

September 5, 2014
Request For Qualifications For
San Francisco-Oakland Bay Bridge
West Span Bicycle, Pedestrian, and Maintenance Path Project
Dated July 25, 2014

Responses to Proposers' Questions from Proposers' Conference
on July 31, 2014
and Questions Received by Closing Date for Clarifications/Exceptions on August 15, 2014

Questions & Answers

Q1	Scope of Services Task 7. Are permit applications under Task 7 to be prepared only for permits and agreements required for Project Approval?
A1	<i>Yes, Consultant shall prepare all permit application for permits and agreements required for Project Approval and Environmental Documentation.</i>
Q2	Is a detailed cost estimate with quantities corresponding to the estimate summary provided in the Draft PSR available?
A2	<i>Please visit https://mtcdrive.box.com/sfobb-bikepath to view documents.</i>
Q3	FORM OF SOQ, Section E. Qualifications and Experience. For ease of reviewing, is it acceptable that biographies for our proposed Project Manager and key personnel be included in the Qualifications and Experience section and that resumes for all proposed team members be included as an Appendix?
A3	<i>Yes.</i>
Q4	FORM OF SOQ, Section M. Forms and Certificates and N. Iran Contracting Act. Are the forms Appendix B, Appendix C-1 and Iran Contracting Act required for the prime consultant and subconsultants or just the prime consultant?
A4	<i>The forms referenced above are required of the Prime Consultant only.</i>
Q5	In the Consultant Selection timetable, interviews are listed as the Week of September 15 th . a. Is that schedule still accurate or do you foresee scheduling the interviews for some later week? b. To better assist our team in preparing for a potential interview, can you provide the interview format? (For example, total time allotted, time allotted for presentation vs Q&A) c. Can you provide the Interview Evaluation criteria similar to what was provided for the SOQ Evaluation on page 7 of the RFP?
A5	<i>a) See Addendum #1. b) Generally, interviews are less than an hour with some time allotted for a short presentation on qualifications and a question and answer session. Specifics will be determined at a later date. c) There are no separate evaluation factors for the interviews. The evaluation criteria will be a cumulative scoring of both the written SOQs and interviews, if</i>

	<i>held, based on the evaluation criteria on page 7 of the RFQ.</i>
Q6	FORM OF SOQ, Section I. Detailed Scope of Services. Please clarify that “level of effort” is to include “hours” for each major task and subtask.
A6	<i>The level of effort for each task should include assumptions on resourcing and estimated number of hours to complete each major task and subtask.</i>
Q7	We understand there may be a patent on certain procedures (shimming the suspender cables) that could be used to adjust a suspension bridge profile after the addition of dead load. Is that correct? If so, has BATA secured the rights, which would allow all teams to prescribe the patented procedures on this project?
A7	<i>We recently have become aware of a patent for modifying the profile of a cable supported bridge (Patent No. US 6,728987). Before determining which design approach will be used in constructing the project, BATA and Caltrans will evaluate intellectual property rights relevant to the design alternatives.</i>
Q8	It appears that the scope of work for Task 8 as written was intended for another project rather than the SFOBB BPM project. Please clarify the work scope, project, expectation and deliverables.
A8	<i>Consultant will be expected to deliver Task 8, Public Information, to provide public outreach support, if necessary.</i>
Q9	Will BATA consider exceptions and reductions of insurance requirements for small subconsultants that may have scope and corresponding fees in excess of \$25,000?
A9	<i>Requested change is not acceptable. To the extent the requested change applies to a subconsultant, it is up to the Prime Consultant to assess the risk associated with the work to be performed by its subconsultants and ensure its subconsultants maintain adequate insurance coverages. Please see Appendix C, Attachment F, Section 1.A.</i>
Q10	Will all firms on the team (prime, major subs and small subs) be required to: (1) Prepare a Conflict of Interest Statement; (2) Sign the California Levine Act (Appendix B); (3) Sign the Insurance Provisions (Appendix C-1); and (4) Sign the Iran Contracting Act (Appendix D)?
A10	<i>See response to Question #4.</i>
Q11	We would request from BATA to include the following language in Section 6 or the agreement in order to allow the CONSULTANT some protection in the event of non-payment? If BATA fails to make payment of an invoice when due or otherwise commits a material breach of the Agreement, CONSULTANT may give written notice of CONSULTANT's intention to terminate this Agreement. If BATA fails to correct or submit a corrective plan within 30 Days after receipt of such notice by CONSULTANT, CONSULTANT may terminate this Agreement.
A11	<i>Requested change is not acceptable.</i>
Q12	We would request BATA be willing to amend the indemnification provision (section 9) in order to align it with industry standard insurance coverage?

