

**CITY AND COUNTY OF DENVER  
DEPARTMENT OF TRANSPORTATION AND INFRASTRUCTURE**

**RFQ – LAND SURVEY PROFESSIONAL SERVICES ON-CALL**

**ADDENDUM NO. 3  
JUNE 6, 2023, OF ADDENDUM**

Firms are hereby instructed that the RFQ documents are modified, corrected, supplemented and/or superseded for the above-mentioned project as hereinafter described:

**ATTACHMENTS**

Please replace Pages 14-15 of the Sample Agreement with the attached updated language pertaining to sections 5.09(a) and 5.09(b) Defense and Indemnification.

Previous Language:

**5.09 Defense and Indemnification:**

- (a) Consultant hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Consultant or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.
- (b) Consultant’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Consultant’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

Updated Language:

**5.09 Defense and Indemnification:**

- (a) To the fullest extent permitted by law, the Consultant agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement that are attributable to the negligence or fault of the Consultant or the Consultant’s agents, representatives, subcontractors, or suppliers (“Claims”). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.
- (b) Consultant’s obligation to defend and indemnify may be determined after Consultant’s liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the parties. Consultant’s duty to defend and indemnify City shall relate back to the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Consultant is not named as a Defendant.

## QUESTIONS/ANSWERS

- Q1. Will hourly or daily charges be allowed for specialized survey equipment, specifically for GPS receivers, laser scanners – both stationary, mobile, and UAV/S, in similar fashion to the charges allowed by CDOT?  
A1. **No, not for standard survey equipment such as GPS receivers and or total stations, etc. Specialized survey/non-survey equipment such as mobile mapping units or jackhammers, etc. may be reimbursed at zero mark-up if pre-approved by the city project manager PER TASK ORDER.**
- Q2. Will hourly or daily charges be allowed for survey vehicles? (not mileage charges)  
A2. **No.**
- Q3. Is an annual escalation in labor rates acceptable, or should escalation be built into the rates provided in Attachment 3?  
A3. **No rate escalation clause will be included in this On-Call contract. Consultants should plan to submit personnel rates to be used for the duration of the three-year contract term.**
- Q4. Is there a maximum limit per Task Order?  
A4. **No, but most are <\$100,000.**
- Q5. Can firms use their own rate sheets, or do they need to use the forms provided in Attachment 1?  
A5. **Firms cannot use their own rate sheets must use the forms in Attachment 1.**
- Q6. How are task orders allocated to the pool of on-call consultants?  
A6. **Task orders are issued by direct select or RFP to two or more consultants, at the City's discretion.**
- Q7. Are we subject to the Occupational Privilege Tax for the City and County of Denver?  
A7. **The City of Denver imposes Occupational Privilege Tax (OPT) on any employee working in Denver that receives gross earnings of at least \$500 per month. There are two components to the OPT: the Employee OPT (EOPT) and the Business OPT (BOPT). Any employee that meets the earnings threshold is subject to the EOPT, and the employer should withhold the \$5.75 per month per taxable employee. The employer is also required to pay the BOPT at a rate of \$4 per month for each taxable employee.**

A link to [Tax Guide Topic No. 61 – Occupational Privilege Taxes](https://www.denvergov.org/files/assets/public/finance/documents/treasury/tax-guides/taxguidetopic61_occupationalprivilegetaxes.pdf) is also included below with additional information.

[https://www.denvergov.org/files/assets/public/finance/documents/treasury/tax-guides/taxguidetopic61\\_occupationalprivilegetaxes.pdf](https://www.denvergov.org/files/assets/public/finance/documents/treasury/tax-guides/taxguidetopic61_occupationalprivilegetaxes.pdf)

- Q8. For the 2020 Land Survey Professional Services On-Call, four firms were selected. Do you expect that to be the same for this contract?  
A8. **Yes**
- Q9. Please clarify what you are looking for in our overall project approach and the proposed approach to completion of the scope of work in Sections 5 and 6.  
A9. **Regarding Section 5, we are looking for general overall resource management and capacity. i.e., how many staff in each category and how will they be managed along with DSBO allocation. Regarding Section 6, we are looking for how individual task types will be approached with particular attention to QA/QC plans, project communication matrix and issue resolution.**

