

REQUEST FOR PROPOSALS
Sacramento Metropolitan Air Quality Management SMAQMD
Enhanced Ozone Monitoring – Chemical Analysis for Carbonyl Compounds
RFP No. 2007-028

1. Introduction

The Sacramento Metropolitan Air Quality Management SMAQMD (SMAQMD) is requesting quotes and proposals from experienced firms and organizations to provide chemical analysis for carbonyl compounds in accordance with the Photochemical Assessment Monitoring Stations (PAMS) guidelines.

2. Background

The SMAQMD is the local public agency responsible for development, implementation, monitoring and enforcement of air pollution control strategies in Sacramento County, including its incorporated cities. The mission of the SMAQMD is to achieve clean air goals by leading the region in protecting public health and the environment through innovative and effective programs, community involvement, and public education.

SMAQMD is governed by a 14-member Board of Directors comprised of five Sacramento County Supervisors, four members of the Sacramento City Council, one member representing each of the cities of Citrus Heights, Elk Grove, Folsom, and Rancho Cordova, and one member representing the cities of Galt and Isleton. The Board reviews and approves all AQMD rules, programs and budgets.

The SMAQMD is part of a larger area, called the Sacramento Federal Ozone Non-attainment Area (SFNA). The SFNA is designated by the Environmental Protection Agency (EPA) as a “serious” non-attainment area for the eight-hour ozone standard. As a result, SMAQMD is required to implement the PAMS regulations. In addition to the Sacramento Air District, the SFNA includes all or parts of four other air districts: El Dorado County Air Quality Management District, Feather River Air Pollution Control District, Placer County Air Pollution Control District, and Yolo-Solano Air Quality Management District.

The PAMS regulation requires SMAQMD to perform enhanced ozone monitoring by collecting air samples, which are then analyzed to determine the amount and types of species of volatile organic compounds. SMAQMD intends to collect up to 180 silica gel cartridge samples between July 1 and September 30.

When selecting an independent contractor, SMAQMD will consider factors such as: amount of actual experience with similar projects, reputation of respondent, quality of work product, and cost. Applicants bidding on this project should address these factors in their bid package.

3. Contacts

All inquiries regarding this document must be directed to Veronica Ruvalcaba, Administrative Assistant. All inquiries and responses, if any, will be posted on the SMAQMD Web site at www.airquality.org. Respondents that do not have internet access must make a written request that copies of inquiries and responses be mailed to them.

4. Timeline

The following timeline will guide this RFP Process.

Date/Time	Event
March 17, 2008	Release of RFP
Week of March 31, 2008	Possible pre-award interviews
April 18, 2008	Proposals due to SMAQMD
Week of April 28, 2008	Interview of finalists (if necessary)
May 6, 2008	Selection of a Contractor
July 1, 2008	Execution of a Contract

Filing of a protest may delay the award of a contract

5. Deadline

Five (5) copies of all responses to this RFP must be received at the SMAQMD by:
4:00 p.m. on Friday, April 18, 2008

Mail the responses to:

SMAQMD
777 12th Street, Third Floor
Sacramento, CA 95814
Attn: Veronica Ruvalcaba
Time critical – Please hand deliver

- No response will be accepted after the time and date indicated above.
- All components of the proposal are mandatory
- Failure to include all requested information may result in rejection.
- Minor or inconsequential deviations may be waived.

What to Include In Your RFP Response

6. Response Document

SMAQMD's goal in this RFP process is to identify the respondent with the experience, resources and qualifications to provide chemical analysis for carbonyl compounds as described in **Attachment #1**, Scope of Services. Your RFP response must include a work sample that illustrates work similar to the work described in **Attachment #1**, Scope of Services. Submittal of a proposal constitutes an agreement to all provisions and conditions set forth in this RFP.

7. Qualifications

Describe in detail the duration and extent of your firm's experience as it relates to providing the required services. List previous projects prepared by your firm, particularly those related to the required tasks. Include information on the length of time that your firm has been in business and describe the technical capabilities of your firm as it relates to the required services.

