

QUESTIONS & ANSWERS

QUESTION NUMBER	ORIGINATOR	DOCUMENT NAME	DOCUMENT NUMBER	QUESTION	RESPONSIBLE	ANSWER
001		RFP	Section 205	Because the 10-page Executive Summary may be released to the media, can we assume that it should be packaged separately from the Package A or Package B?		See Addendum No. 01. The ES has been reduced and it will not be released to the media.
002		RFP	Section 207	RFP Section 207, Package A, Tab A-3 Licenses and Evidence of Entitlement to Carry Out Construction and Design Work requests that the Proposer provide evidence of all licenses, registrations, and credentials held by it and its team members as required to perform design and construction services in the State of California. Please confirm copies of Professional Engineering Licenses do not need to be provided with the Proposer's response		No change. Copies of PE licenses are not required.
003		RFP	Section 208	Reference RFP Section 208 Package B Qualifications/Technical Proposal, instructions for Tab B-2 Organization, Staffing, and Credentials. We suggest that the resumes (2 pages each) for the Project Manager, Key Personnel, and Project Staff be excluded from the 85 page limitation.		No change. See Addendum No. 01. Resumes are now excluded from page count.
004		RFP	Section 208	Reference RFP Section 208 Package B Qualifications/Technical Proposal, instructions for Tab B-3 Project Management. Item 1 requires the Proposer's plan for overall management of Stage A and Stage B of the project (citing items A through E). Item 2 requires a draft Project Management Plan for Stage A work and initial summary plan for Stage B. Please clarify what is expected in the Item 2 that is different from the Item 1 requirements. They appear to be asking for similar information.		No change. See Addendum No. 01. Item 2 was deleted.
005		RFP	Section 208	Reference RFP Section 208 Package B Qualifications/Technical Proposal, instructions for Tab B-5 Construction Plan and Approach to the Work, Item 8 Project Schedule. Please clarify what is expected for a "schedule for the design and construction work" at this stage of the procurement process.		Document revised. Requirement is revised by Addendum No. 02.
006		RFP	Section 208	Reference RFP Section 208 Package B Qualifications/Technical Proposal, instructions for Tab B-6 Safety Plans and Safety Record. We request that Item 1 Statements of Commitments from Proposer and Key Subcontractors, and Item 2 Form SQ be excluded from the 85 page limitation.		No change. See Addendum No. 01. Item 2 - Form SQ is now excluded from the page count limitation.
007		RFP	Section 208	Reference RFP Section 208 Package B Qualifications/Technical Proposal, instructions for Tab B-9 Other Required Plans and Programs. Please explain what information and level of detail the Authority expects for the five required plans. These can easily consume a significant portion of the 85 page limit – please provide clarification or exclude from the page limit.		No change. See Addendum No. 01. The response in Tab B-9 is now limited to five (5) pages.
008		General	General	Use of shared subconsultants; Will the Authority downgrade Proposers who use the same subconsultants for select functions such as Survey or Geotechnical services. Shared subconsultants may be perceived to dampen the independent creative thinking the Authority is presumably attempting to achieve through the chosen procurement arrangement for Preliminary Engineering.		No change. This is not an issue and the evaluation process as structured will not be affected by this subject.

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009		Stage A Agreement	Section 4	Stage A Agreement; Issue #2 – Heightened, Uninsurable Standard of Care; Pg.5-6. Sec.4. “Scope of Work & Performance Requirements,” (b) Performance Requirements,” (1) “Professional Standards,” – This section is a non-typical heightened standard of care, which is not insurable under any professional liability insurance policy. It should be noted that (2) “Skill & Care Required” is a typical statement of the engineering standard of care. We believe that the Authority’s linking of professional services to a “technically sound” performance standard, would be viewed as a warranty and heightened, uninsurable standard of care.;(b) Performance Requirements -- (1) Professional Standards -- The Contractor shall, at all times during the term of the this Agreement, perform all of its professional services in a technically sound manner and in accordance with appropriate prevailing professional practice standards; and shall furnish all labor, supervision, materials, and supplies necessary...” ;Pg. 6. This provision also contains a remedy for errors & omissions, which is typically acceptable to ██████, if the sole remedy for negligent acts.;(d) Errors or Omissions – During the period of performance of the Stage A Work, the Contractor shall, without additional compensation, correct or revise any deficiencies, errors, or omissions caused by the Contractor in its analysis, reports, and services. The Contractor also agrees that if any error or omission is found, the Contractor will expeditiously make the necessary correction, at no expense to the Authority, except when such error or omission was directly caused by the Authority.”; Pg. 7. Contains a provision in (i) that precludes disclaimers, but does allow for those linked to the standard of care.		No change. Language in Section 4(b) was changed in the Stage A Agreement as issued on 11/09/09, in response to industry review process. However, errors and omissions language in section 4(d), and disclaimer language in section 4(j), are standard language typically found in public agency engineering and professional services contracts.
010		Stage A Agreement	Section 11	Inappropriate Work Product IP Rights Transfer & Representation of No Infringement; Pg. 14-17. Sec. 11 “Ownership of Work; Treatment of Information” – contains a transfer of all copyrights, including those protected by the Federal Copyright Act, and a representation of no infringement on any patent, etc., including those of third parties. It is becoming important for ██████ to retain its copyright, and it is impossible, short of engaging in a patent, copyright and trademark search of all potential patents, copyrights and trademarked materials and work product, pre-design in order to make such a representation.		No change. The reports and plans, including copyrightable interests, that are to be transferred to the Authority are produced for the Stage A work and paid for by the Authority. Transfer of ownership of these materials to the public agency is in accordance with standard practices in the industry. Also see answer to Question No. 076 and technical change to Section 11(c).
011		Stage A Agreement	Section 13	Non-negligence Based Indemnity & Heightened Standard of Care; Pg. 18-19. Sec. 13. “Hold Harmless,” (a) “Professional Services Indemnity” – Agreement restates the standard of care to a non-typical, uninsurable standard of care, and contains non-negligence indemnity and uninsurable indemnity obligations, i.e., assuming liability, duty to defend, third party liability, type One obligation, “claimed to arise,”.; “(a) Professional Services Indemnity -- The Contractor has represented to the Authority that it is skilled in the professions necessary to perform the services and duties agreed to be performed under this Agreement, and the Authority is relying upon such representations and upon the skill and knowledge of Contractor to perform those services and duties. To the fullest extent permitted by law, the Contractor hereby agrees, at its sole cost and expense, to assume liability and defend, indemnify, and hold the Authority, Metro, and their Board Members, employees, and agents, the City of Los Angeles, the City of Culver City, and the City of Santa Monica (“Indemnitees”) harmless from and against any and all direct damages, claims, losses, costs, judgments, and expenses including attorney fees and court costs (“Claims”) that arise or are claimed to arise out of, or result from, any acts, errors, or omissions of the Contractor, its agents, employees, subcontractors, assignees, licenses, or any other person for whom it is legally or contractually responsible in the performance of professional services under this Agreement.”		No change. Section 13 (a) indemnification language was changed in Stage A Agreement as issued with the original RFP on 11/09/09 to cover "errors, omissions, and negligent acts".

