

FasTrak® Regional Customer Service Center RFP

Responses to Requests for Clarification – Set 3

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#	RFP Section	Relevant Provision	Requested Action	Response
1.	Letter of Invitation - Contractor's Selection Timetable; p.3	Closing date for receipt of requests for clarification or exceptions to, or modifications of RFP requirements.	<p>Changes and/or responses made by BATA due to proposer's questions or requests for clarification will likely lead to additional questions from proposers.</p> <p>Question 1: Will BATA please consider providing at least one more round of questions and answers?</p> <p>Question 2: Will BATA please add the anticipated BATA response date to proposer's questions to the Contractor Selection Timetable?</p>	See Addendum 2.
2.	Terms and Conditions Section 4.2 "Letter of Credit" p. 13	"Contractor, concurrently with the execution and delivery of this Contract, has provided additional security for the performance of its obligations for maintenance and operations hereunder through a letter of credit issued by a bank..."	<p>The letter of credit is applicable to the operations phase of the project. Additional costs will accrue if the letter of credit is maintained during the initial phases.</p> <p>Question: Is it acceptable for Contractor to provide the letter of credit upon commencement (or within a reasonable time before; perhaps 90 days) of the operations instead of at the time of contract execution?</p>	See Addendum 3.
3.	RFP, Section I.F. "Letter of Credit" p.4	"The successful Proposer shall also provide a Letter of Credit to secure contractor's obligations for the maintenance and operations. The Letter of Credit shall be issued by a bank whose long-term debt is rated "A7" or better by either Moody's, Fitch, or Standard & Poor's in the amount of \$5,000,000, with a term of one year."	Question: Will BATA provide the required form of Letter of Credit prior to the date for submittal of proposals?	BATA intends to provide the required form for the Letter of Credit prior to the date for submittal of proposals.
4.	Letter of Invitation	Page 3, Contractor Schedule	Would BATA establish a second round of requests for clarification or exceptions to, or modifications of RFP requirements?	See Addendum 2.

5.	Letter of Invitation Contractor's Selection Timetable Page 3	Closing date for receipt of requests for clarification or exceptions to, or modifications of RFP requirements.	<p><u>Question:</u></p> <p>Could the Authority please add into the Contractor selection timetable the date for answers to clarification questions from the bidders. Also, if the date could be set sufficiently in advance to enable submission of the tender in good conditions.</p>	See Addendum 2.
6.	Request for Proposal Chapter I Section E Page 3	Minimum Qualifications	<p><u>Question:</u></p> <p>We would like to use a CSC reference project, currently in implementation phase, under the assumption that the reference project will be in operation prior to the Authority awarding of the Contract. Is such a reference acceptable in the evaluation process?</p>	See Addendum 2.
7.	Request For Proposal Chapter V Sections G through K Pages 14-17	Intellectual Property and Work Product Ownership Rights, Examination of Specifications and Sites, Prevailing Wage Rates, Subcontractors, Organizational Conflicts of Interest	<p>Some provisions in the RFP are in contradiction with the Appendix D "Terms and <u>Conditions</u>"?</p> <p><u>Question:</u> Will the Authority be issuing a new version of the Contract? Also, do the Terms and Conditions contained in Appendix D supersede the Request For Proposal document in case of contradiction?</p>	See Addendum 3. The documents are intended to be complimentary. In the event of conflict, the Contract will prevail over the RFP.
8.	Appendix D	Bonding	Can the proposer substitute a Performance Bond instead of a Letter of Credit for maintenance and operation?	No.
9.	Appendix D: Contract, section 4.1, 4.2 <i>Performance & Payment Bonds, Letter of Credit</i>	<p>Contractor, concurrently with the execution and delivery of this Contract, has provided additional security for the performance of its obligations to perform the Work required hereunder through a Performance Bond and Payment Bond issued by a surety acceptable to BATA on forms acceptable to BATA.</p> <p>Contractor, concurrently with the execution and delivery of this Contract, has provided additional security for the performance of its obligations for maintenance and operations hereunder through a letter of credit issued by a bank whose long-term debt is rated "A7" or better by either Moody's, Fitch, or Standard & Poor's (the</p>	<p>The requirement for a performance bond or letter of credit creates additional costs to a bidder that then would be priced to BATA. A letter of credit is the most expensive option as it essentially is priced like a corporate loan by a bidder. Performance bonds are significantly cheaper options – e.g., less than 1% depending on the bidder's credit status – which also provide similarly accessible funds as a letter of credit. A parental guarantee is cheapest form of protection that a bidder can offer.</p> <p>Will BATA allow bidders to put forward either a performance bond or a parental guarantee from a publicly traded parent company as an alternative to a letter of credit?</p>	No. Also see Addendum 3.

