

ANSWERS TO SUBMITTED QUESTIONS - ROUND 5
(QUESTIONS 127- 168)

Q #	Questions	RFP Reference (Document & Page-Section-Item)	Answers
127	How will future U.S. government tariff actions (which are not enacted as of 5/7/2025) be addressed between the JCC and the DBE?	Att 7- Sample Agreement	Pursuant to General Conditions section 5.2, the Judicial Council will not adjust the Stipulated Sum or pay escalation for increased costs due to tariffs. The DBE is responsible for managing the risk of tariff impacts within the Stipulated Sum.
128	Please confirm quality control manager needs to be onsite at all times per section 13.19.13.2.	Attachment 7 – 13.19.13.2	Per section 13.19.13.2, the quality control manager need only be present at the Site full-time during the performance of Construction Work.
129	<p>Can a mutual waiver of consequential damages be added to the agreement per the standard AIA language below:</p> <p><i>The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:</i></p> <p><i>1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and</i></p> <p><i>2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work .</i></p>	Attachment 7	The Judicial Council declines to waive consequential damages.
130	TT0.01 indicates the location of (4) 4” PVC conduits from service provider vault. Based on existing field conditions, the closest AT&T underground vault is located at the corner of El Camino Real & S Mathilda Ave. Please clarify the tie-in connection point for Low Volt / Telecom.	General	<p>Sheet TT0.01, Keynote 120 for new (4) 4” conduits for connection to service provider vault is diagrammatic and is not intended to represent the tie-in connection point for Low Volt / Telecom.</p> <p>The new conduit pathways shall be from Keynote 119 to the service provider vault located in All America Way north of the project site (the same vault where the existing building service connects - Refer to RFP Attachment 8, Section B, Sunnyvale Courthouse As-Built sheet E-1). Additional coordination with the service providers is required during design development to confirm sizing and connection standards for network service. Refer to Addendum No. 6 for clarification on Sheet TT0.01.</p>

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131	Based on existing conditions, there are (2) BELL SYSTEM Christy boxes at the north side of the property. Please confirm BELL SYSTEM won't be connected to the new courthouse.	General	AT&T has confirmed connection to a vault north of the property in All America Way. DBE shall coordinate with service provider to confirm which vault during design development.
132	Laboratory performance mockup testing is called out in Spec Section 019119 for the curtain wall and precast architectural concrete assemblies. These are very expensive tests usually performed on large Curtain wall projects. Please clarify whether these tests are required on this project.	Attach 9 - Spec Section 019119	These tests are required on this project.
133	Section 14.5 "...Grounding System..." calls for in accordance with TIA/EIA-607A, shall we assume this also includes the latest standards up to ANSI/TIA-607-E- Generic Telecommunications Bonding and Grounding?	ADD. 04- Attachment 9 - Performance Criteria Docs (page 265) - Section 14.5	No.
134	Please confirm that Article 10.2.1 Compensable delay daily rate for Construction Work dollar amount is only for the DBE contractor and not the rest of the team, designers, trade partners, etc.	Attachment 7 - Sample Agreement for DBE Services Add #2 Rev 4/4/25	Confirmed. The "compensable delay daily rate" is compensation for the DBE's general conditions for Construction Work in the event of a "Compensable Delay." For additional information about what is considered part of the "General Conditions," please see Exhibit E to the Agreement.
135	Article 10.2 - Please strike " Design Build Entity must provide documentation of actual costs to receive extended general conditions. Notwithstanding the amounts set forth below, Design Build Entity must establish that it sustained such damages, up to the amount below, as it applies to each Day of delay consistent with the requirements of the Contract Document" as the point of the daily delay rate is to establish the DBE's damages at the onset of the project.	Attachment 7 - Sample Agreement for DBE Services Add #2 Rev 4/4/25	The Judicial Council declines to strike the noted language from Article 10.2 as it applies to the period "After the building is approved as Ready for Use."
136	Please confirm that 11.1.2 can be revised to provide clarity for time extensions: Compensable delay = Fully compensable Compensable delay + Excusable delay = Fully compensable Compensable delay + Unexcusable delay = Time only, no compensation Excusable delay + Unexcusable delay = Time only, no compensation	Attachment 7 - Sample Agreement for DBE Services Add #2 Rev 4/4/25	The Judicial Council declines to make the requested revisions.
137	16.2 - It is inappropriate for the DBE to be a fiduciary of the Judicial Council. Please confirm that the DBE is not a fiduciary of the Judicial Council and strike this article.	Attachment 7 - Sample Agreement for DBE Services Add #2 Rev 4/4/25	16.2 has been removed and marked as "Reserved." Refer to Addendum No. 6.
138	Article 3.4 - In order to meet the schedule outlined in the RFP, long lead materials will need to be ordered prior to full approval of the Construction Drawings. Please add the following to 3.4 "Upon receipt of NTP, the DBE, at its sole discretion, shall have the authorization to procure long lead materials to support the project."	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The DBE may order long lead items at its own risk to meet the schedule.

