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 San Francisco Mayor's Appointee

November 20, 2013

Addendum No. 1
to
REQUEST FOR QUALIFICATIONS
FOR ON-CALL CONSTRUCTION MANAGEMENT
AND DESIGN SERVICES

Dated October 25, 2013

Dear Consultant:

This letter is Addendum No. 1 to the Request for Qualifications for On-Call Construction Management and Design Services dated October 25, 2013. Where text is revised, deleted text is shown in strike-through format; added text is *italicized*. The RFQ is revised as follows:

Addendum Item	Reference	Change(s)
1.	RFQ, Letter of Invitation, page 1, 2 nd paragraph	<p>The project is divided into two parts and this Request for Qualifications (RFQ) is intended to:</p> <p>Part 1 - Select a pool of <i>six (6) to eight (8)</i> firms to perform on-call construction management services described herein; and</p> <p>Part 2 - Select a pool of <i>six (6) to eight (8)</i> firms to perform on-call design services described herein.</p>
2.	RFQ, <u>Letter of Invitation</u> , XI. <u>General Conditions</u> , pages 4-5	<p>BATA reserves the right in its sole discretion not to enter into any contract as a result of this SOQ. Placement in the pool of qualified firms to perform individual, as yet unspecified construction management or design projects, does not guarantee a firm will be contacted or awarded any projects. BATA reserves the right in its sole discretion to determine which Consultant's or Consultant team's qualifications, experience, available resources and ability to perform the required services best suit each project. Further, BATA reserves the right in its sole discretion to hold mini-procurements among pool firms or to directly award task order work to any one firm. <i>However, BATA will hold mini-procurements among pool firms to assign task order work with Federal funds.</i></p>

STEVE HEMINGER
 Executive Director

ANDREW B. FREMIER
 Deputy Executive Director

Addendum Item	Reference	Change(s)
3.	RFQ, III. <u>Form of SOQ, G. Forms and Certificates</u> , pages 4-5	<p>G. <u>Forms and Certificates</u></p> <ul style="list-style-type: none"> • A signed California Levine Act statement (Appendix B) • A signed Insurance Provisions document (Appendix C-1); • A signed Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Appendix G-1) for each Consultant and any subcontractors; and • A signed Certification of Restriction on Lobbying (Appendix G-2) for each Consultant and any subcontractors.
4.	RFQ, Appendix A, <u>Part 1 - On-Call Construction Management Services</u> , page 12	9. Conduct constructability reviews on draft construction plans and specifications and prepare an evaluation report of findings per applicable standards. The reviews shall identify contract plans and specification errors, omissions, and inconsistencies and assure <i>confirm</i> overall Plan, Specification, & Estimate (PS&E) constructability, operability, and maintainability.
5.	RFQ, Appendix C, <u>BATA's Standard Consultant Agreement</u> , Article 9, <u>Indemnification</u> , Add New Paragraph after Paragraph 2	<i>CONSULTANT's reasonable defense costs (including attorney and expert fees), incurred in providing a defense for the BATA Indemnified Parties shall be reimbursed by BATA except to the extent such defense costs arise, under principles of comparative fault, from CONSULTANT's (a) negligent acts or omissions; (b) breach of any of the provisions of this Agreement; or (c) willful misconduct.</i>
6.	RFQ, Appendix C, <u>BATA's Standard Consultant Agreement</u> , Article 23.B.	3. The right to terminate the Agreement for default. CONSULTANT shall be responsible for all errors and omissions <i>attributable to its failure to meet the warranty standards above</i> and is expected to pay for all deficient work as a result of errors and omissions.
7.	RFQ, Appendix C, <u>BATA's Standard Consultant Agreement</u> , Attachment E	Attachment E, <u>Insurance and Financial Security (Bond) Provisions</u> , is deleted in its entirety and replaced with the attached Attachment E, <u>Insurance and Financial Security (Bond) Provisions</u> .
8.	RFQ, Appendix C-1, <u>Insurance Requirements</u>	Appendix C-1, <u>Insurance Requirements</u> , is deleted in its entirety and replaced with the attached Appendix C-1, <u>Insurance Requirements</u> .