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012		Stage A Agreement	Section 15	Professional Liability Insurance Requirements; Pg. 21. Sec. 15, "Insurance," (a) (4), "Professional Liability Insurance" – There are several issues with the required PL insurance. -Additional Named Insureds;-Disclosure of Claims History;-Replacement Policy-this provision suggests that if the practice policy is eroded replacement PL insurance will be placed. This requirement is not consistent with a practice policy, but a project specific PL policy.; -(4) Professional Liability Insurance covering any liability arising out of or resulting from any error, omission, or negligent act, by the Contractor or any employee, subcontractor, or anyone for whose acts or omissions Contractor may be legally or contractually responsible, in performance of professional services under this Agreement. This policy shall be endorsed to include defense of the Authority and Metro, the City of Los Angeles, the City of Culver City, and the City of Santa Monica, for vicarious liabilities arising out of the Contractor's professional services, and shall contain limits of liability not less than \$1,000,000 each claim. This policy may be written on a "claims made" basis, with defense costs included within limits of liability. Coverage of professional liabilities arising out of this Agreement shall continue for five (5) years after completion of the professional services performed under this Agreement, either by policy renewals (with retroactive dates that include this Work) or by extended reporting provision under the current policy. If requested by the Authority, the Contractor shall provide the Authority with a current estimate of the claims and defense costs reported under the policy since its inception. If current or potential claims threaten to erode professional liability policy limits, the Contractor, shall, upon request by the Authority, acquire and maintain additional reasonable limits of liability for its work under this Agreement."		Document revised. See change to section 15(a)(4), Draft Stage A - Agreement, in Addendum No. 02, which deletes additional insured endorsement for vicarious liabilities. Document revised. See change to Section 15(a)(4), Draft Stage A - Agreement, in Addendum No. 02, which clarifies the contract language regarding possible erosion of policy limits. The essence of these requirements is retained, however. Since the required professional liability coverage is a practice policy and not a project specific policy, the Authority has a legitimate interest in knowing the extent of claims against the policy, in order to assess whether the Authority is actually insured as contemplated by this provision. In the event of erosion, the Contractor doesn't have a duty to provide a replacement policy, but rather to provide insurance coverage sufficient to meet the requirements of the Agreement.
013		Stage A Agreement	Section 15	Section 15. Insurance (a) (2) – page 22 line 1: Amend "production" to "products"		Document revised. See change to Section 15(a)(2), Draft Stage A - Agreement, in Addendum No. 02.
014		Stage A Agreement	Section 15	Section 15. Insurance (a) (2) – page 22 line 5: Delete "without exclusions". Or, explain the intent of this requirement as any additional insureds on a policy are subject to the conditions, limitations and exclusions of the coverage provided by the policy.		No change. The Intent to is preclude language in insurance policies that excludes specific acts or parties from coverage and thereby dilutes the scope of coverage required by the Authority. Any additional insured should be provided the same coverages as any insured, without prejudice or limitation on the coverages afforded by the policy.
015		Stage A Agreement	Section 15	Section 15. Insurance (a) (4) – page 22: The professional liability requirement indicates that the policy is to cover any liability arising out of acts by the Contractor or any employee, subcontractor, or anyone for whom the contractor may be legally or contractually responsible. Please note that the Contractor may not be a designer and may subcontract this responsibility to a design professional. In such a scenario, it would not be advisable for the Contractor to be included as an insured under the policy as it would eliminate the Contractor's ability to pursue claims against the policy for rectification. (Note that coverage for third party bodily injury and property damage arising out of the negligent acts of the Contractor and its subcontractors, except for professional liability errors and omissions, should be covered by the contractor's general liability policy). Please amend the first sentence of this section to read "Professional liability Insurance covering any liability arising out of or resulting from any error, omission, or negligent act by the Designer or any employee, subcontractor, or anyone for whose acts or omissions Designer may be legally or contractually responsible, in performance of professional services under this Agreement."		No change. The intent of this provision is to require the Contractor to provide a "master" policy that will cover the Contractor and all design subcontractors. See also Section 15(e), which addresses the insurance to be provided by subcontractors.
016		Stage A Agreement	Section 15	Section 15. Insurance (a) (4) – page 22: Please note that adding entities for vicarious liability is not usually available on Designer's practice policies. The requirement to include the Authority, Metro, the City of Los Angeles, the City of Culver City, and the City of Santa Monica for vicarious liability will most likely cause the designer to be required to purchase a project specific professional liability policy. This will add significant cost to the project. Please consider deleting the requirement.		Document revised. See change to Section 15(a)(4), Draft Stage A - Agreement, in Addendum No. 02, which deletes the additional insured requirement

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017		Draft Design Build Contract	Section 7.5	Draft D/B Contract - Section 7.5 Hazardous Materials (h) (2) line 3- Please amend line three to read "...attributable to the negligent actions, omissions, or willful misconduct of the Contractor..."		Document revised. See change to Section 7.5, Draft Stage B - Design Build Contract, in Addendum No. 02.
018		Draft Design Build Contract	Section 8.7	Draft D/B Contract - Section 8.7 Contractor Insurance (a) Commercial General Liability Insurance - Delete "without exclusions". Or, explain the intent of this requirement as any additional insureds on a policy are subject to the conditions, limitations and exclusions of the coverage provided by the policy.		No change. See answer to Question No. 014 above.
019		Draft Design Build Contract	Section 8.7	Draft D/B Contract - Section 8.7 Contractor Insurance (c) Automobile Liability Insurance - Delete "without exclusions". Or, explain the intent of this requirement as any additional insureds on a policy are subject to the conditions, limitations and exclusions of the coverage provided by the policy.		No change. See answer to Question No. 014 above.
020		Draft Design Build Contract	Section 8.7	Draft D/B Contract – Section 8.7 (d) Environmental Liability Insurance – Please confirm that a policy issued on an occurrence basis in lieu of a claims made form is acceptable.		No change. Existing language in Section 8.7(d) allows policy issued on an occurrence basis. This type of policy is acceptable as long as the overall coverage requirements are satisfied
021		Draft Design Build Contract	Section 8.7	Draft D/B Contract – Section 8.7 (f) Professional Liability Insurance – The requirement indicates that the Contractor is to provide the coverage, that the coverage is to include coverage for errors, omissions, or negligent acts by the Contractor or any Contractor Related Entity, and is to include the Contractor and its Subcontractors of any tier. Please note that the Contractor may not be a designer and may subcontract this responsibility to a design professional. In such a scenario, it would not be advisable for the Contractor to be included as an insured under the policy as it would eliminate the Contractor's ability to pursue claims against the policy for rectification. (Note that coverage for third party bodily injury and property damage arising out of the negligent acts of the Contractor and its subcontractors, except for professional liability errors and omissions, should be covered by the contractor's general liability policy). Please amend the section to read "The Contractor shall provide, or cause to be provided, professional liability coverage ...and shall protect against any error, omission, ...design or engineering activities with respect to the Project. , including coverage for errors, omissions, or negligent acts by the Contractor or any Contractor-Related Entity The coverage shall include design subconsultants of any tier.		Document revised. See change to Section 8.7(f), Draft Stage B - Design Build Contract, in Addendum No. 02, which adds "or cause to be provided" language.
022		Draft Design Build Contract	Section 8.7	Draft D/B Contract – Section 8.7 (g) Builders Risk - Delete "without exclusions". Or, explain the intent of this requirement as any additional insureds on a policy are subject to the conditions, limitations and exclusions of the coverage provided by the policy.		No change. See answer to Question No. 014 above.
023		Draft Design Build Contract	Section 8.7	Draft D/B Contract – Section 8.7 (g) Builders Risk - amend line 7 to read "The insurance shall be maintained until the date of Final Completion"		No change. Draft Stage B - Design Build Contract uses terms "Substantial Completion" and "Final Acceptance". Builder's Risk coverage must stay in effect until Final Acceptance.

