



ADDENDUM No. 2

RFP NUMBER:	LRT-10-155-MART		
RFP TITLE:	MESA EXTENSION ART SERVICES		
ADDENDUM NO.:	2	DATE:	August 13, 2010

CLARIFICATIONS / CORRECTIONS

The following clarifications and corrections are hereby made part of and subject to the Request for Qualifications.

Item	Section/Article & Paragraph	Page(s)	Clarifications and/or Corrections
REQUEST FOR QUALIFICATIONS			
1	Acknowledgment of Addenda <ul style="list-style-type: none"> • Section 11, paragraph E • Section 12, paragraph G • Section 24, paragraph C 		NOTE: Artists who have submitted their Qualifications before receiving Addendum No. 1 and 2 must resubmit their Qualifications; or submit a letter to METRO, no later than August 20, 2010, 3:00 PM local Phoenix time, acknowledging the receipt of both addenda. If submitting a letter it shall state that there are no changes to the Qualifications that were submitted before the issuance of one or both addenda. Failure to acknowledge receipt of addenda shall make the Qualifications non-responsive.
2	Attachment B, Sample Art Services Agreement Section 1.14 (Intellectual Property)		Page 8, Attachment B, Section 1.14 Intellectual Property – Sample Art Services Agreement shall be stricken in its entirety and replaced with revised language. (See attached)
3	Attachment B, Sample Art Services Agreement Section 1.33 Representations and Warranties		New Paragraphs 1.33.5 and 1.33.6 have been added to Section 1.33 Representations and Warranties. (See attached)

NOTE: Omitted text in RFQ Addendum documents is denoted by ~~strikethrough~~. Added text in RFQ Addendum documents is denoted by double underline. All changes to text in RFQ Addendum denoted by outside border mark at side of changed paragraph.



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LIST OF QUESTIONS AND VMR RESPONSE(S)

The following questions and VMR Responses are hereby made a part of and subject to the Request for Qualifications.

Item	Question / Answer	
1.	Q	Are the sites for the art "open air"? or can you point me to a page that describes the sites? Thank you. The reason I ask is her materials do not work well in open air/exposure to the elements situations.
	A	Yes, all sites are open air and exposed to the elements.
2.	Q	Is the acknowledgement of addenda page counted as part of the page count?
	A	No.
3.	Q	Do Artists need to include tabbed dividers in the 9 copies (aside from the original)?
	A	Formal tabbed dividers are not required; however pages that clearly separate the sections are required. Per the solicitation, divider pages are not included in the page limitation.
4.	Q	Please clarify if the images must only be "1920 pixels in length with aspect ration locked." Our question is regarding is the width can be 1920 or just the length.
	A	The terms, "length" and "width" can be used interchangeably. It is expected that images shall be square or rectangular with at least one edge being 1,920 pixels.
5.	Q	If an Artist submits a proposal prior to the last date for addenda, August 13, 2010 and does not acknowledge both addenda, will Metro reject the proposal?
	A	Yes. Please see "NOTE" above in Item 1 of the Clarifications/Corrections section. If an Artist does not acknowledge both addenda the proposal is determined non-responsive and will be rejected.
6.	Q	What is the difference between Project Budget and Total Costs? Aren't they the same thing?
	A	No. The "project budget" is the budgeted amount while the "total cost" is the amount of money required to complete the work. In this context, the Artist should show both the budget amount assigned by the owner and the total cost to complete the job.
7.	Q	My resume, references, letter and image list are on my letterhead which contains a header with business name that is larger than 12 point font and address, etc. which is smaller than 12 point. All of the pertinent info is 12 point. Is this acceptable?
	A	Yes.