The remaining provisions of the RFQ, dated October 25, 2013 remain unchanged. In the event of a conflict between this addendum and the previous version(s), this addendum shall take precedence.

Questions and Answers regarding this RFQ are enclosed with this Addendum.

Any questions concerning this addendum to the RFQ should be directed to Alice Truong, Contract Specialist at (510) 817-5749 or atruong@mtc.ca.gov.

Sincerely,



Andrew B. Fremier
Deputy Executive Director

ABF:sb:at

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ATTACHMENT E
Insurance and Financial Security (Bond) Provisions

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover CONSULTANT's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that CONSULTANT authorizes to work under this Agreement (hereinafter referred to as "Agents.") CONSULTANT shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement 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.

CONSULTANT is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, CONSULTANT shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONSULTANT's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event CONSULTANT or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that CONSULTANT's insurance be primary without right of contribution from BATA. Prior to beginning work under this contract, CONSULTANT shall provide BATA with satisfactory evidence of compliance with the insurance requirements of this section.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, 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 in favor of BATA. Such Workers Compensation & Employers Liability may be waived, if and only for as long as CONSULTANT is a sole proprietor or a corporation with stock 100% owned by officers with no employees. [Should any bridge work require coverage for the United States Longshore Harbor Workers Act, CONSULTANT agrees to furnish proof of insurance, if required.](#)

2. Commercial General Liability Insurance 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 & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of BATA.

BATA and those entities listed in Part 3 of this Attachment E (if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

4. Umbrella Insurance in the amount of ~~\$1,000,000~~ \$5,000,000 *per occurrence and annual aggregate* providing excess limits over Employer's Liability, *Business Automobile Liability*, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements. *CONSULTANT may satisfy the limits required in this Section by any combination of primary and excess policies.*

5. Errors and Omissions Professional Liability Insurance for errors and omissions *in the performance of professional services* and the resulting damages, including, but not limited to, economic loss to BATA and having minimum limits of ~~\$1,000,000~~ \$2,000,000 *per claim and annual aggregate.*

6. Property Insurance. Property Insurance 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 BATA (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy 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 BATA.

B. Acceptable Insurers. All policies will be issued by insurers acceptable to BATA, generally with a Best's Rating of A-VIII or better.

C. Self-Insurance. CONSULTANT's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to BATA.

D. Deductibles and Retentions. CONSULTANT shall be responsible for payment of any deductible or retention on CONSULTANT's policies without right of contribution from BATA. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that BATA seeks coverage as an additional insured under any CONSULTANT insurance policy that contains a deductible or self-insured retention, CONSULTANT shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of CONSULTANT, subconsultant, subcontractor, or any of their employees, officers or directors, even if CONSULTANT or subconsultant is not a named defendant in the lawsuit.

E. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, CONSULTANT shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, CONSULTANT shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of CONSULTANT's personnel, subcontractors, and equipment have been removed from BATA's property, and the work or services have been formally accepted. CONSULTANT must notify BATA if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, CONSULTANT shall deliver to BATA 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.

H. Disclaimer. The foregoing requirements as to the types and 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 Article 9 of this Agreement.

2. FINANCIAL SECURITY (BONDS)

None.

3. ADDITIONAL INSUREDS

The following entities are to be named as Additional Insureds under applicable sections of this Attachment E and as BATA Indemnified Parties, pursuant to Article 9 of the Agreement.
California Department of Transportation (Caltrans)

APPENDIX C-1, INSURANCE REQUIREMENTS

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover CONSULTANT’s own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that CONSULTANT authorizes to work under this Agreement (hereinafter referred to as “Agents.”) CONSULTANT shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement 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.

CONSULTANT is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, CONSULTANT shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONSULTANT’s indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event CONSULTANT or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that CONSULTANT’s insurance be primary without right of contribution from BATA. Prior to beginning work under this contract, CONSULTANT shall provide BATA with satisfactory evidence of compliance with the insurance requirements of this section.