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024		Draft Design Build Contract	Section 8.7	Draft D/B Contract – Section 8.7 (g) Builders Risk - Please confirm that a sublimit of \$5 million for “soft costs” coverage as described in the requirements will be acceptable.		No change. A specific sublimit for soft costs will not be provided. The Builder’s Risk policy must satisfy the overall minimum coverage requirements set forth in Section 8.7(g)(2), and must provide “soft cost expense cover”, but the Contractor should assess and determine the appropriate sublimit, if any, that will cover its exposure to risk.
025		Draft Design Build Contract	Section 8.8	Draft D/B Contract – Section 8.8 (b) Additional insured Endorsement - Delete “without exclusions”. Or, explain the intent of this requirement as any additional insureds on a policy are subject to the conditions, limitations and exclusions of the coverage provided by the policy.		No change. See answer to Question No. 014 above.
026		Draft Design Build Contract	Section 8.8	Draft D/B Contract – Section 8.8 (e) Deductibles – Given the specifications clearly indicate that any deductible is the sole responsibility of the contractor, the amount of such deductible should not be subject to any approval by the Authority. Please delete “Any deductibles or self-insured retentions greater than \$100,000 for all lines of coverage except \$250,000 for flood or five percent (5%) of total insured value for earthquake must be declared to and approved by the Authority.”		No change. Amount of deductibles is only subject to the approval of the Authority if the proposed deductible is over the stated amounts. Deductibles affect insurance pricing and insurance/claims administration, and are a matter of legitimate interest to the Authority.
027		Draft Design Build Contract	Section 8.8	Draft D/B Contract – Section 8.8 (h) Unavailability of Required Coverages – It is inequitable and onerous to the Contractor to give them no relief for increases in insurance cost due to unavailability of coverage and provision of acceptable alternatives yet allow that the Authority be entitled to a reduction in the Contract Price for accepting alternatives. Please delete the last two sentences of this section in their entirety.		Document revised. See change to Section 8.8(h), Draft Stage B - Design Build Contract, in Addendum No. 02, which addresses cost sharing of increased costs of alternative insurance coverage.
028		Draft Design Build Contract	Section 15.5	Will the Authority consider modifying this provision by adding, “..., which consent will not be unreasonably withheld.” at the end of the provision, so that it will read: (3) Action by Surety. -- The Authority may in its sole discretion demand that the Surety on the Performance Bond under the Contract cure the default. Without regard to whether the Authority demands that the Surety cure the default, the Authority may take any other actions as it deems appropriate to cause the completion of the Work and to mitigate its damages. The Surety shall not be entitled to take over the Contractor’s performance of Work in case of Termination under this Article, except with the written consent of the Authority, which consent will not be unreasonably withheld.		Document revised. See change to section 15.5(b)(3), Draft Stage B - Design Build Contract, in Addendum No. 02
029		RFP	Form OR	On item 2.) Contractor No: Please confirm this is requesting the Contract Number the Owner filling out the reference form) used to identify their project.		Document Revised. Item 2 should read “CONTRACT”. Change will be reflected in Addendum No. 02
030		RFP	General	Please confirm Divider Tabs B-1 thru B-9 may be used for photos and quotes and will not count in the given page count of 60. A Tabs may also have photos and/ or quotes on them, please confirm this is acceptable.		No change. Acceptable but will not be considered in the evaluation process.

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031		General		When will the geotechnical investigation be available?		Document revised. See Question No. 033 below
032		General		When will the Phase 1/Phase 2 environmental investigation be available?		Document revised. See Question No. 033 below
033		SOW	Section 2.2	It is believed the baseline designer is competing for this contract. Will all relevant technical data (geotechnical, environmental, utility, etc.) including preliminary, draft and final work product be equally available to all proposers?		Document revised. The Authority intends to provide all documents within the Scope of Work Section 2.2 with Addendum No. 2 except for the FEIR (6 th bullet) and the draft CPUC Hazards Analysis (13 th bullet).
034		RFP	Section 208	Section 208, Tab B-2, number 2 states: "If the Key Subcontractor for one of these elements of the work has not been selected, identify three (3) potential subcontractors for that area." If, during our prequalification process, only two subcontractors meet our criteria, is providing only those two (rather than three) acceptable?		No change. It is suggested that Proposer explain this in Tab B-2 or B-7 to satisfy the requirements.
035		RFP	Section 102	Will the Authority please provide a copy of the SBE program referenced on page 3 in section 102 (Definitions), number 17?		No change. The program has not been developed at this time. It will be developed by a separate consultant in the future.
036		RFP	Section 207	Package A, Tab A-10 – Is the "Debarment, Suspension, and Other Responsibility Matters" form to be executed by the prime and each subconsultant with \$250K or more of work, or is it to be executed by only the prime proposer or the person with power of attorney (in the case of a joint venture) on behalf of the team? [Page 12 excepts this form from those to be signed by the person with power of attorney but the form says the proposer is to sign on behalf of all partners and subs with more than \$250K of work.]		Document revised. The Debarment form should be executed by the parties listed in Tab A-12 of the RFP. See change to the Debarment form in Addendum No. 02.
037		RFP	Section 206	Package B - To meet the requirements of the RFP, would Expo consider allowing additional 11x17 pages? We would prefer 8 - 10.		No change. Changes were made in Addendum No. 01 in consideration of requests and the evaluation process. Please comply with Addendum No. 01.

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038		SOW	Section 2.1	Attachment 1, Draft Scope of Work, 2.1 Authority Provided Services: The Authority indicates that it will administer all agreements with third parties. Will designated Third-Party Coordinators be assigned to each Stage A contractor to facilitate interaction with these parties? Will the Third-Party Coordinators be assigned exclusively to a single contractor during Stage A services to maintain the confidentiality of each team's concepts and concerns?		No change. The Third Party coordinators will be assigned on a third party specific basis thereby ensuring that information shared is the same for both firms..
039		SOW	Section 2.2	Attachment 1, Draft Scope of Work, 2.2 Authority Provided Documentation: Additional data is required to define Stage A scope and concepts. Please provide the following information for the project corridor: DTM files, geotechnical reports, hazardous materials investigation reports and studies, and the as-built drawings for the I-405 bridges at Exposition Blvd.		Document revised. See response to Question No. 033
040		RFP	Section 207	RFP Section 207, Required Contents of Proposals, Tab A-9. The Authority's requirement to provide a Form CCD with the Stage A Services Proposal for <i>every potential subcontractor</i> (italics and bolding added) that could be employed on the project is onerous to both the Proposers and the construction community. Given that most subcontractors will not be known until the Stage B Design-build services Price Proposal is complete, we propose that this form be submitted to known first-tier subcontractors for the Stage A proposal, with a more comprehensive collection provided with the Stage B price proposal when these service providers can be more accurately identified.		No change. Forms CCD and GD should be submitted for all named Key Subcontractors, as that term is defined in the RFP. There is no requirement that the forms be submitted for "every potential subcontractor".
041		RFP	Section 207	.Section 207, Tab A-12. Proposer is required to affirm acceptance of all terms and conditions of Stage A Agreement and Scope of Work, and Stage B Design-Build Contract and General Requirements. Any exceptions may render a proposal non-responsive, or at the least will be considered in evaluation of the proposal. Since the Authority has acknowledged that the Stage B Documents are early drafts that will be reviewed with the successful Stage A Contractors during the performance of the Stage A work, it is not reasonable to include acceptance of the Stage B Design-Build contract and general requirements as a selection criteria at this early stage. We suggest the language regarding Stage B be stricken.		No change. It is the Authority's intent to refine the terms and conditions of the Draft Stage B - Design-Build Contract in consultation with the two PE Contractors. In this regard, please note that the agreement of the Proposer as to the Draft Stage B - Design Build Contract, as stated in the Proposal Letter, is to "execute the Draft Stage B - Design Build Contract and perform the design-build work in accordance with the terms and conditions thereof, subject to any exceptions noted in our Proposal and/or any subsequent modifications to the Draft Stage B - Design Build Contract negotiated with the Authority."
042		RFP	Section 206D	RFP Section 206D, Specific Requirements: The Authority has established a minimum font size requirement of 11 point. Will the Authority allow different sized fonts to be used for section headings, tables, and graphic exhibits? We request that a minimum font size of 10 points be allowed for graphic elements (illustrations, organization charts, and tables) to provide an easier to read and score document.		No change. Correct, the font specified is the <u>minimum</u> size for the 60 pages specified for Package B in the RFP. For the pages excluded from the sixty (60) page limitation, the font may be reduced to accommodate available space on the forms.
043		General	General	General: Obtaining timely responses to questions on the RFP or scope is critical to a proposers' ability to develop a comprehensive proposal submittal. We request that the Authority provide answers to questions within one week of their submittal.		No answer required.
044		SOW	Appendix B	Attachment 1, Draft Scope of Work, Appendix B: Starting on page 3, the narrative explains the contents of Appendix B. On page 20 of this document, the text reflects an irregular and confusing break after Item B.4, Description of Contents of Technical Background Reports, and the following section, entitled 9.0 Additional Conceptual Engineering. Please provide an explanation for the significance of the discussion starting with Item 9.0 on page 20, or a correction to the contents of Appendix B.		Document revised. Appendix B, Items B.2 B.3 & B.4 (including Item 9.0) have been deleted by Addendum No. 02.