- Q10. On the Attachment 1 – Reimbursable Expenses for Prime, are we able to list additional reimbursable expenses for the following specialty equipment?
- a. Aircraft Turbine Twin
  - b. Aircraft Piston Twin
  - c. Sensor Terrain Mapper
  - d. Sensor ADS Camera
  - e. Sensor A3 Camera
  - f. UAS System
  - g. 3D Laser Scanner
  - h. Mobile Mapping System
  - i. UAS Lidar System
  - j. AirWorks UAS AI Data Feature Extraction
- A10. **No need. Specialized survey/non-survey equipment such as mobile mapping units or jackhammers, etc. may be reimbursed at zero mark-up if pre-approved by the city project manager PER TASK ORDER.**
- Q11. Is it required that we use the forms provided for listing titles/classifications, responsibilities, and rates for our proposed staff, or can we submit our own rate sheet form provided it contains the information requested?
- A11. **Firms cannot use their own rate sheets must use the forms in Attachment 1.**
- Q12. Will annual rate increases be allowed for the 3-year term of the contract, plus option years?
- A12. **No rate escalation clause will be included in this On-Call contract. Consultants should plan to submit personnel rates to be used for the duration of the three-year contract term.**
- Q13. Sample agreement section 5.09 (Defense and Indemnification) subparagraphs (b) and (c) appear to be in direct contradiction of Colorado HB 15-1197. Question: Please clarify.
- A13. **See updated sample agreement language.**
- Q14. Previous City indemnification agreements regarding duty to defend stated that negligence would be adjudicated *before* consultants became responsible for defense costs. Subparagraph (b) of the RFQ sample agreement now states that duty to defend arises *upon notice*. Question: Is this change intentional?
- A14. **See updated sample agreement language.**

including but not limited to policies and endorsements.

- (c) Additional Insureds: For Commercial General Liability, Business Auto Liability, Professional Liability, and Excess Liability/Umbrella (if required) Consultant and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- (d) Waiver of Subrogation: For all coverages required under this Agreement, with the exception of Professional Liability, Consultant's insurer shall waive subrogation rights against the City.
- (e) Subcontractors and Subconsultants: All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Consultant. Consultant shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Consultant agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.
- (f) Workers' Compensation/Employer's Liability Insurance: Consultant shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- (g) Commercial General Liability: Consultant shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.
- (h) Business Automobile Liability: Consultant shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement
- (i) Professional Liability (Errors & Omissions): Consultant shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. The policy shall be kept in force, or a Tail policy placed, for three (3) years for all contracts except construction contracts for which the policy or Tail shall be kept in place for eight (8) years.

#### **5.09 Defense and Indemnification:**

- (a) To the fullest extent permitted by law, the Consultant agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the work performed under this Agreement that are attributable to the negligence or fault of the Consultant or the Consultant's agents, representatives, subcontractors, or suppliers ("Claims"). This indemnity shall be interpreted in the broadest possible manner

consistent with the applicable law to indemnify the City.

- (b) Consultant's obligation to defend and indemnify may be determined after Consultant's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between the parties. Consultant's duty to defend and indemnify City shall relate back to the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Consultant is not named as a Defendant.
- (c) Consultant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.
- (d) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Consultant under the terms of this indemnification obligation. The Consultant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- (e) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**5.10 Colorado Governmental Immunity Act:** The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

**5.11 Contract Documents; Order of Precedence.** This Agreement consists of Sections 1 through 5, which precede the signature page, and the following attachments, which are incorporated herein and made a part hereof by reference:

Exhibit A	Consultant's Scope of Work
Exhibit B	Consultant's Rates
Exhibit C	Consultant's Key Personnel
Exhibit D	ACORD Insurance Certificate

In the event of an irreconcilable conflict between a provision of Sections 1 through 5 and the listed attachments, or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which provision shall control to resolve such conflict, is as follows, in descending order:

- Sections 1 through 5
- Exhibit D
- Exhibit C
- Exhibit B
- Exhibit A

**5.12 When Rights and Remedies Not Waived:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default