Yes (√)	Please certify by checking the boxes at left that required coverages will be provided within five (5) days of request from the BATA Project Manager.
—	<u>Workers' Compensation Insurance</u> with Statutory limits, and Employer’s Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, 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 in favor of BATA. Such Workers Compensation & Employers Liability may be waived, if and only for as long as CONSULTANT is a sole proprietor or a corporation with stock 100% owned by officers with no employees. Should any bridge work require coverage for the United States Longshore Harbor Workers Act, CONSULTANT agrees to furnish proof of insurance, if required.
—	<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 & Advertising Injury liability

	<p>with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of BATA.</p> <p>BATA and those entities listed in Part 3 of this Attachment E (if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.</p>
<p>_____</p>	<p><u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.</p>
<p>_____</p>	<p><u>Umbrella Insurance</u> in the amount of \$5,000,000 <i>per occurrence and annual aggregate</i> providing excess limits over Employer's Liability, <i>Business Automobile Liability</i>, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements. <i>CONSULTANT may satisfy the limits required in this Section by any combination of primary and excess policies.</i></p>
	<p><u>Errors and Omissions Professional Liability Insurance</u> for errors and omissions <i>in the performance of professional services</i> and the resulting damages, including, but not limited to, economic loss to BATA and having minimum limits of \$2,000,000 per claim <i>and annual aggregate.</i></p>
	<p><u>Property Insurance.</u> Property Insurance 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 BATA (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy 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 BATA.</p>
<p>B. <u>Acceptable Insurers.</u> All policies will be issued by insurers acceptable to BATA, generally with a Best's Rating of A-VIII or better.</p> <p>C. <u>Self-Insurance.</u> CONSULTANT's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to BATA.</p> <p>D. <u>Deductibles and Retentions.</u> CONSULTANT shall be responsible for payment of any deductible or retention on CONSULTANT's policies without right of contribution from BATA. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.</p> <p>In the event that BATA seeks coverage as an additional insured under any CONSULTANT insurance policy that contains a deductible or self-insured retention, CONSULTANT shall satisfy such deductible or self-insured retention to the extent of loss</p>	

covered by such policy, for any lawsuit arising from or connected with any alleged act of CONSULTANT, subconsultant, subcontractor, or any of their employees, officers or directors, even if CONSULTANT or subconsultant is not a named defendant in the lawsuit.

E. Claims Made Coverage. If any insurance specified above is written on a “Claims-Made” (rather than an “occurrence”) basis, then in addition to the coverage requirements above, CONSULTANT shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, CONSULTANT shall purchase “extended reporting” coverage for a minimum of three (3) years after completion of the work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of CONSULTANT’s personnel, subcontractors, and equipment have been removed from BATA’s property, and the work or services have been formally accepted. CONSULTANT must notify BATA if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, CONSULTANT shall deliver to BATA 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.

H. Disclaimer. The foregoing requirements as to the types and 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 Article 9 of this Agreement.

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 request from the BATA Project Manager.

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 BATA’s attention no later than the date for protesting RFQ provisions. If such objections are not brought to BATA’s attention consistent with the protest provisions of this RFQ, compliance with the insurance requirements will be assumed.

**Request for Qualifications for
On-Call Construction Management and Design Services
Dated October 25, 2013**

Responses to Proposers' Questions from Proposers' Conference
on November 7, 2013
and Questions Received by Closing Date for Clarifications/Exceptions on November 12, 2013

Questions & Answers – Set 1

Q1	Because the SOQs for Part 1 and Part 2 will be evaluated separately, please confirm that if team wants to submit SOQs for both parts, the two SOQs can be submitted as separate submittals.
A1	<i>BATA encourages firms/teams to submit one SOQ submittal to include both Parts 1 and 2.</i>
Q2	One requirement for the Project Manager is that the person be a registered civil engineer in California. Can this requirement be broadened to include registration as a mechanical or electrical engineer in California?
A2	<i>No.</i>
Q3	If a firm has only a few of the required specialties in Part 2, can they submit and further be considered in the pool for just those specialties? For example, an electrical engineering firm will not have geotechnical experience. Or are you anticipating or have preference that specialty sub-consultants team with major primes so that you can obtain as-needed services through only a few prime agreements.
A3	<i>Proposers can submit for a specific subcategory or areas of expertise related to construction management, design services or Building/Facilities, ITS, and Traffic Engineering. However, SOQs will be evaluated according to Article IV. <u>Qualifications Evaluation</u> as described in the RFQ.</i> <i>As indicated in the RFQ on page 1, BATA, at its discretion, may establish one or more qualified pools of firms for specific subcategories or areas of expertise related to both construction management and design services based on particular strengths of Proposers.</i>
Q4	Does BATA intend to have a Specialty On-Call Design Services category for Building/Facilities, ITS, and Traffic Engineering? If so, is this process selected through the major prime consultant?
A4	<i>See Question #3.</i>
Q5	Do you require original, wet signatures for all the subconsultant forms?
A5	<i>See Addendum #1.</i>
Q6	Is BATA seeking one firm to provide and manage all services for each part of the scope, or will the Authority consider qualification submittals for individual services on the list