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045		RFP	Section 305	RFP Section 305, Evaluation Factors and Weights: The Authority's selection criteria have a significant score base for just three criteria, while other categories that require a significant response are allocated as little as three points, with sub categories, such as the Community Outreach Activities are apparently scoring less than one point each. We suggest that some redistribution of the scoring is made to give some additional value to such activities.		Document revised. See Addendum No. 02
046		RFP	Part V Form OR	On Form OR: Item 2, Contractor Number. What is this number, or should the heading read Contract Number? Item 7, Description of Contact Requirements. Should this read "Contract Requirements?" There is no entry provided to identify the reference project by name. If Item 7 should read Contract Requirements, we suggest the project name should be provided with the project description narrative under this heading.		Item 2: Document revised. Contract number is correct. Please refer to Question No. 045 above Item 7: Document revised. The form will be revised in Addendum No. 02
047		Stage A Agreement	Section 4	Stage A Agreement: Section 4(b): The standard of care for Stage A services should be tied to industry standards for a preliminary design deliverable. By definition, such a deliverable will contain some level of errors, omissions, and deficiencies		No change. Language in section 4(b) states that work and documents are to be prepared "in accordance with appropriate prevailing professional standards."
048		Stage A Agreement	Section 4	Stage A Agreement: Section 4(d): Obligation to correct work should be tied to the standard of care for a preliminary design deliverable, not to "any deficiencies, errors, or omissions".		No change. Obligation of Contractor to correct "deficiencies, errors, and omissions" is standard language typically found in public agency engineering and professional services contracts.
049		Stage A Agreement	Sections 4, 11 & 14	Stage A Agreement: Sections 4(j), 11(a)(3), and 14: Contractor is not liable for use of preliminary work products by others, except to the extent of any professional liability insurance coverage applicable to the work. This is not acceptable; Contractor should not have any liability for use by others of a preliminary design. We request that the exception be removed. See further discussion regarding professional liability insurance under Section 15 below. We further request that the Authority indemnify the Contractor for damages stemming from unauthorized reuse of the preliminary engineering work product.		1. Document revised. See change to Section 11(a) (3), Draft Stage A Agreement, in Addendum No. 02, which deletes the exception for professional liability coverage. 2. However, the Authority will not agree to provide an affirmative indemnification for the "unauthorized reuse" of preliminary engineering work.
050		Stage A Agreement	Section 13	Stage A Agreement: Section 13(a): Any Contractor indemnity obligation should be tied to a breach of the standard of care associated with a preliminary design deliverable. It is not reasonable for a Contractor to provide an indemnification for any acts, errors, or omissions for a preliminary deliverable. This indemnity should be limited to the extent of the Contractor's negligence (similar to language in Sec. 13(b) for the General Operational Indemnity).		No change. Current language in Section 13(a) does not provide indemnification for " any acts, errors, or omissions" but rather for "errors, omissions, or negligent acts", so there already is a negligence standard in 13(a).
051		Stage A Agreement	Section 13	Stage A Agreement: Section 13(a): The recent Crawford ruling in California takes a position that the obligation to "defend" is separate and distinct from the obligation to "indemnify." Accordingly, we request that the following clarifying language be added to this section: <i>"Notwithstanding the foregoing, the parties agree that Contractor's obligation to defend the Authority is solely limited to reimbursing the Authority for its cost for defending a claim if Contractor's negligence gave rise to such claim."</i>		No change. Intent is that the Contractor will have both a duty to "defend" and a duty to "indemnify".

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052		Stage A Agreement	Section 15	<p>15. Stage A Agreement: Section 15(a)(4): We request that changes be made to the following items in this section:</p> <ul style="list-style-type: none"> • We request that the requirement for a vicarious liability endorsement in the second sentence be removed. It is not possible to provide such an endorsement under a corporate practice policy. This requirement would mandate the purchase of a project-specific professional liability policy, which is neither necessary nor economically reasonable for the Stage A Preliminary Engineering. We can provide \$1 million of professional liability coverage under our corporate practice policy for this work at no additional cost to the Authority, but that will require changes in the contract language as noted here. • Under our corporate professional liability program we cannot provide claim reports or estimated defense costs to any third party. We request that this provision be removed. • This section also requires that additional limits of professional liability insurance shall be acquired if current or potential claims threaten to erode professional liability limits. We request that this wording be revised to clarify the intent as follows: <i>"If current or potential claims threaten to erode professional liability policy limits required by this Agreement, the Contractor shall notify the Authority, and acquire and maintain professional liability policy limits required by this Agreement for its work under this Agreement."</i> 		<p>1. Document revised. See change to Section 15(a) (4), Draft Stage A - Agreement, in Addendum No. 02.</p> <p>2. Document revised. See minor change to Section 15(a) (4), Draft Stage A - Agreement, in Addendum No. 02. However, basic duty to report claims amounts will be retained.</p> <p>3. Document Revised. See change to Section 15(a) (4), Draft Stage A - Agreement, which clarifies the requirement for additional coverage in the event of policy erosion. See also answer to Question No. 012.</p>
053		Stage A Agreement	Section 16	<p>Stage A Agreement: Section 16(a): We note that the RFP for Stage B is to be issued "at or near the completion of Stage A work." We request that this is issued after the completion of the Stage A work to insure that all Stage A design deliverables are complete and accepted before we are obliged to start pricing the work for Stage B.</p>		<p>No change. But the Authority agrees that Stage A work/deliverables should be substantially completed before the PE Contractors are required to submit a lump sum fixed price proposal for the Stage B design build work.</p>
054		Stage A Agreement	Section 16	<p>Stage A Agreement: Section 16(e)(2) Call on Proposal Bond: Authority has the right to call the bond if the Contractor fails to enter into the D/B Contract – this should only apply if there is a failure to negotiate in good faith to enter into the Agreement.</p>		<p>No change. One of the basic purposes of any Proposal Bond is to guarantee that the Proposer will execute and deliver the Contract if selected for award.</p>
055		Stage A Agreement	Section 31	<p>Stage A Agreement: Section 31: Termination for Default (a)(2) provides that default occurs if the contractor fails to perform any of the provisions of the Agreement; this should only be for a "material failure to perform. Similarly for (a)(5) a default is called if there is a failure to execute and deliver the Contract; this should be only a failure to negotiate in good faith.</p>		<p>No change. See answer to Question No. 054.</p>
056		Stage A Agreement	Section 34	<p>Stage A Agreement: Section 34: Backup support and audit provisions should not be required for lump sum invoices, particularly in context of Section 6 (b) which provides a schedule with fixed periodic payments of the Lump Sum.</p>		<p>Document revised. See Section 34, Draft Stage A - Agreement, in Addendum No. 02, which deletes audit provisions in Section 34.</p>

