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 U.S. Department of Housing  
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 Cities of Santa Clara County

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 U.S. Department of Transportation

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 Contra Costa County

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 San Francisco Bay Conservation  
 and Development Commission

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 Marin County and Cities

SAM LICCARDO  
 San Jose Mayor's Appointee

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 Napa County and Cities

JAKE MACKENZIE  
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 Association of Bay Area Governments

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 California State  
 Transportation Agency

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 Solano County and Cities

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 San Francisco Mayor's Appointee

STEVE HEMINGER  
 Executive Director

ANDREW B. FREMIER  
 Deputy Executive Director

June 12, 2015

**Addendum No. 1  
 TO INVITATION FOR BID  
 For Electronic Toll Collection (FasTrak®) Toll Tags  
 Dated May 26, 2015**

Dear Supplier:

This letter is Addendum No. 1 to the Invitation for Bid (IFB) for Electronic Toll Collection (FasTrak®) Toll Tags, dated May 26, 2015. Where existing provisions of the IFB are modified, deleted text is shown in strike-through format, added text is *italicized*. The IFB is revised as follows:

<u>Addendum Item</u>	<u>Reference</u>	<u>Change(s)</u>	
1.	IFB, Letter of Invitation, Bidder Selection Timetable, Page 3	Wednesday, June 5, 2015, 4:00 p.m.	Closing date & time for clarifications & exceptions
		<del>Friday</del> <i>Tuesday</i> , June <del>16</del> <i>14</i> , 2015, 4:00 p.m.	Closing date & time for protest of IFB Specifications
		<b>Friday, June 19, 2015, 4:00 p.m.</b>	<b>Closing date &amp; time for receipt of bids &amp; bid opening</b>
		Wednesday, July 8, 2015	BATA Oversight Committee consideration of recommendation for award
		Friday, July 17, 2015 (approximate)	Issuance of Purchase Order
2.	IFB, General Conditions, Section C.2, Termination for Default, Paragraph 1, Page 5	If Supplier becomes insolvent, assigns or subcontracts the work without BATA approval, does not deliver the work specified in the Contract or fails to perform in the manner called for, or fails to comply with any other material provision of the Contract, BATA may terminate the Contract for default. Termination shall be effected by serving a <del>ten (10)</del> <i>thirty (30)</i> days advance written notice of termination on Supplier, setting forth the manner in which Supplier is in default. If Supplier does not cure the breach or propose a plan and schedule for curing the breach acceptable to BATA within the <del>ten (10)</del> <i>thirty (30)</i> day period, the Contract shall be deemed terminated.	

<p>3.</p>	<p>IFB, General Conditions, Section D, Indemnity, Page 6</p>	<p>Supplier agrees to indemnify, <i>defend</i> and hold BATA, MTC, their commissioners, officers, and employees (<i>BATA Indemnified Parties</i>) <del>and agents</del> harmless from all claims, demands, suits, losses, damages, injury, and liability (including any and all costs and expenses in connection therewith), <del>incurred by reason of any</del> arising out of a negligent or otherwise wrongful act, or failure to act of Supplier, its officers, <del>agents</del>, employees and subcontractors or any of them, under <del>or in connection with</del> this IFB. <del>Supplier agrees at its own cost expense and risk to defend any and all claims, demands, suits, or other legal proceedings brought or instituted against BATA, MTC, their commissioners, officers, agents, and employees, or any of them arising out of such acts or failure to act, and to pay and satisfy any resulting judgments. Supplier does not have any indemnity obligations under this provision for any claim or allegation that Supplier's work or goods delivered under the Contract, any portion thereof, or any portion thereof in combination with Supplier's work or goods delivered under any other agreement, infringes that patent, copyright, trade-secret, design, or other intellectual-property or proprietary right of any third party. Except as set forth in Appendix D, Section 13, in no event shall Supplier be liable for any indirect, consequential, incidental, or special damages regardless of how such damages arise.</del></p>
<p>4.</p>	<p>IFB, General Conditions, Section E, Assignment, Page 6</p>	<p>The Supplier shall not assign any right, duty or responsibility in this contract without the prior written consent of BATA thereto, <i>such consent not to be unreasonably withheld</i>; provided however, that claims for money due or to become due to Supplier from BATA under this Contract may be assigned without such approval. Notice of any such assignment shall be furnished promptly to BATA, and any such assignment shall be subject to all authorized withholdings in favor of BATA.</p>
<p>5.</p>	<p>IFB, Special Conditions, Section F, Liquidated Damages, Page 7</p>	<p>BATA requires that the first shipment of toll tags purchased as a result of this IFB be delivered no later than the due date of October 1, 2015. In the event of delay in delivery of the first shipment of toll tags beyond the date set forth in the IFB (see Appendix A, Section 8, Schedule) or authorized extensions of the date, damage will be sustained by BATA. It is impracticable to determine the actual amount of the damage caused by such delay. Therefore, the selected Supplier agrees to pay BATA as liquidated damages, and not as a penalty, the amount of \$10,000 per each calendar day of the delay <i>subject to the overall liability cap under Appendix D, Section 13.</i></p>