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8.	Q	Where exactly on your website is this slide show on your website, what is it called and could you send me a link to it.
	A	<p>The PowerPoint slide show from the Pre-Submittal Conference is located on METRO's website at the following link:</p> <p>http://www.valleymetro.org/images/uploads/contracts_and_purchasing/LRT-10-155-MART_Pre-Submittal_Conference_Presentation_072710.pdf</p>
	Q	<p>Are you saying that we should not have a title page?</p> <p>And how do we include the statement the RFQ asks for that accepts contract terms and acknowledges receipt of addenda? Is that another page? At the end? Numbered as part of the nine?</p> <p>To be clear, can you state the total number of pages in order and what they are?</p> <p>for example:</p> <p>1-2: Letter of Interest 3-5: Resume 6: References 7-8: Image List</p> <p>What is 9? Title page with contract term acceptance & addenda acknowledgement? Where does this go?</p>
9.	A	<p>No title page is required; however, a cover that states the name and number of the RFQ and the name of the submitting artist, along with due date, would be helpful. The cover will not be considered in the page count.</p> <p>Page 9 is to be used as an overflow page in case any one of your other section responses needs extra space.</p> <p>Separate from page count requirements, the Offeror should include:</p> <ul style="list-style-type: none"> • A statement accepting the terms and conditions contained within the proposed Sample Contract (Attachment B) or identify and explain any exceptions to such terms and conditions. • Identify and list any exceptions, conditions, reservations or understandings (collectively referred to as "Exceptions") to this RFQ. Offerors shall reference the Section (and Paragraph, if applicable) of this RFQ where the Exception exists and provide the suggested changes to the Exception. • Offerors shall acknowledge each addendum issued and affirm that such addenda have been taken into consideration in preparing their Proposal.



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10.	Q	<p>The RFQ asks for bound copies of the 10 application packets, would it be acceptable to simply use a paper clip? Is page numbering also a set requirement?</p> <p>Also, we plan on sending in our submission via Fedex, which requires the name and phone number for the recipient, what should we list for this?</p>
	A	<p>Proposals must be bound. Binding can be as simple as inserting pages into a 3 ring notebook. Although the proposal does not need to be professionally bound, lose pages are not acceptable. Pages should be numbered.</p> <p>The recipient of your proposal package is:</p> <p>Manager, Procurement & Risk Management Services Valley Metro Rail, Inc. 101 N. 1st Avenue, Suite 1300 Phoenix, AZ 85003 602-254-9896</p>

ATTACHMENTS:

- RFQ revised Attachment B (Sample Art Services Agreement) Paragraph 1.14, Intellectual Property
- RFQ revised Attachment B (Sample Art Services Agreement), Paragraph 1.33, Representations and Warranties

END OF ADDENDUM NO. 2



- o The ARTIST repeatedly fails to make prompt payment to Subcontractors for materials, labor or other items.

1.10.2 The ARTIST disregards laws, regulations, ordinances, the orders of a legal authority, or the instructions of AGENCY; and the ARTIST has not remedied the breach within ten (10) days after receiving written notice from AGENCY.

1.10.3 If the ARTIST refuses or fails to prosecute the Services or any separable part with the diligence that will ensure its completion within the time specified in the Contract, including any extension, AGENCY may, by written notice to the ARTIST, terminate the right to proceed with the Services (or the separable part of the Services) that has been delayed. In this event, AGENCY may take over the Services and complete it by contract or otherwise, and may use any data or other items necessary for completing the Services. The ARTIST shall be liable for any damage to AGENCY resulting from the ARTIST's refusal or failure to complete the Services within the specified time, or for liquidated damages for delay, if fixed in the Contract, whether or not the ARTIST's right to proceed with the Services is terminated. This liability includes any increased costs incurred by AGENCY in completing the Services.

1.10.4 If, after termination of the ARTIST's right to proceed, it is determined that the ARTIST was not in default, or that the delay was excusable, the rights and obligations of the Parties will be the same as if the termination had been issued for AGENCY's convenience.

1.11 Termination for Convenience

1.11.1 Termination for Convenience. This Agreement may be terminated by the AGENCY or ARTIST for convenience by thirty (30) days' advance written notice to the AGENCY or ARTIST specifying the termination date of this Agreement. ARTIST shall put a similar clause in its entire Subcontractors agreements.