QUESTIONS & ANSWERS

QUESTION NUMBER	ORIGINATOR	DOCUMENT NAME	DOCUMENT NUMBER	QUESTION	RESPONSIBLE	ANSWER
057		Stage A Agreement	Section 36	<p>Stage A Agreement: Section 36: Waiver of consequential damages—we request that the exception in Par. (b)(4) be revised to reflect the fact that consequential damages are not insurable under a corporate practice policy. If the Authority chooses to provide or require project-specific insurance that may somehow cover consequential damages, then we suggest that the wording in Par. (b)(4) be revised as follows:</p> <p><i>"(4) Any liability for any type of damage or loss, to the extent such loss or damage is covered by project specific policies applicable to the Project and the Work (regardless of whether required to be carried hereunder)."</i></p>		No change. The language in Paragraph. (b)(4) does not mandate that insurance cover consequential damages. Rather, it states that the exclusion of consequential damages does not affect any liability for loss or damage if that loss or damage is in fact covered by applicable insurance policies.
058		Stage A Agreement	Attachment F	<p>Stage A Agreement: Attachment F: This attachment lists performance evaluation criteria for the Stage A Report Card. Request that Authority describe how these criteria will be weighted and quantified.</p>		No change. This is currently under review but a response will not be available until the award process for Stage A.
059		Stage A Agreement	Table of Contents	<p>Stage A Agreement: General: Table of Contents--Several headings in table of contents do not match text (see Sections 9, 16, 20, 21, 23)</p>		Document revised. Addendum No. 02 corrects Draft Stage A - Agreement Table of Contents.
060		Stage A Agreement	Attachment H	<p>Stage A Agreement: General: Attachment H, Proposal Bond Form, is not included with the draft agreement.</p>		Document revised. Bond form is provided in Addendum No. 02.
061		Stage A Agreement	General	<p>Stage A Agreement: General re systems design:</p> <ol style="list-style-type: none"> 1. Do the Expo Design Criteria and reference documents include a "System Assurance" and "System Safety" criteria that can be used for Expo Phase 2 design? 2. Is the Expo Phase 1 Contractor installing fiber optic cable to support Expo Phase 2 Project? 3. Where will the Rail Control Center (ROC) be located for the Expo Line? 4. Is the Expo Authority responsible for Safety Certification of the overall system, including Expo 2? 		<ol style="list-style-type: none"> 1. No change. The Stage B Performance Specification covers both of these items. In addition, the documents produced for Phase 1 will be made available. 2. No change. The Phase 1 contractor has provided two 24-fiber cables, for which spare un-terminated dark fibers are available. Additionally, the Phase 1 contractor has performed bandwidth calculations (attached) to identify spare bandwidth capacity in the network they are providing. 3. No change. Metro has not made a final determination as to the location for rail operations control. The current facility does not have capacity to accommodate Expo Phase II. Metro is currently evaluating its options, including expansion of the existing ROC building at 2000 IMPERIAL HWY, LOS ANGELES, CA 90059. 4. No change. Either the Authority or Metro has this responsibility, but there is a role for the Contractor to play in maintaining records to support the certification process.

QUESTIONS & ANSWERS

QUESTION NUMBER	ORIGINATOR	DOCUMENT NAME	DOCUMENT NUMBER	QUESTION	RESPONSIBLE	ANSWER
063				NOT USED		
064		RFP	Section 102.19	Us there a difference between Engineering Manager and Design-Build Manager?		No change. It was anticipated that the Engineering Manager would be responsible for the actual design effort and the Design-Build Manager would responsible for the coordination of design and construction. Proposer should provide its nomenclature and respective responsibilities for its proposed personnel to satisfy the RFP requirements.
065		RFP	Section B Tab B-8	Will the Authority have a Community Outreach Plan of their own?		No change. The Authority will provide overall management and oversight of the Plan.
067		RFP	Form SQ	Indicate the Safety Record on the last project to which the indicated Key Personnel were assigned. Is this for all Personnel listed for both Stage A and B?		No change. We expect that the Key Personnel will be assigned to both Stage A and B. Should the Proposer assume different, then it would be advantageous to address both Stages.
068		Draft Stage A Agreement	General	Will the final Stage A Agreement be issued prior to the submission of the RFP?		An updated version of the Stage A - Agreement will be issued as part of Addendum No. 02. Any further revisions to that Agreement will be made during the final negotiation and award process.
069		General	General	Will the Authority downgrade Proposers who use the same subconsultants for select functions such as Survey or Geotechnical services. Shared subconsultants may be perceived to dampen the independent creative thinking the Authority is presumably attempting to achieve through the chosen procurement arrangement for Preliminary Engineering.		No change. Same as Question No. 008 above.
070		RFP	General	RFQ page 2, definitions, item #12, Key Subcontractor "The term "Key Subcontractor" means (A) a subcontractor responsible for performing one of the following: (1) trackwork/rail; (2) train control; (3) traction power; (4) communications; (5) overhead catenary system (OCS); and (6) structures; and (B) any other subcontractor identified by the Contractor as responsible for performing ten percent (10%) or more of either the Stage A or Stage B Work." It is unclear whether this definition refers to the designer, or (sub) contractor, or possibly both. Is a design firm considered a Key Subcontractor if it is responsible for performing the <u>design</u> of one of the following: (1) trackwork/rail; (2) train control; (3) traction power; (4) communications; (5) overhead catenary system (OCS); and (6) structures?		No change. A "Key Subcontractor" can be either a designer or a firm performing work during construction.

