



CALIFORNIA High-Speed Rail Authority

Request for Proposals for Tier III Trainsets

INSTRUCTIONS TO PROPOSERS

RFP No.: HSR14-30

INDUSTRY REVIEW DRAFT – 1/30/2015



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1.0 Background and General Information

1.1 Background

The California High-Speed Rail Authority (the Authority) is responsible for planning, design, construction, maintenance and operation of the first high-speed rail system in the nation. The California High-Speed Rail System will connect the mega-regions of the State, contribute to economic development and a cleaner environment, create jobs and preserve agricultural and protected lands. Phase 1 service will connect the San Francisco Bay Area to the Los Angeles Basin in less than three hours at speeds of over 200 miles per hour. The system will eventually extend to Sacramento and San Diego, totaling approximately 800 miles with up to 24 stations. In addition, the Authority is working with regional partners to implement a statewide rail modernization plan that will invest billions of dollars in local and regional rail lines to meet the State's 21st century transportation needs.

1.2 Project Funding

The Authority intends to finance the Project with State and federal funding. This may include funds provided by the Federal Railroad Administration (FRA) and funding made available through the American Recovery and Reinvestment Act of 2009 (ARRA), the Passenger Rail Investment and Improvement Act (PRIIA), the Railroad Rehabilitation & Improvement Financing (RRIF) Program, and the Transportation Infrastructure Finance and Innovation Act (TIFIA).

1.3 Request for Expression of Interest Process

On October 1, 2014, the Authority released Request for Expressions of Interest (REOI) No.: HSR14-30 for Tier III Trainsets. Potential Proposers that submit an EOI may be registered by the Authority pursuant to the REOI process. Only registered Proposers will be eligible to submit Proposer Inquiries and to participate in one-on-one meetings. However, it is not mandatory to have submitted an EOI or be registered to submit a Proposal for consideration by the Authority.

1.4 RFP Documents

The RFP consists of the following documents:

- Instructions to Proposers; and
- the draft Contract, which consists of the following documents:
 - General Provisions;
 - Schedules to the General Provisions
 - Supplemental General Provisions; and
 - Signature Document.

The ITP will not form a part of the Contract. The ITP provides instructions to be followed by Proposers in their response to this RFP No. HSR 14-30.



1.5 General Information

The following list provides general information related to this RFP:

- The Authority is issuing this RFP to receive Proposals for the provision of Tier III Trainsets, any required maintenance facilities and maintenance and related services, as described under the Contract.
- This procurement is conducted in accordance with the Authority's contracting power described in Section 185036(a) of the California Public Utilities Code.
- The Contractor may be required to work with the Federal Railroad Administration (FRA), Surface Transportation Board (STB), California Public Works Board (PWB), California Department of Transportation (Caltrans), California Department of General Services (DGS), and/or other partnering agencies and contractor(s) on the California High-Speed Rail Project.
- Proposers are required to comply with the Authority's Small and Disadvantaged Business Enterprise Program, dated August 2012.
- The RFP will be available in electronic format on the Authority's website (www.hsr.ca.gov).

2.0 Definitions and Acronyms

2.1 Definitions

The following terms shall have the meanings set forth below. Refer to Article 1 of the General Provisions to the Contract for the meaning of capitalized terms and acronyms used, but not defined, in this ITP.

Addendum or Addenda - Means additions, deletions, and modifications to the provisions of the RFP made by the Authority after the release of the RFP.

Apparent Best Value Proposal – The Proposal that has the highest overall score at the conclusion of the Proposal evaluation process.

Competitive Range – Proposers that submit Technical Proposals that Authority, in its sole discretion, determines to have passed Stages 1, 2 and 3 of the evaluation process.

Disadvantaged Business Enterprise (DBE) – A small business concern that is at least 51% owned and whose management and daily business operations are controlled by “socially and economically disadvantaged individuals” as that phrase is defined in 49 C.F.R. Part 26.

Disabled Veteran Business Enterprise (DVBE) – A for-profit small business concern that is at least 51 percent owned by a veteran of the United States military, which has at least a 10 percent service-connected disability. To qualify as a Disabled Veteran Business Enterprise, the business must have received the appropriate certification issued by the California Department of



General Services. This definition applies where the contracts in question are 100 percent state-funded.

Expression of Interest (EOI) – Materials submitted by potential Proposers in response to Request for Expressions of Interest (REOI) No.: HSR14-30 for Tier III Trainsets, issued by the Authority on October 1, 2014.

Final Proposal – Means the Revised Technical Proposal and the Price Proposal.

Final Proposal Due Date - Means the date Proposers are required to submit their Final Proposal, as set forth in Table 2, Section 3.3 of the Instructions to Proposers.

Good Faith Efforts – Means the efforts to achieve the established SB goal or other requirements which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Authority's Small and Disadvantaged Business Enterprise Program requirement.

Key Personnel – Those individuals identified in the Proposer's Proposal to fill the positions specified in the Contract and Attachment U, Key Personnel.

Microbusiness (MB) – A for-profit small business concern with gross annual receipts of less than \$3,500,000 or, if the small business is a manufacturer, with 25 or fewer employees. The Authority recognizes Microbusiness certifications issued by the California Department of General Services.

Official Representative – Means the individual authorized to bind the Proposer with respect to the RFP.

Open Government Laws – Collectively, the California Public Records Act (Government Code section 6250, et seq.), the Bagley-Keene Open Meeting Act (Gov. Code section 11120, et seq.), and the Freedom of Information Act (5 U.S.C. section 552, as amended by Public Law No. 104-231, 110 Stat. 3048) and other applicable State and Federal open records laws.

Price Proposal – Means the price-related submittals Proposers are required to submit with their Final Proposals, as described in Attachment B.

Proposal – Means a proposal submitted by a Proposer in response to the RFP and may refer to one or more of the Technical Proposal, Final Proposal, or best and final offer, as applicable.

Proposer – A Person submitting a Proposal in response to this RFP.

Proposer Inquiries – The process for submission of questions, inquiries, and requests for clarifications or information during the RFP process, as set forth in Section 3.11.

Protest Official – The Authority employee to which all protests must be addressed, as identified in Section 12.5.

Request for Expressions of Interest (REOI) – Request No.: HSR14-30 for Tier III Trainsets, issued by the Authority on October 1, 2014.



Request for Proposals (RFP) – The set of documents described in Section 1.4 issued by Authority on the date specified in Section 3.3, as revised by Addenda, if any.

Revised Technical Proposal – Means the revised Technical Proposal that Proposers may be required to submit after the completion of the FRA waiver process, as described in Attachment B. The Revised Technical Proposal is a component of the Final Proposal.

Small Business – A for profit small business that meets the requirements and eligibility criteria set forth by the U.S. Small Business Administration and California Department of General Services for certification as a Small Business. This definition is dependent on whether the firm wishes to participate in U.S. DOT-assisted contracts or in 100 percent, State funded contracts, which are defined as follows:

- a. For U.S. DOT-assisted contracts, a Small Business meets the definition for a small business concern contained in Section 3 of the Small Business Act and United States Small Business Administration regulations implementing it (13 C.F.R. Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 C.F.R. Part 26.65(b). Certified SB firms participating in U.S. DOT-assisted contracts are not required to have a principal office located in California. Both State and/or Federal certified SB firms are eligible to be credited toward meeting the SB goal on a U.S. DOT-assisted contract.
- b. For 100 percent State-funded contracts, a Small Business is independently owned and operated, with its principal office located in California and with owners living in California, has grossed \$14 million or less over the previous three tax years, and is not dominant in its field of operations. This certification is issued by the California Department of General Services.