8. References

Please provide three references for whom you provided similar or comparable services during the last 5 years and a description of the services provided. The services must demonstrate your firm's ability to meet SMAQMD's needs as described under this RFP. The response must include: contact's name, address, phone number, email address, date and description of services. (See **Attachment #2**, References)

SMAQMD may contact references at anytime, either before or after a respondent is selected. The Air Pollution Control Officer (APCO) may reverse the selection decision and award the contract to another respondent based upon a post-award reference check.

9. Staff Experience and Expertise

Please list the person(s) who will perform the majority of work on this contract and describe their relevant qualifications and experience. This must include: education, job history, length of time with firm, precise position held within firm, expertise and experience in performance auditing and any other pertinent information. Substitution of key personnel will not be permitted without prior written approval of the APCO.

10. Additional Requirements

- A. All respondents must complete **Attachment #2**, References
- B. All respondents must complete **Attachment #3**, Debarment and Licensing Certification Form.
- C. All respondents must complete **Attachment #4**, Assurance and Certification.
- D. All respondents must complete **Attachment #5**, Declaration of Campaign Contributions.

11. Rate for Services

Please indicate the fee your firm will charge for completion of each task as described in **Attachment #1**, Scope of Services.

Evaluation Criteria and Selection Process

12. SMAQMD Discretion

SMAQMD reserves the right, without limitation, to reject any and all proposals received, to waive any minor informality or irregularity in any proposal, or to cancel awarding of the contract and advertise for new proposals, all as the public good may require.

13. Contract Team - Evaluation

The respondents and RFP responses will be evaluated by a committee that will include regional SMAQMD staff members (Contract Team).

14. Woman/Minority/Disabled Veteran-Owned Business Enterprises

It is the policy of the SMAQMD to provide equal opportunities for all persons without regard to race, religion, creed, color, national origin, ancestry, disability, medical condition, marital status, gender, age or sexual orientation. It is also SMAQMD policy to encourage participation of Minority and Women Owned Business Enterprises in the bidding process.

To the extent that any conflict exists between this policy and any requirements imposed by federal and state law relating to participation in a contract by a certified MBE/WBE/DVBE as a condition of receipt of federal and state funds, the federal or state requirement will prevail.

15. Disadvantaged Business Enterprise (DBE)

The successful respondent may not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. In addition, the SMAQMD encourages the participation of DBEs as defined in Title 49, Code of Federal Regulations part 26 (49 CFR 26) in the performance of contracts financed in whole or in part with Federal Transportation funds. If this project is funded by Federal Transportation Funds, this project is subject to 49 CFR 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.”

Federal DBE regulations require the SMAQMD to collect data regarding work performed by DBEs. While SMAQMD may also set a “DBE Availability Advisory Percentage,” meeting this percentage is not an eligibility requirement for award of this Contract. However, if 49 CFR 26 is triggered, the successful respondent will be required to report on how much, if any, work required under the contract is performed by DBEs. (See **Attachment #6**, Sample Contract, Exhibit E)

16. Evaluation Criteria

Criteria for evaluating RFP respondents and the written responses will include:

Evaluation Criteria		Possible Points
A	Work Sample	20
B	Overall Qualifications	25
C	Staff Experience & Expertise	25
D	Quality of Proposal	15
E	Fee	15
Total		100

17. Award Notification

Both the successful and unsuccessful respondents will be notified in writing by the APCO. The APCO or his designee will attempt to notify all respondents by facsimile on the same day. The Contract Administrator shall retain documentation verifying the notification attempts.

18. Protest Procedure

The protest procedures allow unsuccessful respondents the opportunity to challenge the process prior to execution of a contract. Protestors must:

1. Submit a written notice to the APCO of the intent to file a protest within five days of the date that respondents are notified of the contract award. The protest notice must be received in the SMAQMD's office by 5 o'clock p.m. on the fifth day.
2. Submit a written protest to the APCO within ten days of the date that respondents are notified of the award of contract. The written protest to APCO must be received in the SMAQMD's office by 5 o'clock p.m. on the tenth day.
3. The written protest must include a complete statement of the reason(s) for the protest. The protesting party must provide facts and evidence to support its claim. Protests will be reviewed and resolved by the APCO within five days of receipt of the written protest, unless the APCO determines that additional time is necessary.

19. Appeal

If a protest filed under Section 18 is denied, the protester may appeal the APCO's determination to the Board of Directors.

