

ADDENDA 6 – REVISIONS TO SECTION 1 DESIGN- BUILD PROPOSAL AND SECTION 2 DESIGN-BUILD CONTRACT

Dated January 22, 2014

REVISIONS TO THE SECTION 1 - DESIGN-BUILD PROPOSAL REQUIREMENTS

Revisions correspond to Addendum 6 Number Questions

QUESTION No. 8

Revisions as follows:

IX. Reservation of Rights

- A.** In connection with this procurement, DES reserves to itself all rights (which rights shall be exercisable by DES in its sole discretion) available to it under applicable law, including without limitation, the following, with or without cause and with or without notice:
1. The right to cancel, withdraw, postpone, or extend this RFP in whole or in part at any time prior to the execution by DES of the Design-Build Contract, without incurring any obligations or liabilities, except as set forth herein.
 2. The right to issue a new RFP.
 3. The right to reject any and all submittals, responses, and Proposals received at any time.
 4. The right to modify all dates set or projected in this RFP.
 5. The right to terminate evaluations of responses received at any time.
 6. The right to suspend and terminate the procurement process for the Project, at any time.
 7. The right to revise and modify, at any time prior to the RFP Proposal submittal date, factors it will consider in evaluating responses to this RFP and to otherwise revise its evaluation methodology.
 8. The right to issue addenda, supplements, and modifications to this RFP, including but not limited to modifications of evaluation criteria or methodology and weighting of evaluation criteria.
 9. The right to permit submittal of addenda and supplements to data previously provided with any response to this RFP until such time as DES declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed.
 10. The right to hold meetings and conduct discussions and correspondence with one or more of the Proposers responding to this RFP to seek an improved understanding and evaluation of the responses to this RFP.

11. The right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to the RFP, including the right to seek clarifications from Proposers.
12. The right to permit Proposers to add or delete firms and/or key personnel until such time as DES declares in writing that a particular stage or phase of its review has been completed and closed.
13. The right to add or delete Proposer responsibilities from the information contained in this RFP.
14. The right to appoint and change appointees of the Evaluation Committee.
15. The right to use assistance of outside technical and legal experts and consultants in the evaluation process.
16. The right to waive deficiencies, informalities and irregularities in a RFP Proposal, accept and review a non-conforming RFP Proposal or seek clarifications or supplements to a RFP Proposal.
17. The right to disqualify any Proposer who changes its submittal without DES's approval.

B. DES Not Obligated for Costs of Proposing

Except as provided herein and for Honorariums paid in accordance with the terms of this RFP, DES assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of any costs incurred or alleged to have been incurred by anyone considering a response to and/or responding to this RFP. All such costs shall be borne solely by each Proposer and its team members.

Except for force majeure (e.g., natural disaster, declaration of emergency, acts of terrorism) if for any reason DES should cancel the 1063 Replacement Block project before a contract for design-build services has been executed, DES will reimburse the Proposers for reasonable and actual expenses incurred toward the preparation of the herein authorized design-builder proposal, up to a maximum reimbursement of \$200,000.00.

QUESTION No.9

Strike paragraphs A & B in their entirety and replace with the following:

XI. Miscellaneous

A. Public Records Act

DES will respond to any requests for confidential records consistent with 42.56 RCW and in particular with 39.10.470 RCW which provides for the protection of trade secrets as follows: "Trade secrets, as defined in RCW 19.108.010, or other proprietary information submitted by a bidder, offeror, or contractor in connection with an alternative public works transaction under this chapter shall not be subject to chapter 42.56 RCW if the bidder, offeror, or contractor specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected." 39.10.470(2)

B. Confidential Records

In the event that Proposer does not comply with the 39.10.470 RCW requirements above, DES will respond to any Public Records request for Proposer's confidential records by (i)

[notifying Proposer of the request and \(ii\) of DES' intent to disclose Proposer's confidential records on a date certain unless Proposer obtains a court order directing DES to withhold such records pursuant to 42.56.540 \("Court Protection of Public Records"\).](#)

REVISIONS TO THE SECTION 2 - DESIGN-BUILD CONTRACT

Revisions correspond to Addendum 6 Number Questions

QUESTION No. 10

Revisions as follows:

