

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>		1. CONTRACT ID CODE	PAGE OF PAGES
2. AMENDMENT/MODIFICATION NO. <b>PR-R7-09-10252/0002</b>	3. EFFECTIVE DATE <b>06/05/09</b>	4. REQUISITION/PURCHASE REQ. NO. <b>PR-R7-09-10252</b>	5. PROJECT NO. (If applicable)
6. ISSUED BY <b>U.S. EPA Region VII PLMG/RFMB/AAMS 901 North 5th Street Kansas City, KS 66101</b>		7. ADMINISTERED BY (If other than Item 6) CODE <b>Not Applicable.</b>	

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)  <b>To All Offerors/Bidders.</b>	(✓)	9A. AMENDMENT OF SOLICITATION NO. <b>PR-R7-09-10252</b>
	✓	9B. DATED (SEE ITEM 11) <b>05/21/09</b>
		10A. MODIFICATION OF CONTRACT/ORDER NO.
		10B. DATED (SEE ITEM 13)

CODE	FACILITY CODE	<b>11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS</b>
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The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning 1 copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (if required)

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

(✓)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor  is not,  is required to sign this document and return \_\_\_\_\_ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The purpose of this modification is to make correction, removal, and addition to the following clauses: Commencement, prosecution, and completion of work, Payment, Performance Warranty, Instructions to Bidders and Public Bid Opening.

Also this modification includes a revised Performance Work Statement (PWS), Quality Assurance Surveillance Plan (QASP) and pdf copy of Property Lists.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)		
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
_____ <small>(Signature of person authorized to sign)</small>		_____ <small>(Signature of Contracting Officer)</small>	

**AMENDMENTS TO THE SOLICITATION**

1. The Section F clause entitled "COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (FAR 52.211-10) (APR 1984)" has been deleted.

2. The Section I clause entitled "PAYMENTS" has been modified. The text is as follows:

a) *Payment of price.* The Government shall pay the Contractor the contract fixed price as provided in this contract.

(b) *Progress Payments.* The Government shall make progress payments as the work proceeds, on work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer or Project Officer. Progress payments for the contract period will be made in accordance with the following schedule until all properties are completed:

(a) First payment - after all plans are approved and property closeout is accomplished for 25 assigned properties;

(b) Second payment - after an additional 25 assigned properties are completed and property closeout is accomplished; (total closed now 100)

(c) Third payment - after an additional 25 assigned properties are completed and property closeout is accomplished; (total closed now 150)

(d) Fourth payment - after an additional 25 assigned properties are completed and property closeout is accomplished; (total closed now 200)

**If a quantity option of up to 400 properties is exercised, the payment schedule will mirror the schedule delineated above. Consequently, four (4) payments will be made for each option quantity exercised.**

**(1) The Contractor's request for progress payments shall include the following substantiation:**

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer (upon request).

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if-

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) *Contractor certification.* Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that-

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(d) *Refund of unearned amounts.* If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall-

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until-

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) *Retainage.* The Contracting Officer will retain a maximum of 10 percent of the amount of the payment until the end of the Performance Warranty Period (See Clause entitled "Performance Warranty". If the Contracting Officer finds that satisfactory performance was not achieved when the Performance Warranty Period expires, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds.

(f) *Title, liability, and reservation rights.* All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as-

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) *Final payment.* The Government shall pay the amount due the Contractor under this contract after-

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) *Limitation because of undefinitized work.* Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) *Interest computation on unearned amounts.* In accordance with 21 U.S.C. 3903(c)(1), the amount payable under subparagraph (d)(2) of this clause shall be-

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

3. The Section I clause entitled "PERFORMANCE WARRANTY" has been modified.

The text is as follows:

The contractor shall provide a specific 90 day performance warranty for landscaping and related property restoration activities work which specifically addresses drainage and re-vegetation work. The following criteria apply:

Warranty begins immediately after 100% property closeout is accepted by the COR and extends for a minimum period of 90 days.

The contractor is responsible for correcting warranty issues raised by the EPA during that 30 day period at no additional cost (even though repair or correction activities may extend beyond the 30 day warranty period).

Replacement activities, including labor and all materials, for trees, shrubs and other such items will be the responsibility of the contractor for a period of not less than 90 days following acceptance by EPA. Upon expiration of the 90 day period, any remaining supplier warranties shall be transferred to the EPA who will, in turn, transfer such warranties to the property owner.