QUESTIONS & ANSWERS

QUESTION NUMBER	ORIGINATOR	DOCUMENT NAME	DOCUMENT NUMBER	QUESTION	RESPONSIBLE	ANSWER
071		RFP	General	Is it acceptable to declare a portion of the proposal as "Confidential"?		No change. The Authority will respect requests for confidentiality but treatment of materials submitted is ultimately a question of State law. Initially, whatever is submitted will be distributed to evaluation teams who will have executed Confidentiality Agreements. The Executive Summary, however, may be distributed to the Authority's Board.
072		Draft Stage A Agreement	Section 6	Section 6 (b) – Payment Schedule. It appears that the several components of the payment schedule do not total to the stated \$5,000,000. Please clarify.		Document revised. The payment will remain at \$5,000,000. The payment schedule is now in Attachment D to the Draft Stage A - Agreement]
073		Draft Stage A Agreement	Section 7	Section 7(c) indicates that Contractor shall not be entitled to compensation for additional services unless it has obtained prior written authorization from the Authority; however, Section 12(d) indicates that the Authority can unilaterally direct Contractor to proceed with work and that a Change Order will be negotiated later. These two provisions are in conflict. Is it the Authority's intent to not provide compensation for services which are performed prior to completion of the Change Order? If not, will the Authority consider deleting the statement in 7(c)?		Document revised. See change to Section 7(c), Draft Stage A - Agreement, in Addendum No. 02, which provides that the Contractor will be compensated for any work carried out as "immediate revisions" directed by the Authority.
074		Draft Stage A Agreement	Section 11	Section 11(a) (1) required Contractor to grant intellectual property rights in the plans to the Authority thereby taking away the right of the Contractor to use or build on any elements of the plans for other projects. Will the Authority consider accepting ownership of the instruments of service and allowing the Contractor to maintain the intellectual property rights? Contractor proposes to grant the Authority a royalty-free irrevocable license to retain and use the instruments of service on the project.		No change. May consider issue in final contract negotiations.
075		Draft Stage A Agreement	Section 6	Section 11(a) (3) limits Contractor's liability to the extent of professional liability insurance coverage for liability associated with the Plans if the Contractor is not the selected Design-Build contractor; however, the last sentence of Section 11(a) (3) indicates that the liability for use of that work shall be in accordance with the terms and conditions of the Design Build Contract. Is the last sentence meant to refer to the liability of the Design-Build contractor as opposed to the Stage A Contractor? If so, will the Authority make such clarification in the language? If not, will the Authority clarify the intent of the last sentence of this Section?		No change. The intent is as stated in the last sentence. The liability and responsibility for any future use of that work will be determined in accordance with the terms of Draft Stage B - Design Build Contract, which places most of that responsibility on the Design Build Contractor. The unsuccessful PE contractor will not have continuing responsibility or liability for the future use of that work.
076		Draft Stage A Agreement	Section 11	Section 11(c) required Contractor to indemnify the Authority for intellectual property infringement claims regardless of the source of the material giving rise to such claim. Given that the Authority is providing certain documents for use on the Project, will the Authority consider modifying the indemnity to carve out claims arising from documents that the Authority specifies for use?		Document revised. See change to Section 11(c), Draft Stage A - Agreement, in Addendum No. 02, which clarifies that indemnification will apply to intellectual property produced "by the Contractor" under the Agreement.
077		Draft Stage A Agreement	Section 13	Will Authority agree in Article 13 that Contractor is only obligated to indemnify the Authority against third party claims? Considering how the Authority has remedies throughout the contract, aren't the indemnity obligations only appropriate for third party claims? Is it Authority's intent for Contractor to indemnify the Authority for more than the proportional extent Contractor is negligent, reckless or misperforms willfully? If the Authority only intends for Contractor to answer for its fault, will the Authority state such in the contract? Will the Authority include a provision limiting the Contractor's liability related to this contract?		No change. The Contractor's indemnification obligations are as stated in Section 13, which uses standard indemnification language for engineering and professional services contracts. The Contractor's duty to indemnify does not apply to the extent the loss was caused by the gross negligence or willful misconduct of an indemnitee (See Section 13(b)). Also, under Section 11(a) (3), if the Contractor is not selected as the Design Build Contractor, it has no continuing liability and responsibility if its work is used in the Design Build process. Finally, the Contractor's liability is limited under Section 12.3.

QUESTIONS & ANSWERS

QUESTION NUMBER	ORIGINATOR	DOCUMENT NAME	DOCUMENT NUMBER	QUESTION	RESPONSIBLE	ANSWER
078		Draft Stage A Agreement	Section 6	Section 13 – The term of the contract is not stated which makes certain time periods relating to statutory requirements and insurance coverage ambiguous. Will the Authority clarify the term of the contract? Contractor proposes that the term of the Stage A contract expire upon submission of the lump sum fixed price proposal for Stage B.		No change. Term of the Draft Stage A - Agreement is expected to be 6 months [see Section 5(a)]. Specific Project Schedule will be in Attachment B.
079		Draft Stage A Agreement	Section 15	Article 15 indicates that the coverage amounts shall be in amounts “not less than” a specific amount. Will the Authority agree to Contractor procuring project specific insurance for Commercial General Liability and Professional Liability insurance? Will the Authority agree to specify the required amount as opposed to a minimum amount so that Contractor is aware of exactly how much insurance coverage is required?		No change. Insurance amounts stated are minimum amounts of coverage required to satisfy the terms of the Agreement. The Contractor should assess the exposure and provide more coverage if appropriate to satisfy its risk tolerances.
080		Draft Stage A Agreement	Section 16	Section 16(e) allows the Authority to call on Contractor’s Stage B Proposal Bond in the event the Contractor does not enter into the Design Build Contract. Is it the intent of the Authority to call on the bond in the event that the Contractor negotiates in good faith but is not able to agree with the Authority on final terms and conditions? Will the Authority provide the form of the bond or clarify the terms?		See answer to Question No. 054. Bond form is provided in Addendum No. 02.
081		Draft Stage A Agreement	Section 17	Section 17(c) does not specify the time limit for either party to request mediation or how long the parties are required to mediate prior to being able to litigate. Will the Authority clarify the language to provide for such time limits?		Document revised. See change to Section 17, Draft Stage A - Agreement, in Addendum No. 02, which establishes a time frame for the request for mediation. Time required for the mediation itself, however, will vary depending on process used and issues presented. Parties can proceed to litigation when mediation is over.
082		Draft Stage A Agreement	Section 31	Section 31(a) allows the Authority to terminate the contract even when noncompliance of contract terms is not material. Will Authority clarify the language to indicate that a termination for default may only occur upon an event of material breach?		Document revised... See answer to Question No. 055.
083		Draft Stage A Agreement	Sections 34 & 35	Section 34 and 35 provide for certain accounting requirements, audits, and ability of the Authority to copy all of Contractor’s financial records. Given that this is a fixed price contract, will Authority lessen the requirements, particularly regarding the Authority’s rights to copy all books and records?		Document revised. See change to Section 34, Draft Stage A - Agreement, in Addendum No. 02, for clarification of audit provisions. However, access to records is a legal requirement in a contract funded with public funds.
084		Draft Stage A Agreement	Section 36	Section 36 provides for a waiver of consequential damages with certain exceptions. The exception in Section 36(b) (4) is unclear given that the amount of coverage required under the Agreement is stated in Article 15 as a minimum amount. Will the Authority limit the Contractor’s exposure in the waiver of consequential damages and limit the exception to insurance proceeds actually received from insurance coverage required under Article 15? Otherwise, the Authority may demand payment for certain damages that the Authority deems recoverable under the insurance required, but the insurance carrier may not agree, thereby leaving Contractor liable for amounts up to the those amounts required under the Contract.		Document revised. See change to Section 36(b) (4), Draft Stage A - Agreement, in Addendum No. 02, which clarifies the insurance exception to the consequential damages provision.