	We would ask to include the following text: "For claims relating to professional liability, CONSULTANT's defense obligation under this provision is limited to reimbursement of any expenditure, including reasonable attorney fees and costs, incurred by an indemnified party in defending claims or lawsuits, to the extent ultimately determined to be due to the negligence of CONSULTANT or any of its employees or subconsultants."
A12	<i>Requested change is not acceptable.</i>
Q13	In Section 23 (A) of the Agreement, we would seek clarification on the standard of care to make sure it falls within insurance coverage. We would seek to delete 'special expertise' and replace with 'current accepted industry practice for projects of a similar type'.
A13	<i>Requested change is not acceptable.</i>
Q14	<p>We would request BATA be willing to include a reasonable limitation of liability taking into consideration the nature of the services and level of fee. We would seek to agree that the professional liability insurance requirement is a limit on CONSULTANT's exposure in relation to that type of liability.</p> <p>We request adding the following clause (or similar): "The total liability of CONSULTANT under or in connection with the Agreement for claims relating to professional liability, whether in contract, tort, negligence, breach or otherwise, shall not exceed the specified and required amount of professional liability insurance set out in this Agreement in the aggregate. This limitation shall not apply to general liability claim such as personal injury, property damage, death, breach of confidentiality, copyright infringement, willful misconduct or gross negligence."</p>
A14	<i>Requested change is not acceptable.</i>
Q15	We would request BATA be amenable to including a mutual waiver of consequential damages: "Neither party shall be liable to the other party for any consequential, indirect or special damages whether foreseeable or not at the time of execution."
A15	<i>Requested change is not acceptable.</i>
Q16	Section 24 (D) of the Agreement requires CONSULTANT to continue providing services even if it is not getting paid. We pay salaries in real time and will not be in a position to fund this without received payment. We would therefore, seek to add to the provision the following: "provided BATA is paying CONSULTANT and there are no outstanding Invoices."
A16	<i>Requested change is not acceptable.</i>
Q17	In Section 3, we would request for the following language to be inserted: "If any invoice submitted by CONSULTANT is disputed by BATA, only that portion for work so disputed may be withheld from payment at which time BATA shall immediately

	reimburse CONSULTANT for any outstanding amounts due with respect thereto."
A17	<i>No change will be made to the contract. If an invoice is disputed by BATA, Consultant should resubmit invoice for the non-disputed portion of work for reimbursement.</i>
Q18	If the CONSULTANT is required to modify and/or revise any completed designs, specifications or reports; and/or work progress is delayed or disrupted in either case for reasons other than any default of the CONSULTANT then the CLIENT will pay to the CONSULTANT such sum as is fair and reasonable in accordance with the schedule of rates set out in (Rate Schedule - Attachment A-2) to cover the additional resources employed by the CONSULTANT in respect of such additional services.
A18	<i>See RFQ, Section III, Scope of Work and Schedule. "All work will be assigned pursuant to BATA initiated task orders, which will include a specific scope of work based on the tasks identified in Appendix A, Scope of Work". If additional work is required that is not covered in the specified scope of work BATA will amend the task order to reflect such changes.</i>
Q19	In Section (VI.G - References) - Will the qualifications of all members of the proposing team (including subconsultants) be valued equally by BATA in evaluation or will there be special consideration for forming Joint Ventures or other type of associations?
A19	<i>Please see Section VII.B. SOQ Evaluation for the evaluation factors. Joint ventures or other types of associations will not receive special consideration.</i>
Q20	In Section VI.G - References - We would like clarification on the term "firm". Does the term "firm" include, the Prime Consultant and also a Joint Venture or Association, or a Sub consultant in the team? We would like to clarify which companies in the project team may contribute relevant experience to meet the requirement in this section.
A20	<i>A total of three references must be provided. Firm is intended to include the proposing entity or firms that comprise the joint venture.</i>
Q21	Please clarify if the selection of the team will be based on the score of the proposal plus the interview. Please clarify how the selection will be made.
A21	<i>See response to Question #5(c).</i>
Q22	In Section 1 "Scope of Services" we would request for the following language to be inserted - If any invoice submitted by CONSULTANT is disputed by BATA, only that portion so disputed may be withheld from payment at which time BATA shall immediately reimburse CONSULTANT for any outstanding amounts due with respect thereto. BATA shall pay CONSULTANT'S reasonable attorneys' fees incurred in connection with any litigation instituted to recover invoice amounts. In addition, CONSULTANT shall have the right to suspend or terminate services if BATA fails to make timely payments 30 days after receipt of invoice.
A22	<i>Requested change is not acceptable. See response to Question #17 for disputed invoices.</i>
Q23	In Section 5 "Amendments" we would request for the following language to be inserted - CONSULTANT shall notify BATA in writing within five (5) business days of any event or condition impacting CONSULTANT'S ability to meet its performance schedule, including but not limited to, unknown or misidentified project site conditions, an error or change in BATA provided information or in the event that BATA fails to meet an obligation specifically set forth in this Agreement, any force majeure event, or any changes caused by governmental authorities, and shall issue to BATA a scope

