



ADRIENNE J. TISSIER, CHAIR  
Chair of MTC and BATA

November 29, 2011

AMY REIN WORTH, VICE CHAIR  
Vice Chair of MTC and BATA

**Addendum No. 1 to  
Request For Qualifications  
for the Regional Agency Headquarters Facility  
At 390 Main Street, San Francisco:  
Renovation And Seismic Retrofit Design  
Dated November 9, 2011**

TOM BATES  
Vice Chair,  
BATA Oversight Committee

DAVE CORTESE  
Chair,  
MTC Administration Committee

BILL DODD  
Chair,  
BATA Oversight Committee

Dear Consultant:

SCOTT WIENER  
Vice Chair,  
MTC Administration Committee

This letter is Addendum No. 1 to the Request for Qualifications (RFQ) for the Regional Agency Headquarters Facility at 390 Main Street, San Francisco: Renovation and Seismic Retrofit Design, dated November 9, 2011. Where text is revised, deleted text is shown in strike-through format; added text is *italicized*. The RFQ is revised as follows:

STEVE HEMINGER  
Executive Director

ANN FLEMER  
Deputy Executive Director, Policy

ANDREW B. FREMIER  
Deputy Executive Director, Operations

<u>Addendum Item</u>	<u>Reference</u>	<u>Change(s)</u>
1.	Cover Letter, Page 2 and RFQ, Page 4, IV. Consultant Selection Table	<del>2:00 p.m., on Monday, November 28, 2011</del> <i>4:00 p.m. Wednesday, November 30, 2011</i> : Closing date/time for receipt of requests for clarification/exceptions.
2.	RFQ, Page 8, V. Form of Proposal, H. Financial Responsibility,	In a separate sealed envelope: Provide a copy of Proposer's most recent annual and past quarterly financial filing. The statements <del>will not be considered part of the SOQ for purposes of the California Public Records Act</del> and will be reviewed to determine responsibility only. All statements will be returned to all proposers prior to consultant selection.
3.	RFQ, Page 8, V. Form of Proposal, Add Article K	<i>K. Iran Contracting Act Per AB 1650, Iran Contracting Act of 2010, which adds Sections 2200 et seq. to the California Public Contract Code, if the contract resulting from this RFQ will equal or exceed one million dollars (\$1,000,000) Proposer must certify, at the time of proposal submission that proposer is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable. Submit a signed Iran Contracting Act Document (Appendix F).</i>

<u>Addendum Item</u>	<u>Reference</u>	<u>Change(s)</u>
4.	RFQ, Pages 10-11, VII. General Conditions, D. Contract Arrangements, First Paragraph, Last Sentence	If no such change is requested, the Consultant will be deemed to accept BAHA’s standard contract provisions, unless such language is protested in accordance with Section VI.F- E below.
5.	RFQ, Page 11, VII. General Conditions, D. Contract Arrangements, Last Paragraph, 2 <sup>nd</sup> Sentence	When the design scope is finalized, <del>BATA</del> BAHA at its sole discretion may amend the contract to add completion of design and construction administration.
6.	RFQ, Page 12, VII. General Conditions, F. Public Records	<p><b>F. Public Records</b></p> <p><del>With the exception of the information submitted under Section V.H, Financial Responsibility, above, this RFQ and any material submitted by a proposer in response to this RFQ are subject to public inspection under the California Public Records Act (Government Code § 6250 et seq.), unless exempt by law. SOQs will remain confidential until BAHA has authorized award.</del></p> <p><i>This RFQ and any material submitted in response to this RFQ are subject to public inspection under the California Public Records Act (Government Code § 6250 et seq.), unless exempt by law. Other than proprietary information or other information exempt from disclosure by law, the content of SOQs submitted to BATA will be made available for inspection consistent with its policy regarding Public Records Act requests.</i></p> <p><i>Each proposer must clearly mark each page of the SOQ, including financial responsibility information submitted under Section V.H. of this RFQ, that the proposer considers to contain trade secrets or other confidential commercial or financial information that the proposer believes would cause substantial injury to the proposer’s competitive position, if disclosed, and include the following notice at the front of its SOQ:</i></p>

