

**ADDENDUM # 3 (PART 2 of 2) TO CATA RFP #2013-105
CAPITAL AREA TRANSPORTATION AUTHORITY
BUS TIRE LEASE**

Vendor Questions and Answers

Addendum #3 Part 2 of questions received from interested vendors in regard to the above Request for Proposal (RFP) is consecutively numbered 31-83 below and labeled "Q". Below each question is CATA's official corresponding answer labeled "A" and written in italics.

Part Two of This Addendum is enclosed within this correspondence, and is also available on the CATA website at www.cata.org, located under the heading "Doing Business With CATA".

31. Q: RFP Page 16 Breach of Contract.

- a. **Please remove the following language, "such failure shall be deemed a total breach of contract and the Contractor shall be subject to legal recourse by CATA, plus costs relating to failure to comply" and replace with "and Contractor fails to remedy such failure upon adequate written notice from CATA. CATA may terminate the Agreement according to the terms of Section 2, Termination for Default.**
- b. **Please insert paragraph: "Contractor shall have the right to suspend performance if the Authority defaults in the payment of any charges or other amounts due under this Agreement and terminate the agreement if CATA fails to cure such default within ten (10) days after receiving written notice specifying such default."**

A: Part a.: The request is granted.

Part b.: CATA will not negotiate contract language at this time.

32. Q: RFP Page 16.8. Disputes (after Bid Award)

Please remove the following language from this paragraph: "which shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial advice."

Please add the following language at the end of the paragraph: "In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. The Contractor shall not be bound by any decision of the County nor shall the Contractor be required to exhaust all administrative remedies before commencing litigation in a court of competent jurisdiction within the state in which CATA is located.

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A: The requested amendment is denied.

- 33. Q: RFP Page 17, Section 18 Insurance. Paragraph (b) Omit all reference to “Professional Liability.”**

REASON: Contract is for the supply of a product and not for professional type service provided by architects, lawyers, doctors, etc. Bidder stands behind its manufactured products and services rendered under General Liability Products and Completed Operations.

A: The amendment is granted.

- 34. Q: RFP Page 18. 19. Indemnification. Subparagraph (b). Please amend to read: “from any and all third-party claims for injuries to or death, for loss or damage to the property of CATA, and for reasonable attorney fees and related costs arising out of or caused by the sole negligence or willful misconduct of Contractor during the course of its performance of this Agreement. Seller’s obligation to indemnify under this provision does not apply to any damage or losses caused by the negligence or intentional acts of CATA or any of its officers, agents, or employees.”**

A: Denied. Indemnification provisions are not subject to negotiation at this time.

- 35. Q: Page 18, Section 21, FINAL ACCEPTANCE. Please omit this paragraph as it is not applicable to tire lease contract.**

A: The amendment is granted.

- 36. Q: RFP Page 18, Section 22, LIGUIDATED DAMAGES. Please omit this section in its entirety.**

A. The amendment is granted.

- 37. Q: RFP Page 18, Section 23. No assignment of Contract. Due to this agreement being a tire lease and Authority having possession of Contractor’s tires, please make this provision mutual by amending as follows: “It is agreed that neither party shall assign this contract, wholly or in part, without the prior written consent of the other party. Any such assignment shall be recognized only after proper written notice have been received and only to the extent permitted by law. No assignment shall relieve either party of any obligation under this contract.”**

A. CATA acknowledges that any restraint on contract assignment will be mutual, but declines to negotiate the contract language at this time.

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38. Q: RFP Page 19. Paragraph 26. Ownership of Documents. Please remove this section in its entirety, and replace it with the following language:

Any work product produced by Contractor in the performance of services under this Agreement is intended for use by CATA solely for the purpose intended. Any use or reuse of such work product by CATA for any purpose other than its intended purpose is prohibited. Contractor reserves ownership of all intellectual Property in all Products and Services, and this Agreement does not create any right of ownership in CATA. For the purposes of this Section, “Intellectual Property” means all proprietary interests of any kind or nature, including, interests pertaining to patent rights, copyrights, trade secrets, design rights, prototypes, models, documentation, trade and service marks, and other similar rights throughout the world, however denominated and any amendments, additions or improvements made thereto.