Successful Proposer – The Proposer whose Proposal is determined to be the Apparent Best Value Proposal, and that has been notified thereof.

Surety – A properly licensed surety company, insurance company, or other Person approved by the Authority, which has issued a Proposal Bond.

Technical Proposal – Means the initial technical submittals Proposers are required to submit, as described in Attachment B.

Technical Proposal Due Date – Means the date Proposers are required to submit their Technical Proposals, as set forth in Table 2, Section 3.3 of the Instructions to Proposers.

Waiver in Common – A waiver that the FRA, in its sole discretion, may grant for assembly or for a component that will apply to all Proposers whose Proposals are under evaluation.

2.2 Acronyms

ARRA – American Recovery and Reinvestment Act of 2009

BAFO – best and final offer



CalSTA – California State Transportation Agency

Caltrans – California Department of Transportation

DB – Design-Build

DBE – Disadvantaged Business Enterprise

DGS – California Department of General Services

DVBE – Disabled Veteran Business Enterprise

FOIA – Freedom of Information Act

ITP – Instructions to Proposers

MB – Microbusiness

NTP – Notice to Proceed

SBE – Small Business Enterprise

U.S. DOT – United States Department of Transportation

3.0 General Requirements

3.1 Improper Communications and Contacts

The following rules of contact shall apply during the procurement for the Project, which began upon the date of the Authority's issuance of the RFP and will continue in effect until the later of the execution of the Contract or the cancellation of the procurement. Contact includes face-to-face, telephone, facsimile, email, or formal written communication. These rules are designed to promote a fair, unbiased, and legally defensible procurement process. The specific rules of contact are as follows:

- A. Proposers shall communicate with the Authority regarding the RFP only through the Authority Point of Contact (see Section 3.2 of the ITP) and Proposer's Official Representative, except for communications expressly permitted by this ITP.
- B. Except for communications expressly permitted by the ITP or approved in advance by the Authority's Chief Counsel, in his or her sole discretion, no Proposer or representative thereof shall have any ex parte communications regarding the RFP or the procurement described herein with any member of the Authority Board of Directors, with any Authority staff or with any Person identified in Table 1. This includes any of the Authority's advisors, contractors, or consultants (and their respective Affiliates) that are involved with the procurement or the Project. (A list of contractors and consultants with which ex parte communication is prohibited, is provided in Table 1.)
- C. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or the procurement, or preclude or restrict



participation in public meetings of the Authority or any Authority workshop related to the RFP.

- D. Proposers shall not contact, nor communicate with the entities listed below, including any employees, representatives, or members, regarding the RFP:
1. Federal Railroad Administration (FRA)
 2. California State Transportation Agency (CalSTA)
 3. California Department of Transportation (Caltrans)
 4. California Department of General Services (DGS)
 5. California High-Speed Rail Authority (except as provided in this ITP)
- E. Proposers may contact third party stakeholders during the RFP process, subject to the following requirements:
- a. Contact by Proposers of third parties such as municipalities or other agencies is allowed for purposes of obtaining information on permitting processes, fees, and schedules, or related similar standard information.
 - b. Contact with utilities is allowed for the purpose of obtaining cost and schedule information.

The Authority does not warrant the accuracy of any information obtained from third parties and cautions Proposers that reliance on any information received from third parties is at the Proposer's risk.

- F. After submittal of Proposals, no Proposer or any of its team members may communicate with another Proposer or its team members with regard to the RFP or any other team's Proposal, with the exception of subcontractors that are shared between two or more Proposers. In such cases, those subcontractors may communicate with their respective team members so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the two Proposers. Protocols established to ensure that subcontractors do not act as conduits of information between teams may be subject to Authority approval, at the Authority's discretion.
- G. Any communication determined to be improper, at the sole discretion of the Authority, may result in disqualification from the procurement.
- H. The Authority will not be responsible for, nor bound by, any oral exchange or any other information or exchange that occurs outside the official procurement process.
- I. At any time prior to the later of (i) execution of the Contract and (ii) the Authority's termination of the procurement process, Proposer shall not initiate contact with the general public regarding the Project unless the nature of the contact and the substance thereof is previously approved in writing by the Authority. At any time during the procurement process, any Proposer that receives a media inquiry related to the RFP shall decline to provide information to the media and shall refer such inquiry to the Authority Point of Contact.



Table 1: Firms with which contact is prohibited:

- Akin Gump Strauss Hauer & Feld, LLP	- KPMG LLC
- All Transit Consultants LLC	- LKG-CMC
- Alta Vista Solutions	- Loop Initiatives (PB Halsall)
- Balfour Beatty- Bickmore	- Nossaman LLP
- Cambridge Systematics	- Natoma Technologies, Inc.
- Commonwealth Associates Inc.	- Nayak Corp.
- Construction Engineering Consulting Group, Inc.	- Oliveira Advisory Services
- Cordoba Corporation	- O'Melveny & Myers LLP
- Dan Hoyt	- Padilla and Associates, Inc.
- David Ory, Metropolitan Transportation Commission	- Paragon Partners
- DC Agrawal Consulting LLC	- Parsons Brinckerhoff, Inc.
- Electrical Consultants, Inc.	- Parsons Brinckerhoff International
- Ellison, Schneider & Harris LLP	- Remy Moose Manley, LLP
- Enterprise Wireless Alliance	- Roy Kienitz
- Eric Miller, University of Toronto	- SC Solutions, Inc.
- Frank S. Koppelman, Northwestern University	- Sean Gallagher
- Fukuji Planning and Design	- Spectrum Consultant Leslie Rifkin
- Gibson & Skordal, LLC	- Stephen J .Thoman Consulting, Inc.
- Gilbert Mallery	- Sustain Environmental
- International Union of Railways	- The Next Generation
- Kay W. Axhausen, Dr. Ing., Institute of Transport Planning and Systems, ETH Zurich	- Thomas E. Frawley Consulting, LLC
	- Turner Engineering Corporation
	(TENCO)Urban Ecos
	- Zoon Engineering

3.2 Authority Point of Contact

The Authority Point of Contact for communications concerning the Project or this RFP shall be as follows:

Rebecca Harnagel, P.E.
California High-Speed Rail Authority
 770 L Street, Suite 620 MS 2
 Sacramento, CA 95814
 Phone: (916) 324-1541
 Fax: (916) 322-0827
 Email: Trainsets@hsr.ca.gov

3.3 Proposal Submittal Information

Table 2: Procurement Schedule:

Key Dates	Activity Description
October 01, 2014	Issued Request for Expressions of Interest (REOI)
October 22, 2014	Expressions of Interest (EOI) Due Date
January 30, 2015	Issued Industry Review Draft of RFP
February 24, 2015	Deadline for registered potential Proposers to submit comments on Industry Review Draft of RFP