	(Design Services on Page 15 of Appendix A, Part 2 On-Call Design Services)?
A6	<i>Firms may submit a standalone SOQ for individual services or join as a subcontractor as part of larger teams.</i>
Q7	Are Design Engineers required on the Part 1 - Construction Management contract?
A7	<i>Yes, see page 13 of RFQ for requirement. BATA may need the Construction Management consultant to provide design engineering and assistance in the completion of their work. As an example, the Construction Management consultant may be requested to review an element of the design for a particular project and offer advice to BATA in regards to that design element.</i>
Q8	Do you want three references per key staff member or only a total of three firm references?
A8	<i>Three references must be provided for each key staff that will be expected to work on the project(s).</i>
Q9	In Appendix C-1, Insurance Requirements – the form that we are to sign – states the amounts for Umbrella Insurance (\$5 million) and for Errors and Omissions Professional Liability Insurance (\$2 million). These amounts are not consistent with the amounts in Attachment E, Insurance and Financial Security (Bond) Provisions of the Professional Services Agreement (page 28) – Umbrella Insurance (\$1 million) and Errors and Omissions (\$1 million).
A9	<i>See Addendum #1.</i>
Q10	In the RFQ, it mentions that BATA may pick consultants for specialty areas. Is one of those areas ADA Access consulting for your new or existing projects?
A10	<i>No.</i>
Q11	Do subconsultants need to provide a Conflict of Interest Statement?
A11	<i>No.</i>
Q12	I have a question regarding the forms. Section G of the RFQ specifies that each consultant and subcontractor needs to fill out and sign Appendix G-1 and G-2. However, nothing is specified on the first two Items (Appendix B: Levine Act and Appendix C-1: Insurance Provisions), do you only need these from the prime or do subcontractors need to complete these two forms as well?
A12	<i>See Addendum #1.</i>
Q13	We will be pursuing the design services as a prime, one of our subconsultants would also like to pursue the design services as a prime, would it be okay for them to be a subconsultant and a prime?
A13	<i>Yes.</i>

Q14	Please clarify the DBE Requirements.
A14	<i>DBE requirements are required for contracts that are funded in whole or in part with Federal funds. Federally required forms related to DBE goals will be required at the time mini-procurements are held (or at the task order level if applicable), not at the time of SOQs are submitted.</i>
Q15	Is insurance required at the subconsultant level?
A15	<i>It is the responsibility of the prime consultant to determine the appropriate insurance requirements for their subconsultants.</i> <i>Consultant shall assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsement to cover such risks.</i>
Q16	Please clarify what licensing is needed for scheduling and project controls.
A16	<i>A California PE license is not required, but the work must be under the direction of a California PE license engineer.</i>
Q17	What dollar amount is to go out over next projects coming up?
A17	<i>It is undetermined at this time. Projects may vary.</i>
Q18	How many firms are expected on this list?
A18	<i>See Addendum #1.</i>
Q19	Is there a page limit for the SOQ, and how many electronic and hard copies shall we submit?
A19	<i>There is no page limit for the SOQs, but brevity is encouraged.</i> <i>See RFQ, Page 2, Letter of Invitation, I. Statement of Qualifications Due Date for submittal requirements.</i>