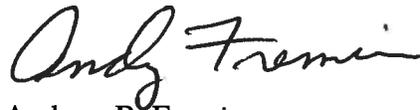
<p>6.</p>	<p>IFB, Appendix A, Specifications for ETC FasTrak® Toll Tags, Section 6, Mobile Tag Reader Kit, Page 14</p>	<p>Supplier shall provide a mobile RFID tag reader kit a minimum of 30 days before the first shipment. The mobile RFID tag reader shall be able to read toll tags shipped by the Supplier, verify the toll tags assigned facility codes, and verify the toll tags are not defective. The mobile RFID tag reader shall be for handheld <i>or desktop</i> use, <del>include a display that shows toll tag data</del>, and be able to transfer toll tag data from the reader to a personal computer with a Windows operation system.</p> <p>At a minimum, the kit shall include the mobile RFID tag reader, user manual, charger <i>or power</i> cable, <del>USB</del> data cable <i>that allows the interface between the tag reader and personal computer</i>, and host application software CD.</p>
<p>7.</p>	<p>IFB, Appendix A, Specifications for ETC FasTrak® Toll Tags, Section 7, Warranty, Page 14</p>	<p>Supplier shall provide a standard one-year warranty. Should any of the tags prove <i>to be materially</i> defective due to failure to conform with specifications or due to otherwise <i>materially</i> defective workmanship or materials (including battery) within the specified warranty period, the Supplier agrees to replace or repair said defective items within 30 days of notice by BATA. Supplier shall bear any costs for material, labor, and shipping (including cost for shipping to and from the Supplier) for claims made during the warranty period.</p>
<p>8.</p>	<p>IFB, Appendix D, General Conditions for BATA Purchase Orders, Section 8.b, Termination, First Paragraph, Page 29</p>	<p>If Supplier becomes insolvent, assigns or subcontracts the work without BATA approval, does not deliver the work specified in the Contract or fails to perform in the manner called for, or fails to comply with any other material provision of the Contract, BATA may terminate the Contract for default. Termination shall be effected by serving a <del>ten</del> <del>(10)</del> <i>thirty (30)</i> day advance written notice of termination on Supplier, setting forth the manner in which Supplier is in default. If Supplier does not cure the breach or propose a plan and schedule for curing the breach acceptable to BATA within the <del>ten (10)</del> <i>thirty (30)</i> day period, the Contract shall be deemed terminated.</p>
<p>9.</p>	<p>IFB, Appendix D, General Conditions for BATA Purchase Orders, Section 10, Indemnification, Page 29</p>	<p><del>Supplier shall indemnify and hold harmless BATA and its officers, agents and employees from and against all claims, demands, suits, loss damage, injury and liability, including any and all costs and expenses incurred in connection therewith, however caused, resulting from, arising out of or in any way connected with Supplier's performance of the Contract, including delivery of materials or equipment to BATA at the time and point of delivery indicated when delivery is an obligation of Supplier under the Contract. Supplier agrees to</del></p>