REASON: This is a tire lease Agreement. Contractor will not be producing “works for hire” design or construction services or any professional services such as engineering or architecture under this Agreement.

A: Paragraph 26 of CATA’s Standard Terms and Conditions of Procurement on page 19 of the RFP shall not apply to this procurement.

39. Q: RFP Page 21. Paragraph B4. Records/Audits. Confirm any audit and inspection of books and records will be subject to thirty days advance notice to Contractor, at the regular business hours of the Contractor, and at CATA’s expense.

A: Bidders understanding is confirmed provided that CATA shall be responsible for its own out of pocket expenses but not those of vendor in cooperating with the audit.

40. Q: RFP Page 22. B-9. Please replace “Contractor” with “Parties” to make the requirement to comply with all applicable laws, ordinances and regulations mutual.

A: The amendment is granted.

41. Q: RFP Page 22. B-14. Bid Bond. And B.16 Performance Bond. Confirm there are no bonding requirements for this contract.

A: B14 on page 22 of the RFP shall not apply to this procurement.

42. Q: RFP Page 25.3. Section C.3 Please remove the following language from this paragraph: “Exclusive jurisdiction and venue of any suit, action or claim relating to this contract will be in the Ingham County Circuit Court or the Federal District Court for the Western District of Michigan.”

A: The requested amendment is denied.

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43. Q: Procurement Process, Section I-E, Contract Term, Page 3.

Please consider changing the terms:

Costs in the tire industry are volatile and can change drastically over a six year period. In order to reduce the risk to the Supplier, and therefore minimizing the price to the Authority, please consider changing the term from five (5) fixed years to a term of three (3) years with a two (2) year mutually agreeable options.

Alternatively, please consider adding a Raw Material Clause to this section. Changes in raw material costs would be evaluated based on pre-determined indices.

A: Please provide your requested contract term and Raw Material Clause with proposal.

44. Q: Contract Service and Maintenance. Section 4.2 Tire inventory and Control, Page 8.

In order to ensure that invoicing is timely and accurate, please consider changing the language to read as follows:

“CATA will provide a monthly vehicle mileage report prior to the 10th day of the following month the buses were operated”.

A: Please provide your required reporting time with proposal.

45. Q: NON-CONSTRUCTION STANDARD TERMS AND CONDITIONS OF PROCUREMENT, 18. Insurance page 17. Please consider making the following changes to this section:

Insurance: The Contractor shall place and maintain with responsible insurance carriers the following insurance. The Contractor shall deliver to CATA, upon request, certifications or insurance. Contractor shall require all Subcontractors to maintain adequate insurance coverage.

(a) Workers’ Compensation and Employer’s Liability Insurance.

(1) Workers’ Compensation in compliance with the applicable state and federal laws.

(2) Employer’s Liability. Limit \$1,000,000.

(b) Commercial General Liability Insurance, including Blanket contractual, Broad Form Property Damage, and Completed Operations, all applicable to Personal Injury, Bodily Injury and Property Damage to a combined single limit of \$1,000,000 each occurrence/claim, subject to a \$2,000,000 annual aggregate for Completed Operations and Personal Injury other than Bodily Injury.

A: The requested change is granted.

46. Q: TERMS INCLUDED IN CONTRACTS FUNDED IN WHOLE OR PART BY FTA, MDOT, OR OTHER GOVERNMENTAL AGENCY, 14. Bid Bond, pages 22-23.

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Please confirm bonds are only for construction-related services and are not needed for this RFP.

A: Bonds are not required for this RFP. The referenced provision of the Standard Terms and Conditions of Procurement do not apply to this procurement.

- 47. Q: Section III, Compliance Requirements, III-D Ownership, page 12 and CATA Standard Non-Construction Terms and Conditions, 26. Ownership of Documents, page 19.**

Please consider inserting the following language to protect Michelin's intellectual property rights. If this language is not accepted this could potentially have an affect whether or not we provide a response to the RFP.

“Notwithstanding anything in the Contract to the contrary, Michelin shall own and remain the sole owner of any and all intellectual property rights associated with the tire manufactured by Michelin and leased to CATA. Michelin does not and cannot grant any license to CATA regarding Michelin Products or processes. In particular, Michelin does not grant CATA any license or right to make or have made any product or process covered by intellectual property rights of Michelin.”

