as part of the services under this Contract Agreement (collectively, "Work Product"); and (2) all methodologies, processes, techniques, ideas, concepts, trade secrets, and know-how embodied in the Work Product or that the CONTRACTOR may develop or supply in connection with this Agreement. All Work Product is intended solely for the benefit and use of I-BANK in considering matters relating to the purpose of the services as set out in the RFP. I-BANK agrees that no such Work Product shall be used for any other purpose or reproduced, disseminated, quoted or referred to third parties at any time in any manner or for any purpose without the CONTRACTOR's prior approval (which shall not be unreasonably withheld), except as required by law (including any freedom of access laws). The Work Product is not being rendered by the CONTRACTOR as an agent or as a fiduciary of I-BANK and/or the State or any of its constituents and the CONTRACTOR shall not have any liability or obligation with respect to its services hereunder to such constituents or to any other person, firm or public or private entity.~~

#### 42. Bidders' Proposed Additions to Standard Terms and Conditions

##### **Termination of Contract**

CONTRACTOR may terminate performance of any part of the Services, upon written notice to the I-BANK, if CONTRACTOR determines that the performance of any part of the Services would be in conflict with law, or independence or professional rules.

~~This is not an acceptable addition. Please see Section X(3) of the RFQ for a firm's obligation to report a conflict of interest.~~

##### **Limitation of Liability**

###### **Suggested Addition #1:**

Will I-Bank consider including a waiver of consequential damages and an overall limit of liability in amount not to exceed the required insurance limits identified in the contract, or higher?

~~No.~~

###### **Suggested Addition #2:**

Would the I-BANK agree that the Contract should provide a commercially reasonable limitation of liability for direct damages and an exclusion of indirect, special, and consequential damages for both parties?

~~No. However, the following proposed additional language is incorporated into the Standard Terms and Conditions:~~

~~Consequential Damages. Neither Party shall be liable to the other for indirect, incidental or for consequential liabilities, damages, losses, costs or expenses, including specifically but without limitation, any based on loss of profits or revenue, or loss of goodwill.~~

**Suggested Addition #3:**

The liability (including attorney's fees and all other costs) of Consultant and its present or former partners, principals, agents or employees related to any claim for damages relating to the Services performed under this Agreement shall not exceed the fees paid to Consultant for the portion of the work to which the claim relates, except to the extent finally determined to have resulted from the gross negligence, willful misconduct or fraudulent behavior of Consultant relating to such Services. This limitation of liability is intended to apply to the full extent allowed by law, regardless of the grounds or nature of any claim asserted, including the negligence of either party. Additionally, in no event shall either party be liable for any lost profits, lost business opportunity, lost data, consequential, special, incidental, exemplary or punitive damages, delays, interruptions, or viruses arising out of or related to this Agreement even if the other party has been advised of the possibility of such damages.

This is not an acceptable addition.

**Suggested Addition #4:**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE CONTRACTOR'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE FEES ACTUALLY PAID TO THE CONTRACTOR FOR THE APPLICABLE WORK ENGAGEMENT ARISING FROM THIS AGREEMENT THAT HAS GIVEN RISE TO LIABILITY EXCEPT TO THE EXTENT THE LIABILITY IS FINALLY DETERMINED TO HAVE RESULTED PRIMARILY FROM ITS FRAUD OR WILLFUL MISCONDUCT. IN NO EVENT WILL THE CONTRACTOR BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR EXEMPLARY DAMAGES OR LOSS (NOR ANY LOST PROFITS, SAVINGS OR REVENUE OPPORTUNITY) NOR FOR ANY DELAYS OR FAILURES TO PERFORM DUE TO CIRCUMSTANCES BEYOND ITS REASONABLE CONTROL. THIS PARAGRAPH SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

This is not an acceptable addition.

**Process**

Would the I-BANK agree that the Contract should provide for a mutually acceptable deliverable acceptance process and change control process that reflects the specific work to be performed?

The program has an established practice by which it awards contracts and assignments to Consulting Engineering Firms in the Engineering Consulting Pools. As part of that process, Selected Consultants execute a contract with the I-Bank. The terms of the contract shall include the terms of the RFQ, any applicable RFP, the I-Bank standard form contract and the Standard Terms and Conditions.