**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**REQUEST FOR QUALIFICATIONS**

**FOR**

**Heavy Civil Engineering & Design Services for the New Jersey Wind Port (NJWP)**

**(Reference 2023-RFQ-198)**

**ADDENDUM #7**

The following constitutes an Addendum, which can be a Clarification and/or Modification to the above-referenced solicitation. This Addendum is as follows:

* Part 1: Answers to Questions Submitted

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| **Part 1: Answers to Questions Submitted** | | |
| No | Question | Answer |
| 1. | If any work extends past the contract end date, will the fee schedule be eligible for escalation? | Work cannot extend past the contract end date. All fee schedules will be determined during the TOR/Mini Bid Process. |
| 2. | Would there be potential to remove verbiage granting the Authority ownership of intellectual property? (Section 5, 1st paragraph, last 2 sentences & 2nd paragraph, last sentence)? | The Authority does not accept this change. |
| 3. | Regarding Section 7, Indemnification, would there be potential to remove the word “defend” throughout paragraph and revise “damages of any kind arising out of or claimed to arise out of any act” to read “damages to the extent caused by any negligence”? | The Authority does not accept this change. |
| 4. | Section 7: The Contractor should only indemnify to the extent it is at fault/negligent. Please consider these edits.  The Contractor shall defend, indemnify, protect and hold harmless the State of New Jersey and the Authority, and its officers, agents, servants and employees from and against any and all suits, claims, demands, losses or damages of any kind **to the extent** arising out of or claimed to arise out of any **negligent** act, error, or omission on the part of the Contractor, its officers, agents, servants, employees and subcontractors in the performance of services under this Contract. The Contractor shall, at its own expense, appear, defend and pay all charges for attorneys and all costs and other expenses arising from such suit or claim or incurred in connection therewith. If any judgment shall be rendered against the State of New Jersey and the Authority or its officers, agents, servants, and employees for which indemnification is provided under this Section 6, the Contractor shall, at its own expense, satisfy and discharge the same. | The Authority does not accept this change. |
| 5. | Section 15: We would like to add a new subsection W to address liability limitations. Specifically, we request a commercially reasonable limitation of liability that bears a proportionate relationship to our scope and fees. This is an important governance requirement, and it may be difficult to obtain internal approval for unlimited liability given the anticipated scope of services.  W. Under no circumstances shall (i) shall either party be liable to the other for any type of damages other than direct damages (including loss of profits, loss of opportunity, loss of business, loss of goodwill, or indirect, consequential, special, or punitive damages), even if such party has been advised of the possibility of such damages; and (ii) the aggregate liability of the Contractor in connection with the Agreement or the Work exceed an amount equal to five (5) times the amount actually paid to the Contractor by the Authority for the Work, but in no event more than One Million Dollars ($1,000,000). | The Authority does not accept this change. |
| 6. | Exhibit L, Contract for Professional Services:  **Section 7 (Indemnification)** – Due to insurance commercially available under which professional liability insurance does not cover an upfront duty to defend, and because the term “acts” can be interpreted to include the professional using data or information provided by their client, incorporating changes required by their client into deliverables, following the instruction of their client, and simply performing the agreement upon scope of work, none of which are wrongful acts, the following changes are requested to this clause:  a) modify the term “any act, error, or omission” to “any negligent act, error or omission”, and  b) addition of the following sentence to the end of the first paragraph: “Notwithstanding the foregoing or any other provision to the contrary, the Contractor shall not be required to provide a defense to the State of New Jersey or the Authority for claims of a professional nature as defined in the Contractor's professional liability policy except that this shall not affect the Contractor's obligation to pay reasonable attorney's fees as part of Contractor's indemnity obligation to the State of New Jersey and the Authority, nor shall it affect Contractor's duty to defend the State of New Jersey and the Authority if such a defense is available under any of Contractor's other insurance policies.” | The Authority does not accept this change. |
| 7. | Exhibit L, Contract for Professional Services:  **Section 8 (Insurance)** – Per the RFQ, Exhibit K (Rider “D”) completely replaced this clause in the contract. However, certain of the insurance limits in Rider “D” are extremely high, and not warranted for the type of services requested. Changes requested are as follows: a) Commercial General Liability Insurance limits of $5,000,000 per occurrence and aggregate changed to $2,000,000 per occurrence and $4,000,000 aggregate; and b) Umbrella/Excess Liability Insurance limits of $25,000,000 per occurrence and aggregate changed to $10,000,000 per occurrence and aggregate. These are reasonable limits considering the type of professional services required to be provided. | The provided Exhibit K is informational only.  All insurance requirements will be negotiated during the Mini Evaluation/TOR process. |
| 8. | Exhibit L, Contract for Professional Services:  **Section 12 (Time for Completion and Damages)** – The penalties for any delay in services constitute liquidated damages which are not normal for the design professional firm and are also not generally insurable under professional liability insurance. Please consider removal of the second paragraph, or as an alternative, limiting any such penalties to fees paid to the Contractor for the Services performed. | **Modification to Exhibit L, Contract for Professional Services:**  For reasons within the Contractor's control, if the Contractor shall fail to complete the Work, or shall be responsible for a delay which results in the failure to complete the Work within the time specified, or  extension of time granted by the Authority, then the Authority shall hold 5% - 10% retainage on professional services. The Authority reserve the right to evaluate that % for each scope of work. |