A: The referenced provisions of the RFP, III-D Ownership, page 12, and CATA's Standard Non-Construction Terms and Conditions, 26 Ownership of documents, page 19 do not apply to this procurement.

- 48. Q: CATA Standard Non-Construction Terms and Conditions. 2. Termination for Default and 3. Termination for Convenience, page 15.**

The following language should be added to these paragraphs to allow Michelin to have termination rights:

“Notwithstanding any language to the contrary, Contractor may terminate this Contract, in its sole discretion at any time; provided, however, that Contractor provides CATA with thirty (30) days prior written notice of such termination. If Contractor determines CATA is in default of the Contract, Contractor may terminate the Contract if, after ten (10) days written notice, such default is not cured by CATA. Moreover, if this Contract is terminated, all sums owing from CATA to Contractor shall become immediately due and payable.”

A: The request is denied. CATA will not negotiate contract language at this time.

- 49. Q: CATA Standard Non-Construction Terms and Conditions. 9. Delivery Extension and Delays, Page 16 and 27. Excuses for failure to Perform or Delays, page 19.**

Having a force majeure provision allows the Parties a certain amount of time to recover from certain events before the Party is considered to be in breach of the Contract. Force majeure clauses take many forms in bids and contracts but generally, Michelin wants to make sure that the kinds of events that might delay

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the supply of tires is covered and that you are in agreement with the notice and performance requirements for the force majeure event. The following should be inserted as a separate paragraph under this paragraph.

Please consider inserting the paragraph below. If this language is not accepting this could potentially have an affect whether or not we provide a response to the RFP.

A: The requested language is denied. CATA will not negotiate contract terms at this time.

50. Q: CATA Standard Non-Construction Terms and Conditions 16. Warranty and 17. CATA Warranty, page 17.

Please consider inserting the paragraphs below. If this language is not accepting this could potentially have an affect whether or not we provide a response to the RFP.

“Notwithstanding anything in this Contract to the contrary, new tires supplied will be subject to Contractor’s standard written limited warranty and Contractor’s standard written limited warranty shall apply for defects in materials and workmanship. Copies of the applicable limited warranty booklet(s), which may be amended from time to time, will be furnished upon request.

Notwithstanding anything in this agreement to the contrary, retread tires supplied will be subject to the Michelin Retread Technologies, Inc. standard written limited warranty. Copies of the applicable limited warranty booklet, which may be amended from time to time, will be furnished upon request.”

A: The requested language is denied. CATA will not negotiate contract language at this time.

51. Q: CATA Standard Non-Construction Terms and Conditions, 19. Indemnification, page 18.

“As a matter of policy, Michelin does not agree to indemnify for the errors or omissions by subcontractors, consultants, agent’s third parties, DBE agencies, representatives or Michelin’s authorized independent dealers or franchises that may provide services to CATA. Furthermore, please insert the following at the end of this Paragraph:

“Notwithstanding anything in this contract to the contrary, the Contractor agrees to indemnify and hold harmless CATA from and against any and all damages, and liabilities, including reasonable attorneys’ fees, which arise out of injury or damage proximately caused by defective workmanship or materials in Products manufactured by Contractor and provided to CATA pursuant to this Contract. Contractor shall not be liable in anyway and shall have no obligation to indemnify for any acts, errors or omissions by subcontractors, consultants, agents, third

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parties, DBE agencies, representatives or Contractor's authorized independent dealers or franchisees who may provide services to the CATA hereunder."

A: The request is denied. CATA will not negotiate contract language at this time.

52. Q. CATA Standard Non-Construction Terms and Conditions. 23. Assignment, page 18.

Please consider changing the language for "Assignment to read as written below: "Notwithstanding the foregoing, nothing herein shall prohibit the delivery of products or services pursuant to this RFP and/or Contract by Proposer's authorized independent dealers or franchisees. This RFP and/or Contract and any right hereunder or interest herein may be assigned at any time by Proposer to its affiliates. Proposer may assign any right to receive payment to a third party."

A: The requested language change is denied. CATA will not negotiate contract language at this time.

53. Q: In general throughout the specification, please confirm references to "laws", "standards" and/or "provisions" refer to "applicable laws", "applicable standards" and/or applicable provisions".

