

ATL CONTRACT CLARIFICATION/PROPOSED MODIFICATIONS RESPONSE
ATL Solicitation No. 21-096: RFP for Regional Transit Planning Consulting Services

#	Contract Provision Title	Contract Section Number	Current Wording of Section	Reason for Exception (Cite relevant law or provide business reason)	Proposed Language	Legal proposed response
1	Trust Funds	11.3	Trust Funds. All payments made by the ATL to Consultant for the Services under the Contract Documents shall be held in trust by the Consultant for the purpose of paying its employees, agents, assigns, subcontractors and suppliers who provided any part of the Services	Please clarify the intent of this provision, and confirm that this does not require Consultants to set up and establish a trust account for project funds. If the proposed language cannot be accommodated, please provide clarification as to what is required by this Section.	All payments made by the ATL to Consultant for the Services under the Contract Documents shall be held in trust <u>properly held and managed</u> by the Consultant for the purpose of paying its employees, agents, assigns, subcontractors and suppliers who provided any part of the Services.	No change. Clarification: This language does not require a establishment of a trust account.
2	Professional Liability Insurance	13.3.4	The Consultant shall maintain professional liability insurance that shall be either a practice policy or project-specific coverage. Professional liability insurance shall contain prior acts coverage for services performed by the Consultant for this Project. If project-specific coverage is used, these requirements shall be continued in effect for two years following issuance of the Certificate of Final Completion for the Project.	We would like to request that wording of this Section be modified to more accurately describe the Professional Liability insurance.	The Consultant shall maintain professional liability insurance that shall <u>provide coverage for Contractor's negligent acts, errors, or omissions under this Agreement</u> be either a practice policy or project-specific coverage . Professional liability insurance shall contain <u>a retroactive date that precedes the commencement date</u> prior-acts coverage for services performed by the Consultant for this Project. If project-specific coverage is used, these requirements shall be continued in effect for two years following issuance of the Certificate of Final Completion for the Project.	No change.
3	Confidentiality	21	Consultant acknowledges that in order to perform the Services called for in this Contract, it will be necessary for ATL to disclose to Consultant certain trade secrets, and confidential information concerning the Services, ATL's respective customers, operations, projects, procurements and any confidential and/or proprietary information of any of ATL's vendors (collectively, "Confidential Information"). Consultant agrees that it shall use its best efforts to keep the Confidential Information strictly confidential and shall not disclose, transfer, use, copy, or allow access to any such Confidential Information to any employees or to any third parties excepting those who have a need to know such Confidential Information in order to allow Consultant to perform the Services, and who have executed a nondisclosure agreement with either Consultant or ATL consistent with the provisions hereof.	The final sentence of this Section requires all employees execute a nondisclosure agreement in order to access Confidential Information. This requirement may create an unnecessary administrative burden, particularly for a project with a large number of staff working on it. We would instad suggest that employees be allowed to access Confidential Information on the condition that such employees are bound by company confidentiality policies that are at least as restrictive as the terms of this Agreement and that such employees are made aware of the requirements of this Agreement.	Consultant acknowledges that in order to perform the Services called for in this Contract, it will be necessary for ATL to disclose to Consultant certain trade secrets, and confidential information concerning the Services, ATL's respective customers, operations, projects, procurements and any confidential and/or proprietary information of any of ATL's vendors (collectively, "Confidential Information"). Consultant agrees that it shall use its best efforts to keep the Confidential Information strictly confidential and shall not disclose, transfer, use, copy, or allow access to any such Confidential Information to any employees or to any third parties excepting those who have a need to know such Confidential Information in order to allow Consultant to perform the Services, <u>and who are bound by company confidentiality policies that are at least as restrictive as the terms of this Agreement and that such employees are made aware of the requirements of this Agreement</u> and who have executed a nondisclosure agreement with either Consultant or ATL consistent with the provisions hereof .	No change. We anticipate that very little or no Confidential Information will need to be shared with the Consultant in order to perform the Services. However, in the event such Confidential Information must be shared we would prefer to keep the existing language.