		“Letter of Credit”), in the stated amount of \$5,000,000, with a term of one (1) year.		
10.	RFP pg. 3, F. Performance and Payment of Bonds, and Appendix D Contractor Agreement, 4.1 Performance and Payment Bonds	Contractor... has provided additional security for the performance of its obligations to perform the Work required hereunder through a Performance Bond and Payment Bond issued by a surety acceptable to BATA on forms acceptable to BATA.	Please confirm and amend to read that annually renewable bonds are acceptable during implementation.	Annually renewable bonds are not acceptable during the implementation phase.
11.	RFP pg. 10, B. Evaluation Factors	Price: 35 Points	What is the basis and formula used to award the 35 points for pricing?	The proposer with the lowest price on the last line of the form receives 35 point. Other proposers receive points relative to their price and the lowest price.
12.	RFP pg. 10, B. Evaluation Factors	Price: 35 Points	How will BATA evaluate Appendix B: Price Form Line Items T1 (Toll Tag Replacement Price per tag) and L1 (Total Lease Price)? Can BATA confirm that Proposers are to provide only estimated square footage in Price Form L1?	Addendum 2.
13.	SOW 1 General Description of Project Responsibilities, pg. 2	BATA will consider hosted or other solutions to the requirements of this Scope of Work if presented as an alternative which may result in cost savings to BATA.	Where should the Proposer present the description and price for alternative solutions? How will BATA evaluate and score the alternative approach(es) from both a technical evaluation and a price evaluation?	Contractors must submit a proposal against the RFP requirements. See Addendum 3.
14.	Appendix A, SOW, section 1, 5th and last	Location of Work Efforts	The referenced statements note that all functions shall be performed at the RCSC location in the Bay Area, but the last allows for alternative off-site solutions. Please clarify that a proposal will not be deemed non-compliant if off-site alternatives are offered.	All operations services shall be provided within the 390 Main Street building, except third party financial services, printing and mailing services, and software development and helpdesk services which may be provided at alternate location or at the 390 Main Street building . Contractors must submit a proposal against the RFP requirements. See Addendum 3.
15.	RFP, page 5 I. Project Requirements and Resources	The requirement in the RFP appears as follows: Letter of Credit. The successful Proposer shall also provide a Letter of Credit to secure contractor’s obligations for the	In lieu of a letter of credit for the maintenance and operations [M&O] portion of the contract, can a proposer provide an annual performance and payment bond for 100% of total annual fee for each year of	No