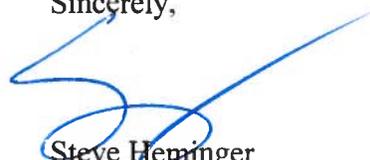
<u>Addendum Item</u>	<u>Reference</u>	<u>Change(s)</u>
6., continued		<p>“The data on the following pages of this SOQ, marked along the right margin with a vertical line, contain technical or financial information which are trade secrets and/or which, if disclosed, would cause substantial injury to the proposer’s competitive position. The proposer requests that such data be used for review by BAHA only, but understands that exemption from disclosure will be limited by BAHA’s obligations under the California Public Records Act. [List pages].”</p> <p><i>Failure to include this notice with relevant page numbers shall render any individual markings inadequate. Individual pages shall accordingly not be treated confidentially. Any language purporting to render the entire SOQ or the cost proposal confidential or proprietary will be regarded as ineffective and will be disregarded.</i></p> <p><i>In the event properly marked data is requested pursuant to the California Public Records Act, the proposer will be advised of the request and given the opportunity to provide to BAHA a detailed statement indicating the reasons it believes the information should be withheld from disclosure. The proposer may be asked by BAHA, as a condition of non-disclosure, to indemnify and hold BAHA harmless, in the event of claims made as a result of non-disclosure.</i></p>
7.	RFQ, Page 12, VII. General Conditions, Add Article H	<p><b>H. Organization Conflicts of Interest</b></p> <p><i>Proposer shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under the agreement resulting from this and other BAHA solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to BAHA; a firm or person’s objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Project.</i></p> <p><i>Whenever BAHA is awarding a contract that involves the rendering of advice, it will consider whether there exists the potential for bias, because of other activities, relationships or contracts of the Consultant, and if so, whether any potential bias can be mitigated acceptably by BAHA and the Consultant.</i></p>

<u>Addendum Item</u>	<u>Reference</u>	<u>Change(s)</u>
7., continued		<i>Proposer shall not engage the services of any subcontractor or independent contractor on any work related to this Agreement if the subcontractor or independent contractor, or any employee of the subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.</i>
8.	RFQ, Page 20, Appendix D, <u>Synopsis of Provisions in BAHA's Standard Consultant Agreement</u>	Appendix D, <u>Synopsis of Provisions in BAHA's Standard Consultant Agreement</u> , is deleted in its entirety and replaced with the attached Appendix D, <u>Synopsis of Provisions in BAHA's Standard Consultant Agreement</u> .
9.	RFQ, Page 21, Appendix D-1, <u>Insurance Requirements</u>	Appendix D-1, <u>Insurance Requirements</u> , is deleted in its entirety and replaced with the attached Appendix D-1, <u>Insurance Requirements</u> .
10.	RFQ, Add Appendix F, <u>Iran Contracting Act Document</u>	<i>Appendix F, <u>Iran Contracting Act Document</u>, is added as attached. Return one signed original as a loose insert to the original SOQ.</i>

The remaining provisions of the RFQ, dated November 9, 2011, remain unchanged. In the event of a conflict between this addendum and the previous version(s), this addendum shall take precedence.

Any questions concerning this addendum to the RFP should be directed to Stephen Wolf, Project Manager, at (510) 817-5968 or [swolf@mtc.ca.gov](mailto:swolf@mtc.ca.gov).

Sincerely,



Steve Heminger  
Executive Director

SH: SW

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## **APPENDIX D: SYNOPSIS OF PROVISIONS IN BAHA'S STANDARD CONSULTANT AGREEMENT**

The selected Consultant/Contractor will be required to sign BAHA's standard consultant agreement, a copy of which standard agreement may be obtained from the Project Manager for this RFQ. In order to provide bidders with an understanding of some of BAHA's standard contract provisions, the following is a synopsis of the major requirements in our standard agreement for professional services. THE ACTUAL LANGUAGE OF THE STANDARD CONSULTANT AGREEMENT SUPERSEDES THIS SYNOPSIS.

Termination: BAHA may, at any time, terminate the Agreement upon written notice to Consultant. Upon termination, BAHA will reimburse the Consultant for its costs for incomplete deliverables up to the date of termination. Upon payment, BAHA will be under no further obligation to the Consultant. If the Consultant fails to perform as specified in the agreement, BAHA may terminate the agreement for default by written notice following a period of cure, and the Consultant is then entitled only to compensation for costs incurred for work products acceptable to BAHA, less the costs to BAHA of rebidding.

Insurance Requirement: See *Appendix D-1, Insurance Requirements*, attached hereto.

Independent Contractor: Consultant is an independent Consultant/Contractor and has no authority to contract or enter into any other agreement in the name of BAHA. Consultant shall be fully responsible for all matters relating to payment of its employees including compliance with taxes.

