



FAIRFAX COUNTY PARK AUTHORITY

12055 Government Center Parkway, Suite 927 • Fairfax, VA 22035-1118
703-324-8700 • Fax: 703-324-3974 • www.fairfaxcounty.gov/parks

ADDENDUM NO. 2

TO: All Prospective Offerors

DATE: February 11, 2019

RFQ: Museum and Collections Facility

DUE DATE/TIME: Wednesday, February 27, 2019, 2:00 p.m.

Attached is an answer to a question received (Attachment 1), and a Fairfax County Park Authority (FCPA) sample contract (Attachment 2). All other terms and conditions remain unchanged.

This Addendum consists of 15 pages.

Andrew Miller
Building Design Manager
Planning & Development Division

THIS ADDENDUM IS ACKNOWLEDGED AND IS CONSIDERED A PART OF THE MUSEUM AND COLLECTIONS FACILITY REQUEST FOR QUALIFICATIONS:

Name of Firm

Signature

Date

A SIGNED COPY OF THIS ADDENDUM MUST BE INCLUDED IN THE STATEMENT OF QUALIFICATIONS.

Note: SIGNATURE ON THIS ADDENDUM DOES NOT SUBSTITUTE FOR YOUR SIGNATURE ON THE ORIGINAL PROPOSAL DOCUMENT. THE ORIGINAL PROPOSAL DOCUMENT MUST BE SIGNED.

ATTACHMENT 1

Questions and answers received in writing are provided below. Offerors should review the content below as clarifications beyond those shared at the Pre-Submission Conference and in Addendum No. 1.

Q12: Please provide a copy of the FCPA's standard contract. Will FCPA consider modifications to their contract?

A12: Attachment 2 is sample contract that FCPA has used in the past. The contract for this project has not been created, and will be subject to negotiation. However, please note that Articles 3-10 are not subject to modification.

Thank you for your interest in Fairfax County Park Authority. Any questions regarding the RFQ or Addendum No. 2, please feel free to email Andrew Miller at Andrew.Miller@fairfaxcounty.gov by Wednesday, February 13, 2019.

ATTACHMENT 2

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AGREEMENT BETWEEN OWNER AND ARCHITECT/ENGINEER

FOR Project Name,
Professional Architecture/Engineering and Related Services
CPxxxxxxx

AGREEMENT

made this _____ day of _____ in the year of Two Thousand and Nineteen ,

BETWEEN the Owner, Fairfax County Park Authority and the ARCHITECT/ENGINEER: Firm Name

The Owner and the Architect/Engineer (A/E) agree as set forth below.

1. **THE A/E** shall provide professional services in accordance with the Terms and Conditions of this Agreement.

Contractor agrees that the goods and/or services provided to the Fairfax County Park Authority pursuant to this Agreement are for the benefit of the Fairfax County Park Authority and that Contractor shall not undertake any actions or efforts stemming from or related to this Agreement that shall inure to the detriment of the Fairfax County Park Authority. Any information provided to the Contractor for the performance of this Contract shall not be used for any other purpose without the written consent of the Purchasing Agent.

2. **THE OWNER** shall compensate the A/E, in accordance with the Terms and Conditions of this Agreement.

- a. **FOR SERVICES**, as described in Article 1, compensation shall be:

An Amount not to exceed \$xxx,xxx for Phase I at the following rates:

- (a) Principals time at the fixed hourly rate listed in the fee schedule (See Attachment A). For the purposes of this Agreement, the Principals are:
Name; Name
 - (b) Employees time at the fixed hourly rates listed in the fee schedule (See Attachment A).

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- (c) Professional Sub-consultants at the fixed hourly rates listed in the fee schedule (See Attachment A).
 - (d) Services of professional sub-consultants at a multiple of 1.1 times the amount billed to the A/E for such services.
- b. For **REIMBURSIBLE EXPENSES** amounts expended as defined in Paragraph 3.2.

ARTICLE 1

ARCHITECT/ENGINEER'S BASIC SERVICES

- 1.1. TBD
- 1.2. TBD
- 1.3. TBD

ARTICLE 2

THE OWNER'S RESPONSIBILITIES

The Owner shall provide such information as it has about and affecting the site regarding its requirements for the Project.

ARTICLE 3

PAYMENTS TO THE ARCHITECT/ENGINEER

- 3.1. Payments for services shall be made monthly, in proportion to services performed, per Article 1.
- 3.2. Payment for Reimbursable Expenses authorized by the Owner shall be made monthly. Reimbursable Expenses are in addition to compensation and include actual expenditures made by the A/E for the Project, specifically approved by the Owner for: fees paid to

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governmental agencies; renderings and models required by the Owner; Owner-authorized overtime; and such additional authorized reimbursables.

- 3.3. The A/E shall permit in-progress and post auditing by the Owner or its agent. Post auditing, if any shall be completed within three years of completion of the services final payment.