	F. Performance and Payment Bonds	maintenance and operations.	M&O?	
16.	Appendix D, page 46 14.2 FEDERAL EXCISE TAX	Currently the escrow release requirement contains the following: BATA, as a political subdivision of the State of California, will furnish exemption certificates for Federal Excise Tax as required.	“In addition to the Federal Excise Tax exemption provided for in Appendix D Section 14.2, will BATA provide a Sales Tax Exemption as well?”	See Appendix D, Terms and Conditions, Revised July 27, 2012. Also, BATA is not exempt from either Federal Excise Taxes or Sales Taxes.
17.	3.24.3 (Page 111)	DEDUCTION FOR NON-COMPLIANCE “The amount of the KPI non-compliance deduction, if any, payable by the Contractor for the reporting period shall be determined by the number of KPI non-compliance points assessed by BATA using the criteria of Table 12: Key Performance Indicators - Operations for such period in accordance Table 13: Deduction for Non-Compliance.”	Will BATA entertain payment incentives for exceeding KPIs?	Contractors must submit a proposal against the RFP requirements.
18.	Contract, General	Contract, General	Please provide a copy of the current contract for services between BATA and the incumbent CSC Contractor.	Available upon request.
19.	3.5.2	“Failure to meet the performance requirements for Operations and Maintenance service provided in Appendix A, Scope of Work, shall result in adjustment to the payment for the monthly invoice.” (Emphasis added). Comment: Contractor believes the standard to withhold all or a portion of invoiced amounts is too subjective and request modification of this term.	Request modification of this term to tie to defined performance standards and also to clarify it.	See Addendum 3.
20.	3.5.3	Comment: Reasons for lost revenue from bridge and HOT lane tolls are complex, and probably impossible to determine to have	Delete the Article in its entirety.	No.

		been caused by one entity.		
21.	4.1	<p>“[In lieu of a performance bond, Contractor may substitute a Letter of Credit issued in a form and from a bank satisfactory to BATA.]”</p> <p>Comment: the RFP indicates that a LOC <u>and</u> a performance bond are required, but Article 4.1 says to obtain either a LOC or a performance bond. Contractor requests clarification of this section.</p>	We request clarification that either a performance bond or a LOC are required, but not both.	That is correct. However, prior to the commencement of the operations phase, a letter of credit will also be required. Also, see Addendum 3.
22.	General	1. Use of capitalized and non-capitalized terms.	<p>Q. Will definition be provided for agreement?</p> <p>Comment: Terms like "Performance Bond" are used in lower and upper case throughout the document. There does not appear to be a definitions section. Will this be provided?</p> <p>Contract is very difficult to follow without a full set of appropriately defined terms.</p>	See definition for “Contract” in Glossary of Terms in Appendix D. Also, BATA intends to correct inconsistencies in capitalization.
23.	General	2. Ambiguity regarding payment of price, scope and completion	Comment: How payment is received, what the scope of the project is and how completion for various stages is achieved is not clear. We would need to work with BATA to significantly enhance the contract to create a set of clear obligations.	Please review the Appendix A, Scope of Work.
24.	General	3. Contract integration with Scope Document	Comment: Contract does not appear to integrate with the Appendix A - Scope of Work. Terms are not consistently used and the documents do not seem to logically integrate concepts required to determine essential concepts such as price, scope and how performance is evaluated.	BATA will attempt to correct inconsistencies, if proposer would like to offer specific comments.
25.	General	4. Limitations of Liability	It is usual to have specific limitations of liability for the implementation and services phases of the contract. We would expect a limitation of liability on the implementation phase to be equal to the contract value for the phase and on the services phase to be equal to one year of the Contractor’s price. The loss of toll revenue must be included in this cap.	Caps will not be included.