Indemnification: Consultant shall indemnify and hold harmless BAHA, BATA, MTC, BAAQMD, and their commissioners, directors, officers, agents, and employees (collectively "Indemnitees") from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith), to the extent arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, agents, employees and subcontractors, or any of them, under or in connection with this Agreement; and CONSULTANT agrees at its own cost, expense and risk to defend any and all such claims, actions, suits, or other legal proceedings brought or instituted against Indemnitees, or any of them, arising out of, pertaining to, or relating to any such negligence, recklessness, or willful misconduct, and to pay and satisfy any resulting judgments. As part of this defense obligation, Consultant agrees to either retain counsel to defend the Indemnitees or pay charges of the Indemnitees' attorneys with regard to the Claims and Losses. Consultant's duty to defend shall apply and be enforced even if it is alleged that the acts, omissions, or failures to act of parties other than Consultant, including BAHA and other Indemnitees, caused or contributed to the Claims and Losses.

The provisions set forth in this Section are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder is to be severable and enforceable. This indemnification shall survive termination or expiration of this Agreement.

Data Furnished by BAHA: All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("BAHA Data") made available to the Consultant by BAHA for use by the Consultant in the performance of its

services under this Agreement shall remain the property of BAHA and shall be returned to BAHA at the completion or termination of this Agreement. No license to such BAHA Data, outside of the Scope of Work of the Project, is conferred or implied by the Consultant's use or possession of such BAHA Data. Any updates, revisions, additions or enhancements to such BAHA Data made by the Consultant in the context of the Project shall be the property of BAHA.

Ownership of Work Product: All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("Work Product") written or produced by the Consultant under this Agreement and provided to BAHA as a deliverable shall be the property of BAHA. Consultant will be required to assign all rights in copyright to such Work Product to BAHA.

Personnel and Level of Effort: Personnel assigned to this Project and the estimated number of hours to be supplied by each will be specified in an attachment to the Agreement. No substitution of personnel or substantial decrease of hours will be allowed without prior written approval of BAHA.

Subcontracts: No subcontracting of any or all of the services to be provided by Consultant shall be allowed without prior written approval of BAHA. BAHA is under no obligation to any subcontractors.

Organization Conflicts of Interest: *Consultant shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to BAHA; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.*

*Consultant shall not engage the services of any subconsultant or independent contractor on any work related to this Agreement if the subconsultant or independent contractor, or any employee of the subconsultant or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.*

*If at any time during the term of this Agreement Consultant becomes aware of an organizational conflict of interest in connection with the work performed hereunder, Consultant shall immediately provide BAHA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. Consultant's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, BAHA becomes aware of an organizational conflict of interest in connection with Consultant's performance of the work hereunder, BAHA shall similarly notify Consultant. In the event a conflict is presented, whether disclosed by Consultant or discovered by BAHA, BAHA will consider the conflict presented and any alternatives proposed and meet with Consultant to determine an appropriate course of action. BAHA'S determination as to the manner in which to address the conflict shall be final.*

*Failure to comply with this section may subject the Consultant to damages incurred by the BAHA in addressing organizational conflicts that arise out of work performed by Consultant, or to termination of this Agreement for breach.*

Consultant's Records: Consultant shall keep complete and accurate books, records, accounts and any and all work products, materials, and other data relevant to its performance under this Agreement. All such records shall be available to BAHA for inspection and auditing purposes. The records shall be retained by Consultant for a period of not less than four (4) years following the fiscal year of the last expenditure under this Agreement.

Prohibited Interest: No member, officer or employee of BAHA can have any interest in this agreement or its proceeds and Consultant may not have any interest which conflicts with its performance under this Agreement.

Governing Law: The Agreement shall be governed by the laws of the State of California.

**APPENDIX D-1: INSURANCE REQUIREMENTS**

Minimum Insurance Coverages. CONSULTANT shall, at its own expense, obtain and maintain in effect at all times the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement, placed with insurers with a Best’s rating of A-X or better.

