

# STATE BAR OF TEXAS



## State Bar of Texas 1415 Lavaca Building Project

### Request for Qualifications (RFQ): Question Responses

Provided below are questions and associated responses regarding the RFQ for Construction Manager-At-Risk Services (CMAR).

- **The analysis of the schedule did not have any detail about when the contract would be awarded and when the work would start so the contractor could come up with one but wondered if one would be provided.**
  - The estimated start date for CMAR services is scheduled for late summer to early fall 2023.
- **There was a contract included, but were we looking for comments on the contract or can the details be negotiated later?**
  - The contract provided is only meant to serve as a sample. Details regarding the agreement will be negotiated later.
- **Question 4.5.2 states “Understanding the schedule limitations, provide an analysis of the Owner’s project planning schedule in Section 3.3 of this RFQ and describe your plan for communicating constructability, phasing, value engineering and other budget options in a form that will quickly facilitate the Owner’s decision making.”**
  - **What are the schedule limitations?** Owner’s scheduling limitations refer to the Owner not having a concrete schedule until the CMAR is on board and permitting processes have begun.
  - **There is no detailed project planning schedule in section 3.3 (only a completion date). In your previous answer to the schedule you stated CMAR services would start late summer, early fall. Do you have an anticipated NTP for construction to start date?** The anticipated NTP for construction is August 2024.
- **Insurance Exhibit - the Insurance Exhibit provided was written for an Architect and references Architect and their consultant throughout the Exhibit. Is there a Contractor specific Exhibit you can provide? See Below**

**Exhibit A to General Conditions**  
**Owner's Insurance Requirements of Contractor**

**1. Specific Insurance Requirements**

The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required:

<b>Insurance</b>	<b>Coverage/Limits</b>	<b>Other Requirements</b>
Commercial General Liability (Occurrence Basis)	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$1,000,000 Per Occurrence</li> <li>▪ \$2,000,000 General Aggregate</li> <li>▪ \$2,000,000 Products/Completed Operations Aggregate</li> <li>▪ \$1,000,000 Personal And Advertising Injury</li> <li>▪ Designated Construction Project(s) General Aggregate Limit</li> </ul>	<ul style="list-style-type: none"> <li>▪ Current ISO edition of CG 00 01</li> <li>▪ Additional insured status shall be provided in favor of Owner Parties on a combination of ISO forms CG 20 10 10 01 and CG 20 37 10101 or an equivalent.</li> <li>▪ This coverage shall be endorsed to provide primary and non-contributing liability coverage. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and will not seek contribution from any other insurance held by Owner Parties, with Owner Parties' insurance being excess, secondary and non-contributing.</li> <li>▪ Stop Gap coverage shall be provided if any work is to be performed in a monopolistic workers' compensation state.</li> <li>▪ The following exclusions/limitations (or their equivalent(s), are prohibited: <ul style="list-style-type: none"> <li>○ Contractual Liability Limitation CG 21 39</li> <li>○ Amendment of Insured Contract Definition CG 24 26</li> <li>○ Exclusion-Damage to Work Performed by Subcontractors On Your Behalf, CG 22 94 or CG 22 95</li> <li>○ Any Classification limitation</li> <li>○ Any Construction Defect Completed Operations exclusion</li> <li>○ Any endorsement modifying the Employer's Liability exclusion or deleting exception to it</li> <li>○ Any endorsement modifying or deleting Explosion, Collapse or Underground coverage</li> <li>○ Any Habitational or Residential exclusion applicable to the Work</li> <li>○ Any "Insured vs. Insured" exclusion except Named Insured vs. Named Insured</li> <li>○ Any Punitive, Exemplary or Multiplied Damages exclusion</li> <li>○ Any Subsidence exclusion</li> </ul> </li> </ul>