20. Limitations

This RFP does not commit SMAQMD to award a contract, to pay any costs incurred in the preparation of proposals, or to procure or contract for services or supplies. Costs for developing proposals are entirely the responsibility of the respondent and are not chargeable to SMAQMD. All proposals become the property of SMAQMD and will not be returned to the respondents.

21. Ambiguity, conflict or other errors

If a respondent discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the respondent should immediately notify SMAQMD of the error and request modification or clarification of the document. The SMAQMD may modify the RFP prior to the deadline for proposals by the publication of the revision on its website and mailing of the revisions to all persons that requested mail notice under paragraph 3.

Contract

22. Term of Contract

It is understood that the successful respondent will enter into a services contract with the SMAQMD. The term of this Contract will expire **June 30, 2010**, unless extended by mutual consent of the parties. **Attachment #6** is SMAQMD's standard contract language, insurance requirements and DBE requirements.

23. Insurance

Prior to execution of the contract, commencement of work or disbursement of SMAQMD funds, the successful respondent or its insurance company must submit an original certificate of insurance and certified copies of required endorsement. Certificates of insurance must show that the coverage is in effect and meets the SMAQMD minimum requirements. (See **Attachment #6**, Sample Contract, Exhibit C)

24. Payment

SMAQMD will reimburse the successful respondent only for the successful respondent's actual time and expenses incurred in the performance of the contract. SMAQMD will not under any circumstances reimburse the successful respondent for any commitments made by the successful respondent for services not yet performed or materials not yet received.

25. Administration

The successful respondent must carry out all elements of the contract to the satisfaction of the APCO.

26. State of Corporation and Tax Payer Information

Federal Income Tax Law requires the SMAQMD to file information returns for "services rendered" by certain individuals and others. The code provides that the Taxpayer Identification Number of the "payment recipient" (you) must be furnished upon request to the "service recipient" (us).

In order to help us comply with our reporting responsibilities and to protect you from withholding or penalty, the selected vendor will be required to complete a W-9 Form.

Attachment # 1

SCOPE OF SERVICES

Contractor will perform a chemical analysis to determine the concentrations of carbonyls in each absorbent cartridge, in compliance with EPA's PAMS guidelines.

Task A - The responsibilities of Contractor under this task include:

1. Verify information provided on field sample data sheet and reconcile any questions regarding field data with field operators.
2. Analyze the collected samples for carbonyls. Analysis method for Carbonyls is EPA TO-11A.
3. Complete laboratory analysis in a timely manner to avoid potential degradation of reactive species after lengthy storage in cartridge.
4. Participate in laboratory and data management audits and comparisons.

Task B - The responsibilities of Contractor under this task include:

1. Assemble the data for individual samples into a master database
2. Validate data to Level 1.
3. Submit data to SMAQMD in hardcopy (text file) and electronic format. The data in electronic format must be in the EPA "AIRS" format.
4. Prepare a Quality Control Summary Report for both field samples and lab analytical instrumentation.

Note: Contractor must follow all the industry standards to ensure that the sampling and analyses is true, accurate and valid. SMAQMD will only pay for "valid" samples received and analyzed by the laboratory.

SMAQMD will purchase silica gel cartridges directly from Waters Corporation. SMAQMD will pay for Federal Express shipping of cartridges from our office to the Contractor's lab.

References: Technical Assistance Document for Sampling and Analysis of Ozone Precursors by U.S. EPA/National Exposure Research Laboratory, EPA/600-R-98/161, September 1998. This document is available in Adobe Acrobat format under the PAMS File Area on the PAMS information site at <http://www.epa.gov/ttn/amtic/pamsmain.html>.

Attachment #2

SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

REFERENCES

Respondents must provide references from three (3) organizations that are or have received similar services. A brief description of services rendered, in addition to name, address, telephone number and contact person must be provided. Proponents may include letters of reference with this attachment.

Reference #1:

Date of Service:
Name of Organization:
Address:
Phone:
Email:
Contact Person:
Description of Service:

Reference #2:

Date of Service:
Name of Organization:
Address:
Phone:
Email:
Contact Person:
Description of Service:

Reference #3:

Date of Service:
Name of Organization:
Address:
Phone:
Email:
Contact Person:
Description of Service:

Attachment #3

DEBARMENT AND LICENSING CERTIFICATION FORM

To be completed by all bidders/respondents on SMAQMD contracts financed with Federal transportation funds.