QUESTIONS & ANSWERS

QUESTION NUMBER	ORIGINATOR	DOCUMENT NAME	DOCUMENT NUMBER	QUESTION	RESPONSIBLE	ANSWER
085		Draft Stage B D/B Contract	Section 1.1	The definition in Section 1.1 for Final Acceptance includes the completion of tasks to the satisfaction of the Authority. An objective standard for Final Acceptance is appropriate. Will the Authority delete the reference making the Final Acceptance subject to the discretion of the Authority?		Document revised. See change to definition in Section 1.1, Draft Stage B - Design Build Contract, in Addendum No. 02. However, determination of compliance with Contract Documents is a judgment to be made by the Authority.
086		Draft Stage B D/B Contract	Section 1.1	The definition in Section 1.1 for Force Majeure Event includes a reference to "Utility Delays"; however, the term is not defined. Will the Authority clarify the definition of the term "Utility Delays?"		Document revised. See added definition in Section 1.1, Draft Stage B - Design Build Contract, in Addendum No. 02.
087		Draft Stage B D/B Contract	Section 1.1	The definition in Section 1.1 for Government Rule includes terms such as "directive", "guideline", "policy requirement". Given that these terms are not clearly known or identifiable, will the Authority consider clarifying or deleting them?		No change. Words should be given their common meaning.
088		Draft Stage B D/B Contract	Section 1.1	The definition in Section 1.1 for Major Subcontract indicates it is one with a value in excess of 0.5% of 1% of the Contract Price, which would be a very small amount. Is there a typographical error in this definition?		No change. The definition of "major subcontract" is a subcontract with a price "in excess of 0.5% of the Contract Price", which is based on the requirements of the Subletting and Subcontracting Fair Practices Act, Public Contracts Code Sections 4100 et seq.
089		Draft Stage B D/B Contract	Section 1.1	Section 1.1 defines "Recovery Schedule". Article 12 refers to Section 3.7 for more information regarding the Recovery Schedule; however, there is no Section 3.7 in the contract. Please clarify the requirements relating to a Recovery Schedule.		No change. Cross reference in Article 12 is correct. See Section 3.7 of the Draft Stage B - Design Build Contract, entitled Recover Schedule.
090		Draft Stage B D/B Contract	Section 3.1	Section 3.1(a) refers to Contract Deadlines; however, such term is not defined. Please clarify which deadlines are considered "Contract Deadlines". Given the liquidated damages will be available to the Authority under the contract as its remedy for delay, will the Authority delete the "time is of the essence" language which implies that all interim milestones may be a deadline giving rise to a breach of contract?		1. Document revised. See change to Section 3.1(a), Draft Stage B - Design Build Contract, in Addendum No. 02, which changes "Contract Deadline" to "Completion Deadline", which is a defined term in Section 1.1 of the Design Build Contract. See also Section 3.3 for the three Completion Deadlines. 2. No change to the "time is of the essence language".
091		Draft Stage B D/B Contract	Section 5.8	Section 5.8 indicates that the design documents will become the property of the Authority. Will the Authority accept ownership of such documents as instruments of service and expressly state that the Contractor is not granting intellectual property rights? Contractor proposes to grant a royalty-free irrevocable license to the Authority to retain and use of the instruments of service on the project.		No change. See answer to Question No. 074.

QUESTIONS & ANSWERS

QUESTION NUMBER	ORIGINATOR	DOCUMENT NAME	DOCUMENT NUMBER	QUESTION	RESPONSIBLE	ANSWER
092		Draft Stage B D/B Contract	Section 7.5	Section 7.5(h) requires that the Contractor take on the status of “generator” for certain hazardous materials; however, Section 8.12 indicates it is not the intention that the Contractor have liability for pre-existing hazardous materials. Status as generator will shift liabilities related to being the “potentially responsible party” for pre-existing hazardous materials to the Contractor. What is the Authority’s intent on labeling the Contractor as the generator? Will the Authority delete the language creating generator status, given the liabilities of Contractor for handling hazardous materials are stated specifically in the contract and the Contractor should not have to assume any liabilities of the potentially responsible party?		Document Revised. See answer to Question No. 017.
093		Draft Stage B D/B Contract	Section 7.8	Section 7.8 requires the Contractor to perform the Authority’s obligations under MCAs, and indicates that the Contractor <i>may</i> be entitled to a Change Order if a third party does not respond within the time frames indicated in the applicable MCA. Will the final and draft MCAs effective upon the effective date of the Design-Build contract be the baseline to determine the obligations of Contractor and third parties under the MCAs so that any change in the agreement or delay by a third party can be made the basis for a Change Order? Will the Authority reference the specific baseline for each MCA in the contract and indicate that such change <i>shall</i> be a basis for a Change Order in accordance with the terms of Article 9?		No change. As stated in Section 7.8, failure of a Third Party to act within the time period stated in the applicable MCA, or if there is no time period, within 30 days, may be the basis for a change order. “May” is the correct verb; not “shall”; the delay must meet all the conditions for an excusable delay in Section 9.4 and not be ineligible for a change under Section 9.9.
094		Draft Stage B D/B Contract	Section 8	Article 8 indicates that the coverage amounts shall be in amounts “not less than” a specific amount. Will the Authority agree to specify the required amount as opposed to a minimum amount? Article 8 indicates that the coverage amounts shall be in amounts “not less than” a specific amount. Will the Authority agree to Contractor procuring project specific insurance for Commercial General Liability, Builder’s Risk, Pollution Liability, Excess Liability, and Professional Liability insurance? Will the Authority agree to specify the required amount as opposed to a minimum amount?		No change. See answer to Question No. 079.
095		Draft Stage B D/B Contract	Section 8	Please clarify why Environmental Insurance is required of Contractor in Article 8? Will the Authority consider deleting this requirement given Contractor’s Pollution Legal Liability coverage is required?		No change. Environmental insurance is designed to cover unknown site conditions encountered during construction. Contractor’s Pollution Liability (CPL) is designed to cover the transportation of materials as well as pollution conditions caused by Contractor activities.
096		Draft Stage B D/B Contract	Section 8	Based on previous experience, Contractor believes it is very unlikely to be able to procure Professional Liability insurance with the insured versus insured exclusion deleted. Will the Authority consider deleting this requirement in Article 8?		No change. It is understood that this coverage may be difficult to obtain but not impossible. For a project of this scope, the requirement for the insured versus insured exclusion should be maintained.
097		Draft Stage B D/B Contract	Section 8	Article 8 - Contractor does not believe that the Builder’s Risk coverage is commercially available that provides coverage “for any ensuing loss from faulty workmanship, nonconforming work materials, omission or deficiency in design or specifications.” Will the Authority considering deleting this language?		No change.

QUESTIONS & ANSWERS

QUESTION NUMBER	ORIGINATOR	DOCUMENT NAME	DOCUMENT NUMBER	QUESTION	RESPONSIBLE	ANSWER
098		Draft Stage B D/B Contract	Section 8	Article 8 - Will the Authority consider reducing the level of coverage required for earthquake coverage from \$50 million under Builder's Risk to make it more commercially obtainable?		Document revised. Addendum No. 02 will revise requirement to \$25Million.
099		Draft Stage B D/B Contract	Section 8	Article 8 – Will the Authority consider slightly reducing the 10-year tail period for the Contractor's Pollution liability coverage so that the coverage will be more commercially available?		Document revised. See change to Section 8.7(k), Draft Stage B - Design Build Agreement, in Addendum No. 02, which reduces the required "tail" for the CPL insurance to seven (7) years.
100		Draft Stage B D/B Contract	Section 8	Article 8 – Please clarify the language in the contract to reflect the intent of the "Reinsurance" and "Claims Management" provisions?		<p>1. No change. The reinsurance provision is intended to insure that, in the event of insolvency of the insurer, the fronting company and/or re-insurer will honor claims on behalf of a Contractor that utilizes a captive to place coverage.</p> <p>2. No change. The claims management provision is intended to establish a process under which the Authority is informed on the status of claims on a monthly basis.</p>
101		Draft Stage B D/B Contract	Section8	Article 8 – Contractor does not provide copies of its corporate package insurance policies given those policies are confidential. Contractor will provide copies of project specific policies. Please delete the requirement to provide copies of policies other than the project specific policies.		No change. The Contractor is required to provide copies of all policies that are part of the insurance structure in support of the project.
102		Draft Stage B D/B Contract	Section 8.11	Will Authority agree in Section 8.11 that Contractor is only obligated to indemnify the Authority against third party claims? Considering how the Authority has remedies throughout the contract, aren't the indemnity obligations only appropriate for third party claims? Is it Authority's intent for Contractor to indemnify the Authority for more than the proportional extent Contractor is negligent, reckless or misperforms willfully? If the Authority only intends for Contractor to answer for its fault, will the Authority state such in the contract? At a minimum, will the Authority delete Section 8.11(a)(8) and 8.11(a)(9) given the Authority's mutual responsibility regarding coordination and cooperation with third parties?		<p>No change. The Contractor's indemnification obligations are as stated in Section 8.11, which uses standard indemnification language for design build and construction contracts. The Contractor's duty to indemnify does not apply to the extent the loss was caused by the gross negligence or willful misconduct of an indemnitee (See Section 8.11(c)).</p> <p>Section 8.11(a)(8) covers disruption, delay, etc. "caused by the Contractor" and Section 8.11(a)(9) covers "the Contractor's" performance or failure to perform its obligations under MCAs—neither provision makes the Contractor responsible for the Authority's obligations.</p>
103		Draft Stage B D/B Contract	Section 8.11	Section 8.11 requires Contractor to indemnify the Authority for intellectual property infringement claims regardless of the source of the material giving rise to such claim. Given that the Authority is providing certain documents for use on the Project, will the Authority consider modifying the indemnity to carve out claims arising from documents that the Authority specifies for use?		Document revised. See change to Section 8.11 (a), Draft Stage B - Design Build Contract, in Addendum No. 02, which clarifies that indemnification will apply to intellectual property produced "by the Contractor or a Contractor-Related Entity".
104		Draft Stage B D/B Contract	Section 8.11	Section 8.11(e) provides for unlimited liability relating to claims by employees. Will Authority consider including such claims in the limitation of liability?		No change. This provision states that indemnification of employee claims is not limited to amounts or type of damages under workers compensation or other employee benefit laws. Such claims are still subject to the overall limitation on liability in Section 12.3.