26.	General	5. Form of Contract	We have an overall concern about the form and clarity of the contract, and believe it would be valuable to have discussions in advance of the bid submission to assist with creating a more appropriate contract form. As currently drafted, the contract form would require us to include significant contingencies, which would not provide value for money to BATA. Without significant amendment, we may not be in a position to provide a proposal.	Proposer must provide specific requests for exception by the deadline specified in the RFP to merit consideration.
27.	RFP I.F	2. The Proposer awarded the Contract shall be required to furnish a performance bond, a payment bond and a letter of credit, all in a form satisfactory to BATA at the time of Contract execution. Proposers shall furnish, along with their proposals, evidence satisfactory to BATA of their present and expected ability to provide the required bonds and Letter of Credit. If proposer wishes to substitute the performance bond for a Letter of Credit, a copy of the letter as well as the identity of the issuing financial institution must be provided. Full compensation for furnishing the following contract bonds and Letter of Credit is included in the prices paid for the various contract items of work and no separate payment will be made for the bonds and Letter of Credit.	<p>Q. Does "satisfactory to BATA" refer to the Attachment 5 and Appendix F to the Contract? If so, please update language accordingly or provide further clarification.</p> <p>Q. Given the apparent intent of permitting alternate security for the Performance Bond, would it be acceptable to substitute Letters of Credit for each of the Bid Bond and Payment Bond requirements?</p> <p>Q. Given the liquid nature of Letters of Credit, it is usual for Letters of Credit to be in much smaller amounts when substituting for bonds. For instance, it is often the case that a 10% Letter of Credit would be used instead of a 50% Performance Bond/Payment Bond requirements. As such, would BATA consider permitting use of a \$100,000 Letter of Credit instead of the Bid Bond, and one 15% Letter of Credit instead of the Performance Bond and Payment Bond obligation?</p>	<p>Q1. Attachment #5 includes the performance and payment bond forms and Appendix F includes the bid bond form.</p> <p>Q2. Yes.</p> <p>Q3. No.</p>
28.	RFP V.G.1.	Neither the Contractor nor its Subcontractors will be permitted to use or disseminate any BATA Data outside of the context of the Regional Customer Service Center without the prior written approval of BATA. All authorized uses of BATA Data by the Contractor outside of the context of the Regional Customer Service Center project shall include a copyright notice on behalf of the owner (BATA or GGBHTD). Contractor will be required to enter into a non-disclosure agreement prior to receipt of	<p>Q. Will BATA provide a sample non-disclosure agreement?</p> <p>Q. Will these terms be negotiated between the parties after the successful proposer is selected?</p>	Article 5.2.1 contains the substantive requirements related to nondisclosure of confidential information. Also, see Addendum 3.

		any BATA Data. Contractor will also be required to abide by DMV policy and sign a written agreement. See Attachment H, DMV Information Security Statement, to Appendix A.		
29.	Appendix D. Glossary of Terms	Major Subcontractor: A subcontractor with a contract in an amount equal or greater than \$100,000.	Q: How have you determined the threshold of \$100,000 to qualify Major Subcontractors? Comment: the interest of having a difference of subcontractors and Major Subcontractors is reduced by this small amount of contract value. Due to the size of the project, Major Subcontracts should be the ones above \$1,000,000.	See Addendum 3.
30.	Appendix D. 1.5		Q. Who is assigned the risk when there is a change in law that increase the scope of the project or impacts the project schedule?	See Addendum 3.
31.	Appendix D 2.1		Q. How is pricing determined in the event that contract is extended?	Please see Appendix B, Price Form.
32.	Appendix D 2.2		Q. Will requirement to meet CSC Operations on July 14, 2014 be subject to Force Majeure or Changes? Comment: Current section does seem to allow the CSC Operations date to be extended for reasons outside of the control of Contractor such as Force Majeure and Changes.	Yes.
33.	2.4.1		Comment: "Work" seems to include construction and operations and maintenance. This section seems to be only referring to construction. Seems that a separate definition for construction related work and operations and maintenance would be beneficial.	BATA does not intend to add separate definitions at this time.
34.	Appendix D 3.5.2/3.5.3		Please clarify the ability for BATA to deduct payments? Comment: The penalties outlined in these sections need to be specifically linked to specific performance metrics.	See Addendum 3.