1.11.2 Compensation if Agreement is Terminated for Convenience. In the event of a termination by the Agency for convenience or for any reason not the fault of the ARTIST, reasonable compensation shall be paid to the ARTIST for services properly performed on the Project prior to the effective date of the termination and for reasonable expenses properly incurred as a result of the termination. In no event will the Agency be liable for lost profits of ARTIST or Subcontractors on unperformed Professional Services. ARTIST shall put a similar clause in each Subcontractor's contract. Further, ARTIST shall be reimbursed for that portion of the actual eligible costs (not otherwise reimbursed under this Agreement) incurred by ARTIST hereunder to implement any termination to the extent allowable pursuant to 48 CFR, Part 31.205-42.

1.12 Pursuant to A.R.S. § 41-4401

ARTIST agrees that: ARTIST and each Subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.

1.13 Sudan and Iran

Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, the ARTIST certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.

~~1.14 Intellectual Property~~

~~**1.14.1** "Intellectual Property" shall mean any trade secret, idea, invention, design, development, device, method or process (whether or not patented or able to be patented and whether or not reduced to practice or included in Confidential Information) and all related patents and patent applications, all copyrightable works and mask works (whether or not included in Confidential Information or fixed in a~~



~~tangible medium) and all related registrations and applications for registration, all Confidential Information, and all other intellectual or industrial property rights created by, contributed to, conceived by or made by the ARTIST (whether alone or jointly with others) at any time that: (a) relate to the business or to the actual or anticipated research or development of the AGENCY; (b) result from any Services or work that ARTIST performs for the AGENCY or (c) are created using any Confidential Information or the equipment, supplies or facilities of the AGENCY.~~

~~**1.14.2 Ownership of Intellectual Property.** All Intellectual Property is and shall remain the exclusive property of the AGENCY. The ARTIST hereby assigns to the AGENCY all right, title and interest in and to such Intellectual Property. The AGENCY shall own all rights in all copyrightable works prepared by the ARTIST pursuant to this Agreement, which shall be considered "works made for hire" and shall be owned by the AGENCY irrespective of any copyright notices or confidentiality legends to the contrary which may have been placed in such works by the ARTIST or by others.~~

1.14 OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

1.14.1 The Artist retains: (i) all rights to any work products including any rendering and/or model which qualify for such protection under the Copyright Act of 1976, 17 U.S.C. §§ 101 et seq., as amended by the Visual Artists Rights Act of 1990 ("VARA"), and any successor act; and (ii) all rights expressly granted in this Agreement, as well as any and all other intellectual property rights in the Work, whether statutory or common-law, international, federal, state or local, except as expressly set forth herein.

1.14.2 The Artist may, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright of the Work in the Artist's name. If such copyright is obtained, the Artist shall provide the AGENCY with a copy of the application for registration, the registration number and the effective date of registration.

1.14.3 The Artist hereby grants the AGENCY the non-exclusive right to display any and all work products produced under this Agreement, and any reproductions of such work products consistent with previously mentioned provisions in this Agreement, and to loan such work products to other institutions with authority to display such work products or reproductions publicly, including on the internet and other electronic formats.

1.14.4 The Artist hereby grants the AGENCY a non-exclusive license to make, and to authorize the making of, photographs and other two-dimensional representations of any work products that result from the Services provided hereunder for educational, public relations, promotional and other non-commercial purposes. For the purposes of this Agreement, the following are among those reproductions deemed to be for non-commercial purposes: brochures and pamphlets pertaining to the AGENCY, AGENCY-purchased advertising that promotes programs and services of the AGENCY, reproduction in exhibition catalogues, books, slides, photographs, postcards, posters, and calendars, on the internet and other electronic formats, in art magazines, art books and art and news sections of newspapers; in general, books and magazines not primarily devoted to art but of an educational, historical or critical nature, slides and film strips not intended for a mass audience; and television programs for educational purposes. Whenever possible, on any and all such reproductions, the AGENCY shall use its best efforts to place a copyright notice in the form and manner required to protect the copyright in the results of the Services, as applicable, compliant with section 401 of the Copyright Act of 1976, as amended, or any successor act.