The Bidder certifies that, neither the Bidder firm nor any owner, partner, director, officer, or principal of the Bidder, nor any person in a position with management responsibility or responsibility for administration of federal funds:

- a) Is presently debarred, suspended, proposed for debarment, has had required licenses revoked or been declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency;
- b) Has within a three-year period preceding this certification been convicted of or had a civil judgement rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (federal, state or local); violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph b) above; or
- d) Has within a three-year period preceding this certification had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.

The Bidder further certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency.

Dated this _____ day of _____, 200__

By

Authorized Signature of Bidder

Printed Name and Title

Bidder Firm Name & Type of Entity (Corp, Sole Proprietor, Partnership)

Address

City/State/Zip Code

Area Code/Telephone number and email address

Attachment #4

SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

ASSURANCE AND CERTIFICATION

I, (We), the undersigned, as duly authorized representative(s) of the respondent agency, affirm that the information and statements contained within this proposal to the best of my (our) knowledge, are truthful and accurate, and further, that I (we) am (are) duly authorized to submit this proposal from the respondent agency to deliver services.

Signature

Date

Signature

Date

Attachment #5

DECLARATION OF CAMPAIGN CONTRIBUTIONS

Contractor to
Initial

_____ Contractor has declared that there were no contributions made to any member of the SMAQMD Board of Directors during the preceding 12 months that trigger Government Code section 84308.

_____ Contractor has made the following contributions to members of the SMAQMD Board

Name of Board member	Date of Contribution	Amount of Contribution

Attachment #6

SAMPLE CONTRACT LANGUAGE

1.0 Recitals

2.0 Terms and Conditions

The parties agree to the terms and conditions listed below:

- 2.1 **Scope of Services:** Contractor will perform the services described in Exhibit A.
- 2.2 **Payments:** SMAQMD will make the payments outlined in Exhibit B to the Contractor so long as the Contractor is providing the services set forth in Exhibit A.

LANGUAGE TO BE DETERMINED BASED UPON RFP RESPONSE

1. Contractor is solely responsible for payment to all vendors, subcontractors and consultants used in the performance of this Contract. It is not the intent of SMAQMD and Contractor to create third party beneficiary rights in these entities.
 2. In the event Contractor fails to comply with any provision of this Contract, SMAQMD may withhold payment until Contractor has corrected the noncompliance.
 3. If this Contract involves media placements, Contractor may not retain commissions on media placements purchased for the benefit of SMAQMD. At the discretion of SMAQMD, the value of any commissions will be applied toward the purchase of additional SMAQMD media placement or discounted from the total bill. Contractor will be paid an hourly rate for media placement services as provided for in this Contract.
- 2.3 **Rights to Contracted Products:** All reports, research data, and every other work product of any kind or character arising from or relating to this Contract is the exclusive property of SMAQMD. SMAQMD may use these work products for any purpose whatsoever and has the sole right to the copyright or trademark for these work products.
- 2.4 **Contract Term:** The term of this Contract will commence _____ and terminate _____, unless extended by mutual consent of the parties.
- 2.5 **Applicable Laws/Choice of Law/Venue:** Contractor must observe and comply with all applicable laws and regulations. This Contract is executed in Sacramento County, California and is governed by the laws of the State of California. Any action arising out of this Contract must be filed in a state court or federal court located in Sacramento, California.

2.6 **Status of Contractor:** Contractor is an independent contractor, and no relationship of employer-employee exists between SMAQMD and Contractor, or Contractor's employees, subcontractors, or consultants. Accordingly, Contractor, its employees, subcontractors and consultants do not have any of the entitlements of a SMAQMD employee.

A. **Direction and Control:** Contractor is subject to the control and direction of the APCO regarding the designation of tasks to be performed and the results to be accomplished under this Contract, but not the means, methods, or sequence used by Contractor for accomplishing the tasks and results.

B. **Direction of Third Parties:** If the Contractor employs any third persons, these persons will be under the exclusive control of Contractor. All terms of employment, including but not limited to hours, wages, working conditions, discipline, hiring, and discharging will be determined by Contractor.