Yes (√)	<b>Please certify by checking the boxes at left that required coverages will be provided within five (5) days of BAHA’s notice to firm that it is the successful proposer.</b>
—	<u>Workers' Compensation Insurance</u> in the amount required by the applicable laws, and Employer’s Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per occurrence, and any and all other coverage of CONSULTANT’s employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation endorsement in favor of BAHA. Such Workers Compensation & Employers Liability may be waived, if and only for as long as CONSULTANT is a sole proprietor with no employees.
—	<p><u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of CONSULTANT and CONSULTANT’s officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal &amp; Advertising Injury liability with a limit of not less than \$1,000,000. Expense for Indemnitee’s defense costs shall be outside of policy limits and such policy shall be issued on a Duty to Defend Primary Occurrence Form.</p> <p>BAHA, MTC, BATA, and BAAQMD and their, directors, commissioners, officers, representatives, agents and employees are to be named as additional insureds. Such insurance as afforded by this endorsement shall be primary as respects any claims, losses or liability arising directly or indirectly from CONSULTANT’s operations.</p>
—	<u>Business Automobile Insurance</u> for all automobiles owned, used or maintained by CONSULTANT and CONSULTANT’s officers, agents and employees, including but not limited to owned, leased, non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence.
—	<u>Umbrella Insurance</u> in the amount of \$5,000,000 providing excess limits over Employer’s Liability, Automobile Liability, and Commercial General Liability Insurance.
—	<u>Errors and Omissions Professional Liability Insurance</u> in an amount no less than \$1,000,000. If such policy is written on a “Claims-Made” (rather than an “occurrence”) basis, CONSULTANT agrees to maintain continuous coverage in effect from the date of the commencement of services to at least three (3) years beyond the termination or completion of services or until expiration of any

	<p>applicable statute of limitations, whichever is longer. The policy shall provide coverage for all work performed by the CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between the CONSULTANT and any subcontractor/consultant shall relieve the CONSULTANT of the responsibility for providing this Errors &amp; Omissions or Professional Liability coverage for all work performed by the CONSULTANT and any subcontractor/consultant working on behalf of the CONSULTANT on the project.</p>
<p>—</p>	<p><u>Errors and Omissions Professional Liability Insurance</u> in an amount no less than \$1,000,000. If such policy is written on a “Claims-Made” (rather than an “occurrence”) basis, CONSULTANT agrees to maintain continuous coverage in effect from the date of the commencement of services to at least three (3) years beyond the termination or completion of services or until expiration of any applicable statute of limitations, whichever is longer. The policy shall provide coverage for all work performed by the CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between the CONSULTANT and any subcontractor/consultant shall relieve the CONSULTANT of the responsibility for providing this Errors &amp; Omissions or Professional Liability coverage for all work performed by the CONSULTANT and any subcontractor/consultant working on behalf of the CONSULTANT on the project.</p>
<p>—</p>	<p><u>Property Insurance</u> covering CONSULTANT'S own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of BAHA (if any), debris removal, and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" ("All Risk") that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of BAHA. If such insurance coverage has a deductible, the CONSULTANT shall also be liable for the deductible.</p>
<p><b>Deductibles:</b> Any deductibles or self-insurance retentions over \$100,000 are subject to the approval of BAHA.</p> <p><b>Notice of Termination:</b> <i>CONSULTANT shall give written notice to BAHA at least 60 days prior to cancellation, non-renewal or material change of coverage of the policy or policies, except in the event of non-payment of premium, in which ten (10) days prior notice may be provided, and shall provide notice of such change to BAHA and any other additional insured.</i></p> <p><b>Additional Provisions:</b> Each policy or policies of insurance described in <u>Commercial General Liability Insurance</u>, above shall contain the following provisions:</p> <ul style="list-style-type: none"> <li>• Inclusion of BAHA, MTC, BATA, and BAAQMD and their directors, commissioners, officers, representatives, agents and employees, as additional insured’s with respect to work or operations in connection with this Agreement.</li> <li>• Endorsement providing that such insurance is primary insurance and no insurance of BAHA will be called on to contribute to a loss.</li> </ul>	

**Certificates of Insurance:** *Promptly on execution of this Agreement and prior to commencement of any work hereunder, CONSULTANT shall deliver to BAHA Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.*

**Disclaimer:** The foregoing requirements as to the types of limits of insurance coverage to be maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant hereto, including, but not limited to, liability assumed pursuant to *Appendix D*, Indemnification.

**Subcontractor’s Insurance:** CONSULTANT shall require each of its subconsultants to provide the aforementioned coverages, unless such coverages are waived or reduced in writing by the BAHA Project Manager.

**By signing below, you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within five (5) days of BAHA’s notice to firm that it is the successful proposer.**

Representative Name and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

**NOTE: If you were unable to check “Yes” for any of the required minimum insurance coverages listed above, a request for exception to the appropriate insurance requirement(s) must be brought to BAHA’s attention no later than the date for protesting RFQ provisions. If such objections are not brought to BAHA’s attention consistent with the protest provisions of this RFQ, compliance with the insurance requirements will be assumed.**

**APPENDIX F, IRAN CONTRACTING ACT DOCUMENT**  
(Public Contract Code sections 2202-2208)

Prior to bidding on, submitting a proposal or executing a contract or renewal for a BAHA 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*