



## **Addendum No. 04**

### **Request for Proposal and Prequalification Application No: B19/20-14**

#### **Lease-Leaseback Project Delivery Service**

To: All Prospective Proposers

This addendum No: 04 is issued to clarify, add, delete, correct and/or change the RFP B19/20-14 documents to the extent indicated and is hereby made a part of the above noted RFP documents on which the contract will be based. Any modifications/changes made by this addendum affect only the portions or paragraphs specifically identified herein: all remaining portions of the proposal to remain in force. It is the responsibility of all proposers to conform to this addendum. Acknowledge receipt of this addendum in the space provided on the Prequalification Form, and in submitted Proposal(S). Failure to do so may subject the bidder to disqualification.

#### **A. Revisions to Prequalification Forms:**

None at this time

#### **B. Revisions to Request for Proposal Document:**

- a) Request for Proposal, Page 4 Subsection E, paragraph 3, is revised to read as follows: "Prior to finalization of the GMP, the Firm will be required to provide the District with objectively verifiable information of all of its costs to complete the work. The District will expect to have access to objectively verifiable information for all of contractors costs, including but not necessary limited to subcontractor bids, value engineering back-up, contingency breakdown and tracing documents, general conditions breakdown and tracing documents, and Contractor Fees. *The Firm may be required to submit spreadsheets showing full breakdown of costs, including information on subcontractors that were contracted and subcontractors who responded. Subcontractors may be selected either on best value or a lowest bidder basis.*"
- b) Lease-Leaseback Agreement Section A, subparagraph 5 is revised to read as follows: "Cost Estimates. Contractor shall provide an initial estimate of total Project cost, as well as necessary updates to that estimate. Contractor's initial estimate shall be due to the District within two weeks of completion of its review of the Construction Documents. Updated cost estimates shall be given in accordance with the approved CPM project schedule for the Project. Contractor shall also provide an updated estimate upon the submission of the Plans and Specifications to DSA and at any other time required or reasonably necessary pursuant to this Agreement. Contractor's cost estimate shall identify all trades and unit costs and shall also identify all allowances, contingencies, and allowable general condition costs and fees. If any cost estimate submitted to the District exceeds a previously approved estimate, the District and the Contractor shall work together to determine appropriate recommendations for reducing the estimated cost of the Project, including changes in scope, changes in materials, change in

sequence, etc. *All estimates will be returned to the Contractor with comments with 7 calendar days by the District.*"

- c) Insert the following document into the Request for Proposal document: *Attachment #2 Preconstruction and Construction Phase Fee Proposal shall be inserted in the RFP document and shall be required to be submitted within the response to the RFP within the maximum page count specified.*

**C. Revisions to Specifications:**

None at this time

**D. Response to Bidders Questions:**

**RFP-Q1** - On page 6, section 13 of the RFP notes to "provide your proposed fee for the Project(s) expressed as a percentage of the total final project cost... that fee includes overhead, profit, and all costs, including, but not limited to, insurance, bonds, labor and general conditions". In past experiences with Lease-leaseback proposals it has proven more efficient to evaluate General Conditions costs like for like. Attached is a sample form that delineates what is to be included in General Conditions vs Direct Cost of the Work.

- a. Also in this same section you state that "labor" is to be included in the Fee % for the GC. What labor are you referring to?
- b. And under the same section you state, "Note that this is a preliminary fee proposal, and will be updated and finalized as a GMP later." Since price is worth 60 points, how are you evaluating this fee % evenly if it can be changed later? Does this mean that the stated % by a GC can be increased at GMP time?

**District Response:** Refer to Revision to Request for Proposal above item B.c response from the District.

**RFP-Q2** - On all projects where a PLA has been required, we as a Contractor have executed the PLA. For these projects, will all Contractors be expected to sign the PLA agreement?

**District Response:** In accordance with Paragraph 2.1 of the Draft Project Labor Agreement included in the RFP includes contractors, "including subcontractors of any tier".

**RFP-Q3** - Are we to use "Anticipated Project Cost/Budget" amounts stated on Exhibits A1, A2 and A2 as a basis to formulate our Preconstruction and Construction Fee Proposal percentages?