C. **Right to Bind:** Neither the Contractor nor its employees, subcontractors or consultants have the right to act on behalf of SMAQMD in any capacity, or to bind SMAQMD to any obligation.

D. **Taxes:** SMAQMD will not make any deductions or withholdings from the compensation paid to Contractor. Contractor must issue all forms required by federal and state laws for income and employment tax purposes, including W-2 and 941 forms, for all of Contractor's assigned personnel.

2.7 **Conflict of Interest:** No officer or employee of SMAQMD has any pecuniary interest, direct or indirect, in this Contract or the proceeds of the Contract. No officer or employee of Contractor may serve on SMAQMD's governing body or hold any SMAQMD position which nominates, recommends, supervises or authorizes payment to Contractor.

2.8 **Nondiscrimination:**

A. **Requirements:** Contractor must not discriminate based on:

1. Color, race, creed, national origin, religion, sex, age, or physical or mental handicap in violation of Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d) and its implementing regulations, or in violation of any other state or federal law;

2. Sexual orientation as determined by federal, state, or local laws and regulations.

B. **Prohibited Discrimination:** Prohibited discrimination under this Contract means disparate treatment on the basis of race, color, creed, national origin or sexual orientation. Discrimination includes, but is not limited to:

1. Denying persons any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Contract;
2. Subjecting persons to segregation or separate treatment in any matter related to the receipt of services;
3. Restricting persons in any way from the enjoyment of any advantage or privilege enjoyed by others under this Contract;
4. Treating persons differently from others in determining whether they satisfy any admission, enrollment quota, eligibility, membership, or other requirement that individuals must meet in order to be provided any service or benefit under this Contract;
5. Assigning times or places for the provision of services on the basis of race, color, creed, national origin or sexual orientation of the persons to be served.

2.9 **Indemnification:**

- A. **Scope:** Contractor will indemnify and defend SMAQMD, its officers, agents, employees and volunteers from any and all liabilities of any kind that arise from any negligent or wrongful acts or omissions of Contractor in his/her performance of this Contract. SMAQMD will indemnify and defend Contractor, its board, officers, agents, and employees, from any and all liabilities of any kind that arise from any negligent or wrongful acts or omissions of SMAQMD in its performance of this Contract.
- B. **Counsel:** Contractor will also use counsel reasonably acceptable to SMAQMD in carrying out its obligations under this section. The provisions of this section will survive the expiration or early termination of this Contract.

2.10 **Waiver of Claims:** Contractor waives any claims against SMAQMD, its officers, agents, employees or volunteers from damage or loss caused by:

- A. Any suit or proceeding directly or indirectly attacking the validity of this Contract, or any part of this Contract.
- B. Any judgement or award: (i) declaring this Contract, or any part of this Contract, either void or voidable, or (ii) delaying the performance of any part of this Contract.

2.11 **Insurance:**

- A. **Insurance Requirement:** Contractor will maintain insurance to cover its operations throughout this Contract and any Contract extensions.
 1. The insurance must meet the requirements in Exhibit C.

2. Any insurance or self-insurance maintained by SMAQMD will apply in excess of, and not contribute to, insurance maintained by Contractor.
3. Contractor will give SMAQMD 30-days written notice prior to modifying the insurance obtained under this section. SMAQMD may object to the modification within 15 days of receiving the notice. If SMAQMD objects, it may demand the relief specified in paragraph 2.16 (B).
4. This section does not limit Contractor's indemnification obligation in Section 2.9.

B. Involuntary Policy Modifications: If Contractor's insurer modifies its insurance in any manner that affects the specifications in Exhibit C, Contractor must notify SMAQMD within 48 hours of the modification. SMAQMD may demand that Contractor obtain additional coverage sufficient to comply with the specifications in Exhibit C, or may terminate this Contract as provided in section 2.16 (B).

- 2.12 **Assignments:** No performance required or payment due under this Contract may be subcontracted, delegated or assigned without the express written consent of SMAQMD.
- 2.13 **Subcontracts:** If the Contractor submitted the name of a subcontractor in the proposal or application for this Contract, SMAQMD's approval of the Contract is also an approval of the use of the named subcontractor.

