

Q-14: Please clarify – Duty to defend in 6.1.2.7 contradicts 6.3 of the draft contract, Para. 7 of the General Conditions, and Para 3 of the Special Conditions.

1. From Draft Contract (6.1.2.7; Defense) (p 251 of RFP packet)

.7 Defense. The insurance obtained by the CM/PM, except for professional liability and workers compensation insurance, shall provide that the insurer shall defend any suit against the additional insureds, even if such suit is allegedly or actually frivolous or fraudulent. Defense costs shall apply in excess of any per occurrence limit of liability and shall not reduce any aggregate limits of liability applying under the policies.

The above Section, 6.1.2.7 will remain in the Contract.

2. From Draft Contract (6.3; Indemnification) (p 252 of RFP packet)

6.3 INDEMNIFICATION

- 6.3.1 To the fullest extent permitted by law, CM/PM shall indemnify, defend, and hold harmless the Company Indemnitees, from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the CM/PM or its sub-consultants or contractors), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise directly or indirectly, in whole or in part, from (a) the Services under this Agreement, or any part of such Services, and (b) any negligent, reckless, or willful act or omission of the CM/PM, any sub-consultant or contractor, anyone directly or indirectly employed by them, or anyone that they control, unless due to the negligence or willful misconduct of the Company Indemnitees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this paragraph.
- 6.3.2 The CM/PM shall defend the Company Indemnitees using counsel selected by the CM/PM and approved by the Company. The CM/PM's obligations shall include the obligation to pay reasonable attorneys' fees and costs in connection with such defense.
- 6.3.3 CM/PM shall also indemnify, defend and hold harmless all Company Indemnitees from all suits or claims by a third party for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the Company Indemnitees of articles or services to be supplied in the performance of CM/PM's Services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of the Agreement.

The above Section, 6.3 will remain in the Contract and Company Indemnitees are to follow Section 1.6.5 of the Contract.

1.6.5 Company Indemnitees: Company, Hawai'i Convention Center, AEG Management HCC, LLC, Anschutz Entertainment Group, Inc. ASM Global Parent, Inc., AEG Venue Management Holdings, LLC, the Hawai'i Tourism Authority, and the State of Hawai'i, and each of its and their respective affiliates, related entities and their respective Principals, Owners, Shareholders, Members, Partners, Officers, Directors, Employees, Representatives, Tenants, Agents, Contractors and Volunteers.

3. **From General Terms and Conditions (#7. Indemnification and Defense) (p 262 RFP packet)**

7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.

4. **From Special Conditions (#3) (p 276 RFP packet)**

3. The first sentence of Paragraph 7 shall be changed to read: "The CONTRACTOR shall defend, indemnify, and hold harmless AEG Management Hawaii HCC, LLC, the Hawaii Tourism Authority ("HTA"), the State of Hawaii, and their respective officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, suppliers, or subcontractors under this Contract."

Replace item 3 of Special Conditions with "Paragraph 7 of the General Terms and Conditions is hereby deleted in its entirety. Please refer to Section 1.6.5 and Section 6.3 of the Contract for the Indemnification obligations of the CONTRACTOR."