35.	Appendix D. 4.3		<p>Q. Please clarify when insurance obligations end?</p> <p>Q. Why does BATA want professional E + O coverage after system completion?</p> <p>Comment: Insurance obligations seem to be linked to Project Completion and System Completion which seem unclear as to what is exactly required to achieve these objectives.</p>	<p>Insurance obligations are for the life of the agreement. In the event the Contractor's E + O insurance is written on a claims made basis, it will need to comply with the provisions of Article 4.3.12, as well, i.e., 3 years after Project Completion.</p> <p>BATA intends for Contractor to provide E + O insurance for all phases of the project, which would include implementation, testing, operations and maintenance</p>
36.	Appendix D. Article 5		<p>Comment: Article 5 is a very detailed section of IP rights that would need to be discussed with our subcontractors prior to further discussion.</p>	<p>Noted, but any requests for exceptions must be submitted before the deadline specified in the RFP.</p>
37.	Appendix D 6.7		<p>Q. Please clarify what identifiable requirements need to be achieved for System Acceptance?</p> <p>Comment: System Acceptance is not clearly defined.</p>	<p>Please see Section 4.6.1.5 of the Appendix A Scope of Work.</p>
38.	Appendix D 7.1		<p>Q. Please provide an explanation as to the distinctions between service commencement and operations and maintenance?</p> <p>Comment: Current contract does not provide a clear distinction between the two periods.</p>	<p>Service commencement and commencement of operations and maintenance are the same.</p>
39.	Appendix D 7.2		<p>Q. What happens once BATA makes a policy decision?</p> <p>Q. Does this allow BATA to increase the scope of the project through "policy decisions" and the Contractor is required to follow these decisions?</p> <p>Comment: It is unclear what the impact of policy decisions resting on BATA means to the Contractor.</p>	<p>Should any policy decision justify additional compensation or time or require changes in the Scope of Work, a change order would be issued.</p>
40.	Appendix D 7.3/9.1		<p>Q. Please clarify what identifiable requirements need to be achieved for Project Completion?</p>	<p>See Article 9.1 of Appendix D.</p>
41.	Appendix D Article 8		<p>Q. Please explain when warranty obligations will end?</p> <p>Comment: There should be no warranty past the end of Project Completion. The assets should be handed over at Project Completion</p>	<p>See Addendum 3.</p>

			in a condition that recognizes that they are either 5 or 15 years old, but well maintained in accordance with 9.2.2. As drafted, the Contractor might be forced (especially at 15 years) to replace the entire system to meet the warranty requirements.	
42.	Appendix D. Article 12	Concept of Preliminary Change Orders	Please remove the concept of Preliminary Change Orders. Comment: Current procedure seems to allow for BATA to impose Change Orders without Contractors consent.	Requested change is not acceptable.
43.	Appendix D. 12.7	"The BATA Executive Director shall appoint a review officer to review the protest, and shall respond within twenty (20) days to Contractor. BATA and Contractor agree to negotiate in good faith to resolve disputed Change Orders."	Q. How will BATA ensure that this process is not one sided? Comment: The BATA Executive Director appoints a review office, but there seems to be a conflict of interest.	BATA will appoint a review officer with no prior involvement with the issue who will independently review the protest.
44.	Appendix D. 13.2		Q. If BATA does not pay an amount, will the Contractor have the ability to stop work? Comment. This clause seems to require the Contractor to continue to work regardless of payment. The Contractor should have the right to stop work if it is not paid.	No.
45.	Appendix D. 13.4		Q. Does Californian state law limit the types or amounts of damages that may be awarded against a government organization? Comment: Claims may be filed against BATA but concern is that there may be a statutory limit on the amount of types of damages that may be received.	Proposer should research and assess its risks.
46.	Appendix D. 14.1		Q. Would more information be available regarding what laws, statutes, ordinances, rules, regulations and procedural requirements will be imposed on Contractor due to this section?	No. Proposer is responsible for familiarizing itself with all applicable rules and regulations pertaining to the scope of work. See Article 1.5, <u>Governmental Rules and Approvals</u> .
47.	Appendix D. 16.3		Q. Please clarify exactly what sections of the contract will survive termination? Comment: current clause allows all provision to survive termination.	All provisions that by their inherent character survive termination of the Contract. A few are listed.