		<p><i>indemnify, defend and hold BATA, MTC, their commissioners, officers, and employees (BATA Indemnified Parties) harmless from all claims, demands, suits, losses, damages, injury, and liability (including any and all costs and expenses in connection therewith), arising out of a negligent or otherwise wrongful act, or failure to act of Supplier, its officers, employees and subcontractors or any of them, under this IFB. Supplier does not have any indemnity obligations under this provision for any claim or allegation that Supplier’s work or goods delivered under the Contract, any portion thereof, or any portion thereof in combination with Supplier’s work or goods delivered under any other agreement, infringes that patent, copyright, trade-secret, design, or other intellectual-property or proprietary right of any third party. Except as set forth in Appendix D, Section 13, in no event shall Supplier be liable for any indirect, consequential, incidental, or special damages regardless of how such damages arise.</i></p>
10.	IFB, Appendix D, General Conditions for BATA Purchase Orders, Page 30	<p><b>“13. LIMITATION ON LIABILITY</b></p> <p><i>Supplier’s total liability to BATA and BATA Indemnified Parties, however arising, shall not exceed \$500,000.”</i></p>
11.	IFB, Appendix D, General Conditions for BATA Purchase Orders, Page 30	<p><b>“14. WAIVER OF CONSEQUENTIAL DAMAGES</b></p> <p><i>Neither Supplier nor any of the BATA Indemnified Parties shall be liable for lost profits, frustration of economic or business expectations, or any other consequential, indirect, incidental, or special damages arising from performance or nonperformance of the contract, even if notice is issued as to the potential for such claims. The foregoing limitation on Supplier’s liability shall not apply to or limit any right of recovery BATA may have respecting liquidated damages as referenced in the Invitation for Bid, Special Conditions, Section F, Liquidated Damages.”</i></p>
12.	IFB	See Attachment 1 for Appendix E, IRAN CONTRACTING ACT
13.	IFB, Instructions to Bidders and Bidding Requirements, Page 5	<p><b>E. Public Records</b></p> <p><i>This IFB and any material submitted by a bidder in response to this IFB are subject to public inspection under the California Public Records Act (Government Code Section 6250 et seq.), unless exempt by law.</i></p>

The remaining provisions of the IFB, May 26, 2015, remain unchanged. In the event of a conflict between any provision of this Addendum and the previous IFB, this Addendum shall prevail.

Any questions concerning this addendum to the IFB should be directed to Samuel Fitzer, BATA Project Manager, at (510) 817-5936 or [sfitzer@mtc.ca.gov](mailto:sfitzer@mtc.ca.gov).

Sincerely,



Andrew B. Fremier  
Deputy Executive Director, Operations

ABF: mb

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**ATTACHMENT 1**  
**APPENDIX E, IRAN CONTRACTING ACT**  
**(Public Contract Code sections 2202-2208)**

Prior to bidding on, submitting a proposal or executing a contract or renewal for a BATA contract for goods or services of \$1,000,000 or more, a Proposer must either: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

To comply with this requirement, please insert your Proposer or financial institution name and Federal ID Number (if available) and complete one of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

**OPTION #1 - CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is not on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Proposer Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in</i>

**OPTION #2 – EXEMPTION**

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a Proposer/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Proposer Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	

*Printed Name and Title of Person Signing*

*Date Executed*

**INVITATION FOR BID (IFB)  
FOR ELECTRONIC TOLL COLLECTION (FASTRAK®) TOLL TAGS,  
DATED MAY 27, 2015**

**REQUEST FOR CLARIFICATIONS AND EXCEPTIONS RECEIVED FROM BIDDERS ON  
JUNE 5, 2015**

**Q1: Will all bidders be required to provide evidence that tags to be furnished will satisfy Title 21? If so, will that evidence be published by BATA with consideration of the time frames specified in IFB Section I.D.6?**

A1: See IFB, Letter of Invitation, Minimum Qualifications, page 2, and IFB, Special Conditions, Section III.A, page 6, for Minimum Qualification requirements.

Bidder's information that verify minimum qualifications will not be published but will be subject to disclosure under Government Code Sections 6250 et seq, "California Public Records Act".

**Q2: Can the notice and cure period for default in General Conditions Section C.2 be modified from ten (10) days to thirty (30) days?**

A2: Please see addendum #1, Item#2

**Q3: Request for the following change in language for General Conditions Section D, Indemnity: "Supplier agrees to indemnify, defend and hold BATA, MTC, their commissioners, officers, and employees (BATA Indemnified Parties) ~~and agents~~ harmless from all claims, demands, suits, losses, damages, injury, and liability (including any and all costs and expenses in connection therewith), ~~incurred by reason of any~~ arising out of a negligent or otherwise wrongful act, or failure to act of Supplier, its officers, ~~agents,~~ employees and subcontractors or any of them, under ~~or in connection with~~ this IFB. ~~Supplier agrees at its own cost expense and risk to defend any and all claims, demands, suits, or other legal proceedings brought or instituted against BATA, MTC, their commissioners, officers, agents, and employees, or any of them arising out of such acts or failure to act, and to pay and satisfy any resulting judgments.~~ Supplier does not have any indemnity obligations under this provision for any claim or allegation that Supplier's work or goods delivered under the Contract, any portion thereof, or any portion thereof in combination with Supplier's work or goods delivered under any other agreement, infringes that patent, copyright, trade-secret, design, or other intellectual-property or proprietary right of any third party. Except as set forth in Appendix D, Section 13, in no event shall Supplier be liable for any indirect, consequential, incidental, or special damages regardless of how such damages arise."**

A3: Please see addendum #1, Item#3

**Q4: Request for the following change in language for General Conditions Section E, Assignment:**

**"The Supplier shall not assign any right, duty or responsibility in this contract without the prior written consent of BATA thereto, such consent not to be unreasonably withheld; provided however, that claims for money due or to become due to Supplier from BATA under this Contract may be assigned without such approval. Notice of any such assignment**

shall be furnished promptly to BATA, and any such assignment shall be subject to all authorized withholdings in favor of BATA.”

