

Clarifications No. 5, August 16, 2013 – Cajon Pass Rehabilitation Design-Build Project Contract No. 08-0Q7404

RFC No.	Category	Document	Section	Clarification	Response
85	2	Book 1	15.2 (F)	Section 15.2 (f) requires Design-Builder to pay all Subcontractors upon termination. However, this may be difficult if Department has not paid Design-Builder. Would the Department consider adding “and payment by Department for Subcontractor’s work” after “Department” in the first line of 15.2(f)?	The Department has considered the issue presented by the Proposer and decided to not modify the position reflected in the RFP documents at this time.
86	3	Book 1	15.7 (D)	Section 15.7(d) allows the Department to withhold from payment amounts in dispute at the time of a termination but does not provide that those amounts will be paid promptly upon the resolution of the dispute. Would the Department consider adding “;provided the Department shall promptly pay amounts determined to be due the Design-Builder upon the resolution of such matters” to the end of 15.7(d)?	The Department has considered the issue presented by the Proposer and decided to not modify the position reflected in the RFP documents at this time.
87	2	Book 1	15.11	Section 15.11 provides that the Design-Builder is not entitled to consequential damages but there is no mutual release of consequential damages by the Department. Liability for consequential damages substantially changes Design-Builders risk profile and would result in a corresponding cost increase. Would the Department consider a mutual release of consequential damages?	The Department has considered the issue presented by the Proposer and decided to not modify the position reflected in the RFP documents at this time.
88	2	Book 1	16.3	Section 16.3 states Design-Builder will not be relieved from Liquidated Damages by exercise of rights under 16.2, but 16.2 allows for termination. We would like to clarify that upon termination of the Contract, Liquidated Damages will no longer accrue. Would department add “;provided, Liquidated Damages will stop accruing upon termination of the Contract.”	Liquidated Damages would not continue to accrue after termination. The Department has considered the issue presented by the Proposer and decided to not modify the RFP documents at this time.

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89	2	Book 1	18	The indemnification provisions of Section 18 require the Design-Builder to indemnify the Department for damages “regardless of the existence or degree of fault of Indemnities”. We do not believe this is consistent with recent changes in California law and request this be modified to comply with those changes.	The Department has considered the issue presented by the Proposer and decided to not modify the position reflected in the RFP documents at this time.
90	2	Book 1	18.1.2	Section 18.1.2 requires indemnification for all “Errors in the Design Documents” whether or not those were the result of negligence. Would Department add “arising from the Design-Builder’s negligence” after ‘Errors in the Design Documents’ in the sixth line of 18.1.2 to make this consistent with insurance availability?	The Department has considered the issue presented by the Proposer and decided to not modify the position reflected in the RFP documents at this time.
91	3	Book 1	19.2	Section 19.2 only allows for the initiation of the dispute resolution procedures after Final Acceptance, but there could be situations where the dispute is about whether Final Acceptance should have occurred and there may also be disputes regarding termination and other events that would preclude the occurrence of Final Acceptance. Would the Department consider adding “(or (i) if due to the nature of the dispute it is unlikely that Final Acceptance will occur or (ii) the dispute is about whether Final Acceptance should have occurred, then at such time as the issue affecting Final Acceptance arises)” after “Final Acceptance” in the fourth line of the fifth paragraph of 19.2.1?	The dispute resolution provisions address disputes both before and after final acceptance. The Department has considered the issue presented by the Proposer and decided to not modify the position reflected in the RFP documents at this time.