	change order notice. To the extent such information is available, all scope change order notices shall include preliminary documentation to enable BATA to determine (1) the factors necessitating the possibility of a scope change; (2) the impact which the scope change is likely to have on the compensation; and (3) the impact which the scope change is likely to have on the project schedule.
A23	<i>No change will be made to the contract. Should there be a change to the scope or schedule BATA will amend the task order, subject to negotiation.</i>
Q24	In Section 9 "Indemnification" we would request for the following section to be removed: CONSULTANT further agrees to immediately defend the BATA Indemnified Parties with respect to any Claims and Losses if such Claims and Losses are alleged to arise out of, pertain to, or relate to any allegations of CONSULTANT's recklessness, willful misconduct, or negligent services performed under this Agreement. As part of this defense obligation, CONSULTANT agrees to either retain counsel to defend the MTC Indemnified Parties or pay charges of the BATA Indemnified Parties' attorneys with regard to the Claims and Losses. 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) recklessness; or (c) willful misconduct.
A24	<i>Requested change is not acceptable.</i>
Q25	We would request for the following Section to be inserted as Section 31 "Limitations" - 31. LIMITATIONS Neither party shall be liable to the other party for loss of profits or revenue; loss of use; loss of opportunity; loss of goodwill; cost of substitute facilities, goods or services; cost of capital; cost of replacement power; governmental and regulatory sanctions; and claims of customers for such damages; or for any special, consequential, incidental, indirect or exemplary damages whether a claim for any such loss arises out of breach of contract, warranty, tort (including negligence), strict liability, indemnity, or another theory. Except for an obligation to make payments, neither party shall be in default to the extent any nonperformance is caused by a circumstance beyond such party's reasonable control. The warranties, obligations, liabilities and remedies of the parties, as provided herein, are exclusive and in lieu of any others available at law or in equity. CONSULTANT's total aggregate liability under this Agreement shall not exceed the compensation received by CONSULTANT under the applicable Task Order. To the fullest extent allowed by law, releases from, and limitations of liability shall apply notwithstanding the breach of contract, tort including negligence, strict liability or other theory of legal liability of the party released or whose liability is limited. CONSULTANT may subcontract portions of the services to its related entities.
A25	<i>Requested change is not acceptable.</i>
Q26	Attachment F - Insurance Requirements Section A "Minimum Coverages" we would request for the following language to be revised as follows: The insurance requirements specified in this section shall cover CONSULTANT's own liability and the liability to the extend caused by the work or services performed under this Agreement by anyone whom CONSULTANT is legally

	liable for ...
A26	<i>Requested change is not acceptable. It is up to the Prime Consultant to assess the risk associated with the work to be performed by its subconsultants and ensure its subconsultants maintain adequate insurance coverages. Please see Appendix C, Attachment F, Section 1.A.</i>
Q27	Attachment F - Insurance Requirements 5. Errors and Omissions - we would request for the following language to be revised as follows: 5.5. Professional Liability Insurance for negligent errors and omissions and the resulting damages, including, but not limited to, economic loss to BATA and having minimum limits of \$2,000,000 per claim and annual aggregate. The policy shall provide coverage for work performed by CONSULTANT and anyone for whom Consultant is legally liable who is performing services on behalf of the CONSULTANT. No contract or agreement between CONSULTANT and any subcontractor/consultant shall relieve CONSULTANT of the responsibility for providing this Professional Liability coverage for work performed by CONSULTANT and anyone for whom CONSULTANT is legally liable for working on behalf of CONSULTANT on the project.
A27	<i>Requested change is not acceptable.</i>
Q28	Attachment F - Insurance Requirements (a) 6. Property Insurance - we would request for the following language to be revised as follows: ... 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. (b) Attachment F - Insurance Requirements B. Acceptable Insurers - we would request for the following language to be revised as follows: All policies will be issued by insurers acceptable to BATA, generally with a Best's Rating of A-VIII or better.
A28	(a) <i>No change will be made to the contract. It is acceptable to have earthquake (EQ) as part of the property insurance program. However, Consultant may not charge EQ premiums back to BATA for this project.</i> (b) <i>Requested change is not acceptable.</i>
Q29	Attachment F - Insurance Requirements E. Claims Made Coverage - we would request for the following language to be revised as follows: (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 if commercially available and reasonably affordable; and
A29	<i>Requested change is not acceptable.</i>
Q30	Attachment F - Insurance Requirements E. Claims Made Coverage - we would request for the following language to be revised as follows: (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 <u>if commercially available and reasonably affordable</u> .
A30	<i>Requested change is not acceptable.</i>
Q31	APPENDIX C-1, INSURANCE REQUIREMENTS We would request for the following language to be revised as follows: 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 <u>to the extent caused by the performance of work or services</u> under this Agreement, placed with insurers with a Best’s rating of A-VIII or better.
A31	<i>Requested change is not acceptable.</i>
Q32	APPENDIX C-1, INSURANCE REQUIREMENTS We would request for the following language to be revised as follows: 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, MTC, Caltrans, 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.
A32	<i>Requested change is not acceptable.</i>
Q33	APPENDIX C-1, INSURANCE REQUIREMENTS We would request for the following language to be revised as follows: Umbrella Insurance in the amount of \$5,000,000 <u>per occurrence and annual aggregate</u> providing excess limits over Employer’s Liability, <u>Business Automobile Liability</u> , and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.
A33	<i>No, changes will be made to the contract. BATA expects a \$5M per occurrence limit, but understands that the Contractor’s policy may include a \$5M aggregate. Umbrella insurance is expected to provide excess limits, including “Business” Automobile liability.</i>
Q34	APPENDIX C-1, INSURANCE REQUIREMENTS We would request for the following language to be revised as follows: Errors and Omissions Professional Liability Insurance for the negligent acts , errors and omissions and the resulting damages, including, but not limited to, economic loss to BATA and having minimum limits of \$2,000,000 per claim and <u>annual aggregate</u> . The policy shall provide coverage for all work performed by CONSULTANT and any work performed