Key Dates	Activity Description
March 2-9, 2015	One-on-One Meetings with registered potential Proposers
TBD	Issue final RFP
TBD	Pre-bid Conference held in Sacramento, CA
TBD	Last day to submit Proposer Inquiries
TBD	One-on-One Meetings
TBD	Deadline for Authority to respond to Proposer Inquiries
TBD	Technical Proposal Due Date (Technical Proposals due by 4:00 PM Pacific Time)
TBD	FRA completion of waiver process (estimated)
TBD	Discussions with Proposers, if held
TBD	Site Visits to Proposers' Facilities, if held
TBD	Final Proposal Due Date (Final Proposals due by 4:00 PM Pacific Time)
TBD	Deadline to submit Escrowed Proposal Documentation (3 rd Working Day following Final Proposal Deadline by 4:00 PM Pacific Time).
TBD	Notice of proposed award
TBD	Contract execution

Technical Proposals must be submitted in one or more sealed packages and received (mail or hand-delivered) no later than 4:00 PM PT on the Technical Proposal Due Date. The Technical Proposal package(s) shall be addressed and delivered as follows:

<p>Attention: Rebecca Harnagel, P.E. California High-Speed Rail Authority 770 L Street, Suite 1160 Sacramento, CA 95814</p> <p>TECHNICAL PROPOSAL</p>

Final Proposals must be received (mail or hand-delivered) no later than 4:00 PM PT on the Final Proposal Due Date. The Final Proposals shall be submitted in separate sealed packages, addressed and delivered as follows, as applicable:

<p>Attention: Rebecca Harnagel, P.E. California High-Speed Rail Authority 770 L Street, Suite 1160 Sacramento, CA 95814</p> <p>REVISED TECHNICAL PROPOSAL</p>	<p>Attention: Rebecca Harnagel, P.E. California High-Speed Rail Authority 770 L Street, Suite 1160 Sacramento, CA 95814</p> <p>PRICE PROPOSAL</p>
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The Revised Technical Proposal and the Price Proposal shall not be submitted in the same package(s).

The following information must be clearly visible on the Technical Proposal, Revised Technical Proposal and Price Proposal submittal shipping packages:



RFP No.: HSR 14-30

California High-Speed Rail Authority

Tier III Trainsets and Related Maintenance Facilities and Services Proposal

Proposer: _____**3.4 Addenda to Request for Proposals**

The Authority reserves the right to modify the RFP by Addendum. The Authority will post any Addenda on the Authority's website.

3.5 Non-Commitment of Authority

This RFP does not commit the Authority to award a contract, to pay any costs incurred in the preparation of a Proposal in response to this request, or to procure or contract for any products or services.

3.6 Late Submittals

Proposals received by the Authority after the Technical Proposal Due Date or the Final Proposal Due Date, as applicable, are considered late and will not be accepted. Postmark dates of mailing, E-mail and facsimile (FAX) transmissions shall not be considered in establishing compliance with the submission deadline for Proposal delivery, set forth in Table 2 to Section 3.3 of the ITP. Late Proposals will be returned, unopened, to the Proposer.

3.7 Proposal Validity Period

Final Proposals and BAFOs, if any, submitted and not withdrawn as of the Final Proposal Due Date or the due date established by Authority for any BAFO, as applicable, shall be valid for 360 days from their respective due dates. After such period, the Final Proposals and BAFOs, if any, will cease to be valid unless the Proposer and Authority agree in writing to extend the validity period. The parties' extension of the Proposal validity period shall not extend or otherwise affect the validity of a Proposal Bond or Proposal Letter of Credit without acquiescence by the Surety or financial institution that issued the bond or letter of credit, as applicable.

3.8 Team Continuity and Changes to Organizational Structure

Proposers are advised that subsequent to Proposal submission and until Authority's execution of the Contract, unless otherwise approved in writing by the Authority, Proposer's Key Personnel, Proposer's team members, and Guarantor(s) identified by a Proposer in its Proposal may not at any time be removed, replaced or augmented, except in accordance with this Section 3.8.

Requests for removal, replacement or additions of any Key Personnel, team member or Guarantor must be submitted in writing to the Authority Point of Contact. To be considered for approval, the Proposer must submit a written request documenting how the resultant proposed Key Personnel, team member or Guarantor(s) will be equally or better qualified than the Key Personnel, team member or Guarantor(s) identified previously by the Proposer. Requests shall



include supporting documentation, including legal and financial data as well as any other information necessary for qualitative evaluation.

If the request for removal, replacement or addition of Key Personnel, team member, or Guarantor is approved by Authority, Proposer shall submit a copy of Authority's approval letter with its Technical Proposal or Revised Technical Proposal, as appropriate; provided, however, that Authority is under no obligation to approve such requests and may do so within its sole discretion.

3.9 Modification or Withdrawal of Proposals

Any Technical Proposal or Final Proposal submitted to the Authority may be withdrawn before the applicable due date (Technical Proposal Due Date or Final Proposal Due Date) by written notification to the Authority. The only method for a Proposer to modify its previously submitted Technical Proposal or Final Proposal is by withdrawing its Technical Proposal or Final Proposal, in its entirety prior to the applicable due date, by written notification to the Authority. A complete, corrected submission package for the Technical Proposal or Final Proposal may be submitted prior to the applicable due date. The Authority will not consider any modifications to a Proposal offered in any other manner.

3.10 Escrowed Proposal Documentation

Each Proposer shall submit a set of all documentary information generated in preparation of the Price Proposal (the "Escrowed Proposal Documents"). This requirement shall apply to information generated by the Proposer and by all Proposer team members. Proposers shall submit the "Escrowed Proposal Documents Certification" (Attachment W) with the EPD submittal, certifying to the accuracy of the information in the EPDs, by the deadline to submit EPDs set forth in Table 2, Section 3.3 to the ITP.

The EPDs shall contain information in accordance with the "Contents of EPDs" clause at Article 26.4 of the General Provisions regarding the Proposer's assumptions made in calculating the prices included in the Price Proposal. The Proposer shall submit its EPDs in such format as it used in preparing its Proposal. The EPDs shall be organized in a logical fashion to reflect the organization of the Price Proposal.

In the event that the Authority requests revisions to Proposals, BAFOs or one or more clarifications to a Proposer's Price Proposal, the Proposer shall submit one copy of all additional documentary information generated in preparation of the revision, BAFO or clarification, as applicable, including Subcontractor pricing changes. This additional documentation is considered as part of the EPDs.

EPDs shall be delivered to the Authority in a locked fireproof cabinet supplied by the Proposer. The cabinet shall be stored in the Authority's offices or in another location designated by the Authority, with the key held only by the Contractor. Release of EPDs shall be in accordance with the Contract.



Representatives of the Authority and the Apparent Best Value Proposer shall review the EPDs of the Apparent Best Value Proposer prior to Contract award to determine whether they are complete and in compliance with the “Escrowed Proposal Documents” clause at Article 26 of the General Provisions. The purpose of this examination is to ensure that the EPDs are authentic, legible and complete. The Apparent Best Value Proposer shall correct any deficiencies to the EPDs within three days of discovery. The examination shall not include detailed review of, and shall not constitute approval of, proposed manufacturing or construction methods, estimating assumptions, or interpretations of RFP Documents. The examination shall not alter any condition or term of the Contract.

