



City of Anaheim
DEPARTMENT OF PUBLIC WORKS

July 2, 2020

NOTICE TO ALL PROSPECTIVE DESIGN-BUILDERS

**RE: REQUEST FOR QUALIFICATIONS (RFQ)
DESIGN-BUILD MASTER AGREEMENT FOR WATER, WASTEWATER, AND
STORM WATER PROJECTS**

ADDENDUM NO. 3

The following changes, additions, or deletions shall be made as indicated and all other conditions shall remain the same:

Design-Builder Questions and Answers

Responses to Questions 1-4 were issued with Addendum No. 2.

- Q5** Article 2.1 of the DBA says the DBA can only be extended for an additional 12 months if Work Order Packages are in progress at the end of the term. What happens if the Work Order extends past the twelve months? Proposer suggests changing the last sentence to say, "Unless otherwise mutually agreed by the Parties, in no event, shall the extension exceed twelve (12) months."
- A5** **The City does not anticipate issuing Work Orders that may extend past twelve months beyond the final term of the Design-Build Master Agreement.**
- Q6** Article 5.1.1 of the DBA requires the "design and other Services" be "free from defects." This requirement creates an uninsurable requirement that designers and insurance companies will not accept. Design-Builder requests this section (c) be deleted. This change is consistent with Article 5.6.2 Standard of Care.
- A6** **In accordance with Section 9, Additional Terms and Conditions, Master Agreement (page 9) of the RFQ, Design-Builder must include any exceptions to the Design-Build Master Agreement within their SOQ. The City may consider these exceptions but is under no obligation to accept them. The City will not accept any exceptions not included in the SOQ.**
- Q7** Article 3.4 of the GC requires the work be "free from defects, including design defects." Similar to above, this is beyond the Standard of Care in the industry, and the Standard of Care as defined in Article 5.6.2 of the DBA. Design-Builder requests to have this language stricken.
- A7** **See response to Q6.**
- Q8** Article 3.13.2 excepts Design Builder's indemnity obligations for City's "sole" negligence, however this is not in line with California Civil Code 2782, which requires agencies not require Contractors to indemnify for the "active" negligence of the agency. Design Builder requests City replace "sole" with "active" in all instances.
- A8** **See response to Q6.**

- Q9 Article 4.2.2 of the GC is unnecessarily punitive. Design-Builder recognizes the importance of timely notice but requests the waiver only be applicable insofar as City was prejudiced by Design-Builder's delay. DB requests to replace the last sentence of the second paragraph with: "The Design-Builder's failure to notify the Engineer within such period shall be deemed a waiver of costs which Design-Builder has incurred prior to the notice and to the extent such late notice materially prejudiced the City from being able to mitigate the impacts."
- A9 **See response to Q6.**
- Q10 Contractor requests City delete General Conditions Article 4.2.3.
- A10 **See response to Q6.**
- Q11 The waiver of rights due to a late COR in GC Article 7.4 is unreasonably punitive. Design-Builder requests City change: "Design-Builder's failure to initiate a COR within such period shall be deemed a waiver of the right to adjustment of the Work Order Package or Price or the Work Order Package Deadline for the alleged Change" to "Design-Builder's failure to initiate a COR within such period shall be deemed a waiver to adjustment of the Work Order Package or Price or the Work Order Package Deadline for the alleged Change to the extent City was materially prejudiced by such late notice."
- A11 **See response to Q6.**
- Q12 For forward priced Work, it is often difficult to price delay impacts such as disruption, acceleration, loss of efficiency, etc., which leads to Design-Builder having to carry a higher contingency. To reduce costs of forward priced change orders, Design-Builder recommends deleting the last two sentences in General Condition Article 7.5.3. These final terms can be negotiated on each Change Order.
- A12 **See response to Q6.**
- Q13 Article 9.1.2 of the General Conditions says "No such estimate or partial payment shall be required to be made when in the judgment of the Engineer, the Work is not proceeding in accordance with the provisions of the Contract, or when in his judgment, the total value of the Work done since the last estimate is less than Five Hundred Dollars (\$500.00)." Design-Builder insists on timely payment for Work performed and cannot accept this open-ended ability to refuse to pay for Work performed. Design-Builder requests to delete this sentence. This sentence appears to be in violation of Cal. Pub. Cont. Code §20104.50, which requires local agencies to promptly pay general contractors undisputed amounts.
- A13 **See response to Q6.**
- Q14 Article 14.1 of the General Conditions says it is a default event if Design-Builder "fails to install Work that is free of defects." This is a heightened standard beyond the Contract Documents and industry Standard of Care and the definition of the Standard of Care in this Contract. Design-Builder requests City to delete this subpart (e).
- A14 **See response to Q6.**
- Q15 Design-Builder asks that the City better define what damages are recoverable by both parties. Specifically, Design-Builder requests a mutual waiver of consequential damages to the fullest extent allowable by law.
- A15 **See response to Q6.**

Q16 The Contract does not provide clear entitlement for encountering a utility conflict that must be relocated or protected in place, hazardous material or differing site conditions. Also the Contract does not address changes in Applicable Law or government orders that increase the cost or time of the Project. Design-Builder requests a change to the General Conditions to affirmatively say Design-Builder is entitled for increased cost and time due to utility conflicts, differing site conditions, hazardous materials, changes to Applicable Law, and government orders.

A16 See response to Q6.

Q17 The SOQ Document:

Page 49: Exhibit A General Scope of Work [ATTACHED BEHIND THIS PAGE]

Page 50: Exhibit B Performance Bond [ATTACHED BEHIND THIS PAGE]

Page 51: Exhibit C Payment Bond [ATTACHED BEHIND THIS PAGE]

Page 52: Exhibit D Design Builder's Management & Key Personnel Chart [ATTACHED BEHIND THIS PAGE]

There are no attachment behind the pages, can you please provide attachments for Exhibit A,B,C,D?

A17 The attachments are intentionally omitted in the RFQ. These documents are intended to be project-specific and will be provided with each Request for Work Order Proposal to prequalified Design-Builders.

Q18 We understand that we may email copies of our financial statements to the City. However, we would like to avoid having a digital copy floating around that is easy to be shared. I would like to request that we submit a hard copy to be mailed in. Will you please allow this portion of the submission to be mailed in?

A18 Yes, mailing a hard copy is acceptable and must be received before the RFQ deadline. Please mail to:

Anaheim City Hall – Public Works
200 S. Anaheim Blvd., 2nd Floor, Anaheim, CA 92805
Attn: Brenda Medina Mail Stop: 276

**THE DUE DATE FOR RESPONSES TO THE REQUEST FOR QUALIFICATIONS
REMAINS 2:00 P.M., JULY 9, 2020.**

All other aspects of the documents pertaining to the Request for Qualifications remain in effect and applicable.

Sincerely,



Brenda Medina
Construction Contract Administrator

cc Raul Garcia David Mori Michael Moore
Craig Parker Jacob Hester File

The Design-Builder shall acknowledge receipt of all addenda by signing and enclosing each addendum form in his/her Statement of Qualifications submittal. Failure to do so may result in a rejection of his/her submittal.

Signature

Print Name

Firm Name

Date