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139	Article 3.4 - In order to meet the schedule outlined in the RFP, construction work may need to begin before full approval of the Construction Drawings. Please add the following to 3.4 "Upon receipt of NTP, the DBE, at its sole discretion, shall have the authorization to proceed with construction work as outlined in the OSFM Memo dated September 6, 2019."	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council declines to make this proposed revision. Refer to 3.4.4.
140	Article 5.1 - Much of this section appears to be left over from a GMP type agreement. It would be more appropriate to be replaced with language confirming that the DBE will be paid the entire stipulated sum in progress payments based on the completion of the work compared to a schedule of values. Additionally, Exhibit O does not make sense for a Stipulated Sum Project. We kindly request this exhibit be removed.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council declines to make this proposed revision.
141	Article 5.2 - Due to the unrepresented market uncertainty and potential material escalation, we kindly request that Article 5.2, in its entirety be replaced with the following language "Design Build Entity be shall be entitled to additional payment and time for material escalation and/or material unavailability beyond the control of the Design Build Entity. DBE included 3% escalation to mid-point of construction. Material Escalation beyond this will be reimbursed by the Judicial Council. DBE will need to justify the additional costs and time to the reasonable satisfaction of Judicial Council."	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	See reponse to question 127 above.
142	Article 5.2 - Additionally, we kindly request the following language to also be included "The Stipulated Sum and Contract Time shall be equitably adjusted for additional costs and time resulting from any changes in Applicable Laws and Standards, including trade restrictions and increased taxes, tariffs, duties or material escalation which are enacted after the Effective Date, which could not have been reasonably anticipated by Design-Builder. Design-Builder will notify Judicial Council of such change or increase and (i) Judicial Council and Design-Builder will reasonably cooperate in good faith to identify alternative construction means or methods, or alternative materials or suppliers, in an effort to avoid or mitigate the cost or time impact, and (ii) if such avoidance and mitigation efforts are unsuccessful or insufficient, then the Judicial Council and Design-Builder will mutually agree on an equitable adjustment to the Stipulated Sum." If this cannot be replaced, the DBE will be required to carry additional contingencies to cover this risk which would take away from providing additional enhancements to the project.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	See reponse to question 127 above.
143	Article 6.1.2 - please strike "at its sole cost and expense." If the Judicial Council would like an element redesigned, re-bid or Value Engineered, it should be at the Judicial Council's expense if they are requesting the above services.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council declines to make this proposed revision