Business Auto Liability	Amount of coverage shall be no less than: <ul style="list-style-type: none"> <li>▪ \$1,000,000 Combined Single Limit</li> </ul>	<ul style="list-style-type: none"> <li>▪ Current ISO edition of CA 00 01</li> <li>▪ Arising out of any auto (Symbol 1), including owned, hired and non-owned</li> </ul>
Workers' Compensation and Employer's Liability	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> <li>▪ Statutory Limits</li> <li>▪ \$1,000,000 Each Accident and Disease</li> <li>▪ Alternate Employer endorsement</li> </ul>	<ul style="list-style-type: none"> <li>▪ The State in which work is to be performed must listed under Item 3.A. on the Information Page</li> <li>▪ Such insurance shall cover liability arising out of the Contractor's employment of workers and anyone for whom the Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.</li> <li>▪ Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Contractor shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Contractor and Owner. Where Contractor uses leased employees with Workers' Compensation insurance provided by a PEO or employee leasing company, Contractor is strictly prohibited from subletting any of its work without the express written agreement of Owner.</li> </ul>
Excess Liability (Occurrence Basis)	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> <li>▪ \$5,000,000 Each Occurrence</li> </ul>	<ul style="list-style-type: none"> <li>▪ Coverage shall "follow form" over underlying policies listed herein.</li> </ul>
Professional Liability	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> <li>▪ \$1,000,000 Each Claim</li> <li>▪ \$2,000,000 Annual Aggregate</li> <li>▪ If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Claim.</li> <li>▪ Such insurance shall cover all services rendered by the Contractor and its consultants under the Agreement, including but not limited to design or design/build services.</li> <li>▪ Policies written on a Claims-Made basis shall be maintained for at least two years beyond termination of the Agreement.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Such insurance shall cover all services rendered by the Contractor and its subcontractors under the Agreement.</li> <li>▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: <ul style="list-style-type: none"> <li>○ bodily injury or property damage where coverage is provided on behalf of design professionals or design/build contractors</li> <li>○ habitational or residential operations</li> <li>○ mold and/or microbial matter and/or fungus and/or biological substance</li> </ul> </li> <li>▪ Any retroactive date must be effective prior to beginning of services for the Owner.</li> <li>▪ Policies written on a Claims-Made basis shall have an extended reporting period</li> </ul>

		<p>of at least two years beyond termination of the Agreement. Contractor shall trigger the extended reporting period if identical coverage is not otherwise maintained with the expiring retroactive date.</p>
<p>Contractors Pollution Liability</p>	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$1,000,000 Each Claim</li> <li>▪ If a combined Contractor’s Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Claim.</li> <li>▪ The policy must provide coverage for: <ul style="list-style-type: none"> <li>○ the full scope of the named insured’s operations (on-going and completed) as described within the scope of work for this Agreement</li> <li>○ loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall</li> <li>○ third party liability for bodily injury, property damage, clean up expenses, and defense arising from the operations;</li> <li>○ diminution of value and Natural Resources damages</li> <li>○ contractual liability</li> <li>○ claims arising from non-owned disposal sites utilized in the performance of this Agreement.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ The policy must insure contractual liability, name Owner Parties as an Additional Insured, and be primary and noncontributory to all coverage available to the Additional Insured.</li> <li>▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: <ul style="list-style-type: none"> <li>○ Insured vs. insured actions. However exclusion for claims made between insured within the same economic family are acceptable.</li> <li>○ impaired property that has not been physically injured</li> <li>○ materials supplied or handled by the named insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval.</li> <li>○ property damage to the work performed by the contractor</li> <li>○ faulty workmanship as it relates to clean up costs</li> <li>○ work performed by subcontractors</li> </ul> </li> <li>▪ If coverage is provided on a Claims Made basis, coverage will at least be retroactive to the earlier of the date of this Agreement or the commencement of contractor services relation to the Work.</li> <li>▪ The policy will offer an extended discovery or extended reporting clause of at least three (3) years.</li> <li>▪ Completed Operations coverage shall be maintained through the purchase of renewal policies to protect the insured and additional insured for at least two (2) years after the property owner accepts the project or this contract is terminated. The purchase of an extended discovery period or an extended reporting period on a Claims</li> </ul>

		<p>Made policy or the purchase of occurrence-based Contractors Environmental Insurance will not be sufficient to meet the terms of this provision.</p>
<p>Builders Risk</p>	<ul style="list-style-type: none"> <li>▪ Coverage shall be provided in an amount equal at all times to the full contract value, including change orders, and cost of debris removal for any single occurrence.</li> <li>▪ Coverage shall be at least as broad as an unmodified ISO Special form, shall be provided on a completed-value basis, and shall be primary to any other insurance coverage available to the named insured parties, with that other insurance being excess, secondary and non-contributing.</li> <li>▪ The policy must provide coverage for: <ul style="list-style-type: none"> <li>○ Agreed Value <span style="float: right;">Included</span></li> <li>○ Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse <span style="float: right;">Included</span></li> <li>○ Debris removal additional limit <span style="float: right;">\$1,000,000</span></li> <li>○ Earthquake and Earthquake Sprinkler Leakage <span style="float: right;">\$5,000,000</span></li> <li>○ Flood <span style="float: right;">Included</span></li> <li>○ Freezing <span style="float: right;">Included</span></li> <li>○ Mechanical breakdown including hot &amp; cold testing <span style="float: right;">\$1,000,000</span></li> <li>○ Ordinance or law <span style="float: right;">\$ 25,000</span></li> <li>○ Pollutant clean-up and removal <span style="float: right;">Included</span></li> <li>○ Preservation of property <span style="float: right;">Included</span></li> <li>○ Theft <span style="float: right;">\$10,000</span></li> </ul> </li> <li>• Deductible shall not exceed</li> </ul>	<ul style="list-style-type: none"> <li>▪ Insureds shall include Owner Parties, General Contractor, all Loss Payees and Mortgagees, and subcontractors of all tiers in the Work as Insureds.</li> <li>▪ Such insurance shall cover: <ul style="list-style-type: none"> <li>○ all structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling;</li> <li>○ all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site;</li> <li>○ all property including materials and supplies on site for installation;</li> <li>○ all property including materials and supplies at other locations but intended for use at the site;</li> <li>○ all property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and</li> <li>○ other Work at the site identified in the Agreement to which this Exhibit is attached.</li> </ul> </li> <li>• No protective safeguard warranty shall be permitted.</li> <li>• The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed. This insurance shall be maintained in effect, unless otherwise provided for the Agreement Documents, until the earliest of: <ul style="list-style-type: none"> <li>○ the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated;</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ All Risks of Direct Damage, Per Occurrence, except</li> <li>○ Named Storm</li>   <li>○ Earthquake and Earthquake Sprinkler Leakage, Per Occurrence</li> <li>○ Flood, Per Occurrence or excess of NFIP if in Flood Zone A or V</li> </ul>	<p>2% subject to \$50,000 minimum</p> <p>\$100,000</p>	<ul style="list-style-type: none"> <li>○ occupancy, in whole or in part;</li> <li>○ the date on which release of substantial completion is executed; or</li> <li>○ the date on which the insurable interests of Contractor in the Covered Property has ceased.</li> <li>● A waiver of subrogation provision shall be provided in favor of all insureds listed above.</li> </ul>
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## 2. General Insurance Requirements