ARTICLE 4

TERMINATION OF AGREEMENT

- 4.1. Notwithstanding any other section or provision of this Agreement, the Owner shall have the absolute right any time to terminate this Agreement or any work to be performed pursuant to this Agreement. In the event of termination, the Owner, after such negotiation as it deems reasonable, shall determine and pay an amount which, in its opinion, is fair and equitable compensation for the work properly performed by the A/E.
- 4.2. In event of breach of the following provision, the Owner shall have the right to terminate this or any other agreement with this firm or individual without liability, and at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

"The A/E warrants that he has not employed any company or person other than a bona fide employee working for the A/E to solicit or secure this agreement; and that he had not paid or agreed to pay any person, company or corporation, or individual or firm, other than a bona fide employee working solely for the A/E any favor, commission, percentage, gift or any other compensation contingent upon or resulting from the award or making of this or any other agreement."

ARTICLE 5

SUCCESSORS AND ASSIGNS

The Owner and the A/E each binds himself, his partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this

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Agreement. Neither the Owner nor the A/E shall assign his interest in this Agreement without the written consent of the other.

ARTICLE 6

EXTENT OF AGREEMENT

This Agreement represents the entire and integrated Agreement between the Owner and the A/E and supersedes all prior negotiations, representations or agreements. This Agreement may be amended only by written instrument signed by both Owner and A/E.

ARTICLE 7

GOVERNING LAW

This Agreement shall be governed by the law of the principal place of business of the Owner.

ARTICLE 8

INSURANCE REQUIREMENTS

- 8.1. The A/E firm shall be responsible for their professional services. The A/E assumes all risk of damage to his property or injury to its property or persons employed by the firm or in connection with the work contracted for, and of all damage or injury to property or injury to any person or property, resulting from the A/E firm's errors, omissions or negligent act(s).
- 8.2. The A/E shall, during the continuance of all work under the Agreement shall provide the following:
 - 8.2.1. Maintain Statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the A/E from liability or damages for any injuries (including death and disability) of its employees, including liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
 - 8.2.2. The A/E agrees to maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate to protect the A/E, and the interest of the County, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury. The General Liability insurance shall also include the Broad Form Property Damage endorsement in

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addition to coverages for explosion, collapse, and underground hazards, where required. Completed operations liability endorsement shall continue in force for three years following completion of the construction of the project.

- 8.2.3. The A/E agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the A/E. In addition, all mobile equipment used by the A/E in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy.
- 8.2.4. The A/E shall maintain Professional Liability insurance in the limits of \$300,000 per occurrence/aggregate per year. This coverage shall continue in force for three years following completion of construction of the project. In the event that the coverage in effect upon execution of this agreement is terminated for any reason prior to the third year after completion of construction of the project, the A/E shall initiate new equivalent coverage. Any such new coverage will contain a provision which provides Prior Acts coverage to protect the A/E from claims caused by errors, omissions, or negligent acts which occurred during the time frame the A/E's liability was covered by the former insurance carrier.
- 8.2.5. The A/E agrees to accept liability for and acknowledges that the firm may bear the costs of change orders to the construction contract caused by the A/E's errors and omissions, and the value of such change orders exceed 2% of the initial construction contract. The cost of the error will be the costs of all corrective change orders paid to the Contractor. The cost of omissions shall be limited to costs in excess of the bid amount had the omitted item been included in the bid as determined from Means Cost Guides, independent estimates, or quotes. Any such determination by the County is subject to the provisions of Article 9.

8.2.6. Liability Insurance "Claims Made" basis:

If the liability insurance purchased by the A/E has been issued on a "claims made" basis, the A/E shall comply with the following additional conditions. The limits of liability and the extension to be included as described previously in these provisions, remain the same. The A/E must either:

- 8.2.6.1. Agree to provide certificates of insurance evidencing the above coverages for a period of two years after final payment for the professional services contract. This certificate shall evidence a "retroactive date" no later than the beginning of the A/E's or sub-consultant's work under this agreement, or

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- 8.2.6.2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- 8.2.7. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- 8.2.8. The A/E agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
- 8.2.9. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the A/E's broker can provide financial data to establish that a market's policyholder surpluses are equal to or exceeds the surpluses that correspond to Best's A:VI Rating.
- 8.2.10. Hold-harmless and Indemnification
- The A/E hereby agrees to indemnify, and hold harmless Fairfax County, Virginia, its officers, agents and all employees and volunteers, from any and all claims for bodily injury, and personal injury and/or property damage, including cost of investigation, all expenses of litigation, including reasonable attorney fees, and the cost of appeals arising out of any claims or suits which result from errors, omissions, or negligent acts of the A/E, his sub-consultants and their agents and employees.
- 8.2.11. The A/E will provide an original, signed Certificate of Insurance and such endorsements as prescribed herein.
- 8.2.12. The A/E will secure and maintain all insurance certificates of his sub-consultants that shall be made available to the County on demand.
- 8.2.13. The A/E will provide on demand certified copies of all insurance coverages related to the Agreement within ten business days of demand by the County. These certified copies will be sent to the County from the A/E's insurance agent or representative.
- 8.2.14. No change, cancellation, or non-renewal shall be made in any insurance coverage without a 45-day written notice to the County. The A/E shall furnish a new certificate prior to any change or cancellation date. The failure of the A/E to

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deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.