Representatives of the Authority and the Apparent Best Value Proposer shall also organize the EPDs, labeling each page so that it is obvious that the page is a part of the EPDs, and enable a person reviewing the page out of context to determine where it can be found within the EPDs. An index shall be compiled listing each document included in the EPDs and briefly describing the document and its location in the EPDs. The Authority shall have a right to retain a copy of the index.

The EPDs shall be available for joint review by the Apparent Best Value Proposer and the Authority in conjunction with any pre-award discussions and negotiations. Following award of the Contract, the EPDs of the Successful Proposer shall be available for joint review as specified in the Contract.

EPDs for each unsuccessful Proposer will be available for collection after the Contract is signed with the Successful Proposer. EPDs for all Proposers shall be available for collection if all Proposals are rejected or withdrawn.

3.11 Proposer Inquiries

All Proposer Inquiries shall be submitted to Authority via SharePoint using the instructions provided by Authority to potential Proposers registered pursuant to the REOI process. Only questions, inquiries, and requests for clarifications or information submitted by Proposers that have been registered by Authority after submitting an EOI shall be considered by Authority. Proposer Inquiries must be received by the Authority by the last day for submission of Proposer Inquiries set forth in Table 2, Section 3.3 of the ITP. The Authority is contemplating periodic public releases of questions and the Authority’s answers. The Authority may in its sole discretion respond individually to requests that it deems to contain confidential or proprietary information. The Authority reserves the right to disagree with a Proposer’s characterization of the confidentiality of any information the Proposer provides. The Authority may rephrase or consolidate questions and answers as it deems appropriate. The Authority’s answers to Proposer Inquiries shall not be considered part of the Contract.

3.12 One-on-One Meetings

The Authority shall hold one-on-one meetings with potential Proposers at the Authority office in Sacramento. Only those potential Proposers that have been registered by the Authority after having submitted an EOI are eligible to participate in one-on-one meetings. All registered



potential Proposers will be invited to attend one-on-one meetings; however participation shall not be mandatory. The purpose of these meetings is to discuss issues and clarifications regarding the RFP. The Authority reserves the right to disclose any issues raised during the one-on-one meetings, except to the extent that the Authority determines, in its sole discretion, such disclosure would reveal a potential Proposer's confidential business strategies.

One-on-one meetings with registered potential Proposers will be subject to the following:

- a. The Authority will not discuss with any potential Proposer, any potential Proposal other than its own;
- b. Potential Proposers shall not seek to obtain commitments from the Authority in the meetings or otherwise seek to obtain an unfair competitive advantage over any other potential Proposer;
- c. No aspect of these meetings will be intended to provide any potential Proposer with access to information that is not similarly available to other potential Proposers, and no part of the evaluation of potential Proposals would be based on the conduct or discussions that occur during these meetings;
- d. Potential Proposers shall not be entitled to submit a protest based on the Authority's use of one-on-one meetings; and
- e. Persons attending the one-on-one meetings shall be required to sign an acknowledgement of the foregoing rules and to identify all participants from the potential Proposer.

3.13 Alternate Maintenance Facility Locations

Notwithstanding the requirements set forth in the Contract, Proposers may submit a pre-proposal request to the Authority for an exemption from the requirement to build Maintenance Facilities on the Authority-Provided Property. Any such request shall, at a minimum, include the following information:

- a. The proposed alternate locations for the Maintenance Facilities;
- b. The maintenance services to be performed at the alternate locations;
- c. The proposed method to connect the alternate locations to the Mainline (directly or through the Authority-Provided Property);
- d. The performance benefits, if any, that would result from moving maintenance services to the alternate locations; and
- e. The estimated cost savings, if any, the Authority would realize by granting the request.

[To provide further information regarding the exemption process, including the timing, content and approval of such requests and the process to modify the Contract to reflect an exemption.]



3.14 Responsibility to Review RFP

Proposers are responsible to carefully examine the entire RFP, including all Addenda, and all related materials referenced in this RFP. No allowance shall be made to Proposer because lack of such examination.

4.0 Proposal Requirements

The following summarizes the required content, organization and format of Proposals.

In addition to the information described below, the Authority may require confirmation or clarification of information furnished by a Proposer, and/or require additional evidence of qualifications to perform the Work described in this RFP.

4.1 Content

The submittals required for the Technical Proposal, Revised Technical Proposal and Price Proposal are set forth in the Proposal Checklist (Attachment Z).

The Revised Technical Proposal shall include an errata sheet identifying which sections of its previously submitted Technical Proposal have changed. The Revised Technical Proposal shall also include a summary of changes relative to the submitted Technical Proposal that can be no longer than 10 pages. The errata sheet and summary of changes will not be evaluated and will not be counted within the overall page count.

The Price Proposal shall include a completed Price Proposal Form, provided in Attachment I to this ITP. The Price Proposal Form must be properly executed by the Official Representative. In the event of a computational error, unit prices will prevail over extended totals.

All required forms identified in the attachments to this Instruction to Proposers must be included in all Proposal copies and must be signed by hand in the original copy of the Proposal. If erasures or other changes appear on the forms, each erasure or change shall be initialed and dated by the person signing the form.

4.2 Organization

The Technical Proposal, Revised Technical Proposal and Price Proposal shall each be divided into the following sections, as indicated in the Proposal Checklist (Attachment Z):

- Administrative submittals
- Stage 1
- Stage 2
- Stage 3

A blank page should precede each section with an index tab extending beyond the side of the page; these blank pages will not be counted within the page count. The index tab should have the appropriate section number typed thereon.



4.3 Format

Proposals shall be completed in ink or typewritten; and one original copy shall be manually signed. Scanned or faxed responses are not acceptable.

Proposals shall comply with the following requirements:

- a. Proposals shall be written in the English language only and shall provide all pricing and other financial data in United States Dollar denominations.
- b. Technical Proposals submitted in response to this RFP must include one original and six copies in separate 3-ring binders. The original must be clearly marked "Original" on its face and spine, and each copy must be marked with the Proposer's name and numbered 1 through 6 on their spines.
- c. Each Proposer shall include one electronic version of its Technical Proposal in a readable/searchable pdf format on a DVD.
- d. Revised Technical Proposals submitted in response to a request from the Authority and prepared pursuant to this RFP shall consist of a full resubmission, including one original Revised Technical Proposal and six copies in separate 3-ring binders.
- e. Each Proposer shall include one electronic version of its Revised Technical Proposal in a readable/searchable pdf format on a DVD.
- f. Price Proposals submitted in response to this RFP must include one original and one copy in separate 3-ring binders. The original must be clearly marked "Original" on its face and spine, and the copy must be marked with the Proposer's name.
- g. Each Proposer shall include one electronic version of its Price Proposal in a readable/searchable pdf format on a DVD.
- h. Documents shall be prepared in single-spaced type, 12 point font, on 8-1/2" x 11" sheets printed double-sided. A page is considered a single side of an 8-1/2" x 11" sheet. Recycled paper is preferred. Should the Proposer wish to submit materials that benefit from larger format paper sizes such as charts, drawings, graphs and schedules then they should do so sparingly. Large format pages will be included in the page limit.
- i. Pages shall be numbered at the bottom to show the page numbers and total number of pages in the response; (e.g., Page 1 of 20, Page 2 of 20, etc.). Forms need not be numbered consecutively with the main body of the Proposal.
- j. The Proposal shall be no more than ___ [To be provided] pages in length, exclusive of the transmittal letter, resumes as required by Attachment B, and the forms and certifications identified in the attachments.
- k. Brochures, extraneous documentation such as published articles, directories, lengthy client lists, and other miscellaneous materials not specifically requested will not be evaluated.
- l. All names and applicable titles shall be typed or printed below the corresponding signatures.



