

RESPONSE TO WRITTEN QUESTIONS
Construction Management Services, Materials Testing,
and Construction Surveying for the Construction of the
SR-74/I-215 Interchange Improvement Project
Questions Received by Friday, 6/26/09

Question No. 1:

Who are the RCTC Project Manager and Assistant Project Managers for the SR-74 / I-215 project?

Answer:

The Project Manager is Lisa DaSilva and the Assistant Project Manager is Bob Wunderlich. Please be advised that they cannot discuss the project with you while the solicitation is "on the street".

Question No. 2:

On Page 12, Section L of the RFQ, it states that our firm needs to include the "Disclosure of Campaign Contributions to Commissioners form (Exhibit C). Exhibit C is three pages. Do they go towards the page count?

Answer:

No.

Question No. 3:

On Page 13, Section 1 of the RFQ, it is noted that Subconsultant Commitment Memorandum do not count towards the page count. I did not see the subconsultant memorandum mentioned anywhere else in the RFQ. Are they needed as part of the content?

Answer:

Yes. The Subconsultant Commitment Memorandum indicate the Prime has met with and discussed the project with the subconsultant and the subconsultant has indicated that they will enter into a contract with the Prime to perform a specific piece of work should the Prime be selected.

Question No. 4:

On Page 15, Section b., Item 1 of the RFQ, it says to include copies of applicable professional credentials. If we include copies of the key personnel PE certificates, do they count towards the page count?

Answer:

Yes

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Question No. 5:

On Page 17, Item 2 of the RFQ, it lists the Qualifications of the Key Team Personnel. One of the personnel listed is the Contracts Manager. Can you please clarify the job description for the Contracts Manager?

Answer:

A Contracts Manager is responsible for overseeing the contract activities of the construction contractor such as labor compliance.

Question No. 6:

On Page A-3 of the Scope of Work, it is noted that the Resident Engineer should be the main point of contact for construction activities and that they need to be a California Registered Civil Engineer. Then on Page A-8-9, Item I of the Scope of Work, It mentions that there needs to be a minimum of one qualified SENIOR Resident Engineer. Are we supposed to proposed a Senior Resident Engineer and a Resident Engineer? Or are these two one and the same?

Answer:

The main point of contact for the construction activities needs to be a California register civil engineer. There must be a minimum of one senior member of the prime's organization on the project. It is up to the Offerer to decide if these are the same person.

Question No. 7:

On Page 12 of the Proposal the Contract Term is cited as from November 9, 2009 through August 30, 2011, but in Exhibit A page A-2 the Complete Close-Out date is April 30, 2013. Can you help me understand the term of the contract.

Answer:

See Exhibit A, page A-2, for approximate construction schedule.

Question No. 8:

Will RCTC be assigning a Project Manager or Construction Manager to this contract and if so can we get there name so that we can include them in the Organizational Chart specifically regarding how we will interact with RCTC staff since we are required to include an organization chart such as this?

Answer:

The Project Manager is Lisa DaSilva and the Construction Manager is Stephen Bennett.

Question No. 9:

SR 74/215 Interchange Construction Management RFP does not appear to have any DBE participation goal requirement. Since the State and/or Federal funds are anticipated to partially fund this project, shouldn't this project comply with the State and Federal DBE participation requirements?

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Answer:

Federal funds will not be used to fund the Construction Management contract. Federal funds may be used to fund the Construction contract. If that is the case, all federal requirements including DBE participation goals will apply to the Construction solicitation and any resultant contract.

Question No. 10:

Regarding Clarifications, is it possible to get a copy of the Organizational Chart for RCTC so that we might better show the functional areas within RCTC that we will interact when we draft the SOQ?

Answer:

An RCTC organization chart is not required. The Construction Management Team's interface with RCTC can be shown as a single box for both the RCTC Project Manager and Construction Manager.

Question No. 11:

Can you identify those two project specifically that will be going on at the same time as the SR-74 / I-215 project?

Answer:

There will actually be three RCTC projects under construction during this construction period; East Junction on the I-215/SR-60, Perris Valley Line, and I-215 widening between Murrieta Hot Springs Road and Scott.

Question No. 12:

Request for Clarification: Exhibit "B" Model Agreement, Paragraph 3.19, pages B-12 to B-13:

1. Civil Code Section 2782 provides generally that construction contract with a public agency that purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency are void and unenforceable. Commission has specifically cited to Civil Code Section 2782.8 which applies to Architects only. In order to apply the statutory intent to all project stakeholders (ie. Contractors, Architects, Engineers, Subcontractors, etc.) we suggest a slight modification to the indemnity as follows:

~~Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity obligation shall be limited to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.~~

2. Consultant also requests the list of identified indemnities **exclude** "consultants, agents and volunteers" as they are unidentifiable parties and may cause problems with insurance.