Questions & Answers – Set 2

Responses to Request for Clarifications/ Exceptions

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#	RFQ Section	Relevant Provision	Requested Action	Response
1.	Section IV-Item G, Page 4	Appendix C-1(form)	Are subconsultants required to meet the insurance minimums outlined in Appendix C-1?	It is the responsibility of the prime consultant to determine the appropriate insurance requirements/coverages for their subconsultants. Consultant shall assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsement to cover such risks.
2.	Appendix A, PART 1, A- item 15 – Page 12	Electronic copies	Please confirm this is a requirement for CM services.	Yes, this is a requirement. This may include construction project files, diaries, RFI, schedules, etc. for BATA files.
3.	Appendix A, PART 1, B-Item 2 – Page 12	Technical and report writing services	Please confirm this is a requirement for CM services.	Yes, this is a requirement. Consultant may be assigned a task to conduct a constructability review, project risk assessment and/or a construction value analysis report.
4.	Appendix A, PART 1, C-Item 2	Design engineer staff	Please confirm this is a requirement for CM services.	Yes, this is a requirement. Consultant may be assigned a task to conduct independent project reviews, calculation reviews, provide project schedule and/or project control services.
5.	Appendix C – Professional Services Agreement – Page 9	Section 6 – Termination	Add Section D “If CONSULTANT for any reason, does not complete all services contemplated by this Agreement, CONSULTANT cannot be responsible for the accuracy, completeness or workability of the documents prepared or delivered by CONSULTANT prior to completion of	This is not acceptable.

			the services anticipated hereunder if used, changed or completed by BATA or by another party. Any use of incomplete work will be at the user's sole risk and without liability or legal exposure to CONSULTANT."	
6.	Appendix C – Professional Services Agreement – Page 9	Section 9 – Indemnification	<p>CONSULTANT agrees to indemnify and hold harmless BATA and those entities (if any) identified as additional insureds in Attachment E, <u>Insurance and Financial Security (Bond) Provisions</u>, and their commissioners, directors, officers, agents, and employees (collectively "BATA Indemnified Parties") from and against any and all claims, demands, actions, causes of action, judgments, damages, liability, obligation, costs and expenses (including <u>reasonable attorneys' fees and costs</u>) of any kind whatsoever, including (without limitation) those for personal injuries (including, but not limited to death, bodily injuries, emotional or mental distresses and losses of consortium), property damages or pecuniary, financial or economic losses of any kind whatsoever (collectively "Claims and Losses") <u>if the Claims and to the extent such</u> Losses are caused by CONSULTANT's breach of obligations under this Agreement, willful misconduct, or negligent acts, errors or omissions in the performance of services performed under this Agreement. It is understood and agreed that Consultant has no obligation to indemnify and hold the BATA Indemnified Parties harmless if the Claims and Losses are caused by</p>	This is not acceptable.

			the sole active negligence of the BATA Indemnified Parties.	
7.	Appendix C – Professional Services Agreement – Page 10	Section 9 – Indemnification – 2nd Paragraph	After “ to the claims and losses” Add the following language: <u>“If CONSULTANT is found not liable, BATA will reimburse CONSULTANT for the full cost of defending BATA and its agents”</u>	This is not acceptable. See Addendum #1 for revisions to this provision.
8.	Appendix C – Professional Services Agreement – Page 13	Section 12 – Subcontracts – Part D	Applicable provisions, <u>except insurance requirements</u> , of this Agreement shall be included in any subcontract or subconsultant agreement in excess of \$25,000 entered into under of this Agreement. <u>See Appendix C1 for insurance requirements for subcontracts</u>	This is not acceptable.
10.	Appendix C – Professional Services Agreement – Attachment E – Insurance and Financial Security (Bond) Provisions	Attachment E – Part 1.A 2nd Paragraph	Delete “To the extent that an Agent does not procure and maintain such insurance coverage, CONSULTANT shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONSULTANT’s indemnity obligation as to itself or any of its Agents in the absence of coverage.”	This is not acceptable. Consultant shall be responsible for assessing risk and ensuring their subconsultants’ maintain adequate insurance coverage.
11.	Appendix C-1 – Insurance Requirements	General	Please confirm that subconsultants are not required to fill out Appendix C-1	Subconsultants are not required to fill out Appendix C-1.
12.	Appendix C-1 – Insurance Requirements	Business Automobile Insurance	for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT’s officers, agents and employees, including but not limited to	This is not acceptable.

			owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.	
13.	Appendix C-1 – Insurance Requirements	Umbrella Insurance	<u>Insurance</u> in the amount of \$1,000,000 per occurrence and annual aggregate providing excess limits over Employer’s Liability, <u>Business</u> Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.	See Addendum #1.
14.	Appendix C-1 – Insurance Requirements	Errors and Omissions	Errors and Omissions <u>Professional Liability Insurance for the negligent acts, errors and omissions in the performance of professional services</u> and the resulting damages, including, but not limited to, economic loss to BATA and having minimum limits of \$1,000,000 per claim <u>and annual aggregate.</u>	This has been accepted in part. See Addendum #1.
15.	Appendix C-1 – Insurance Requirements	Deductibles and Retentions	Delete the following paragraph: “Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable”.	This is not acceptable.
16.	Appendix C-1 – Insurance Requirements	Deductibles and Retentions	In the event that BATA seeks coverage as an additional insured under any CONSULTANT insurance policy that contains a deductible or self-insured retention,	This is not acceptable.

			CONSULTANT shall satisfy such deductible or self- insured retention to the extent of loss covered by such policy, for any a lawsuit arising to the extent caused from or connected with any an alleged <u>negligent</u> act of CONSULTANT, <u>its employees, officers or directors, subconsultant, subcontractor, or anyone for whom CONSULTANT is legally liable, of their employees, officers or directors,</u> even if CONSULTANT or subconsultant is not a named defendant in the lawsuit.	
17.	Appendix C-1 – Insurance Requirements	Claims Made Coverage	Maintain and provide evidence of similar insurance for at least three years following project completion, <u>if commercially available and reasonably affordable, including the requirement of adding all additional insureds;</u>	This is not acceptable.
18.	Appendix C-1 – Insurance Requirements	Claims Made Coverage CONSULTANT shall purchase “extended reporting” coverage for a minimum of three (3) years after completion of the work <u>if commercially available and reasonably affordable.</u>	This is not acceptable.
19.	Appendix A	1. Part 1	In Paragraph A.3, replace “ensure compliance” with “confirm compliance”. The Consultant would not have a contract with the construction contractor and therefore could not “ensure” that the construction contractor complies with project plans and specifications.	This is not acceptable.

20.	Appendix A	2. Part 1	In Paragraph A.9, replace “assure” with “confirm”. Since it would not have a contract with the designer, Consultant cannot guarantee the designer’s design, which is required by the use of “assure”.	See Addendum #1.
21.	Appendix C	3. 1. Article 1	In second paragraph, replace “special expertise” in first sentence with “experience”. The use of “special expertise” could be construed as requiring a heightened standard of care that could result in voiding the professional liability coverage sought by the Authority elsewhere in the contract.	This is not acceptable. BATA is not aware that either term would actively void the professional liability insurance policy.
22.	Appendix C	4. 3. Article 9	In third sentence of first paragraph, delete “sole active” and then add “or the acts or omission of any other party for whom CONSULTANT is not legally liable”. This sentence as presently written could be interpreted as requiring the Consultant to assume liability for the Authority’s negligence or the acts of others in the event of joint or concurrent negligence or fault.	This is not acceptable.
23.	Appendix C	5. Article 23.A	In the first sentence of Paragraph A, replace “special expertise” with “experience”. The use of “special expertise” could be construed as requiring a heightened standard of care that could result in voiding the professional liability coverage sought by the Authority elsewhere in the contract.	This is not acceptable. BATA is not aware that either term would actively void the professional liability insurance policy.