A: The understanding of Goodyear is confirmed.

54. Please confirm there is no bonding related to this RFP.

A: Please refer to the answer to Question 46.

55. Q: Please confirm there is no contract DBE goal for this specification.

A: CATA's DBE obligations and policies apply to this procurement.

56. Q: In addition to firm fixed price proposals, please consider incorporation of fixed price plus CPI/PPI based on a Producer Price PCU32621132621103 "Tire Manufacturing – Truck and Bus" or other similar PPI. Raw material costs have been volatile for tire manufacturers over several years. The only variation from firm fixed price would be in cases of hyperinflation (or deflation) for additional increases (or decreases) in rates.

A: CATA will not negotiate contract language at this time. You may address exceptions taken to the RFP language within your proposal.

57. Q: Section II: Statement of Work, Page 7- Item II-C1 TIRE SPECIFICATIONS – Please confirm tire requirements. There is no standard from T&RA or ETRTO that

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defines load range L for 275/70R22.5 size. Typically 275/70R22.5 highest load range is LR-J. This is what is currently being provided.

A: Confirm understanding or provided language.

58. **Q: Section II: Statement of Work, Page 8 – Item 4.2 Tire Inventory and Control – In the fourth line, please delete ‘30%’ and insert ‘5%’, as this is the leasing industry standard.**

A: Request denied.

59. **Q: Section II: Statement of Work, Page 8 & 9 – Item 4.6 Tire Inventory and Control – Please modify as follows:**

If requested, respondent shall provide demonstrations training on tire maintenance and repair to CATA employees at no additional cost to CATA. CATA’s interest is to promote safe tire handling. If requested the vendor will only be responsible to provide this demonstration training two times over the length of the contract. This demonstration training would be conducted at the CATA maintenance facility and the date and times would be coordinated with the vendor.

A. Please provide as specified.

60. **Q: Page 9 – Item 4.7 Disposal/Run Out – Please modify as follows:**

All tire casings casing beyond further operational use by CATA, other than at termination or expiration of run out, shall remain the property of the Contractor. The Contractor shall be responsible for the proper disposal of the casings at the Contractor's expense. Following termination of the term of the contract, Contract shall provide a “Run Out” period to include up to three years allowing CATA to run out all existing inventory at the end of the last option year of the contract. Respondent shall include all requested documentation required for CATA to exercise this option.

A: Provide Disposal/Run out language criteria for review as part of the overall proposal.

61. **Q: Section III - COMPLIANCE REQUIREMENTS. Page 11 – Item III-A FTA and MDOT Required Clauses –In the fifth paragraph, third line, proceeding ‘requests’ please insert ‘for performance required thereunder’.**

A: The requested amendment is granted.

62. **Q: Section III - COMPLIANCE REQUIREMENTS. Page 12 – Item III-D Ownership – Please modify as follows:**

All original documents, calculations, and work product produced by CONTRACTOR and delivered to CATA, whether produced on paper or electronic media or otherwise in performance of this Agreement, shall be the property of CATA; provided, that any proprietary information included

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~~therein shall remain the property of CONTRACTOR. CONTRACTOR shall have the right to retain a copy of such documents, calculations, and work product. CONTRACTOR shall make available to CATA copies of all CONTRACTOR correspondence, notes, and other papers relating to the work, upon reasonable request of CATA. All works of original authorship created in the scope of this Agreement are "works made for hire", as that term is used in connection with the U.S. Copyright Act. To the extent that by operation of law CONTRACTOR retains any intellectual property rights to any work product, CONTRACTOR hereby irrevocably assigns and licenses to CATA all right, title, and interest in such work product, including copyrights and patents, and agrees to execute such assignments and licenses as may be required in the opinion of CATA's legal counsel to confirm this provision. The work product produced by CONTRACTOR in the performance of services under this Agreement is intended for use by CATA solely for the purpose intended. Any use or reuse of such work product by CATA for any purpose other than its intended purpose shall be at the sole risk of CATA and without any liability or responsibility of CONTRACTOR. To the extent that the work product produced by CONTRACTOR contains standard design or construction details or other standardized material previously developed by CONTRACTOR in its professional architectural, engineering, and planning practices, then CONTRACTOR shall have the right to reuse any such material on other projects for other clients or persons without the prior knowledge or permission of CATA and without the payment of any compensation to CATA, provided that the reuse or continued use of such material contains no CATA identifying information or confidential information.~~

A: III-D Ownership shall not apply to this procurement.