In the event that any part of this Contract is subcontracted, Contractor agrees to document the following affirmative steps for utilizing Minority Business Enterprises (MBE) or Women Owned Business Enterprises (WBE) as required by the Environmental Protection Agency:

- A. Inclusion of MBEs and WBEs on solicitation lists.
 - B. Assure MBEs and WBEs are solicited once they are identified.
 - C. Where feasible, divide total requirements into smaller tasks to permit maximum MBE/WBE participation.
 - D. Where feasible, establish delivery schedules which will encourage MBE and WBE participation.
 - E. Encourage use of the services of the U.S. Department of Commerce's Minority Business Development Agency (MBDA) and the U.S. Small Business Administration to identify MBEs and WBEs.
- 2.14 **Successors:** This Contract will bind the successors of SMAQMD and Contractor in the same manner as if they were expressly named.
- 2.15 **Alteration:** No alteration or variation of the terms of this Contract is valid unless made in writing and signed by both parties.

2.16 Recordkeeping:

- A. **Records:** Contractor will maintain all necessary records, books and accounts to verify that the Contract funds are used only for the purposes stated in this Contract.
- B. **Audits:** SMAQMD may audit all expenditures made by the Contractor under this Contract. Contractor must ensure that SMAQMD staff have access, at all reasonable times, to the documents kept by Contractor in connection with all funds expended under this Contract.
- C. **Duration:** Contractor must maintain these documents for 5 years after the termination of this Contract and any Contract extensions. At the end of the 5-year period, Contractor must either continue to maintain the documents or surrender the documents to SMAQMD – unless the APCO states, in writing, that Contractor may destroy documents.

2.17 Termination:

- A. **30-day Notice Termination:** Either SMAQMD or Contractor may terminate this contract for any reason by giving the other party 30-days written notice. If this contract is terminated under this paragraph, SMAQMD may proceed with the work in any manner deemed proper by SMAQMD without recourse by Contractor, its officers, agents, employees or volunteers.
- B. **5-day Notice Termination:** SMAQMD, through its APCO, may terminate this Contract with 5 days written notice if Contractor fails to perform any of the terms and conditions of this Contract in the time and manner specified. If the Contract is terminated under this paragraph, SMAQMD may proceed with the work in any manner deemed proper by SMAQMD without recourse by Contractor, its officers, agents, employees or volunteers.
- C. **Immediate Termination:** SMAQMD, through its APCO, may terminate or amend this Contract without prior notice if advised that funds are not available for this Contract or any portion of this Contract, or if funds are not specifically appropriated for this Contract in SMAQMD's final budget for the term of this Contract and any extensions to the Contract. If SMAQMD terminates or amends this Contract under this paragraph, SMAQMD must serve notice of the action on the Contractor within 2 working days. Contractor will be paid for expenses listed in Exhibit B and work performed through the termination date.

2.18 Disputes:

- A. **APCO Decision:** Any dispute under this Contract will be settled in a written decision by the APCO. The APCO must mail a copy of the decision to Contractor. Contractor is not excused from performance of this Contract while the APCO's decision is pending.