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Request No. 1:

Request to revise RCTC's standard indemnification provision contained in Section 3.19 of the Model Agreement to eliminate the reference to CA Civil Code Section 2782.8 and to more broadly apply the narrowed language from CA Civil Code Section 2782.8, that applies only to "design" professional services, to all project services.

Response: The request is rejected. CA Civil Code Section 2782.8 is applicable only to "design" professional services, which include architectural, landscape architectural, professional engineering and land surveying services. The general indemnification provision contained in the Model Agreement will apply to all non-"design" professional services and does not require the selected consultant to indemnify the Commission in the case of the Commission's sole negligence or willful misconduct. Thus, the Commission's standard indemnity is consistent with CA Civil Code Section 2782 and no change will be made.

Request No. 2:

Request to exclude "consultants, agent and volunteers" from list of identified indemnities under RCTC's standard indemnification provision contained in Section 3.19 of the Model Agreement:

Response: The request is rejected, in part, and accepted, in part. The Commission will not agree to eliminate the requirement to provide indemnification of the Commission's consultants or agents. The Commission will accept the request to delete "volunteers" from the indemnification provision.

Question No. 13:

Section B, "Proposed Staffing and Project Organization" you are asking for "copies of applicable professional credentials" - are you asking for actual copies of the PE registration etc.?

Answer:

Yes

Question No. 14:

Is Exhibit C excluded from page count?

Answer:

Yes

Question No. 15:

Are there any DBE or SBE requirements?

Answer:

No

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Question No. 16:

Are copies of credentials included in the page count?

Answer:

Yes

Question No. 17:

The RFP states that duplication of the org chart is excluded from the page count. Is the second org chart requested considered a "duplication" of the first org chart and thus excluded from the page count?

Answer:

If the organization charts are exactly the same, they only count once toward the page count.

Question No. 18:

Are documents that provide evidence of insurance excluded from the page count?

Answer:

Yes

Question No. 19:

Does a letter from a company's insurance broker confirming insurance coverage limits suffice as "evidence"?

Answer:

Yes

Question No. 20:

If a firm participated in the design phase of the project, are they excluded from participation in the construction management phase as a subcontractor?

Answer:

It would depend on the specific circumstances regarding the firm in question. As an example, even though David Evans & Associates was the Prime for the design of this project, the firm can participate as a subconsultant as a surveyor.

Question No. 21:

Generally, pursuant to industry standard and practice, an agreement for consulting services such as those envisioned here will feature, among other things certain principles and industry standards which would govern the services provided hereunder, such as standards which provide for amongst other things a limitation of liability, a waiver of consequential damages, and no responsibility for overall project site safety.

Although we are in agreement with virtually every term contained in the standard contract provisions suggested by the Commission, we would note in those provisions

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none of these important standards of professional practice referenced above are included with specificity and detail. Accordingly, we would respectfully ask that the following language reflecting these important concepts be incorporated into the already existing clauses to be included in any final contract, as follows:

Notwithstanding and superseding anything in this Agreement to the contrary, the Parties agree as follows:

- 1) Neither party shall be liable for any indirect, incidental, special, consequential or punitive damages of any kind, including but not limited to loss of use, loss of production, delay, economic loss, liquidated damages, lost profits and/or business interruption type damages, whether arising in contract, warranty, tort, negligence (including strict liability) and no matter how claimed, computed or characterized.
- 2) The aggregate liability of the Consultant for any claim, loss, damage or cost suffered or incurred by the Commission or by any person other than the Commission arising out the performance or non-performance of the Services or otherwise in connection with this Agreement (such loss, damage or cost being collectively a "Loss") is limited to the professional fees paid to the Consultant pursuant to this Agreement.
- 3) The Consultant shall not be responsible for overall project site safety or construction means, methods, sequences, procedures or techniques, such responsibilities resting solely with the Commission, its construction contractors or parties other than the Consultant.

Request No. 1:

Request to add a provision to the Model Agreement stating that neither party is liable for indirect, incidental, special, consequential or punitive damages of any kind.

Response: The request is rejected. The Commission's standard indemnification provision specifically includes consequential damages and other damages, and it is not the Commission's practice to eliminate the remedies available to it.

Request No. 2:

Request to limit the total liability of the selected consultant under the Agreement to be entered into with the Commission to the fees paid to the selected consultant.

Response: The Commission rejects this request and will not provide for a cap on the aggregate liability under the Agreement. It is not the Commission's standard practice to cap liability, and will not do so in this case.

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Request No 3:

Request to insert specific language stating that the selected consultant is not responsible for site safety, and that the construction contractor and the Commission bear all such responsibility.

Response: The Commission rejects this request and does not see a need to include this additional language in the Model Agreement. The Agreement does not make the selected consultant responsible for overall project site safety or construction means, but the selected consultant may have certain responsibilities for monitoring and reporting site safety.