4	Publicity	28.11	Consultant shall not issue a press release or otherwise publicize the Services or this Contract without the prior written permission of ATL's Government and External Affairs Director. Consultant acknowledges and agrees that all records of the Services and work, including records of contractors and subcontractors are subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., with particular attention being called to O.C.G.A. § 50-18-70 (b)(2) regarding the records of private entities in the performance of a service or function for or on behalf of a state agency, public agency or public office. The Consultant shall include this language or similar language in all contracts with its subcontractors.	Please add clarification that a Consultant may reference the general nature of the services and the existence of the contract with ATL for purposes of references or qualifications for other, similar services.	Consultant shall not issue a press release or otherwise publicize the Services or this Contract without the prior written permission of ATL's Government and External Affairs Director. Consultant acknowledges and agrees that all records of the Services and work, including records of contractors and subcontractors are subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., with particular attention being called to O.C.G.A. § 50-18-70 (b)(2) regarding the records of private entities in the performance of a service or function for or on behalf of a state agency, public agency or public office. The Consultant shall include this language or similar language in all contracts with its subcontractors. <u>Notwithstanding the foregoing, Consultant may disclose and reference the existence of this Agreement with ATL and the general nature of the services performed for purposes of references or qualifications for other, similar services, provided that Consultant does not disclose any Confidential Information of ATL.</u>	ATL is willing to modify the provision as requested but we will make such a change prior to execution of the Contract if requested by the Proposer ultimately selected.
5	Ownership of Documents	17	The Consultant agrees that all reports, drawings, studies, specifications, estimates, maps, computations, computer files and other data, prepared pursuant to the Contract Documents shall be delivered to, become and remain in the property of ATL upon the earlier of termination or completion of the Services. ATL shall have the right to use same without restriction or limitation and without compensation to the Consultant other than that provided for in this Contract. Any use of these documents by ATL on any project other than the Project which was the subject of the applicable Service under which the documents were prepared shall be done without liability by the Consultant. Notwithstanding the above, if any of the Services are based on Intellectual Property owned by Consultant prior to the Effective Date ("Consultant Intellectual Property"), then all such reports, drawings, studies, specifications, survey notes, estimates, maps, computations, computer files and other data, prepared pursuant to the Contract Documents shall be delivered to, become and remain in the property of ATL with the exception of such Consultant Intellectual Property, for which Consultant hereby grants ATL an irrevocable, non exclusive, non transferable and royalty free license to use such Consultant Intellectual Property. Consultant shall not publish or make public any of the Services or by-products therefore unless required by law or authorized in writing by the Executive Director of ATL. In such case Consultant shall notify ATL as far in advance as possible to allow ATL, if it deems appropriate, to seek legal redress to prevent such publication.	Please add language adding further clarification as to rights in Consultant Intellectual Property, including language that acknowledges the possibility of a separate licensing agreement.	The Consultant agrees that all reports, drawings, studies, specifications, estimates, maps, computations, computer files and other data, prepared pursuant to the Contract Documents shall be delivered to, become and remain in the property of ATL upon the earlier of termination or completion of the Services. ATL shall have the right to use same without restriction or limitation and without compensation to the Consultant other than that provided for in this Contract. Any use of these documents by ATL on any project other than the Project which was the subject of the applicable Service under which the documents were prepared shall be done without liability by the Consultant. Notwithstanding the above, if any of the Services are based on Intellectual Property owned by Consultant prior to the Effective Date ("Consultant Intellectual Property"), then all such reports, drawings, studies, specifications, survey notes, estimates, maps, computations, computer files and other data, prepared pursuant to the Contract Documents shall be delivered to, become and remain in the property of ATL with the exception of such Consultant Intellectual Property, for which Consultant hereby grants ATL an irrevocable, non exclusive, non transferable and royalty free license to use such Consultant Intellectual Property. <u>The parties agree that certain Consultant Intellectual Property may be subject to the terms of a separate License Agreement, which shall govern each party's rights in and use of such Consultant Intellectual Property. Further, the parties agree that there may be certain sensitive, proprietary data contained within Consultant Intellectual Property that may not be disclosed due to confidentiality restrictions.</u> Consultant shall not publish or make public any of the Services or by-products therefore unless required by law or authorized in writing by the Executive Director of ATL. In such case Consultant shall notify ATL as far in advance as possible to allow ATL, if it deems appropriate, to seek legal redress to prevent such publication.	No change at this time. However, if the selected proposer is concerned about the disclosure of its confidential and proprietary information we are willing to make modifications prior to execution of the Contract or to take further appropriate measures to address those concerns.