2.2 Hazardous Materials. ~~Except as set forth herein,~~ Owner shall be responsible, as between Owner and Design-Builder, for the handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to any Hazardous Materials present at, on, in or under, or migrating and/or emanating to or from the Site. Owner shall have the sole discretion to determine the action, if any, to be taken with respect to such Hazardous Materials. Owner, however, shall not be responsible for the Hazardous Materials identified in Section 3.7.4 below ~~or for any Hazardous Materials pertaining to demolition and removal of the existing structures that are identified in the Phase I Environmental Site Assessment – Project 14-009 dated September 2013,~~ as ~~the Parties agree that~~ such Hazardous Materials are the responsibility of Design-Builder.

QUESTION No. 11

Revise as follows:

3.3.3 Standard of Care. The standard of care for all design services performed by or through Design-Builder on the Project shall be the care and skill ordinarily used by members of the design profession on projects of similar size, nature and complexity, practicing under similar conditions at the same time and locality of the Project. ~~Notwithstanding the preceding sentence, Design-Builder agrees that if the Contract Documents contain performance standards for any aspect of the Work, the design services shall be performed to achieve such standards notwithstanding the standard of care set forth in the preceding sentence.~~

QUESTION No.14

Revise as follows:

3.13.4 Financial Guarantee. Owner shall withhold a pre-determined amount from the Contract Sum, during the Performance Guarantee Period. Release of payment for this withheld amount shall be contingent upon the final confirmation that the operations, maintenance and energy use index (EUI) performance standards for the facility (i.e. actual EUI = BTU/GSF-Year) have been achieved as verified by the M&V conducted over the 5 year (1,825 days) period. The start date of the Performance Guarantee Period is the date, post-Substantial Completion, when the building is at a minimum of 80% occupancy. The withheld amount shall be \$420,000 which is equivalent to the approximate value of the estimated operations, maintenance and energy

operating costs for the first year. Design-Builder may propose a performance bond in lieu of the withheld amount as mutually approved with Owner.

If the actual operations, maintenance, and EUI as presented in the M&V findings and recommendations is equal to or better than the guaranteed performance requirements, a percentage of withheld amount will be released annually as noted in the approved plan indicated above.

If the actual operations, maintenance, and EUI as presented in the M&V findings and recommendations fails to meet the guaranteed performance requirements, the Design-Builder shall make a proportionate performance compensation payment to the Owner at the end of the performance period to account for the performance differences from the approved plan.

If six (6) months post-Substantial Completion, 80% occupancy is not achieved, then regardless of the percentage of occupancy, the Performance Guarantee Period will begin.

QUESTION No. 15

Revise as follows:

3.14 Design-Builder's Performance and Payment Bonds. Concurrently with execution of this Agreement, Design-Builder shall provide Owner the following Surety Bonds: (1) performance bond, and (2) payment bond, ~~and, if necessary, (3) maintenance bond.~~ The performance and payment bonds shall use the AIA Document A312 form and the principal amount of each bond shall be one hundred percent (100%) of the Contract Sum plus Sales Tax. ~~If the performance bond provides for a one-year warranty, a separate maintenance bond is not necessary. If the warranty period is for longer than one year, a maintenance bond equal to ten percent (10%) of the Contract Sum is required.~~ Bonds shall be duly executed by a responsible corporate surety (a) licensed as a surety and qualified to do business in the State of Washington; (b) in good standing on the list maintained by the United States Department of Treasury; and (c) having an A.M. Best rating of "A" or better. The costs for such bonds are included in the Contract Sum.

QUESTION No.16

Revise as follows:

6.1 Initial Invoice. Design-Builder shall be entitled to submit to Owner, on or after the Agreement Date, an initial invoice ~~in the amount of \$200,000.~~ This amount is considered part of the Contract Sum and shall be considered full and complete compensation to Design-Builder for the design services performed prior to the Agreement Date and furnished in the Proposal. Payment of the Initial invoice will be processed by Owner and paid in accordance with Section 6.4 below, provided, however, that no retainage will be withheld on such payment. The Initial invoice will not be considered an Application for Payment for purposes of this Article 6.