4.4 Transmittal Letter

The transmittal letter is mandatory but will not be included in the page count. Except for completing any placeholders, Proposers shall use the form of the transmittal letter provided in Attachment A.

4.5 Executive Summary

An Executive Summary is not mandatory. If provided, an Executive Summary will be included in the page count. Proposers may include in an Executive Summary, the key points of their Proposals that they believe highlight their qualifications to provide the Authority with Tier III Trainsets and related maintenance facilities and services. If provided, the Executive Summary should not include any information not fully described in the balance of the Technical Proposal or Revised Technical Proposal, as appropriate, as the Executive Summary will not be separately evaluated.

4.6 Proposal Security

Proposer shall submit a Proposal Bond in the form of the Proposal Bond Form in Attachment J1 or an irrevocable letter of credit in the form of the Proposal Letter of Credit Form in Attachment J2 as part of the Revised Technical Proposal and BAFO (if any).

The Proposal Bond must be provided by a Surety that is registered with the California State Insurance Commissioner, appears on the current Authorized Insurance List in the State of California published by the Office of the Insurance Commissioner, and an A.M. Best's Rating Service classification of "A-XIV" or better.

The issuer of the Proposal Letter of Credit must be a financial institution that is not a Contractor-Related Entity and has a credit-rating for long-term, unsecured debt of not less than "A-/A3."

Each Proposer understands and agrees that the Authority shall be entitled to draw on the Proposal Bond or Proposal Letter of Credit, as appropriate, in its entirety if Proposer does one of the following: (1) submits its Final Proposal as of the Final Proposal Due Date set forth in Table 2, Section 3.3 of the Instructions to Proposers, and withdraws any part or all of its Final Proposal within the Proposal validity period set forth in Section 3.7 of this ITP without the consent of the Authority, or submits its BAFO as of the due date established by Authority for any BAFOs and withdraws any part or all of its BAFO within the Proposal validity period set forth in Section 3.7 of this ITP without the consent of the Authority; (2) refuses or is unable to enter into the Contract as provided in this RFP; (3) refuses or is unable to perform all of the acts or furnish all of the documents required in this ITP; or (4) prior to execution of the Contract, refuses or is unable to satisfy any commitments made in its Final Proposal or BAFO (if any), that are required to be satisfied prior to Contract execution.

The Authority will retain the Proposal Bond or Proposal Letter of Credit, as appropriate, for all Proposers until the Contract has been fully executed, the RFP has been cancelled or the conclusion of the Proposal validity period described in Section 3.7 of this ITP, after which the Proposal Bond or Proposal Letter of Credit, as appropriate, for each unsuccessful Proposer,



except any Proposal Bond or Proposal Letter of Credit that has been drawn upon, will be returned to the respective Proposers. The Proposal Bond or Proposal Letter of Credit, as appropriate, for the Successful Proposer shall be returned at such time as the Successful Proposer has satisfied all conditions of award and execution, including, without limitation, those set forth in Section 10 of the ITP.

Failure to furnish the Proposal Bond or Proposal Letter of Credit, as appropriate, in the proper form and amount, by the Final Proposal Due Date set forth in Table 2, Section 3.3 of the Instructions to Proposers or the due date established by Authority for any BAFOs, may be cause for rejection of a Final Proposal.

4.7 Buy America

Proposers shall comply with the FRA Buy America requirements of 49 U.S.C. § 24405(a). Refer to Attachment E1, Buy America Requirements.

FRA has granted a Waiver in Common for the FRA Buy America requirements of 49 U.S.C. § 24405(a)(1) for the final assembly of two prototype Trainsets. Further information regarding the Waiver in Common is available at:

<http://www.fra.dot.gov/Page/P0185>

Notwithstanding this Waiver in Common, the prototype Trainsets will contain 100% domestic component content unless component waivers have been granted.

The Authority may apply for further waivers, in which case the Authority may amend the RFP to identify the Waivers in Common to be addressed in the Revised Technical Proposal or subsequent revised Technical Proposals, which may be requested if FRA issues subsequent rounds of Waivers in Common.

4.8 Small Business Participation

The Authority seeks a Contractor that understands the policies and requirements set forth in its Small and Disadvantaged Business Enterprise Program, has an effective approach to meeting the Small Business and targeted worker program, and is committed to providing the personnel and outreach program necessary to meet the policies of the Authority. The Small and Disadvantaged Business Enterprise requirements that will apply to Contractor are set forth in the Contract.

Proposers shall identify all Subcontractors and Subconsultants on the Proposer's team, using Attachment D. Proposals shall also include the Proposer's Overall Project Small Business Goal Commitment Affidavit, provided in Attachment F, confirming the Proposer's commitment to aggressively exercise Good Faith Efforts to the satisfaction of the Authority to meet or exceed the overall project Small Business goal of 30 percent. Proposals will be evaluated for compliance with the Small and Disadvantaged Business Enterprise Program. Specifically, the Authority will evaluate if the Proposal meets the commitment of 30 percent and if the Proposer's approach will ensure that this commitment is met during performance of the Contract.



Proposers shall also comply with 41 CFR Part 60, Best Practices of 49 CFR Part 26, Executive Order 11246, and Title VI of the Civil Rights Act of 1964 and related statutes.

Proposers shall identify and discuss specific commitments and innovations in reaching out to Small Business and targeted workers they will bring to the Project. Commitments and innovations that add value to the Project will be scored favorably. In evaluating Proposals, it will be assumed funding for commitments and innovations are included in Proposer's Price Proposal. Consistent with the information provided on Attachment D, provide a list of the SBEs, DBEs, and DVBEs to which you have made a firm contractual commitment for work, together with the scope of work and percentage of work they will perform.

Describe the Proposer's approach and processes to be employed during the performance of the Contract to ensure that the goals of the Authority's Small and Disadvantaged Business Enterprise Program are met. Specifically, provide a description of the planned methodology for achieving the overall 30 percent SB goal, and a description of the Good Faith Efforts the Proposer intends to undertake to achieve the goal. Include your commitments to such items as workshops, technical assistance, seminars, trade fairs, industry forums and other small business focused events. Provide a narrative description and your commitments to innovation in assistance to small businesses such as access to capital, trade credits, surety bonding assistance or forbearance, insurance, and other supportive services.

Provide a narrative discussion of the qualifications and experience of your proposed Small Business Officer (SBO), and describe his/her role and responsibilities for both implementation and compliance with the Authority's Small and Disadvantaged Business Enterprise Program. Describe the SBO's level of authority, placement in your proposed organization chart and percentage of time committed to the Project.