48.	Appendix D. Attachment 6	Project Stabilization Agreement	<p>Q. Would BATA please provide a copy of the Project Stabilization Agreement?</p> <p>Q. What is the Impact of the Project Stabilization Agreement?</p>	<p>The Project Stabilization Agreement has been provided. The selected contractor must comply with its terms and conditions.</p>
49.	Appendix D. 3.2	<p>9. Subject only to duly executed amendments, it is expressly understood and agreed that in no event will the total compensation to be paid Contractor under this agreement exceed the sum of dollars (\$_____)</p>	<p>Comment: How is this number to be calculated given the nature of the payments during the services period? We suggest this clause should be deleted.</p>	<p>See Appendix B, Price Form.</p>
50.	Terms and Conditions, Section 3.2, Maximum Payment	<p>Subject only to duly executed amendments, it is expressly understood and agreed that in no event will the total compensation to be paid Contractor under this agreement exceed the sum of _____dollars (\$_____).</p>	<p>The language providing for a maximum amount paid under the contract does not seem appropriate given the component of compensation that is based on volume of transactions.</p> <p>Question: Will BATA clarify the language to indicate that the maximum amount noted in Section 3.2 relates to the fixed price phases of the work or add a statement that Contractor is not obligated to perform services when invoiced amounts exceed the maximum amount stated in Section 3.2?</p>	<p>Please see instructions on Appendix B, Price Form.</p>
51.	Terms and Conditions, Section 7.3	<p>Upon Project Completion, as defined in Article 9, as between BATA and Contractor, BATA shall own all materials and equipment, including computer hardware, and supplies purchased under this Contract and still useful in the operation of the project when Project Completion is attained.</p>	<p>Contractor suggests that BATA own all materials and equipment including computer hardware and supplies upon commencement of revenue operations. Also, Contractor suggests that BATA accept the risk of loss upon commencement of revenue operations. Also, the risk of loss will be described in the lease agreement relating to the premises at the 390 Main Street building. Contractor needs to confirm the terms and conditions contained within the proposed lease agreement to understand and price the security and insurance obligations for the operations and maintenance period.</p> <p>Question 1: Will BATA accept ownership and the risk of loss of materials and equipment upon commencement of revenue operations?</p> <p>Question 2: Will BATA provide the form of lease agreement proposed for the premises at 390 Main Street prior to the proposal</p>	<p>1. No. 2. See Addendum 2; 3. No.</p>

			<p>submission date and with adequate time to confirm and price the risk allocation?</p> <p>Question 3: Will the lease agreement for the premises at the 390 Main Street Building place the risk of loss of the System on BATA?</p>	
52.	Terms and Conditions, Section 8, Section 9	<p>The Contractor’s warranties under Article 8.2 shall be in effect for one year from the date of Project Completion, as defined in Article 9.</p> <p>Project Completion will occur when BATA determines that all obligations under this Contract have been met by Contractor and all of the following have occurred:</p> <p>a. BATA has received all documents, drawings, software, interface data, test data, manual, and other deliverables for the Project required under the Contract;</p> <p>b. Contractor has submitted all requests for Change Orders, disputes of change notices/orders, or claims under Articles 12 and 13, or a statement that it will not submit such requests, disputes, or claims; and</p> <p>c. Retentions owing to Contractor have been released by BATA.</p>	<p>Contractor suggests that the warranty period begin upon commencement of revenue operations. It is not clear if the term “Project Completion” as defined in Section 9 is intended to refer to the completion of the implementation phase or the end of the term of the contract (e.g., the requirement that Contractor has submitted all Change Orders would occur at the end of the contract term).</p> <p>Question 1: Will BATA clarify that the warranty period is to begin upon the commencement of revenue operations?</p> <p>Question 2: Will BATA clarify the definition of “Project Completion” to clarify BATA’s intention regarding whether it is upon completion of the implementation phase or upon the end of the contract term?</p>	See Addendum 3. Also, Project Completion occurs at the end of the contract term.
53.	Terms and Conditions, Section 11.5	Title to all hardware and supplies purchased under this Contract and still useful in the operation of the Project shall pass to BATA	Contractor suggests that title pass to BATA upon commencement of revenue operations.	No.