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144	Article 8.3.2.1.6 5 - this is not applicable to a stipulated sum agreement. Please strike.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council reserves the right to request additional information to substantiate completion of work as represented by the Design Build Entity. Section 8.3.2.1.5 has been revised to clarify that provision of these additional records shall only be required upon the request of the Judicial Council's Representative. "Judicial Council Representative may require the Design Build Entity provide additional data substantiating Design Build Entity's right to payment, such as invoices, certified payrolls, and daily time and material records." Refer additionally to Addendum No. 6.
145	Article 8.4 - Please confirm that there is no retention held on design and preconstruction services.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	Retention shall be held for design and preconstruction services as authorized by Government Code section 70398.6. (See General Conditions § 8.4.1 regarding retention of 5% of "all sums due" to DBE.) Release of retention is governed under Section 8.5. In particular, Section 8.5.1 governs the release of retention for Design Work.
146	Article 13.1 & 14.7 - In a contract of this magnitude and importance, it is necessary to distinguish between material and non-material contractual requirements. Treating every non-compliance, no matter how minor, as a material breach greatly expands the risk profile because it opens the door for significant legal ramifications and remedies against the Design Build Entity that are far greater than necessary. The legal consequences need to be commensurate with the risk and level of importance. We ask that the Judicial Council recognize the necessity of distinguishing material and non-material requirements and remove the unfair, excessive, and one-sided materiality language in 13.1 and 14.7.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The contract distinguishes between material and non-material contractual requirements; in fact, the Judicial Council made efforts to limit the designation of material terms by largely constraining that designation to Articles 13 and 14. In response to this question, the Judicial Council has further reviewed Articles 13 and 14 and confirms that DBE's performance under those provisions is material. The Judicial Council declines to make this proposed revision.
147	Article 13.12.1 - No Warranty of Judicial Council Furnished Information. The Judicial Council spent a significant amount of effort to develop the bridging documents. The proposers are utilizing the provided information to develop our RFP responses. The Design Build Entity needs to be able to rely on information furnished by Judicial Council. It is unfair and inappropriate to shift the risk of errors or omissions in that information to Design Build Entity. We kindly request 13.12.1 be stricken.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	Article 13.12.1 has been revised. Refer to Addendum No. 6.
148	Article 13.12.5 - Please strike "all required" from this article. We have completed a single site investigation and are relying on the information provided by the Judicial Council to develop our RFP response.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	"all required" has been struck from the first sentence of Article 13.12.5.1. Refer to Addendum No. 6.
149	Article 13.17.1 - This article may conflict with the Design Standard of Care. In an effort to alleviate this concerns, please strike this entire article. Furthermore, the Betterment Waiver is unreasonable. If the complete article is not struck, please strike "As a result, no "betterment" or "added value" defense shall apply to any claim by Judicial Council against Design Build Entity in any way related to Design Build Entity's Work preparing Drawings or Technical Specification"	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The second sentence of Article 13.17.1 has been struck. Refer to Addendum No. 6.

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150	Article 13.17.25.4 - "If Judicial Council Representative directs Design Build Entity to prepare revisions based on the reviewer's comments, Design Build Entity shall make any such revisions and resubmit the Drawings and Specifications to Judicial Council at Design Build Entity's sole cost and expense" It is unreasonable to require the DBE at it's "sole cost and expense" to incorporate additional scope into the project per Judicial Council Representatives direction during a review. We kindly ask to strike "at Design Build Entity's sole cost and expense"	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council declines to make the requested revision. Section 13.17.25.4 provides a mechanism for DBE to challenge comments and revisions to which it objects or deems improper.
151	Article 13.21.4 - It is not appropriate for Judicial Council to have the right to veto name changes or organizational restructurings of the DBE. Design Build Entity needs to retain control over its name and structure. Will the Judicial Council revise this provision to say: 13.21.4. Notice of Name Change. If Design Build Entity intends to make any change in its name or form of organization, Design Build Entity must first will notify Judicial Council of the change. Judicial Council shall determine if Design Build Entity's intended change is permissible while performing the Work under the Agreement.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 RB155:C155ev 4/4/25	The Judicial Council has revised Article 13.21.4 as follows: 13.21.4. Notice of Name Change. If Design Build Entity intends to make any change in its name or form of organization, Design Build Entity must first will notify Judicial Council of the change and comply with all applicable laws and regulations. Judicial Council shall determine if Design Build Entity's intended change is permissible while performing the Work under the Agreement. Refer to Addendum No. 6.
152	Article 14.1.7- Self Performed Work. There should be no restrictions on Self Performed Work under this agreement. Please strike this section and replace with "There are no restrictions on Self Performed Work."	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	Design Build Entity may self-perform any Work under this Agreement. Article 14.1.7 has been revised. Refer to Addendum No. 6.
153	Article 14.3 - If the replacement of a Subcontractor is at the discretion of the Judicial Council's and there are additional costs, the cost and time impact of this request shall be borne by the Judicial Council. Please confirm.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council declines the proposed revision. Subcontractor substitutions are governed by Public Contract Code section 4107. To the extent a subcontractor meets the criteria for substitution under Section 4107, the Design Build Entity shall be responsible for attendant costs. As the party responsible for selecting and managing subcontractors for the project, the Design Build Entity is in the best position to prevent the need for substitution.
154	Article 14.4.2.3 - The broad audit rights are inappropriate for a stipulate sum agreement. Please update accordingly.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council declines to make the requested revision.
155	Article 18.5 - Adverse Weather and Force Majeure are additional conditions for Change Work. Please add these conditions.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council declines to make this revision.
156	Article 18.5 - As Judicial Council gets the full benefit of OSFM code interpretations more stringent than industry standards, the Judicial Council shall pay for the full amount of the costs of the extra work. This provision may be more appropriate for a GMP agreement with a shared savings, but not under this agreement. Please strike "Any such change shall be limited to fifty percent (50%) of the Direct Cost of Work for Extra Work, calculated as provided herein"	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council declines to make this requested revision.