Provide a policy statement that expresses Proposer's commitment to utilize SBs in all aspects of the work, at various levels of responsibility within the Proposer's organization, and states the objectives of the Small Business Performance Plan to be provided under the Contract.

4.9 Guarantors

The ultimate parent company of the Successful Proposer, (or if the Proposer is a consortium, partnership, joint venture, or limited liability company, the ultimate parent company of each member, partner, or joint venture member, or limited liability company as applicable,) will be required to guarantee the obligations of the Proposer under the Contract.

4.10 Joint and Several Liability

If the Proposer is a consortium, partnership, or joint venture, the Proposal shall contain a letter signed by each member, partner, or joint venture member indicating that it accepts joint and several liability for the Proposer's obligations under its Proposal and any resulting contract.



4.11 Financial Capacity

The cost of the Work under the Contract is anticipated to be relatively large and that Work is part of an integrated plan to develop and operate the California High-Speed Rail System. Therefore, the Authority seeks Proposers with the financial capacity to perform the Work successfully in order to reduce financial and delivery risks such that the plan and timetable for developing and operating the system is not impacted. Additionally, the Authority seeks to reduce the risk related to potential cash flow management issues of the Proposer, including the inability of Subcontractors to bear as much financial risk or bonding capacity as the Offeror.

In relation to the Authority's concerns, Proposers shall submit the financial capacity information required under Attachment G. Based on the Authority's evaluation of the financial capacity of a Proposer and its team members, including any Guarantors, the Authority may determine that a Proposer does not have the financial capacity needed to successfully perform the Work. Upon making such a determination, Authority will notify the Proposer in writing and allow the Proposer or Proposer team member, as appropriate, to propose a Guarantor that would provide a guarantee covering the Proposer's (or team member's) performance and financial obligations under the Contract. If the Proposer does not provide a guarantee that the Authority determines is sufficient to give the Proposer the financial capacity needed to successfully perform the Work, the Authority reserves the right to deem the Proposer non-responsive.

5.0 Organizational Conflicts of Interest

The Authority has adopted an Organizational Conflicts of Interest Policy (the "Policy") that will apply to this procurement and the resulting Contract, in addition to the Authority's Conflict of Interest Code and other applicable requirements. The Policy can be found on the Authority's website at:

http://www.hsr.ca.gov/docs/about/doing_business/Organizational_Conflict_Interest_Policy_Final_9152011.pdf

Proposers are advised to carefully review the Policy, and to have their team members review the Policy, since it includes provisions that:

1. Preclude certain firms from participation in this procurement and
2. Affect the ability of the Proposers, their subcontractors and their Affiliates (as defined in the Policy) to enter into business relationships with Authority consultants.

Failure to comply with the Policy in any respect, including the failure to disclose any actual, perceived or potential organizational conflict of interest, may result in serious consequences as described in Section V(2) of the Policy.

An organizational conflict of interest is a circumstance arising out of a Proposer's existing or past activities, business or financial interests, familiar relationships, contractual relationships, and/or organizational structure (i.e., parent entities, subsidiaries, Affiliates, etc.) that results in: (i) impairment or potential impairment of a Proposer's ability to render impartial assistance or



advice to the Authority or of its objectivity in performing work for the Authority; (ii) an unfair competitive advantage for any Proposer submitting a Proposal on an Authority procurement; or (iii) a perception or appearance of impropriety with respect to any of the Authority's procurements or contracts, or a perception or appearance of unfair competitive advantage with respect to a procurement by the Authority (regardless of whether any such perception is accurate). If any such conflict of interest is found to exist, the Authority may:

1. Disqualify the Proposer, or
2. Determine that it is otherwise in the best interest of the Authority to contract with such Proposer and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

Each member of the Proposer team shall fully disclose organizational conflicts of interest in its Technical Proposal or Revised Technical Proposal, as appropriate, using the Organizational Conflict of Interest Disclosure Statement provided in Attachment K1, and the Organizational Conflict of Interest Affidavit, provided in Attachment K2. The refusal to provide the required disclosure, or any additional information required, may result in disqualification of the Proposer. If nondisclosure or misrepresentation is discovered after award of the Contract through this procurement process, the resulting Contract may be terminated.

By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest is discovered following submittal of the Proposal, the Proposer will make an immediate and full written disclosure to the Authority that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts.

6.0 Confidentiality and Ownership of Proposer Work Product

All written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to the Authority during this procurement process, including as part of a response to this RFP (except the Escrowed Proposal Documents) are, upon their receipt by the Authority, the property of the Authority and are subject to the Open Government Laws. None of the aforementioned materials will be returned to the submitting parties. Any materials that are delivered to the FRA are subject to the Freedom of Information Act or other federal open records laws. Proposers should familiarize themselves with the Open Government Laws, including the Public Records Act and Freedom of Information Act. In no event shall the State, the Authority, the FRA or any of their agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of all or a portion of a Proposal submitted in response to this RFP or other information provided in connection with this procurement.

If a Proposer has special concerns about information that it desires to make available to the Authority but which it believes constitutes a trade secret, proprietary information, or other information excepted from disclosure, such Proposer should specifically and conspicuously designate that information as "TRADE SECRET" or "CONFIDENTIAL" in its filed response to this RFP. (This does not apply to the Escrowed Proposal Documents.) Blanket, all-inclusive



identifications by designation of whole pages or sections as containing proprietary information, trade secrets, or confidential commercial or financial information shall not be permitted and shall be deemed invalid. The specific proprietary information, trade secrets, or confidential commercial and financial information must be clearly identified as such. Under no circumstances, however, will the Authority be responsible or liable to the Proposer or any other party for the disclosure of any such labeled materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake, or negligence on the part of the Authority or its officers, employees, contractors, or consultants.

The Authority will not advise a Proposer or any member of a Proposer team as to the nature or content of documents entitled to protection from disclosure under the Public Records Act, Freedom of Information Act (FOIA), U.S. DOT FOIA regulations (49 C.F.R. § 7.17) or other Applicable Laws and implementing regulations, as to the interpretation of the Public Records Act or Freedom of Information Act, or as to the definition of trade secret. The submitting party shall be solely responsible for all determinations made by it under Applicable Law and for clearly and prominently marking each and every page or sheet of materials with "TRADE SECRET" or "CONFIDENTIAL" as it determines to be appropriate. Each submitting party is advised to contact its own legal counsel concerning the Public Records Act, Freedom of Information Act and other Applicable Law and their application to the submitting party's own circumstances. In the event of litigation concerning the disclosure of any material submitted by the submitting party, the Authority's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court, and the submitting party shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk. The submitting party shall reimburse the Authority for any expenses it incurs in connection with any such litigation.

7.0 Proposal Evaluation Process

The selection of the Successful Proposer will be based on a four stage evaluation process described in Attachment B.

8.0 Discussions

The Authority may conduct discussions with Proposers after the submittal of Technical Proposals but before the Final Proposal Due Date. If held, such discussions shall be held with all Proposers in the Competitive Range. The Authority may also use discussions to notify Proposers of issues, concerns or weaknesses the Authority identified in the Proposals. Discussions shall not be scored.