**District Response:** Yes, use the Anticipated Project Cost/Budget in the calculation of fees as stated in exhibits A1, A2 and A3.

**RFP-Q4** - DRAFT contract agreement directs the contractor to carry Builder's Risk Insurance. Since this premium cost includes the deductible, what is the deductible all Contractors should base their coverage upon?

**District Response:** The District does not have a requirement for maximum deductible amounts carried by the Contractors. The Contractors internal level of risk regarding deductible amounts covered by the Contractor is up to the individual Contractor.

**RFP-Q5** - What is the minimum rating the District will require for Insurance and Surety Companies?

**District Response:** The minimum required rating for insurance and surety companies is AM Best rating of no less than A.VII.

**RFP-Q6** - On page 4, section "E. Guaranteed Maximum Price ("GMP") Development", it's stated that "All subcontractor bids received shall be included with the low bidder marked clearly as being selected." And on page 8, item 7iii there is conflicting information which states, "award of subcontract either on a best value or a lowest responsible bidder basis." Statue allows for the latter, please clarify.

**District Response:** The Questioner is correct. There is the appearance of a conflict between the two cited provisions. Refer to item B above for changes to the Page 4, subsection E.

**RFP-Q7** - Please confirm that the cover and divider tabs will not be counted as part of the 30 page maximum.

**District Response:** The District will not count the cover, divider pages and back cover in the overall page count, unless the referenced pages contain pertinent information related to the proposal response.

**RFP-Q8** - RFP, Pages 5-6 of 12 - Section F Submittal Requirements, #13 – Please provide a standard bid form for all bidders to ensure consistent level of detail is provided for all proposers.

**District Response:** Refer to Revision to Request for Proposal above item B.c response from the District.

**RFP-Q9** - RFP, Pages 6 pf 12 – Section F Submittal Requirements, #13 – A Subsection #5 is listed here with some text that seems out of place, please confirm what information is specifically being requested in this section?

**District Response:** Refer to Addendum #03 Section B – Revisions to request for Proposal Document for prior clarification to Section F, Subsection #14 (5).

**RFP-Q10** - Please confirm the lease rate and term requested for the projects or if this will be proposed by the LLB Contractor and where this rate should be included in our proposals?

**District Response:** Please refer to Exhibit A of the Facilities Lease at pages 10 and 11. As can be seen on page 11 of the Exhibit A, the financing charge is 10%.

**RFP-Q11** - Did these projects obtain a validation action for this procurement? Without a validation action this procurement method could be challenged along the way incurring unnecessary project delays. Please confirm if language can be added to the General Conditions, allowing contractor to stop work in the event of extended project delays due to challenges to the procurement method.

**District Response:** The Chabot-Las Positas Community College District took action to authorize the use of Lease-Leaseback Project Delivery methods for all relevant projects on October 15, 2019. Given the recent amendments to Education Code Section 17406 and related statues, the District is confident that a lease-leaseback is legal and authorized.

**RFP-Q12** - RFP Section B – Preconstruction Services of the RFP stipulates the firms shall provide construction cost estimates at Schematic Design, Design Development, 50% Construction Documents and 90% Construction Documents. Please confirm that for the Las Positas Academic Building the only estimates required will be the 50% CD and 90% CD estimates and that the Schematic Design and Design Development Estimates will not be required as these phases of design will have already been complete.

**District Response:** For the Los Positas College Academic Support Building, an initial design development estimate will be needed based on the completed Design Development drawings and specifications.

**RFP-Q13** - RFP Section B – Preconstruction Services of the RFP stipulates the firms shall provide construction cost estimates at Schematic Design, Design Development, 50% Construction Documents and 90% Construction Documents. Please confirm that for the Chabot Library and Learning Center the only estimates required will be the Design Development, 50% CD and 90% CD estimates and that the Schematic Design Estimate will not be required as this phases of design will have already been complete.

**District Response:** lease see response to RFP-Q12 above.

**RFP-Q14** - Lease leaseback agreement section A.5 – Cost Estimates states the initial cost estimate is due (2) weeks after review of the construction documents. Please confirm a minimum of (1) week

for review of documents will be provided or confirm the cost estimate can be provided (3) weeks after review of the construction documents.