24.	Appendix C	6. Article 23.C	In Paragraph 3, insert “attributable to its failure to meet the warranty standards above” between “omissions” and “and is.” The Consultant’s liability here should be tied to its failure to meet the warranty standard.	See Addendum #1.
25.	Professional Services Agreement, Attachment E Appendix C-1, Insurance Requirements	Section 1.A. Minimum Coverages (page 27) Section 1.A. Minimum Coverages, second paragraph, second sentence (page 20)	Provisions 1 & 2 (second paragraph, second sentence): Please delete second sentence which begins "To the extent that an Agent" and ends "in the absence of coverage." Consultant does not purchase insurance for its subconsultants. And our subconsultants are not covered by Consultant’ insurance. Consultant endeavors to hire subconsultants that provide the insurance that BATA requires. If a subconsultant does not have the required insurance, Consultant will hire a subconsultant that does.	This is not acceptable. It is required that the Consultant ensures that such subconsultants have proper insurance as required in this contract.
26.	Professional Services Agreement, Attachment E Appendix C-1, Insurance Requirements	Section 1.A.4. Umbrella Insurance (page 28) Section C-1.1.A. Umbrella Insurance (page 21, table, fourth box under heading)	Please insert a sentence at the end of the paragraph: “CONSULTANT may satisfy the limits required in this Section by any combination of primary and excess policies.”	See Addendum #1.
27.	Professional Services Agreement, Attachment E Appendix C-1, Insurance Requirements	Insurance and Financial (Bond) Provisions, Section 1.D. Deductibles and Retentions (page 28) Section C-1, 1, D. Deductibles and Retentions (page 21)	Second and third sentences: Please delete in its entirety. Insurers will not agree to this.	This is not acceptable.

28.	Professional Services Agreement, Attachment E Appendix C-1, Insurance Requirements	Insurance and Financial (Bond) Provisions, Section 1. G. Certificates of Insurance (page 29) Section 1.G. Certificates of Insurance (page 22)	Last line: Please insert “or CONSULTANT’s insurance broker” at the end of the paragraph.	This change is unnecessary since an insurance broker may be considered an authorized representative.
29.	Appendix C BATA’s Standard Consultant Agreement	Section 10.2 Nondisclosure of Confidential Information	Consultant proposes to add a statement that reads: “ <i>Consultant shall be entitled to keep a copy for business reasons of confidential information (Such copies shall be kept confidential pursuant to Section 10 - Nondisclosure of Confidential Information)</i> ”... to the agreement where it says Consultant should provide all computer files, documents etc. to BATA that contain confidential information at any time upon their request.	This is not acceptable.
30.	Appendix C BATA’s Standard Consultant Agreement	Section 11 – Ownership of Work Products	Consultant proposes to add: “ <i>Any reuse or modification of such documents for purposes other than those intended by the Consultant shall be at BATA’s sole risk and without liability to the Consultant.</i> ”	This is not acceptable.
31.	Appendix C BATA’s Standard Consultant Agreement	Section 23 – Warranty of Services	Consultant proposes to replace Warranty with “ <i>Standard of Care</i> ” throughout.	This is not acceptable.
32.	APPENDIX C-1 and Attachment E	General question	Question: There are 2 sets of Insurance Requirements: Appendix C-1 and Attachment E. We are not sure which one applies to us. Can you clarify or explain in more detail?	See Addendum #1.
33.	APPENDIX C-1 Insurance Requirements	Workers Comp:	Question: Regarding the Longshore Harbor Workers Act Insurance, are each of our subs required to obtain this insurance?	See Question #1.

34.	APPENDIX C-1 Insurance Requirements	Umbrella Insurance	Question: Is the \$5,000,000 Umbrella insurance required for all team members?	See Question #1.
35.	APPENDIX C-1 Insurance Requirements	Errors and Omission	Question: BATA requires \$2,000,000 limit in Appendix C-1. Attachment E requires \$1,000,000 limit on E&O. What limit on E&O is required by our subs?	See Addendum #1.
36.	ATTACHMENT E Insurance Requirements	Workers Comp:	Question: Regarding the Longshore Harbor Workers Act Insurance, are each of our subs required to obtain this insurance?	See Question #1.
37.	ATTACHMENT E Insurance Requirements	Umbrella Insurance	Appendix C-1 above requires \$5,000,000 limit. Attachment E requires \$1,000,000. Question: What limit is required by subs for Umbrella Insurance?	See Addendum #1.
38.	ATTACHMENT E Insurance Requirements	Errors and Omission	Question: Appendix C-1 above requires \$2,000,000 limit on E&O. Attachment E requires \$1,000,000 limit on E&O. What limit on E&O is required by our subs?	See Addendum #1.