Sod and/or grasses replaced under this contract shall be warranted for normal growth and appearance for a minimum of 90 days. Significant areas (at COR's discretion) that fail to produce normal growth shall be replaced or re-seeded.

Any property damage caused directly or indirectly by restoration activity under this contract shall be covered by this warranty. Such warranty includes but is not limited to improper or inadequate surface drainage, collateral water damage to structures, concrete failures, etc.

Work performed to correct warranty issues shall be completed in an expeditious manner (within 2 weeks of notification).

4. The Section L clause entitled "INSTRUCTION TO BIDDERS" has been modified. The text is as follows:

**PLEASE NOTE: Access to properties to be addressed under this contract has not yet been acquired from property owners. Bidders and other interested parties may view properties to be addressed under this contract from public areas, i.e. streets or sidewalks, but shall not encroach upon any private property for any purpose prior to contract award. Interested parties SHOULD NOT trespass on residential properties that are private property and are in no way authorized to do so before contract award.**

Contractor can bid on both the Small Business and Hubzone solicitation, but is limited to receiving only one of the awards for more agency flexibility.

The contractor shall provide 2 copies of the bid. Bids shall include: resumes, Project Management Plan, a completed section B.2 PRICING SCHEDULE, and 3 client references (contracts/subcontracts may include those entered into with Federal, State and local governments, and commercial businesses) for

which work of a similar nature, magnitude and complexity has been performed, and a completed Section K. NOTE: Similar nature, magnitude, and complexity is defined to mean a soil remediation project with a contract dollar value of at least \$1 million that involves excavation and replacement of contaminated surface soils that includes a residential component.

The contractor shall address in their DRAFT PLANS SUBMISSION the following items to be submitted with their proposal.

1. **Health and Safety Plan:** Precaution which prevent disturbing utilities located above and below ground and process for reporting a vehicle accident.
2. **Quality Assurance Plan:** Preparation procedure for X-Ray Florescence Analyzer (XRF) samples and details related to checking the XRF calibration.
3. **Project Management Plan:** Responsibilities for key personnel and process for coordinating with the EPA Contract Office Representative (COR).

**FAILURE TO SUBMIT ANY OF THE DOCUMENTS LISTED ABOVE WILL DEEM THE BIDDER NON-RESPONSIVE.**

Client references shall include: name of contracting activity, contract number, contract title, contract type, brief description of requirement, total contract value, period of performance, contracting officer (name, phone number, and email address), project officer/manager (name, phone number, and email address), list of subcontractors if applicable.

Resumes of key personnel and support staff who will be responsible for the work specified in the Performance Work Statement shall be included.

The Project Management Plan (PMP) shall address the approach advocated, the resources required, the intended interface/communications processes with EPA and the public, preliminary project scheduling, and the overall management approach that will be applied to accomplish the work described in the Performance Work Statement. After award, this plan will be regularly updated to reflect progress made and any changes to process or procedure that occurred.

The Draft Health and Safety Plan shall describe the identified lines of communication that will be used in the even of an accident, include the phone numbers and transportation routes to the nearest hospital or urge care center, and describe the measures the contractor and on-site employees will take to ensure a safe and accident-free work environment.

Any bid submitted with conditions for acceptance will not be considered.

All bids shall be submitted in "hard copy". No facsimile or electronic bids will be accepted.

Bids received that do not include all the information requested by this clause

will be considered non-responsive.

5. The Section L clause entitled "PUBLIC BID OPENING" has been modified. The text is as follows:

The EPA will conduct a **PUBLIC BID OPENING at EPA Region 7, 901 N 5<sup>th</sup> Street, Kansas City, KS 66101 on Wednesday, July 8, 2009 at 1:00 p.m. (CST)** Anyone wishing to attend shall report to the security guard reception desk area and present photo ID to the security guard. Those planning to attend the bid opening should **check-in no later than 12:45 P.M (CST)**.

In the event that a single company is the low bidder on both solicitations, the apparent low bidder at the Small Business bid opening (which will be held first) they will be considered ineligible to be the low bidder for the Hubzone solicitation and therefore, the second low bid will be considered lowest under the Hubzone solicitation. These statements are based on the assumption that the apparent low bidder is found to be both responsive and responsible.