- 8.3. Compliance by the A/E and his sub-consultants with the foregoing requirements as to carrying insurance shall not relieve the A/E and all sub-consultants of their liabilities provisions of the Agreement.
- 8.4. Contractual and other Liability insurance provided under this Agreement shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result.
- 8.5. Nothing contained in the specifications shall be construed as creating any contractual relationship between any sub-consultants and the County. The A/E shall be as fully responsible to the County for the acts and omissions of his sub-consultants and of persons employed by them as it is for acts and omissions of persons directly employed by it.
- 8.6. Precaution shall be exercised by the A/E at all times for the protection of persons (including employees) and property under their control.
- 8.7. The A/E and all his sub-consultants are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this contract.
- 8.8. The County, its employees and officers shall be names as an "additional insured" on the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the County may possess".

ARTICLE 9

DISPUTES

- 9.1. Any dispute concerning a question of fact as a result of the services rendered under this Agreement shall be decided by the Director of the Fairfax County Park Authority, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the A/E within thirty days from the date the Park Authority receives notice of the dispute. The decision by the Director shall be final and conclusive unless the A/E appeals within six months of the date of the final written decision by instituting legal action. An A/E may not institute legal action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified.
- 9.2. Claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the A/E's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon

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which the claim is based. Nothing herein shall preclude the requirement of a written invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

ARTICLE 10

OTHER CONDITIONS AND SERVICES

- 10.1. During the performance of this contract, the A/E agrees as follows:
 - 10.1.1. The A/E will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except when religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the A/E. The A/E agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 10.1.2. The A/E, in all solicitations of advertisements for employees placed by or on behalf of the A/E, will state that such A/E is an equal opportunity employer.
 - 10.1.3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of the provision.
 - 10.1.4. The A/E will include the provisions of paragraphs 10.1.1 and 10.1.2 and 10.1.3 above in every subcontract or purchase order of over \$30,000, so that provisions will be binding upon every sub-A/E or vendor.
- 10.2. After performing the work specified in each project, if additional work is necessary to provide the best information to complete the project, the A/E is required to inform the Owner in writing and request additional funds and/or amended proposal. Unless the A/E receives prior approval from the Owner, the A/E cannot perform additional work for an additional fee.
- 10.3. Truth-in-Negotiation Certificate: At the time of execution of the Agreement, the A/E is required to simultaneously execute a Truth-in-Negotiation Certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting, The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the

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County determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of this Agreement.

SAMPLE

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10.4. All formal and informal proposals shall include the following provisions:

- 10.4.1. The A/E shall certify, upon signing a proposal, that to the best of his knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of this Agreement.
- 10.4.2. Whenever there is reason to believe that a financial benefit of the sort described in the preceding paragraph has been or will be received in connection with a proposal or contract, and that the A/E has failed to disclose such benefit or has inadequately disclosed it, the Director, as a prerequisite to payment pursuant to the contract, or at any other time, may require the A/E to furnish, under oath, answers to any interrogatories related to such possible benefit.
- 10.5. In-progress and post auditing may be performed by the appropriate agency of Fairfax County or its agent. Post-auditing, if any, shall be completed within three years of completion of this contract. The Park Authority or its agent shall have access to and the right to examine any books, documents, papers and records of the A/E involving transactions related to the contract or compliance with any clauses there under, for a period of three years after final payment. The A/E shall include these same provisions in all related subcontracts.
- 10.6. The A/E certifies that he does not, and shall not during the performance of the contract; knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- 10.7. Contractor agrees that the goods and/or services provided to the Fairfax County Park Authority pursuant to this Agreement are for the benefit of the Fairfax County Park Authority and that Contractor shall not undertake any actions or efforts stemming from or related to this Agreement that shall inure to the detriment of the Fairfax County Park Authority. Any information provided to the Contractor for the performance of this Contract shall not be used for any other purpose without the written consent of the Purchasing Agent.
- 10.8. The Architect/Engineer shall agree to submit labor classifications/hourly rates and audited overhead rates due to the addition of any sub-consultants not approved at the time of the initial contract award. The required information shall be submitted 15 days prior to the issuance of a contract change order for which the sub-consultant services are required.

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This Agreement executed the day and year first written above.

OWNER

Director

Date

A/E

Firm's Representative

Date

State of _____

County of _____, to-wit:

The foregoing instrument was acknowledged before me on this ____ day of _____,

20____, by _____
(Name and title of agent or officer)

on behalf of _____
(Name of Corporation/Partnership)

Notary Public _____

Registration Number _____

My Commission expires: _____