

Managed Lanes Implementation Plan RFP
Responses to Questions and Answers and Request for Exceptions – Set 2
July 30, 2014

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#	RFP Section	Requested Action	Response
1.	Appendix D, BAIFA Standard Consultant Contract, page 39	Our company anticipates that it may use pre-existing intellectual property to perform this engagement. As such, we request the ability to negotiate mutually acceptable language to retain our rights to such pre-existing intellectual property as well as to modify the language pertaining to originality to reflect the use of pre-existing intellectual property. Please confirm that this will be acceptable.	Please refer to Appendix D, BAIFA Standard Consultant Contract, page 39, Article 11, 1 st paragraph, last sentence. This language currently gives the Consultant the right to retain all right, title and interest in any such pre-existing intellectual property. Regarding the second request to modify language pertaining to originality, BAIFA can add clarifying language to reflect the use of pre-existing intellectual property, if applicable to the selected Consultant.
2.		In order to perform this engagement, we anticipate that BAIFA, Caltrans and/or third parties not subject to our right to control will provide significant data and information. Please confirm that BAIFA is amenable to negotiate mutually acceptable language to acknowledge that the Consultant is not assuming responsibility for the accuracy and completeness of the information provided to it.	The Consultant will not be responsible for the accuracy and completeness of information or data provided to it by sources other than what is directly collected by the Consultant or its subconsultants (e.g., traffic data, vehicle occupancy data, if applicable). BAIFA will not be amenable to changing the standard contract language.
3.	Appendix D, BAIFA Standard Consultant Contract, Attachments B, C, D, and F	Please confirm that forms and tables included in Appendix D (specifically Attachments B, C, D, and F) do not need to be signed and submitted with proposals.	Forms and tables included in Appendix D, BAIFA Standard Consultant Contract, do not need to be signed and submitted with the proposal.
4.		Do all required forms need to be signed by both the Prime and any proposed sub-consultants?	Required forms for submittal only need to be signed by the Prime Consultant.
5.	RFP, Section VII Form of Proposal, .F Qualifications and References #3	Please confirm that we can include more than one page of relevant experience but no project description should be longer than one page (as noted in Section VII.F.3).	Please refer to Addendum #1.
6.	RFP, Section VII Form of Proposal, .F Qualifications and References #4	Should proposers include an electronic copy of their work sample?	Refer to Section VI. SUBMITTAL OF PROPOSALS, subsection 1 of the RFP. One electronic PDF version of the proposal is required. The work sample is considered part of the proposal.

7.	RFP, Section VII Form of Proposal, .F Qualifications and References #5	Please confirm that each proposed firm on a team should provide 3 references.	Yes.
8.		Can the Project Manager be from a firm that is Sub-Consultant to the Prime?	Yes.
9.	Appendix D, BAIFA Standard Consultant Contract, Section 12, Subcontracts, page 40	Per Section 12, are subcontractors are required to comply with the same contractual obligations as the CONSULTANT?	No. See Section 12 D which states in pertinent part that “applicable provision of this Agreement shall be included in any subcontract or subconsultant agreement in excess of \$25,000.”
10.	Appendix D, BAIFA Standard Consultant Contract, Section 6, A. Termination for Convenience, page 36	Pg 35; 6. TERMINATION, A. – <u>add</u> “...at any time by <u>30 days</u> written notice...”	Requested change not acceptable.
11.	Appendix D, BAIFA Standard Consultant Contract, Section 6, B. Termination for Default, page 37	Pg 37; 6. TERMINATION, B. – delete “... Such reimbursement will be offset by any costs incurred by BAIFA to complete work required under the Agreement. ”	Requested change not acceptable.
12.	Appendix D, BAIFA Standard Consultant Contract, Section 9, Indemnification, page 38	Pg 38; 9. INDEMNIFICATION – 2nd paragraph, edit line: “CONSULTANT agrees may agree , to immediately defend...” Delete entire last sentence which begins: “ As part of this defense... ”	Requested change is not acceptable.
13.	Appendix D, BAIFA Standard Consultant Contract, Section 11, Ownership of Work Products, page 39	Pg 39; 11. OWNERSHIP OF WORK PRODUCTS – edit line: “...delivered to BAIFA. Except that the CONSULTANT may retain a copy for its own internal, non-commercial research use. CONSULTANT hereby assigns...”	No change will be made to the contract; however BAIFA may elect to grant permission to the Prime Consultant on a case-by-case basis.
14.	Appendix D, BAIFA Standard Consultant Contract, Section 11, Ownership of Work Products, page 39	3rd paragraph, add: “...materials in the public domain (or both) and that, <u>to the best of its knowledge</u> , all materials prepared...”	No change will be made to the contract.

15.	Appendix D, BAIFA Standard Consultant Contract, Section 11, Ownership of Work Products, page 39	Add 4th paragraph: 'CONSULTANT may petition BAIFA for approval to publish the results of the Work Products, pending BAIFA review for any sensitive or proprietary information. Such approval shall not be unreasonably withheld.' (.)	See response to #13.
16.	Appendix D, BAIFA Standard Consultant Contract, Section 15, Audits, page 41	<u>Pg 41; 15. AUDITS</u> – Delete clause because the audit terms are incompatible with a fixed price type agreement.	Requested change is not acceptable.
17.	Appendix D, BAIFA Standard Consultant Contract, Section 21, Remedies for Breach, page 44	<u>Pg 44; 21. REMEDIES FOR BREACH</u> – 1 st paragraph, edit: “not limited to, withholding of progress payments and contract retentions, and termination of the Agreement...”	No change will be made to the contract. If progress payments and contract retentions are not required, this will not be applicable.
18.	Appendix D, BAIFA Standard Consultant Contract, Section 23, Warranty of Services, page 45	<u>Pg 45; 23. WARRANTY OF SERVICES, A.</u> – edit last line: “...CONSULTANT shall <u>may</u> provide such specific warranties...”	No change will be made to the contract.
19.	Appendix D, BAIFA Standard Consultant Contract, Section 23, Warranty of Services, page 45	<u>B. 1 & 2</u> –Delete DELETE both items. <u>Pg 45; 23. WARRANTY OF SERVICES, A B. 3</u> – edit line: “The right to terminate the Agreement for default, <u>following an agreed upon period of time by which the identified deficiency may be remedied.</u> CONSULTANT shall be responsible for all errors and omissions and is expected to pay for all deficient work as a result of errors and omissions. ”	No change will be made to the contract. Also please see Appendix D, Section 6. B, Termination for Default.
20.	Appendix D, BAIFA Standard Consultant Contract, Section 23, Warranty of Services, F. Survival of this Article, page 46	<u>F. Survival of this Article:</u> edit term: “claim or dispute under <u>applicable law.</u> the laws of the State of California. ”	No change will be made to the contract.
21.	Appendix D, BAIFA Standard Consultant Contract, Section 25, Choice of Law, page 47	<u>Pg 47; 25. CHOICE OF LAW</u> – SILENT.	Requested change is not acceptable.

22.	Appendix D, BAIFA Standard Consultant Contract, Section 26, Attorney Fees, page 47	<u>Pg 47; 26. ATTORNEY'S FEES</u> – delete, “... in addition to all court costs. ”	Requested change is not acceptable.
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