### A. Definitions. For purposes of this Agreement:

- i. "ISO" means Insurance Services Office.
- ii. "Contractor" shall include the Contractor and its subcontractors of any tier.
- iii. "Owner or Owner Parties" means (a) The State Bar of Texas (referred to as "Owner"), (b) the Project, (c) any lender or loan guarantor whose loan is secured by a lien against the Work, (d) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, (e) any directors, officers, employees, or agents of such persons or entities, and (f) others as required by the Contract Documents.

### B. Policies.

- i. Contractor shall maintain such Excess Liability, Professional and Pollution insurance in identical coverage, form and amount, including required endorsements, for at least two (2) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall maintain such General Liability insurance in identical coverage, form and amount, including required endorsements, for at least ten (10) years following Date of Substantial Completion of the Work to be performed under this Agreement. Contractor shall provide written representation to Owner stating Work completion date.
- ii. All policies must:
  - a. Be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times Work is to be performed.
  - b. Provide a waiver of subrogation in favor of Owner Parties on all insurance coverage carried by Contractor, whether required herein or not.
  - c. Contain an endorsement providing for thirty (30) days prior written notice of cancellation to Owner.
  - d. Be provided to the Owner Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Owner.
- iii. Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.
- iv. The Owner shall have the right to prohibit the Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

### C. Limits, Deductibles and Retentions

- i. No deductible or self-insured retention shall exceed \$25,000 without prior written approval of the Owner, except as otherwise specified herein. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk.

### D. Evidence of Insurance.

The Contractor shall furnish evidence of insurance to Owner that confirms all required insurance policies are in full force and effect. Evidence of insurance shall be in a form acceptable to Owner.

Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages.
- iii. Evidence shall be provided to Owner prior to commencing Work and prior to the expiration of any required coverage.
- iv. ACORD Forms specify:
  - a. Owner as certificate holder at Owner's mailing address;

- b. Insured's name, which must match that on this Agreement;
  - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
  - d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
  - e. Additional Insured status in favor of Owner Parties;
  - f. Amount of any deductible or self-insured retention in excess of \$25,000;
  - g. Designated Construction Project(s) General Aggregate Limit;
  - h. Primary and non-contributory status;
  - i. Waivers of subrogation; and
  - j. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- v. Copies of the following shall also be provided:
- a. General Liability Additional insured endorsement(s);
  - b. General Liability Schedule of Forms and Endorsements page(s); and
  - c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

**E. Contractor Insurance Representations to Owner Parties**

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement; and (b) are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement.
- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance and offset all costs and expenses from the Contract Sum. Owner's exercise of this right shall not relieve or excuse Contractor from the obligation to obtain and maintain such insurance amounts and coverages.
- iii. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Contract Agreement.

**F. Insurance Requirements of Contractor's Subcontractors**

- i. Insurance similar to that required of the Contractor shall be provided by all subcontractors (or provided by the Contractor on behalf of subcontractors) to cover operations performed under any subcontract agreement. The Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The Contractor shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.
- ii. The Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Contractor shall not be reimbursed for same. Should the Contractor or its subcontractors choose to self-insure this risk, it is expressly agreed that the Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the Owner Parties.

**G. Use of the Owners Equipment**



The Contractor, its agents, employees, subcontractors or suppliers shall use the Owners equipment only with express written permission of the Owners designated representative and in accordance with the Owners terms and condition for such use.

**H. Release and Waiver**

The Contractor hereby releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the Contractor and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Contractor and/or its subcontractors pursuant to this Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**