9.0 Proposers' Facility Visits

The Authority may visit the facilities of Proposers, including design offices, manufacturing plants, and maintenance facilities. Such visits, if conducted, may include all Proposers or may be limited to those Proposers in the Competitive Range. The Authority may also visit locations at which to observe rolling stock manufactured by Proposers in operation.



10.0 Negotiations, Contract Award, and Contract Execution

10.1 Limited Negotiations

Following receipt of Final Proposals or BAFOs (if any), the Authority may, at its sole discretion, elect to proceed with award of the Contract without negotiations, or it may proceed with limited negotiations prior to award and execution. Because the Authority also has the right to award a contract without negotiations, all Proposers must commit to entering into the Contract exactly as provided in the RFP.

Any decision to commence limited negotiations regarding the Contract and any topics of negotiation are at the Authority's sole discretion. In such event, the Proposer may raise issues only to the extent they are interrelated with negotiated topics raised by the Authority. Limited negotiations would commence with the Apparent Best Value Proposer. If for any reason the Authority is unable to negotiate a contract with the Apparent Best Value Proposer, the Authority will terminate those negotiations in writing. The Authority may then enter into limited negotiations with the Proposer that received the next highest Final Proposal score, following the above-described process, until a Contract is awarded or all of the Proposals are rejected.

10.2 Contract Award and Execution

10.2.1 Contract Award Recommendation; No Obligation to Award

The Authority's CEO will make a recommendation to the Authority Board of Directors to award the Contract to the Proposer who submitted the Apparent Best Value Proposal. The Authority will not make a recommendation to award the Contract unless the Apparent Best Value Proposer has submitted its EPDs and corrected any deficiencies identified in the examination of the documents. The Authority shall be under no obligation to award the Contract to the Proposer submitting the Apparent Best Value Proposal or to award and subsequently execute the Contract at all.

10.2.2 Contract Award

The Authority's award of the Contract pursuant to this RFP shall not be binding on the Authority until the Contract is executed by the Authority.

10.2.3 Contract Finalization

By submitting its Proposal, each Proposer commits to enter into the form of Contract included in the RFP, without variation or negotiation; except to fill in blanks or include information that the Contract indicates is required from the Proposal.

Following Contract award, the Successful Proposer will cooperate with the Authority to finalize the Contract by filling in blanks and including information from its Proposal as contemplated by the Contract. The Proposal submitted by the Successful Proposer will be incorporated into the Contract as specified in Article 2.1 of the General Provisions. Information provided by the Successful Proposer on Attachment I (Price Proposal Form) will be transferred to Attachment B



(Pricing Commitments) of the Signature Document. The Successful Proposer shall meet with Authority to provide additional details for those items identified as Proposal Commitments in Attachment C of the Signature Document. If the Authority and the Successful Proposer attempt in good faith but cannot finalize a Contract that is satisfactory to the Authority within 30 days of Contract award, the Authority may formally end discussions with the Successful Proposer, and:

1. reject all Proposals;
2. work with the Proposer that received the next highest Final Proposal score to finalize the Contract in accordance with the process described in Section 10.1.

A party shall be deemed to lack good faith in finalizing the Contract if the party does not attend or actively participate in reasonably scheduled meetings, or insists on Contract terms or conditions that conflict with the terms contained in RFP.

10.2.4 Contract Execution

Upon Contract finalization as described in Section 10.2.3, the Authority will deliver 5 sets of execution copies of the Contract to the Successful Proposer, along with a number of sets of execution copies as reasonably requested by Proposer. The Successful Proposer shall obtain all required signatures and deliver all of the execution sets to the Authority, together with the documents described in Section 10.2.4.1, no later than 10 days after receiving the execution sets from the Authority.

If the Successful Proposer is a joint venture, partnership, or limited liability company, the Contract must be executed by all joint venture members, general partners, or members of the Proposer, as applicable. Within 60 Working Days of the Authority's receipt of all required and compliant documents from the Successful Proposer, the Authority will execute the Contract, retain four sets of the Contract and deliver the other executed sets to the Successful Proposer. Final award shall be deemed to have occurred upon delivery of the fully executed sets to the Successful Proposer.

10.2.4.1 Documents to be Delivered with the Executed Contract

The Successful Proposer shall deliver the following items to the Authority concurrently with the Successful Proposer's delivery of the executed Contract by the deadline specified in Section 10.2.4 for the Successful Proposer to execute and deliver the Contract:

1. the name and address of the Successful Proposer's agent for service of legal process for this Project (the Successful Proposer shall not substitute this authorized agent without prior written notice to the Authority);
2. the Successful Proposer's federal Internal Revenue Service Employer Identification Number;
3. evidence that the Successful Proposer, and all affiliates of the Successful Proposer that make sales for delivery into California, hold a California seller's permit issued pursuant to Section 6066 et seq. of the California Revenue and Taxation Code, or are holders of a



certificate of registration issued pursuant to Section 6226 of the California Revenues and Taxation Code;

4. evidence that the Successful Proposer and its team members possess all licenses, registrations, permits and credentials required to perform the Work, including evidence that the Proposer is qualified to conduct business in California and, related to construction of the Maintenance Facilities, a valid Class A (General) License and other specialty licenses applicable to the Project at the time of Contract execution;
5. if not previously submitted in a manner acceptable to the Authority, a copy of the final organizational documents for the Successful Proposer, and for each member or partner if the Successful Proposer is a limited liability company, partnership, joint venture or other form of association;
6. evidence of insurance as required in the Contract;
7. one or more opinion letters from internal or external counsel regarding the matters set forth in Article 39(a), (f), (g), (h), (i), (j), (l) and (n) of the General Provisions;
8. if the Proposer is a limited liability company, partnership, joint venture or any other form of association, a letter signed by each partner or member indicating that each partner or member agrees to be jointly and severally liable for any and all of the duties and obligations of the Successful Proposer under the Contract;
9. Signed Standard Form 204, Payee Data Record; and
10. any other reasonable requirements requested by the Authority during the Contract finalization period.

Delivery of the preceding items is a condition precedent to Contract execution and final award.

Subject to the mutual agreement of the parties otherwise, if following receipt of the information and documents listed in this Section 10.2.4.1, the Authority does not execute the Contract within 60 Working Days, then the Successful Proposer shall have the right to withdraw its Proposal without penalty.

If the Successful Proposer does not comply with the requirements in this Section 10, including execution of the Contract by the date specified in Section 10.2.4, the Authority shall have the right to cancel the Contract award and call upon the Successful Proposer's Proposal Bond or Proposal Letter of Credit, as appropriate, and the Authority may, but is not obligated to, (i) award the Contract to the Proposer whose Final Proposal was the next highest scored Final Proposal, which shall then be deemed the Apparent Best Value Proposal, (ii) re-advertise and complete the Work under a different contract, (iii) cancel the Project, or (iv) pursue any other option it chooses in its sole discretion.

The Contract will not be effective until it has been fully executed and delivered by both of the parties thereto. The Contractor shall be required to comply with all Contract requirements.



11.0 Debriefing of Unsuccessful Proposers

Unsuccessful Proposers may be debriefed, at the Authority's sole discretion, upon their written request submitted to the Authority Point of Contact. Requests for debriefing shall be made no later than three weeks following the notice of proposed award. Debriefings will not be scheduled prior to the notice of proposed award.