63. Q: CATA STANDARD TERMS AND CONDITIONS OF PROCUREMENT.

Page 15 – item A.1. – CHANGES – Please modify as follows:

CATA, at any time, by a written order, and following written without notice to the Contractor sureties, may make changes within the general scope of this contract, in (a) drawings, designs or specifications where the supplies to be furnished are specifically manufactured for CATA in accordance therewith; (b) method of shipment or packing; and (c) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for performance of this contract, whether changed or not changed by such order, an equitable adjustment shall be made by written modification of the contract. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; provided that CATA, if it decides that the facts justify the action, may receive and act upon any such claim if asserted prior to dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

A: The proposed amendment is allowed.

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64. Q: CATA STANDARD TERMS AND CONDITIONS OF PROCUREMENT.

Page 15 – Item A.2. – TERMINATION FOR DEFAULT – Please modify as follows:

CATA, by thirty (30) calendar days prior written notice, may terminate the contract awarded on the basis of this proposal, in whole or in part, for failure of the Contractor to perform any of the provisions hereof. In such event, the Contractor shall be liable for damages, including the excess cost of reprocurring similar supplies or services, provided, that if (a) it is determined for any reason that the Contractor was not in default or, (b) the Contractor's failure to perform is without his control, fault or negligence, the termination shall be deemed to be a termination for convenience under the following Paragraph 3.

A: CATA will not negotiate contract language at this time.

65. Q: CATA STANDARD TERMS AND CONDITIONS OF PROCUREMENT.

Page 15 – Item A.3 – TERMINATION FOR CONVENIENCE – Please modify as follows:

CATA, by ninety (90) calendar days prior written notice, may terminate the contract, awarded on the basis of this proposal, in whole or in part, when it determines it is in the best interest of CATA. If this contract is for supplies and is so terminated, the Contractor shall be compensated in accordance with the prices and/or rates effective ~~its auditable cost incurred~~ at the time of notification of termination. To the extent that the contract is for services and is so terminated, CATA shall be liable only for payment in accordance with the payment provisions of the contract for services rendered to the effective date of termination.

A: The requested modification is denied at this time.

66. Q: CATA STANDARD TERMS AND CONDITIONS OF PROCUREMENT.

Page 16 – Item A.7 - BREACH OF CONTRACT – Please modify as follows:

If the Contractor shall fail, refuse or neglect to comply in any material respect with the terms of these contract conditions, such failure shall be deemed a total breach of contract and the Contractor shall be subject to legal recourse by CATA, plus reasonable and excess costs relating to failure to comply.

A: The requested modification is allowed.

67. Q: Page 16 – Item A.8- DISPUTES (AFTER BID AWARD) - Please modify as follows:

Except as otherwise provided in the contract, any dispute concerning a question of fact arising under the contract which is not disposed of by Contractor shall be decided by CATA in writing, with a copy mailed or

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otherwise furnished to the Contractor. The decision of CATA shall be final and conclusive unless within ten (10) days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to CATA a written appeal addressed to the Executive Director for the determination of such appeal, which shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence or applicable law. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Except for disputes involving non-payment, pending a final decision of the dispute, the Contractor shall proceed diligently with the performance of the contract and in accordance with CATA's decision.

A: The requested modification is allowed.

68. Q: Page 17 – Item A.14- TRAINING – Please modify as follows:

The Contractor shall demonstrate to properly train CATA personnel in the operation and maintenance of the equipment.

A: Please provide as specified.

69. Q: Page 17 – Item A.17 – CATA WARRANTY- Please modify as follows:

The Contractor agrees that the tires leased ~~supplies~~ or services furnished under this contract shall be free from defects in workmanship and material for one year following delivery thereof. ~~covered by the most favorable warranties the Contractor gives any customer for such equipment and that~~ The rights and remedies provided herein are in addition to and do not limit any rights afforded to CATA by any other clause of this contract. ~~The Contractor shall state the warranty and supply with its bid.~~

A: The requested contract language is denied. CATA will not negotiate contract terms at this time. CATA expects responses to its RFP to include the proposed warranty terms of those submitting the proposal.