- B. **Finality of the Decision and Exceptions:** The APCO's decision is final unless Contractor files a written appeal with the SMAQMD Board of Directors within 30 days from the date of the APCO's decision. Any appeal must detail the basis of the appeal and contain copies of all documentation supporting Contractor's position.
 - C. **Appeals:** The SMAQMD Board will hear the appeal at a public Board meeting. The Contractor may present testimony and evidence supporting its position at the meeting. Contractor and SMAQMD will perform all duties and obligations in accordance with the APCO's decision pending final Board action. The decision of the Board is a final agency action and may be judicially appealed.
- 2.19 **Waiver of Contract Provisions:** Waiver by either party of any default, breach or condition precedent will not be construed as waiver of any other default, breach or condition precedent or right under this Contract.
- 2.20 **Time:** Time is of the essence in the performance of each of the provisions of this Contract.
- 2.21 **Severability:** If any provision of this Contract is held invalid or unenforceable, its invalidity or unenforceability will not affect any other provisions of this Contract, and this Contract will be construed and enforced as if such provision had not been included.
- 2.22 **Payments that contravene the law:** SMAQMD has no liability for payments that are found to contravene the law. Contractor will reimburse SMAQMD for any payments made by SMAQMD to Contractor and later determined to contravene federal, state or local laws and regulations.
- 2.23 **Contingency Clause:** This contract is subject to any contingency clauses stated in Exhibit B - Payment Schedule and Terms.
- 2.24 **Special Provisions – Congestion Management and Air Quality (CMAQ) Funds:**
- A. **Applicability:** _____ (SMAQMD staff to initial if CMAQ funds will be used.) This section applies only if the Contractor will receive CMAQ funds. Inclusion of this section is a requirement of the SMAQMD Disadvantaged Business Enterprise (DBE) Program for CMAQ-funded projects. See Contract, Exhibit E.
 - B. The SMAQMD encourages the participation of DBEs as defined in Title 49, Code of Federal Regulations part 26 (49 CFR 26) in the performance of contracts financed in whole or in part with Federal Funds.
 - C. **Provisions:** If this project is funded by federal funds, this project is subject to 49 CFR 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." If all or some of the funds paid to Contractor are CMAQ funds, the following additional contract terms apply:

- i. **Subcontractor Payments:** The Contractor will pay each subcontractor for satisfactory performance no later than 10 days from the receipt of each payment the Contractor receives from SMAQMD. Any delay or postponement of payment from this time frame may occur only for good cause following written approval of SMAQMD. This paragraph applies to both Disadvantaged Business Enterprises (DBE) and nonDBE subcontractors.
- ii. **Retainage Releases:** The Contractor will release retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from this time frame may occur only for good cause following written approval of SMAQMD. This paragraph applies to both Disadvantaged Business Enterprises (DBE) and nonDBE subcontractors.
- iii. **Nondiscrimination:** The Contractor or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor will carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SMAQMD deems appropriate. If there is a conflict between the provisions of this paragraph and section 2.4, this paragraph will control.

2.25 **Entire Agreement:** This Contract constitutes the entire agreement between SMAQMD and Contractor. Both parties revoke all prior or contemporaneous oral or written agreements between them that are inconsistent with this Contract. In the event of a dispute between the parties regarding the Contract, this Contract will be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Contract. This Contract consists of:

- A. Exhibit A – Scope of Services
- B. Exhibit B – Payment Schedule and Terms
- C. Exhibit C – Insurance Requirements
- D. Exhibit D – Disadvantaged Business Enterprises Requirements

2.26 **Communications:** Any communication between the parties that is required under the provisions of this Contract must be in writing, and be either: (i) personally delivered, (ii) sent by prepaid, certified first class mail, return receipt requested, or (iii) sent by facsimile (provided confirmation of delivery is obtained at the time of transmission). Communications must be addressed to the parties as follows:

To Contractor

Name & Title
Title
Address
City State and Zip
Fax:

To SMAQMD

Larry Greene, APCO
Sacramento Metropolitan AQMD
777 12th Street, Third Floor
Sacramento, CA 95814-1908
Fax: (916) 874-4805

- A. **Change of Address:** Either party may change the address for service by giving 15 days advance written notice to the other party.
- B. **Effective Date:** All notices will be effective upon receipt and will be deemed received: (i) upon delivery, if personally delivered, (ii) on the 5th day following deposit in the mail, if sent by certified mail, or (iii) upon the date stated in the facsimile delivery confirmation, if sent by facsimile.

2.27 **Contract Manager:** _____ is the SMAQMD's named Contract Manager for this contract. It is the responsibility of the Contract Manager to: 1) verify compliance with the terms and conditions of the contract, 2) determine that the work has been completed, 3) ensure that funding is available to pay approved invoices, and 4) approve all invoices under the Contract.

2.28 **Authority to Bind:** The persons signing on behalf of the parties to this Contract warrant that they have the legal authority to execute the Contract.

Exhibit A
Scope of Services

See Attachment #1

Exhibit B
Payment Schedule and Terms

Sample

1. Contractor must perform and complete all work required under this Contract in a professional manner and in accordance with the professional standards observed by competent practitioners of the profession in which Contractor, its subcontractors and agents, are engaged.
2. The APCO has the sole discretion to determine whether Contractor has successfully completed the tasks.
3. It is understood by Contractor that \$_____ per fiscal year is the maximum allowed under this Contract.
4. It is the responsibility of the Contractor to successfully complete the requested services as outlined in Exhibit A, including expenses and the acquisition of materials and supplies, while remaining within the approved budget.