A debriefing shall be as follows:

- a. Limited to discussion of the unsuccessful Proposer's Proposal, and may not include specific discussion of any competing Proposal;
- b. Factual and consistent with the evaluation of the unsuccessful Proposer's Proposal; and
- c. Provide information on areas in which the unsuccessful Proposer's Technical Proposal or Revised Technical Proposal had weaknesses or deficiencies.

Debriefings may not include discussion or dissemination of the thoughts, notes or rankings of individual evaluation committee members or advisors assisting in the evaluation process, but may include a summary of the rationale for the contract award recommendation.

12.0 Protest Procedures

12.1 Applicability

This section sets forth the exclusive protest remedies available with respect to this RFP and prescribes the exclusive procedures for protests regarding:

- a. Allegations that the terms of the RFP are:
 - i. Ambiguous;
 - ii. Contrary to legal requirements applicable to the procurement; or
 - iii. Exceed the Authority's authority.
- b. A determination that a Proposal is not responsive to the requirements of the RFP or that the Proposal does not meet all pass/fail requirements.
- c. Allegations of improprieties in the procurement or the procurement process which can only be apparent after submission of Proposals or the Authority's contract award recommendation.

12.2 Required Early Communication for Certain Protests

Protests concerning the issues described in Section 12.1(a) may be filed only after the Proposer has informally discussed the nature and basis of the protest with the Authority, following the procedures prescribed in this Section 12. Informal discussions shall be initiated by a written request for a one-on-one meeting delivered via email to the Authority Point of Contact. The written request should include an agenda for the proposed one-on-one meeting. The Authority will meet with the Proposer as soon as practicable to discuss the nature of the allegations. If



necessary to address the issues raised in a protest, the Authority may make, in its sole discretion, appropriate revisions to the RFP documents by issuing Addenda.

12.3 Deadlines for Protests

Protests concerning the issues described in Section 12.1(a) must be filed as soon as the basis for the protest is known, but no later than 20 days prior to the Final Proposal Due Date. If the protest relates to an Addendum to the RFP, the protest must be filed no later than five days after the Addendum is issued. The failure of a Proposer to file a protest concerning the issues described in Section 12.1(a) within the applicable period shall preclude consideration of those issues in any protest concerning these issues described in Section 12.1(a) and (b).

Protests concerning the issues described in Section 12.1(b) must be filed no later than five days after receipt of a notification of non-responsiveness.

Protests concerning the issues described in Section 12.1(c) must be filed no later than five days after the contract award recommendation.

12.4 Content of Protest

Protests shall state, completely and succinctly, the grounds for protest, its legal authority, and its factual basis, and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Statements shall be sworn and submitted under penalty of perjury. Additionally, all protests shall also contain the name, address, and fax and telephone numbers for the protestor; the RFP number; a request for a ruling by the Authority; all information establishing that the protestor is an interested party for the purposes of filing a protest; and all information establishing the timeliness of the protest.

12.5 Filing of Protest

Protests shall be filed by hand delivery on or before the applicable deadline to the Protest Official with a copy to the Authority Point of Contact, as soon as the basis for the protest is known to the Proposer. Except for protests concerning the issues described under Section 12.1(a), the Proposer filing the protest shall concurrently file a copy of the protest with the other Proposers (whose addresses may be obtained from the Authority's website). The Protest Official for this RFP is:

Mark McLoughlin
California High-Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814

Notwithstanding the existence of a protest, the Authority may continue the procurement process or any portion thereof.



12.6 Comments from other Proposers

Other Proposers may file statements in support of or in opposition to the protest within seven days of the filing of the protest. The Authority shall promptly forward copies of all such statements to the protestor. Any factual determinations shall be sworn and submitted under penalty of perjury.

12.7 Burden of Proof

The protestor shall have the burden of proving its protest by clear and convincing evidence. The Authority may discuss, in its sole discretion, the protest with the protestor and other Proposers. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

12.8 Decision on Protest

The Protest Official shall issue a written decision regarding the protest within 30 days after the filing of the detailed statement of protest. The decision shall be final and conclusive and not subject to legal challenge unless wholly arbitrary. If necessary to address the issues raised in a protest, in its sole discretion, the Authority may make appropriate revisions to this RFP by issuing Addenda.

12.9 Limitation on the Authority's Liability

The Authority shall not be liable for any damages to or costs incurred by any participant in a protest, on any basis, express or implied, and whether or not successful.

12.10 Rights and Obligations of Proposers

Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest provided in this Section 12, and expressly waives all other rights and remedies and agrees that the decision on the protest is final and conclusive. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section 12, it shall indemnify and hold the Authority and its officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's actions. Each Proposer, by submitting a Proposal, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

13.0 Reserved Rights

In connection with this procurement, the Authority reserves to itself all rights available to it under applicable laws, which rights shall be exercised by the Authority at its sole discretion, including without limitation and with or without cause or notice, the right to:



- A. Modify, withdraw or cancel this RFP in whole or in part at any time prior to the execution of a contract by the Authority, without incurring any cost obligations or liabilities and cancel the procurement at any time prior to award;
- B. Issue a new RFP after withdrawal of this RFP;
- C. Accept or reject any and all submittals and responses, or any parts thereof, received at any time;
- D. Modify dates set or projected in this RFP;
- E. Terminate evaluations of Proposals received at any time;
- F. Require confirmation of information furnished by a Proposer, require additional information from a Proposer concerning its Proposal, including any information needed by Authority as part of Stages 1, 2 or 3 of the Proposal evaluation process, and require additional evidence of qualifications to perform the work described in this RFP;
- G. Modify the RFP Process (with appropriate notice to Proposers);
- H. Establish a Competitive Range, hold discussions and/or request BAFOs;
- I. Approve or disapprove changes to the Proposer teams;
- J. Hold meetings, conduct discussions and communicate with one or more of the Proposers responding to this RFP to seek an improved understanding and evaluation of the Proposals;
- K. Add or delete Work;
- L. Negotiate with one or more Proposers concerning its Proposal and/or the Contract;
- M. Suspend and/or terminate negotiations at any time, elect not to commence negotiations with any Proposer and engage in negotiations with other than the Proposer with the Apparent Best Value Proposal;
- N. Retain ownership of all materials submitted in hard-copy and/or electronic format;
- O. Exercise any other right reserved or afforded to the Authority under this RFP;
- P. Waive any informalities, irregularities or omissions in a Proposal, or permit corrections, addenda, and supplements to data submitted with any response to this RFP;
- Q. Adjust, increase, limit, suspend or rescind the evaluation results based on subsequently learned information;



- R. Issue Addenda at any time, including, but not limited to, revisions to the evaluation methodology, evaluation criteria, weightings and selection procedures described in this RFP;
- S. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP or the Proposer;
- T. Permit Proposers to add or delete firms and/or Key Personnel until such time as the Authority declares in writing that a particular stage or phase of its review has been completed and closed;
- U. Add, change or delete Proposers' responsibilities from the information contained in this RFP;
- V. Disqualify any Proposer that changes its Proposal after the Final Proposal Due Date without the Authority's approval;
- W. Disqualify any Proposer based on its responses presented on required forms and certifications; and
- X. Make all final determinations.