1.14.5 The AGENCY shall have the right to graphically reproduce and display the documents, including any rendering and/or model of the Work produced by the Artist, for the purposes of community outreach, education, exhibition or publicity, including use on the internet and other electronic formats, provided that such reproduction is credited to the Artist.

1.14.6 The AGENCY agrees that unless the Artist requests to the contrary in writing, all references to the Work or work products produced under this Agreement and all reproductions shall credit the Artist. The Artist agrees that, whenever practicable, all formal references to the Services provided under this Agreement, any work products and the final physical result of the design shall include the following credit line: "Commissioned by VALLEY METRO RAIL, INC."

1.14.7 Notwithstanding any provision of law, the parties agree that removal, destruction or relocation of the Work shall occur in accordance with the AGENCY's guidelines for review and disposition of art. While it is the AGENCY's intent to permanently retain and publicly display the Work it has acquired through LRT-10-155-MART, circumstances may arise that would make it prudent for the AGENCY to remove the Work from public display. The AGENCY shall make a good faith effort to notify the Artist, in writing, within ninety (90) days of such removal.

1.15 Notices and Communications

1.15.1 All notices and other communications concerning this Agreement shall be written in English and shall bear the number assigned to this Agreement by the AGENCY. Notices and other communications may be delivered personally, by telegram, by telephone facsimile, or by regular, certified, or registered mail. Notices and communications are effective when received.

1.15.2 Prior to issuance of the Notice to Proceed, a notice to the AGENCY will be effective only if it is delivered to the AGENCY's Contract Administrator, 101 N. 1st Ave. Suite 1300, Phoenix, Arizona 85003.

1.15.3 Prior to commencement of Work on the Project, a notice to the ARTIST will be effective if it is delivered to the individual who signed this Agreement on behalf of the ARTIST at the address shown with that signature, to a corporate officer if the ARTIST is a corporation, to a general partner if the ARTIST is a partnership, or to another individual designated by the ARTIST in this Agreement or in a written notice to the AGENCY.

1.15.4 All notices and other communications required or permitted by this Agreement shall be in writing and (i) delivered in person, (ii) sent by first class mail, (iii) sent by certified first class mail, return receipt requested, postage prepaid, or (iv) by commercial or United States Postal Service overnight delivery service, to the following addresses or to such other addresses as the Parties may hereafter designate by written notice. All such notices or other communications shall be deemed delivered immediately if delivered in person, three (3) days after deposit in the United States Postal Service first class mail if mailed, upon receipt as indicated on signed certified mail receipt and on the following Business Day if sent by overnight delivery service.

1.15.5 AGENCY:

Valley Metro Rail, Inc.
101 North First Ave. Suite 1300
Phoenix, AZ 85003



liability for faults or defects in the work during the one-year period shall be solely that of Agency, which determination shall be reasonable.

1.33.4 The foregoing warranties are in lieu of all other warranties, expressed or implied, that may be applicable to the work, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

1.33.5 The Artist represents and warrants to the AGENCY that the personal skill, judgment and creativity of the Artist are essential elements of this Agreement; and, although the parties recognize that the Artist may employ qualified personnel to work under the Artist's supervision, the Artist shall not assign, transfer or subcontract the creative and artistic portions of the Work to another party, without the prior written consent of the AGENCY.

1.33.6 The Artist represents and warrants to the AGENCY that the Work is unique and an edition of one, and does not infringe upon any copyright, and that the Artist will not execute or authorize another to execute another Work of the same design, dimensions and materials as the Work commissioned pursuant to this Agreement. For the purposes of this warranty, if the dimensions of another work exceed seventy-five percent (75%) of the dimensions of the commissioned Work, the other work shall be deemed to be of the same dimensions as the commissioned Work. This warranty of originality shall continue in effect for the life of the Artist, plus fifty (50) years.

SAMPLE