QUESTION No. 17

Revise as follows:

6.4.2 Retainage. Owner shall retain five percent (5%) of the amount of each progress payment due under an Application for Payment until at least forty-five (45) days after Final

Acceptance and receipt of all documents required by Governmental Rule or the Contract Documents, including, at Owner's request, consent of surety to release of the retainage; provided, however, that no amount shall be retained for those portions of the Contract Sum that are for professional design services. In accordance with Chapter 60.28 RCW, Design-Builder may request that monies reserved be retained in a fund by Owner, deposited by Owner in a bank or savings and loan, or placed in escrow with a bank or trust company to be converted into bonds and securities to be held in escrow with interest to be paid to Design-Builder. Owner may permit Design-Builder to provide an appropriate bond in lieu of the retained funds. Retainage shall be released in accordance with Governmental Rules.

QUESTION No. 20

No change to **Section 2** – Article 7, Time for Performance, 7.5.3 – Actual Damages for Late Final Completion.

QUESTION No. 21

Revise as follows:

18.1.1.1 Insurance Coverage. Design-Builder shall maintain the following insurance coverage during the Work and for one year after Final Acceptance. Design-Builder shall also maintain the following insurance coverage during the performance of any corrective Work required by Article 13. Coverage shall be in the amounts set forth in Exhibit F this Article 18 - Schedule 18.1.

- (a) Commercial General Liability (CGL) on the ISO 1986 New Occurrence Form or its equivalent such as ISO Form CG 00 01 with limits of no less than \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. This coverage shall include:
 - (1) Completed operations/products liability;
 - (2) Explosion, collapse, and underground; and
 - (3) Employer's liability coverage - limits no less than One Million dollars \$1,000,000 per accident for bodily injury or disease.
- (b) Automobile Liability – ISO Form Number CA 0001 covering Code 1 (any auto), with limits no less than Five Million dollars (\$5,000,000) per accident for bodily injury and property damage (Combined Single Limit).

QUESTION No. 22

Revise as follows:

18.1.1.4 Insurance Certificates. Design-Builder shall furnish acceptable proof of insurance coverage on the State of Washington Certificate of Insurance form SF500A, dated July 2, 1992, prior to commencement of the Work. All insurance certificates shall name Owner s as an additional insured and shall denote the Project insurer by contract number(s) and

Project title(s). All insurance certificates shall specifically require forty-five (45) days prior notice to Owner of cancellation or a material change, except thirty (30) days for surplus line insurance.

QUESTION No. 24 & 26

Revise as follows:

18.1.3 Errors and Omissions Professional Insurance. Design-Builder in conjunction with the primary design consultant (or consultants) shall purchase and maintain professional liability insurance for design services errors and omissions with minimum limits of no less than Three Million dollars (\$3,000,000) per ~~occurrence claim~~, Five Million dollars (\$5,000,000) policy aggregate. ~~Claims made type of coverage shall include a five (5) year extended reporting period~~The professional liability insurance set forth herein shall be renewed by Design-Builder for a period of no less than five (5) years after Final Completion. The insurance policy shall be endorsed to provide vicarious liability coverage.

QUESTION No. 25

Revise as follows:

18.1.2.1 Insurance to be "All Risk". Design-Builder's property insurance shall be placed on an "all risk" basis and insure against the perils of fire and extended coverage and physical loss or damage including theft, vandalism, malicious mischief, collapse, false work, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Owner's and Owner's consultant's services and expenses required as a result of an insured loss. Design-Builder shall purchase and maintain boiler and machinery insurance covering insured objects during installation and testing until Final Completion. Such insurance shall name as insured Owner, Design-Builder, and all subcontractors who perform applicable work.

QUESTION No. 27

Revise as follows:

18.3 Subcontractors' Insurance. Before permitting any of its Subcontractors to perform any Work at the Site, Design-Builder shall obtain a certificate of insurance from each ~~such first tier~~ Subcontractor evidencing that such Subcontractor has obtained insurance acceptable to Design-Builder in such amounts and against such risks as are identified in ~~Exhibit F~~ Schedule 18.1. Design-Builder shall provide Owner with copies of all certificates of insurance.

QUESTION No. 28

No change to **Section 2**, Article 18 Insurance, 18.4 Additional Insurance Provision.