Exhibit C

Insurance Requirements

Without limiting Contractor's indemnification, Contractor will procure and maintain for the duration of the contract, insurance against claims for injuries or persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives or employees. SMAQMD will retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the SMAQMD's Liability & Property Insurance Office, the insurance provisions in these requirements do not provide adequate protection for SMAQMD and for members of the public, SMAQMD may require Contractor to obtain insurance sufficient in coverage, form and amount to provide adequate protection. SMAQMD's requirement must be reasonable but will be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

Verification of Coverage

Contractor will furnish SMAQMD with certificates evidencing coverage required above. Certified copies of required endorsements must be attached to provided certificates. All certificates are to be received and approved by SMAQMD before work commences. SMAQMD reserves the right to require that Contractor provide complete, certified copies of any policy of insurance offered in compliance with these specifications. As an alternative to insurance certificates, the Contractor's insurer may voluntarily provide complete, certified copies of all required insurance policies, including endorsements, affecting the coverage required by these specifications.

Minimum Scope of Insurance

Coverage will be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3. Worker's Compensation insurance as required by the State of California.
4. Employer's Liability Insurance.

Minimum Limits of Insurance

Contractor will maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit will apply separately to this project/location or the general aggregate limit will be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation: Statutory
4. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Deductible and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by SMAQMD. At the option of SMAQMD, either: the insurer will reduce or eliminate such deductibles or self-insured retention as respects SMAQMD, its officers, officials, employees and volunteers; or the Contractor will procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. SMAQMD, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; or premises owned, occupied, or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage may not contain special limitations on the scope of protection afforded to SMAQMD, its officers, officials, employees, agents or volunteers.
2. For any claims related to this project, the Contractor's insurance coverage will be primary insurance as respects SMAQMD, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by SMAQMD, its officers, officials, employees, agents or volunteers will be excess of the Contractor's insurance and will not contribute to it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties will not affect coverage provided to SMAQMD, its officers, official, employees, agents or volunteers.
4. The Contractor's insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. SMAQMD may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Claims Manager (Special SMAQMD Risk Management Authority) or SMAQMD Counsel, the interests of SMAQMD and the general public are adequately protected.

Exhibit D
Disadvantaged Business Enterprises Requirements

I. DBE Participation Information

(Bidder/Respondent must check Option 1 or Option 2 below)

_____ Option 1 – No certified DBE participation proposed under this Contract.

_____ Option 2 – It is proposed that the following DBE(s) be used on this Contract

Name of Certified DBE	DBE Certification No.
DBE Address	DBE Telephone No.
	DBE E-Mail Address
Capacity of DBE (e.g., contractor, subcontractor, vendor)	\$ Amount DBE Participation
Description of services or material to be provided by DBE	

Submitted By:

Signature	Date
Print Name and Title	
Name of Bidder, if different than signatory	

II. Identifying DBEs

Bidders shall be fully informed in respect the requirements of the DBE Regulations. The DBE Regulations in their entirety are incorporated herein by this reference. The regulations include the following information:

- A. A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
- B. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies or as a trucking company.
- C. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contributions, control, managements, risks and profits of the joint venture commensurate with its ownership interest.
- D. A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a SMAQMD element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- E. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 - 1) The Caltran's "Civil Rights" web site at: <http://www.dot.ca.gov/hq/bep>.
 - 2) The Caltran's DBE Directory. This Directory may be obtained from the Department of Transportation, Materiel Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520.
- F. When Reporting DBE participation, bidders may count the cost of materials or supplies purchased from DBEs as follows:
 - 1) If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will count toward DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - 2) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph F.2. if the person owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph F.2.

- 3) If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

G. When reporting DBE participation, bidders may count the participation of DBE trucking companies as follows:

- 1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
- 2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- 3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- 4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- 5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
- 6) For the purposes of this paragraph G, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

H. Bidders are encouraged to use services offered by financial institutions owned and controlled by DBEs.