70. Q: Page 17 – Item A.18- INSURANCE - . Please modify as follows:

The Contractor shall self-insure or place and maintain with responsible insurance carriers the following insurance. The Contractor shall deliver to CATA, upon request, certificates of insurance which shall provide ~~thirty (30) days' written notice to~~ be given to CATA in the event of cancellation

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~~per policy provisions. Contractor shall require all Subcontractors to maintain adequate insurance coverage. Evidence of self-insurance shall not be provided.~~

A: The proposed modification is allowed.

- 71. Q: Page 17 – Item A.18.b- INSURANCE, Commercial General Liability Insurance – Please modify as follows:**

Commercial General Liability Insurance, including Professional Liability, Blanket contractual, XCU Hazards, Broad Form Property Damage, and Completed Operations, and Independent Contractor's Liability, all applicable to Personal Injury, Bodily Injury and Property Damage to a combined single limit of \$1,000,000 each occurrence/claim, subject to a \$2,000,000 annual aggregate for Professional Liability, Completed Operations and Personal Injury other than Bodily Injury.

A: The proposed modification is allowed.

- 72. Q: Page 18 – Item A.20 – ACCEPTANCE OF MATERIAL – NO RELEASE – Please modify as follows:**

Unless CATA otherwise agrees in writing, acceptance of any portion of the material prior to final acceptance shall not release the Contractor from liability for faulty workmanship or materials or for failure to fully comply with all of the terms of this contract. CATA reserves the right and shall be at liberty to inspect all materials and workmanship at any time during the manufacturing process, and shall have the right to reject all materials and workmanship which do not conform with the contract requirements and specifications; provided, however, that CATA is under no duty to make such inspection and no inspection so made shall relieve Contractor from any obligation to furnish materials and workmanship in accordance with the contract requirements and specifications.

A: The proposed modification is allowed.

- 73. Q: Page 18 – Item A.22 – LIQUIDATED DAMAGES – Please remove this item in its entirety.**

A: Item A-22 liquidated damages shall not apply to this procurement.

- 74. Q: Page 18 &19 – Item A.24 – DEFECTIVE WORKMANSHIP AND MATERIAL – Please modify as follows:**

When and as often as CATA determines that the work done or being done under the contract or the kind of quality or materials supplied in connection therewith are not fully and completely in accordance with any requirement of the contract documents, it may give notice of such noncompliance to the Contractor in writing and the Contractor shall

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immediately upon receipt of such notice do all things required to remedy such noncompliance without additional cost to CATA. If the Contractor fails to comply with such written notice, then CATA, upon written notice to the Contractor, shall deduct the excess cost of repair, replacement or correction of defective or damaged work from the compensation due or to become due to the Contractor.

A: The requested modification is denied.

75. Q: Page 19 – Item A.26 – OWNERSHIP OF DOCUMENTS – Please modify as follows:

~~All original documents, calculations, and work product produced by CONTRACTOR and delivered to CATA, whether produced on paper or electronic media or otherwise in performance of this Agreement, shall be the property of CATA; provided that any proprietary information, included there in shall remain the property of CONTRACTOR. CONTRACTOR shall have the right to retain a copy of such documents, calculations, and work product. CONTRACTOR shall make available to CATA copies of all CONTRACTOR correspondence, notes, and other papers relating to the work, upon request of CATA. All works of original authorship created in the scope of this Agreement are "works made for hire", as that term is used in connection with the U.S. Copyright Act. To the extent that by operation of law CONTRACTOR retains any intellectual property rights to any work product, CONTRACTOR hereby irrevocably assigns and licenses to CATA all right, title, and interest in such work product, including copyrights and patents, and agrees to execute such assignments and licenses as may be required in the opinion of CATA's legal counsel to confirm this provision. The work product produced by CONTRACTOR in the performance of services under this Agreement is intended for use by CATA solely for the purpose intended. Any use or reuse of such work product by CATA for any purpose other than its intended purpose shall be at the sole risk of CATA and without any liability or responsibility of CONTRACTOR. To the extent that the work product produced by CONTRACTOR contains standard design or construction details or other standardized material previously developed by CONTRACTOR in its professional architectural, engineering, and planning practices, then CONTRACTOR shall have the right to reuse any such material on other projects for other clients or persons without the prior knowledge or permission of CATA and without the payment of any compensation to CATA, provided that the reuse or continued use of such material contains no CATA identifying information or confidential information.~~

A: Item A-26 Ownership of Documents on page 19 of the RFP shall not apply to this procurement.