**District Response:** Section A.5 of the Lease-Leaseback Agreement shall be amended as noted in Section B above.

**RFP-Q15** - RFP - there does not appear to be a breakout allocating costs to General Conditions or Direct Cost of Work. Please provide the expectations of what costs are to be included as General Conditions.

**District Response:** Refer to Revision to Request for Proposal above item B.c response from the District.

**RFP-Q16** - Contractor is required to include earthquake coverage as part of the builder's risk obligations per GC 39.a.v. but then GC 38.f. and GC 12.a. indicate that Contractor will not be responsible for damage to the work caused by acts of God as defined by Public Contract Code 7105. Please confirm that although Contractor is not responsible for damage to the work caused by acts of God, we are still expected to provide full earthquake coverage in the builder's risk.

**District Response:** Recommended changes to the general conditions will be considered and negotiated with the successful Lease-Leaseback Contractor for each project.

**RFP-Q17** - Within the agreement, a waiver of consequential damages is not addressed. We recommend adding such a provision similar to AIA A201 15.1.6 (2007). Can this language be added?

**District Response:** Recommended changes to the facilities lease agreement will be considered and negotiated with the successful Lease-Leaseback Contractor for each project

**RFP-Q18** - GC 39.a.vi.(C) - This states the requirements for the listing of additional insureds to the insurance the developer provides, our carrier will not list the Architect under the Builder's Risk policy. Also, the Architect should be limited to on-going operations only under the General Liability policy. Any issues relative to the design shall be covered under the Architect's Professional Liability insurance. Can these requirements be changed?

**District Response:** Recommended changes to the general conditions will be considered and negotiated with the successful Lease-Leaseback Contractor for each project.

**RFP-Q19** - GC 39.a.vi.(E), "Waiver of Subrogation endorsement against any of the additional insureds"- Please confirm this can be removed, as our carrier will not provide a waiver of subrogation for the Architect.

**District Response:** Recommended changes to the general conditions will be considered and negotiated with the successful Lease-Leaseback Contractor for each project.

**RFP-Q20** - Site Lease – Additional Insured Requirements. We recommend including a provision within the Site Lease that provides that the District/Owner is to name Contractor and Subcontractors of all tiers as additional insured on the District/Owner's commercial general liability and property policies during the course of construction in order to protect against any claims for loss or damage that are not associated with the scope of work as described in the Site Lease Attachment "A". Can this provision be added?

**District Response:** Recommended changes to the general conditions will be considered and negotiated with the successful Lease-Leaseback Contractor for each project.

**RFP-Q21** - Please revise GC 12.a to include 'without limitation' – Provides that Contractor is excused from performance of the work for delays which are not the fault of Contractor, including without limitation acts of God per CA Public Contract Code section 7105 (which covers earthquakes in excess of 3.5 on the Richter Scale and floods due to tidal wave), acts of enemy, epidemics and quarantine restrictions.

**District Response:** Recommended changes to the general conditions will be considered and negotiated with the successful Lease-Leaseback Contractor for each project.

**RFP-Q22** - SC 1.2 – Provides that a weather delays day shall be granted for each workday Contractor can document adverse weather caused critical path delays in excess of 20 workdays. This seems to conflict with SC 8.5 which states Rain Days included in the contract shall be 20 calendar days (workdays versus calendar days). Please confirm.

**District Response:** Recommended changes to the special conditions will be considered and negotiated with the successful Lease-Leaseback Contractor for each project.

**RFP-Q23**- Agmt 4.B – Provides for liquidated damages to be assessed in the amount of \$2,000 per day for failure to achieve completion, or applicable phases thereof, by the date for completion. Can we please delete the “or applicable phases thereof” language?

**District Response:** Recommended changes to the facilities lease agreement will be considered and negotiated with the successful Lease-Leaseback Contractor for each project.

**RFP-Q24** - FLA 2. - Upon termination of the Lease Term, the Parties’ respective interests under the Facilities Lease will automatically end and be released, and title to the Site and Project will automatically and fully vest with Owner. Can language be added that provides that the District and Contractor shall agree in writing as to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Project and insurance?