		at Project Completion, as defined in Article 9 or upon early termination pursuant to Article 15. Contractor agrees to execute any and all papers necessary to perfect BATA's ownership of hardware and supplies. Title to Work Products and Contractor Data is governed by the provisions of Article 5.1 and Article 5.2.	Question: Will BATA modify the provision to reflect that BATA accepts title upon commencement of revenue operations?	
54.	Terms and Conditions, Section 12. 1, Scope of Work	<p>BATA reserves the right to make alterations to and permit deviations from the Contract and to require such changes in the extent or manner of performance of the Work as are determined by BATA to be necessary, subject to the provisions of this Article 12. All changes to the Contract shall be implemented by means of a Change Order signed by both parties.</p> <p>Scope of Work, page 50: The Contractor shall adhere to all requirements set forth by the credit card process, bank, PCI, NACHA and <u>any new regulator or processing standard.</u></p>	<p>Contractor proposes a more formal change control process and an express baseline scope from which change orders will be evaluated. The Scope of Work contains many references to options and alternatives and obligations that BATA may or may not require. It is not clear at what point a change in scope will qualify for a change order and entitle Contractor to cost and price relief. Also, for example, the Contractor is required to adhere to all new laws; however, the language could be read to infer that no Change Order is due.</p> <p>Contractor recommends that the Scope of Work be modified to represent a baseline scope of work with all of the options and alternatives identified as tasks that will require a mutually agreed upon change order.</p> <p>Question: Will BATA revise the Scope of Work and Contract to indicate a baseline scope of work and entitlement to Change Orders for tasks outside that scope?</p>	No.
55.	Terms and Conditions, Section 12.8 and Section 14.5, Scope of Work, Section 3.15	For cost data submitted in connection with Change Orders, unless such data is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, BATA and its representatives have the right to examine all books, records, documents and other data of Contractor related to the	<p>Sections 12.8 and 14.5 contain broad audit rights. The services are being provided on a fixed price and unit-rate basis; therefore, audit rights are not appropriate for costs. Further, the last paragraph of Section 3.15 of the Scope of Work provides BATA unfettered access to all records and documents, which should be limited to the project documents and not the RCSC Operator's proprietary information including the build-up of unit rates and fixed prices.</p> <p>Question 1: Will BATA modify Sections 12.8 and 14.5 to reflect that</p>	1. No; 2. All information and things audited will pertain to the work. Should circumstances arise where records are truly considered proprietary by Contractor, BATA will ask its auditors to sign a non-disclosure agreement per Article 5.2.1 of the contract.

