



**Judicial Council of California**  
ADMINISTRATIVE OFFICE OF THE COURTS

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## ADDENDUM 2

Date  
October 20, 2009  
To  
Potential Proposers

Action Requested  
Please review the Q&A below:  
Contact  
[occm\\_solicitations@jud.ca.gov](mailto:occm_solicitations@jud.ca.gov)

From  
Judicial Council of California  
Administrative Office of the Courts,  
Office of Court Construction and Management

Subject  
**Addendum No. 2**  
**New Porterville Courthouse**  
Solicitation Number: OCCM-2009-03

New Porterville Courthouse  
 CM at Risk  
 RFQ/P # OCCM-2009-03

#	RFQ Reference	Question	Answers
1	CM Agreement Ex. C of Attachment A, Page C4 § .10; GCs § 3.19	<p>Indemnification: The Contract requires the Contractor to indemnify, defend and hold harmless the State, the Judicial Council of California, the Administrative Office of the Courts, the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, contractors, representatives, volunteers and employees (individually, an "Indemnified Party") from any and all claims, lawsuits, losses, costs (including attorney fees and costs), liabilities and damages arising from, related to or in connection with any of the following: (a) the Contractor's or any of its employees' or Subcontractors' negligent acts, omissions, or intentional misconduct; (b) the Contractor's breach of its obligations under this Agreement; (c) the Contractor's or any of its employees' or Subcontractors' violation of any applicable law, rule, or regulation; and/or (d) injuries or damages by third parties when such claim arises in connection with the Contractor's performance of this Agreement.</p> <p>Question: The indemnification obligation is very broad and we request consideration that it be limited to insurable claims for bodily injury or death or damage to or destruction of personal property (other than to the Work itself) to the extent caused by the Contractor's negligence</p>	The provision stands as stated.

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2	Permits (CM Agreement Page B1 § .1(C)(1); GCs § 3.7.1) and Attachment C, Miscellaneous Project Costs	<p>Attachment C, Miscellaneous Project Costs, lists the Fees for water connection, meter, sewer, storm drain, gas service, power service and curb and gutter (items #10-16) as "CM @ Risk Construction Phase Services. The costs for the fees are then to be included in Attachment F, Fee Proposal Form, under Construction Phase Services.</p> <p>Question: Because the project has yet to be fully designed (the final sizes and locations of the services thus are not yet determinable), it is not possible to calculate the fees. This appears inconsistent with 00700-3.7.1 and Exhibit B of Article A, paragraph C as well. We request the permit costs / fees be considered either a "Direct Cost of the Work, an allowance be established during the creation of the Supplemental General Conditions, or "Paid by the State".</p>	<p>Attachment C stands as stated.</p> <p>Please also see our answer to question #7 in Addendum 1, Q&amp;A.</p>

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#	RFQ Reference	Question	Answers
3	CM Agreement Page A7 § .4(A)(13); GCs § 3.7.3	<p>Section 3.7.3 states "If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, and rules and regulations, the Contractor shall promptly notify the AOC in writing. If the Contractor performs work known to be contrary, or should have known to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without prior notice to the AOC, the Contractor shall assume full responsibility for the Work and shall bear the attributable costs.</p> <p>Question: Please confirm that It is not the CM@R responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations, and lawful orders of public authorities</p>	The provision stands as stated.

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#	RFQ Reference	Question	Answers
4	GCs § 8.3.2 and CM Agreement Ex. B of Attachment A, Page B4 § .2(D); GCs § 8.2 and GCs § 13.6.1	<p>In GC section 8.3.2 states" If a stop notice or lien is filed against the Work or any AOC property by a subcontractor or supplier on the Project, the Contractor and Contractor's surety, at their own expense, must promptly cause such stop notice or lien to be released or discharged. If the Contractor fails to furnish to the AOC, within thirty (30) days after demand by the AOC, satisfactory evidence that the lien or stop notice has been released, discharged, or secured, the AOC may discharge such indebtedness and deduct the amount required, together with any and all losses, costs, damages, and attorney fees and expense incurred or suffered by the AOC from any sum payable to the Contractor under the Contract.</p> <p>Question: We interpret this section as requiring the CM@R to discharge, at its own expense, any mechanic's liens or stop notices even if the AOC has not paid sums properly due and owing. We request the AOC specify the intent of this stipulation in the event that AOC has not promptly paid the CM@R for undisputed amounts or if payments are delayed due to unavailability of authorized funds discussed in Article 13.6</p>	The provision stands as stated.

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#	RFQ Reference	Question	Answers
5	GC 11.1.2.4	<p><b>“Section 7105 of the Public Contracts Code states in part.</b> (a) Construction contracts of public agencies shall not require the contractor to be responsible for the cost of repairing or restoring damage to the work, which damage is determined to have been proximately caused by an act of God, in excess of 5 percent of the contracted amount, provided, that the work damaged is built in accordance with accepted and applicable building standards and the plans and specifications of the awarding authority. ....”. But, we understand AOC is not bound by Section 7105.</p> <p>GC 11.1.2.4. states “and shall include coverage for flood, water damage, and, if available at commercially affordable cost as reasonably determined by the AOC, earthquake and earth movement” Furthermore, The Agreement provides as follows: “Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by Force Majeure. Force Majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of God, such as earthquakes, floods, and other natural disasters, such that performance is impossible.”</p> <p>Unless 7105 is incorporated into the contract or Article 11 revised, it appears the CM@R has taken on the obligation to rebuild the facility if an earthquake decimates it the day before final acceptance if the AOC decides not to require earthquake and earth movement provisions in the BR insurance</p> <p>Question 1: Please provide AOC’s criteria for “commercially affordable cost” for earthquake and earth movement</p>	<p>·</p> <p>For the construction of the new Porterville Courthouse, and with the AOC reserving the right to provide the builders risk insurance as allowed for under Article 11.2 of the General Contract for Construction, Document 00700, the cost for builders risk insurance, including coverage for damage resulting from earthquake, should be included in Construction Phase Services in attachment F.</p>

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#	RFQ Reference	Question	Answers
6	Exhibit A of Attachment A	Contract Schedule indicates an estimated completion of March 23, 2010 for the Design Development phase, however the Working Drawing phase is not identified to begin until July 13, 2010, almost 4 months later. Please clarify if this is correct and what is occurring during these 4 months.	That is our current estimated schedule.
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