	<p>or conducted by any <u>one subcontractor/consultant</u> working for or performing services on behalf of the CONSULTANT. No contract or agreement between CONSULTANT and any subcontractor/consultant shall relieve CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONSULTANT and any <u>one subcontractor/consultant for whom CONSULTANT is legally liable who is</u> working on behalf of CONSULTANT on the project.</p>
A34	<i>Requested change is not acceptable.</i>
Q35	<p>APPENDIX C-1, INSURANCE REQUIREMENTS We would request for the following language to be revised as follows: 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.</p>
A35	<i>Please see response to Question #28(a).</i>
Q36	<p>APPENDIX C-1, INSURANCE REQUIREMENTS We would request for the following language to be revised as follows: B. Acceptable Insurers. All policies will be issued by insurers acceptable to BATA, generally with a Best's Rating of A-VIII or better.</p>
A36	<i>Requested change is not acceptable.</i>
Q37	<p>APPENDIX C-1, INSURANCE REQUIREMENTS We would request for the following language to be revised as follows: (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 if commercially available and reasonably affordable; and</p>
A37	<i>Requested change is not acceptable.</i>
Q38	<p>APPENDIX C-1, INSURANCE REQUIREMENTS We would request for the following language to be revised as follows: (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 <u>if commercially available and reasonably affordable</u>.</p>
A38	<i>Requested change is not acceptable.</i>
Q39	<p>Attachment F, Insurance Requirements, 1., A., 4., last line: 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"</p>
A39	<i>No changes will be made to the contract, but Consultant may satisfy the limits required under Umbrella Insurance by any combination of primary and excess policies.</i>
Q40	<p>Attachment F, Insurance Requirements, 1., A., second line: replace "the" with "its".</p>

A40	<i>Requested change is not acceptable.</i>
Q41	Attachment F, Insurance Requirements, 1., D., 2nd and 3rd sentences: delete in its entirety.
A41	<i>Requested change is not acceptable.</i>
Q42	Attachment F, Insurance Requirements, 1., E., (2), last line: insert “(if applicable)” between “insureds” and “; and” .
A42	<i>Requested change is not acceptable.</i>
Q43	Attachment F, Insurance Requirements, 1., G., last line: insert “or CONSULTANT’s insurance broker” after “representative”
A43	<i>No change will be made to the contract. It is acceptable for an authorized agent to sign a certificate of insurance on behalf of the insurance company.</i>
Q44	Appendix C-1, Insurance Requirements: Umbrella Insurance: We can satisfy the limits required by relying on its primary Commercial General Liability, Automobile Liability and Employers’ Liability policies, which have primary limits that will satisfy the total limits required in these requirements (required primary plus required Umbrella limits).
A44	<i>See response to Question #39.</i>
Q45	Appendix C-1, Insurance Requirements: Property Insurance: Our policy includes (and not excludes) earthquake. Is this acceptable?
A45	<i>See response to Question #28(a).</i>
Q46	Appendix C-1, Insurance Requirements: Last Box: Our insurers will not agree to the requirement in the second and third sentences of Section D. We respectfully ask that it be removed. Also, our insurance certificates will be signed by a representative of Marsh, not the insurer (see requirement in Section G).
A46	<i>Deletion of the second and third sentences of Section D is not acceptable. It is acceptable for an authorized agent to sign a certificate of insurance on behalf of the insurance company.</i>