76. Q: Page 19 & 20 – Item A.27 – EXCUSES FOR FAILURE TO PERFORM OR DELAYS – Please modify as follows:

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The Contractor will not be in default by reason of any failure in the performance of this contract, if such failure arises out of causes beyond the control and without the fault or negligence of Contractor. Such causes may include, but are not limited to, acts of God, terrorism, war, or the public enemy, acts of the government either in its sovereign or contractual capacity, fires, floods, lockouts, and strikes or other labor disturbances. But in every case, a failure to perform must be beyond the reasonable control and without the fault or negligence of the Contractor or its Subcontractors. An excusable delay will permit the Contractor an extension of time for such reasonable period as may be mutually agreed upon between the parties.

A: CATA will not negotiate contract language at this time.

77. Q: Page 21 – Item B.4 – RECORDS/AUDITS– Please modify as follows:

The Contractor shall maintain complete and accurate books, documents, papers, accounting records, and other evidence with respect to allowable costs incurred and manpower expended under this contract. All such records shall be maintained on the basis of generally-accepted accounting principles and shall be clearly identified and readily accessible. The Contractor shall provide reasonable access during regular business hours to authorized representatives of CATA to such data and records, following prior written notice thereof and the right to inspect and audit all data and records of the Contractor relating to its performance under the contract, and to make transcripts therefrom as necessary to allow inspection of all work data, documents, proceedings, and activities related to this contract for a period of four (4) years from the date of final payment under this contract. In the event of a dispute as to ~~allowable costs~~ or any other issue under this contract, Contractor will thereafter continue to maintain such records until the dispute has been resolved.

A: The requested modification is allowed.

78. Q: Page 22 – Item B.10.A – CLEAN AIR– Please modify as follows:

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC 7401, et seq. If state or local air pollution regulations are in force, the more restrictive criteria shall govern. The Contractor and any subcontractors or suppliers must submit evidence to CATA that the governing air pollution criteria will be met. Violations shall be reported as required under any applicable law or regulation ~~to the Regional Office of the Environmental Protection Agency. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.~~

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A: The requested modification is denied.

- 79. Q: Page 22 – B.11 and Appendix D – BUY AMERICA– There are updated references to this language. Please review: The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.**

A: No comment.

- 80. Q: Page 23 – Item B.17 – Please modify as follows:**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between CATA and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor shall not, by its action or by inaction in violation of the requirements under this Agreement or applicable law, cause CATA to be in violation of FTA regulations, policies, procedures, or directives. Contractor's failure to comply with this paragraph shall constitute a material breach of this contract.

A: The requested modification is allowed.

- 81. Q: Page 24 – Item B.20.A – PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS – Please modify as follows:**

The Contractor acknowledges that the provisions of the Program Fraud Civil Rights Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy in all material respects of any statement it has made, it makes, or may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it knowingly makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the available penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

A: The requested modification is allowed.

- 82. Q: Page 24 – Item B.20.B – PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS – Please modify as follows:**

The Contractor also acknowledges that if it knowingly makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or

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certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under authority of 49 U.S.C. § 5307, the Federal Government reserves the right to impose the available penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, or the applicable Federal law to the extent the Federal Government deems appropriate.

A: The requested modification is allowed.

83. Q: Page 25 – Item C.4– Please modify as follows:

This contract, together with the executed Contractor’s agreement between the parties (if applicable), constitutes the entire contract between the parties and supersedes all negotiations, commitments, and previous contracts and may be modified only by a further written contract which is executed by a duly authorized officer of each of the parties.

A: The requested modification is denied at this time.

All Addendums associated with this RFP are available on the CATA website at www.cata.org, located under the heading “Doing Business With CATA”.