A4: Please see addendum #1, Item#4

**Q5: Request for the following change in language for Special Conditions Section F, Liquidated Damages:**

“BATA requires that the first shipment of toll tags purchased as a result of this IFB be delivered no later than the due date of October 1, 2015. In the event of delay in delivery of the first shipment of toll tags beyond the date set forth in the IFB (see Appendix A, Section 8, Schedule) or authorized extensions of the date, damage will be sustained by BATA. It is impracticable to determine the actual amount of the damage caused by such delay. Therefore, the selected Supplier agrees to pay BATA as liquidated damages, and not as a penalty, the amount of \$10,000 per each calendar day of the delay subject to the overall liability cap under Appendix D, Section 13.”

A5: Please see addendum #1, Item#5

**Q6: May the 6204 toll RFID reader with external antenna fulfill the mobile tag reader kit requirement to read T21 tags and identify its facility code and ID?**

A6: Please see addendum #1, Item#6

**Q7: Request for the following change in language for Appendix A, Specifications for ETC FasTrak Toll Tags, Section 7, Warranty:**

“Supplier shall provide a standard one-year warranty. Should any of the tags prove to be materially defective due to failure to conform with specifications or due to otherwise materially defective workmanship or materials (including battery) within the specified warranty period, the Supplier agrees to replace or repair said defective items within 30 days of notice by BATA. Supplier shall bear any costs for material, labor, and shipping (including cost for shipping to and from the Supplier) for claims made during the warranty period.”

A7: Please see addendum #1, Item#7

**Q8: Can the notice and cure period for default in Appendix D, General Conditions for BATA Purchase Orders, Section 8.b, Termination, be modified from ten (10) days to thirty (30) days?**

A8: Please see addendum #1, Item#8

**Q9: Request for the following change in language for Appendix D, General Conditions for BATA Purchase Orders, Section 10, Indemnification:**

“Supplier agrees to indemnify, defend and hold BATA, MTC, their commissioners, officers, and employees (BATA Indemnified Parties) ~~and agents~~ harmless from all claims, demands, suits, losses, damages, injury, and liability (including any and all costs and expenses in connection therewith), ~~incurred by reason of any~~ arising out of a negligent or otherwise wrongful act, or failure to act of Supplier, its officers, ~~agents,~~ employees and subcontractors or any of them, ~~under or in connection with this IFB. Supplier agrees at its own cost expense and risk to defend any and all claims, demands, suits, or other legal proceedings brought or instituted against BATA, MTC, their commissioners, officers, agents, and employees, or any~~

~~of them arising out of such acts or failure to act, and to pay and satisfy any resulting judgments.~~ Supplier does not have any indemnity obligations under this provision for any claim or allegation that Supplier's work or goods delivered under the Contract, any portion thereof, or any portion thereof in combination with Supplier's work or goods delivered under any other agreement, infringes that patent, copyright, trade-secret, design, or other intellectual-property or proprietary right of any third party. Except as set forth in Appendix D, Section 13, in no event shall Supplier be liable for any indirect, consequential, incidental, or special damages regardless of how such damages arise."

A9: Please see addendum #1, Item#9

**Q10: Request to add the following clause to Appendix D General Conditions for BATA Purchase Orders:**

**"13. LIMITATION ON LIABILITY**

**Supplier's total liability to BATA and BATA Indemnified Parties, however arising, shall not exceed \$500,000."**

A10: Please see addendum #1, Item#10

**Q11: Request to add the following clause to Appendix D General Conditions for BATA Purchase Orders:**

**"14. WAIVER OF CONSEQUENTIAL DAMAGES**

**Neither Supplier nor any of the BATA Indemnified Parties shall be liable for lost profits, frustration of economic or business expectations, or any other consequential, indirect, incidental, or special damages arising from performance or nonperformance of the contract, even if notice is issued as to the potential for such claims. The foregoing limitation on Supplier's liability shall not apply to or limit any right of recovery BATA may have respecting liquidated damages as referenced in the Invitation for Bid, Special Conditions, Section F, Liquidated Damages."**

A11: Please see addendum #1, Item#11