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157	Article 18.21.1.10 - Please strike "or any other Excusable Delay." This language negates the DBE from receiving amounts due for an Excusable concurrent impact. The logic shall be: Compensable delay = Fully compensable Compensable delay + Excusable delay = Fully compensable Compensable delay + Unexcusable delay = Time only, no compensation Excusable delay + Unexcusable delay = Time only, no compensation	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council declines to make the requested revisions.
158	Article 18.21.5.2 - This is unreasonable. Please kindly strike in its entirety. The following logic shall apply: Compensable delay = Fully compensable Compensable delay + Excusable delay = Fully compensable Compensable delay + Unexcusable delay = Time only, no compensation Excusable delay + Unexcusable delay = Time only, no compensation	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council declines to make the requested revisions.
159	Article 18.21.4.2 - Please confirm that the submission dates can be thirty (30) days in lieu of fourteen (14) days.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	Article 18.21.4.2 has been revised to thirty (30) days. Refer to Addendum No. 6.
160	Article 19.2 appears to complicate the dispute process. Can this section be removed and dispute process begin with the meet-and-confer step outlined in 19.3.3?	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council declines to make the requested revisions.
161	Article 19.3.4 - Public Contract Code 7107 does not immunize owner from liability for interest on wrongfully withheld amount. Please strike the following "Notwithstanding this provision, and in accordance with Public Contract Code section 7107, Judicial Council is entitled to withhold up to one hundred and fifty percent (150%) of disputed amounts and Judicial Council will not be liable for payment of interest on such disputed amounts pending final adjudication of such dispute"	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council declines to make the requested revisions.
162	Article 19.3.8.1 - Please update the location of arbitration in a location jointly determined by the Judicial Council and the DBE.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	Revision request is acceptable. The last clause has been revised as follows, "will be determined by arbitration in a location in California designated by mutual agreement of the Parties. If the Parties are unable to agree to a location, then arbitration shall be conducted in Sacramento, California." Refer to Addendum No. 6.
163	Article 19.3.8.3 - We kindly request a panel of 3 arbitrators in lieu of a single arbitrator. Please update accordingly.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council declines to make the requested revisions.

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164	Article 25.3.2.5 - No deductible amount is identified for the Builder's Risk policy. Please confirm that each deductible is no more than \$50,000. Furthermore, please confirm that the DBE is only responsible for a deductible if we cause the loss and that the Judicial Council will be responsible for all other deductibles, including CAT deductibles caused beyond our control.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The policy will not be underwritten until closer to the start of construction, so the actual deductible limits are not yet known. Based on deductibles from other projects and for purposes of answering this question, the DBE will be responsible for the deductible amount up to \$500,000.00 for water damage, flood and earthquake and up to \$250,000 for all other perils. The DBE will be responsible for the deductible for any loss that occurs, regardless of fault.
165	Article 25.4.7 - Bond Costs. Please kindly strike in its entirety. As is a Stipulated Sum agreement, the DBE is responsible for the bond costs.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	Article 25.4.7 has been struck in its entirety and marked as "Reserved." Refer to Addendum No. 6.
166	Article 28 - Audit - This article provides expansive audit rights to the Judicial Council. With this being a Stipulated Sum agreement, this seems inappropriate. We kindly request to please strike in its entirety.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council declines to make the requested revisions.
167	Article 29.6.1 - This provision contains a one-way waiver of consequential damages in which Design Build Entity is waiving its consequential damages against the Judicial Council. The lack of a mutual waiver of consequential damages may reduce the number of subcontractors who are willing to bid on the Project. Will the Judicial Council insert a mutual waiver of consequential damages with an appropriate carveout for liquidated damages for delay that have been agreed to by the parties?	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	The Judicial Council declines to make the requested revisions.
168	Please confirm that there will not be a Project Labor Agreement (PLA) implemented for the 6th Appellate Courthouse Project. All other Prevailing Wage & Skilled and Trained Workforce Requirements will apply as outlined in the documents.	Attachment 7 - General Conditions (DB Contract Docs) Add #2 Rev 4/4/25	A Project Labor Agreement (PLA) will be implemented for the New Sixth Appellate District Courthouse Project.
END OF QUESTIONS AND ANSWERS			