**District Response:** Recommended changes to the facilities lease agreement will be considered and negotiated with the successful Lease-Leaseback Contractor for each project.

**RFP-Q25** - FLA 14. – Contractor and the Owner shall maintain such damage and public liability insurance policies with respect to the Project and the Site as are required of them by the Lease-Leaseback Agreement. Can a provision be added that provides that upon the Leaseback period, the District/Owner is to name Contractor as an additional insured under its property and commercial general liability policies to protect Contractor against any suits, claims, damages, expenses related to the District/Owner’s status as a lessee under the Facilities Lease Agreement during the leaseback period?

**District Response:** Recommended changes to the facilities lease agreement will be considered and negotiated with the successful Lease-Leaseback Contractor for each project.

**RFP-Q26** - RFP Page 6 - #13 Proposal Requirements - The District may want to consider providing a proposal worksheet to make evaluation easier. The current language is fairly generic and will provide a fair amount of interpretation and variation for the LLB contractors. An example might be:

- Preconstruction Services: \$ \_\_\_\_\_
- Overhead & Profit: \_\_\_\_\_%
- Payment & Performance Bond: \_\_\_\_\_%
- General Liability Insurance: \_\_\_\_\_%
- Builders Risk: \_\_\_\_\_%
- Subguard or Subcontract Default Insurance: \_\_\_\_\_%
- General Conditions: \$ \_\_\_\_\_ or \$ \_\_\_\_\_ per month

**District Response:** Refer to Revision to Request for Proposal above item B.c response from the District.

**RFP-Q27** - RFP Page 6 - #13 Proposal Requirements – The General Conditions are calculated using the staff and facilities required total duration of the project. We recommend the District either provide the total duration the respondents should use to calculate the General Conditions or use a per month value.

**District Response:** Recommended changes to the lease-leaseback agreements will be considered and negotiated with the successful Lease-Leaseback Contractor for each project.

**RFP-Q28** - Contract Comments – If we have any comments to the agreement, should we include in our proposal or will you intend to negotiate after our submission?

**District Response:** Recommended changes to the lease-leaseback agreements will be considered and negotiated with the successful Lease-Leaseback Contractor for each project.

**RFP-Q29** - Exhibit A of the Facilities Lease Agreement states that the District will pay 90% of monthly progress payments for the value of construction work (i.e. 10% retention). Item 17 – Progress Payments for Construction Services, of the General Conditions, states that the District will pay 95% of monthly progress payments for the value of construction work. Please clarify the retention percentage to be held on progress payments.

**District Response:** The percentage of retention is 5%.

**RFP-Q30** - On page 6 of the RFP, there is a section numbered 5., yet there is no 1-4 preceding it, nor a heading indicating a new section. Should this piece, titled Relevant Experience, be treated as number 14 under Section F: Submittal Requirements?

**District Response:** Refer to Addendum #03 Section B – Revisions to request for Proposal Document for prior clarification to Section F, Subsection #14 (5).

#### **End of Addendum**

***All other terms and conditions of Bid No. B19/20-14 are to remain the same or as modified by Addendum #01, #02 and #03***

**Exhibit 2**  
**FEE AND WARRANTY PROPOSAL**  
**FOR LEASE-LEASEBACK PROPOSAL**

Name of Proposing Contractor: \_\_\_\_\_

Name of Project \_\_\_\_\_

Fee for Final and Total Construction Cost, expressed as a percentage (%): \_\_\_\_\_

\_\_\_\_\_

Fee for Preconstruction Services, expressed as a percentage (%):

\_\_\_\_\_

Warranty Period: \_\_\_\_\_ years

Warranty Restrictions (Set out below, or in an attachment to this Proposal): \_\_\_\_\_

The undersigned represents and warrants that it has examined the location of the proposed work and is familiar with the Plans, Specifications and other Contract Documents, and with local conditions at the place where the work is to be done and is satisfied with all conditions for the performance of the work.

Date  
\_\_\_\_\_

Name of Proposing Contractor  
\_\_\_\_\_

Signature  
\_\_\_\_\_

Printed Name and Title  
\_\_\_\_\_