QUESTIONS & ANSWERS

QUESTION NUMBER	ORIGINATOR	DOCUMENT NAME	DOCUMENT NUMBER	QUESTION	RESPONSIBLE	ANSWER
105		Draft Stage B D/B Contract	Section 8.12	Section 8.12(a) indicates that it is not the Authority's intention for Contractor to be liable for certain claims relating to existing Site contamination, its non-negligent performance, and activities of others. Section 7.5(h)(2) is in conflict with this intention in that it deems the Contractor to be the generator for releases resulting from all of its actions. Will the Authority consider deleting section 7.5(h)(2) given the obligations of Contractor relating to hazardous materials is clearly stated in the Contract?		Document revised. See answer to Question No. 017.
106		Draft Stage B D/B Contract	Section 8.12	Please clarify the contract language to reflect the intent and extent of indemnification provided by the Authority under Section 8.12(b).		No change. Existing language accurately describes Authority indemnification for pre-existing Hazardous Materials. See also Section 8.11(a)(7) for Hazardous Materials releases covered by the Contractor's indemnification.
107		Draft Stage B D/B Contract	Section 8.17	Section 8.17 provides for a waiver of consequential damages with certain exceptions. The exception in Section 8.17(b)(4) is unclear given that the amount of coverage required under the Agreement is stated in Article 8 as a minimum amount. Will the Authority limit the Contractor's exposure in the waiver of consequential damages by limiting the exception to insurance proceeds actually received from insurance providers on any project specific coverages that may be required under Article 8. Otherwise, the Authority may demand payment for certain damages that the Authority deems recoverable under the insurance required, but the insurance carrier may not agree, thereby leaving Contractor liable for amounts up to the those amounts required under the Contract.		Document revised. See answer to Question No 084.
108		Draft Stage B D/B Contract	Section 9.5 & 9.6	While Section 9.5 and Section 9.6 provide cost relief for certain events, Contractor proposes it be compensated for any and all events that are outside of its control.		No change. Sections 9.5 and 9.6 describe a number of events in which the Contractor may be entitled to additional compensation through issuance of a change order, which means that the cost risk of such events is being borne by the Authority. For events not described in those sections, the risk is being allocated to the Contractor.
109		Draft Stage B D/B Contract	Section 9.7	Section 9.7(d) (8) (c) – Is it the intent to require the Contractor to waive all cumulative impacts resulting from the delays or actions of the Authority or third parties? If the Contractor may claim legitimate cumulative impacts, will the Authority specifically state this in the contract? Also reference 9.7 (e) (1) (F).		No change.
110		Draft Stage B D/B Contract	Section 9.7	Section 9.7(b)(2)(B) refers to Sections 8.5 and 8.6, which do not seem to be the appropriate section numbers. Please clarify the section numbers.		Document revised. See change to Section 9.7(b)(2)(B), Draft Stage B - Design Build Contract, in Addendum No. 02, which corrects cross reference to read "Section 7.5 or 7.6".
111		Draft Stage B D/B Contract	Section 9.7	Section 9.7 allows the Authority to unilaterally require Contractor to perform additional scope. In the event the Change is subject to the dispute resolution process due to the parties failing to agree on price, will the Authority consider paying a certain portion of the costs prior to the dispute is being resolved so that the Contractor is not in the position of funding the project?		No change. Can be addressed on a case by case basis during contract implementation.

QUESTIONS & ANSWERS

QUESTION NUMBER	ORIGINATOR	DOCUMENT NAME	DOCUMENT NUMBER	QUESTION	RESPONSIBLE	ANSWER
112		Draft Stage B D/B Contract	Section 1.1	Article 11 – Is it the Authority's intent to withhold all payment if it disputes any portion of an invoice? Will the Authority agree to pay all undisputed invoiced amounts despite part of the invoice being in dispute?		Document revised. See change to Section 11.3, Draft Stage B - Design Build Contract, in Addendum No. 02, which addresses payment of undisputed amounts.
113		Draft Stage B D/B Contract	Section 12.3	Section 12.3 contains a limitation on liability; however, it only limits the liability resulting from breach of contract. Will the Authority consider making the limitation of liability a hard cap of 12.5% of the Contract Price for all liabilities arising under the contract or related to the Work? Section 12.3(a)(1) includes all costs to complete the Work, which makes the Contractor responsible for funding the project. At a minimum, will the Authority consider adding the appropriate language to reduce the amount described in Section 12.3(a)(1) by the unpaid Contract Price?		Document revised. See change to Section 12.3, Draft Stage B - Design Build Contract, in Addendum No. 02, which clarifies the application of the liability cap.
114		Draft Stage B D/B Contract	Section 12	Article 12 - Will the Authority include in the contract a general exclusive remedies clause in which either party may only pursue those remedies set out in the contract? Will the Authority agree to make the liquidated damages the sole remedy for delay and removal of key personnel?		No change on exclusive remedies issue. Authority will retain any remedies it may have under statutory or common law. Document revised. If the Authority collects liquidated damages for removal of Key Personnel, it will not seek other damages for the same event. See change to Section 12.1(c) (3), Draft Stage B - Design Build Contract, in Addendum No. 02.
115		Draft Stage B D/B Contract	Section 14	Article 14 - Will the Authority include a right for Contractor, in the event the Authority fails to make timely payment under Article 14, to suspend performance so as to relieve Contractor from funding the project?		No change.
116		Draft Stage B D/B Contract	Section 15.5	Section 15.5 allows the Authority to terminate the contract even when noncompliance of contract terms is not material. Will Authority clarify the language to indicate that a termination for default may only occur upon an event of material breach?		Document revised. See change to Section 15.5, Draft Stage B - Design Build Contract, in Addendum No. 02, relating to material breach.
117		Draft Stage B D/B Contract	Section 15.5	Section 15.5(a)(13) refers to a Guarantor, but there is no definition of Guarantor. Please clarify.		Document revised. See added definition in Section 1.1, Draft Stage B - Design Build Contract, in Addendum No. 02.
118		Draft Stage B D/B Contract	Section 16	Article 16 – Will the Authority agree that re-performance of defective warranty work is the exclusive remedy and if the Contractor does not remedy the defect within a reasonable time, the Authority may then pursue other remedies available in the contract?		No change. The Authority reserves its remedies under applicable statutory and common law.