

TG13.4–Contract Grow Trees - RFQ

Questions are numbered in the order received.

Question No.	Submission Date	Drawing No.	Document/ Spec. No.	Question	Response
TG13.4 RFQ Q001	09/11/14		Section A-3 and A-4 of the RFQ	<p>I have two questions on the RFQ.</p> <p>1) First, We do not have in place a health and benefits program for our employees. Does this automatically disqualify us from bidding this job?</p> <p>2) Secondly, We do not have an apprenticeship program in place currently. Does this automatically disqualify us from bidding this job?</p>	<p>1) No, it does not automatically disqualify a subcontractor from bidding the job; however subcontractors may be bound by the Health Care Security Ordinance (HCSO), San Francisco Admin Code Ch.14.</p> <p>2) No, the TG13.4 package is not construction work, therefore, no apprenticeship requirements apply.</p>
TG13.4 RFQ Q002	09/11/14		Various Issues with RFQ	<p>[Bidder] is currently considering submitting a response to the Request for Qualifications ("RFQ") relating to the TG13.4 Contract Grow Trees package and agreement. In its preliminary analysis of the RFQ and related documentation, including the Project Labor Agreement ("PLA") attached and referenced in the RFQ, [Bidder] identified what it believes is an error.</p> <p>Specifically, throughout the RFQ, the Contract Grow Trees is erroneously referred to as a contract for construction services when it is actually an agreement with a specialty vendor to furnish trees to the project. On Page 3 of the RFQ itself, the scope of services is set forth as follows:</p> <ul style="list-style-type: none"> · Source and secure trees and plants immediately · Provide off-site maintenance and storage of trees and plants for the duration of the contract grow period · Acclimatization of trees and plants, at an off-site location, to San Francisco Bay Area climate zones 	<p>The PLA covers off-site delivery and handling of materials only if they occur at lay-down or storage areas in the proximity of the project that are dedicated exclusively to project work. (PLA, Sec. 4.9(g).) The PLA will cover any activities related to the trees after they are delivered to the project site.</p>

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				<ul style="list-style-type: none"> · Provide matching specimens · Coordinate with the Landscape Architect and the Landscape Trade Subcontractor" <p>The services set forth in Contract Grow Trees are not construction based. This distinction is critical because, throughout the RFQ, the scope is referred to as "construction services" and the bidder of Contract Grow Trees package is referred to as a Trade Subcontractor, who would, among other things, be subject to the PLA, Federal Acquisition Regulations and Federal Prevailing Wages.</p> <p>The terms of the PLA itself, at Article 4, indicate that "this Agreement shall apply <u>and is limited to all Construction Contracts</u> solicited and awarded by the TJPA or Contractors <u>for on-site Project Work</u> on or after the Effective Date of this Agreement." (Emphases added). "Construction Contracts" is a defined term and "means any public work construction and/or improvement contract or subcontract of any tier for on-site Project Work as described in Appendix C, except as specifically excluded in Section 4.9 of this Agreement." Appendix C describes various phases of construction, and does not include the tree growing scope. Section 4.9 <u>expressly excludes</u> "Work by employees of a manufacturer or vendor necessary to install, commission and/or maintain such manufacturer's or vendor's specialty products"</p> <p>The tree growing scope is neither construction based nor on-site, both of which are required elements to meet the definition of Construction Contract. Moreover, there is an express exclusion for specialty vendor services, which describes the relevant scope.</p> <p>[Bidder] is not able to bid this project as it is currently packaged, for the mere reason that it appears the tree growing package has been erroneously categorized as a Construction</p>	

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				<p>Contract. [Bidder] is a non-union vendor providing non-covered services. Moreover, [Bidder] is not a Federal Contractor and thus cannot agree to bind itself to the FAR provisions required of Federal Contractors.</p> <p>[Bidder] is seeking a confirmation that despite the language to the contrary in the RFQ, Contract Grow Trees is not a Construction Contract, that the successful winning bidder is not subject to the PLA, and that the successful bidder is also therefore not bound by the Federal Acquisition Regulations language throughout the RFQ, and presumably elsewhere in the contract documents.</p> <p>If this confirmation is attained, [Bidder] respectfully requests that an amended RFQ be posted, which omits all of the above erroneous inclusions.</p> <p>Thank you for your consideration of this issue. We look forward to the response.</p>	