		<p>negotiation of or performance of Work under such Change Orders, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.</p> <p>Contractor shall permit BATA, GGBHTD, and their authorized representatives to have access to Contractor's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in</p> <p>Article 14. Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.</p> <p>Scope. 3.15: This shall include interviews of the employees, access to any premises where any work or services may be carried on and performed, access to any records, correspondence, drawings, memoranda, or other records and documents (including electronic data) of the RCSC Operator pertaining to the work under signed agreement, with facilities for inspecting and</p>	<p>its audit rights are limited to prevailing wages certification and that the appropriate units are applied to the applicable unit rates?</p> <p>Question 2: Similarly, will BATA clarify that the audit right Section 3.15 in the Scope of Work relates to project information and not the proprietary information of Contractor?</p>	
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		copying same.		
56.	Terms and Conditions, Section 13.3.2	Upon final determination of all Contractor's claims for payment in the Final Invoice, BATA shall pay the entire sum found due. BATA may, at that time, elect to make payment of sums not in dispute, without prejudice to the rights of either BATA or Contractor in connection with such disputed sums.	The provision indicates BATA "may" pay undisputed amounts. Contractor should be paid all undisputed amounts on all invoices. Question: Will BATA change "may" to "will" in the language noted to the left, and will BATA include a provision indicated that BATA will pay all undisputed portions or invoices in accordance with the requirements of the Agreement?	See Addendum 3.
57.	Terms and Conditions, Section 14.9.4	A certified copy of payroll records provided for in State Labor Code §1776 shall be furnished to the Project Manager or designee each week.	Question: Will BATA confirm that the certified copy of payroll records described in Section 14.9.4 is required for only those employees subject to prevailing wage laws?	Yes, the requirement to provide certified copies of payroll records on a weekly basis per Article 14.9.3 applies only to those employees subject to prevailing wage laws.
58.	Terms and Conditions, Sections 15.2 and 15.3	Upon termination, Contractor shall be paid costs. Default by Contractor shall include (a) breach of a material provision of the Contract, ...	The provisions are written as though the contract is a cost-reimbursable agreement. The contract pricing is based on fixed prices and unit rates. Upon a termination for convenience, Contractor should receive a Termination for Convenience Break Fee to cover costs and margins not yet received and expenses related to the termination. The Break Fee would depend on the time of the termination for convenience and would decline over time. Question 1: Will BATA modify the clauses to reflect that Contractor is to be paid in accordance with the contract terms and paid reasonable demobilization costs upon a termination? Question 2: Will BATA agree to include a table of Break Fees to be paid to Contractor upon a termination for convenience, in addition to expenses related to the termination? Question 3: Will BATA modify the definition of Default by indicating that the breach must be a "material breach", and will BATA provide	1. and 2. See Addendum 3. 3. Consideration of materiality is already included in the clause. BATA will not replace "15 day" with a "60 day" cure period; however, BATA has the flexibility under Article 15.2.2 to specify a 60 day cure period, if determined reasonable.

			for a 60-day cure period?	
59.	RFP, Section V.D. Contract Arrangements	BATA’s contract provisions are enclosed for your reference as <i>Appendix D</i> , BATA’s Contractor Agreement. If a proposer wishes to propose a change to any standard BATA contract provision, the provision and the proposed alternative language must be submitted prior to the closing date for receipt of requests for clarifications/exceptions listed above. If no such change is requested, the Contractor will be deemed to accept BATA’s standard contract provisions.	<p>Question 1: Will BATA issue an addendum to the form of Agreement indicating any accepted BATA modifications (based on the Questions and Clarification) prior to the proposal date with adequate time for Contractors to respond and adjust their proposals? Will BATA indicate the specific date of any planned addendum?</p> <p>Question 2: Will the terms of the Agreement be negotiated after award based on the qualifications contained within the Contractor’s proposal?</p>	<p>1. An addendum/addenda will be issued indicating any accepted BATA modification prior to the proposal date. The actual date(s) are unknown.</p> <p>2. No.</p>
60.	RFP, Section III.D. Team Organization	Describe the firms that make up the project team.	<p>Question 1: If the firms making up the project team plan to form a limited liability company (“LLC”) to perform the services and enter into the contract with BATA, does BATA require the LLC be formed upon the date of submission of the proposal, or alternatively, can the team form the LLC after award?</p> <p>Question 2: If BATA requires that the LLC be formed upon submission of the proposal, what documents is BATA requiring to be submitted with the proposal to document the existence of the LLC?</p> <p>Question 3: If BATA does not require the LLC to be formed upon the date the proposal is submitted, will BATA accept the bid bond in the name of one of the firms that will be a member of the LLC with the bid bond being assigned to the LLC upon formation?</p>	<p>1. The LLC must be formed upon the date of submission. 2. The RFP has no requirement for the proposer to submit specific documents to document its existence. However, BATA reserves the right to ask for additional information from responsive proposers prior to evaluation. In the case of an LLC, BATA may request articles of incorporation and any board resolutions.</p>
61.	Appendix A: Scope of Work Section 3.24.3 “Deduction for Non-Compliance” p.112	Excluded Event	<p>We are unable to locate a definition of what would be included as an Excluded Event.</p> <p>Will BATA please provide a detailed definition?</p>	See Appendix D, Terms and Conditions, Article 3.5.2.