



CALIFORNIA
High-Speed Rail Authority

Design-Build Stipend and Alternative Technical Concepts

February 2016

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EXECUTIVE SUMMARY

The California High-Speed Rail Authority's (Authority) Audit Division has completed an audit of the Authority's design-build stipend and Alternative Technical Concept processes.

The objectives of the audit were to determine if the Authority is paying the design-build stipend in accordance with the Request for Proposal and Instructions to Proposers and to review the Alternative Technical Concept process used by the Authority to accept, deny and value Alternative Technical Concepts. To accomplish these objectives, we reviewed design-build Proposals submitted for Request for Proposals No. HSR 11-16 Construction Package 1 (CP 1) and No. 13-57 Construction Package 2-3 (CP 2-3).

Our audit identified the following issues:

- The invoices submitted by three of the four unsuccessful Proposers for CP 1 did not fully document costs of \$2 million as the Request for Proposal and Instructions to Proposers require.
- The Authority does not currently have an internal process to value net cost savings of accepted Alternative Technical Concepts.

The report contains the following recommendations:

- Policies and procedures established for CP 2-3 should be utilized by staff tasked to review and pay design-build stipends. The contract specific Request for Proposal and Instructions to Proposers should also be provided to Authority employees responsible to review and pay design-build stipends.
- The Authority should develop procedures to determine the net value of cost savings of Alternative Technical Concepts, including which Alternative Technical Concepts from unsuccessful Proposers will be incorporated as an Authority Directed Change and which will be incorporated as a Value Engineering Change Proposal.

BACKGROUND

The Authority issued Requests for Proposals for Design-Build Services No. HSR 11-16 (CP 1) and No. HSR 13-57 (CP 2-3). Qualified teams submitted a Proposal which included Authority accepted Alternative Technical Concepts.

All unsuccessful Proposers were to be paid a stipend based on the Proposer's documented costs incurred in preparation of the proposal which shall not exceed the lesser of \$2 million or the value of the work product delivered, as determined by the Authority. The \$2 million stipend was to be paid within 60 days of execution of the Design-Build Contract by the selected Proposer.

Alternative Technical Concepts are defined in the Instruction to Proposers as any concept submitted by the Proposer to the Authority, which differ from the requirements of the Contract Documents provided in the Request for Proposals and increase performance and quality of the end product as determined by the Authority.

Proposers may incorporate accepted Alternative Technical Concepts into their Proposal, at their discretion. Proposals with or without Alternative Technical Concepts were evaluated against the same technical evaluation factors. Proposals incorporating Alternative Technical Concepts may or may not receive a higher technical rating and any consideration given by the Authority will be determined by the Authority in its sole discretion. The Price Proposal shall reflect all incorporated Alternative Technical Concepts, including any resulting cost savings.

Following award of the Contract, the Alternative Technical Concepts accepted by the Authority and incorporated in the Proposal by the successful Proposer shall be included in the Contract Documents. The Contractor shall be solely responsible for implementing all Alternative Technical Concepts incorporated into the Contract Documents. Notwithstanding anything to the contrary, if Contractor fails to implement an Alternative Technical Concept included in the Contract Documents for any reason, including but not limited to Contractor's failure to obtain the approvals required to implement, Contractor will be required to comply with the original requirements of the Request for Proposal and shall not be entitled to any additional time or adjustment of the contract price.

Prior to execution of the Contract, Alternative Technical Concepts from any unsuccessful Proposers that submitted agreements to receive compensation for work product may, in the Authority's sole discretion, be presented to the selected Proposer for incorporation in the Contract Documents during negotiation of the final terms of the Contract. In addition, following execution of the Contract, Alternative Technical Concepts from unsuccessful Proposers may, in the Authority's sole discretion, be presented to the Contractor in accordance with the "Changes" clause in the Contract General Provisions.

SCOPE AND METHODOLOGY

The audit scope included design-build stipends and Alternative Technical Concept proposals submitted by responsive bidders during the period of January 1, 2013 through June 22, 2015. The audit objectives were to determine if payment of the design-build stipend payments complied with Authority requirements outlined in the Request for Proposal and Instructions to Proposers, as well as to review the Alternative Technical Concept process used to accept, deny, and value Alternative Technical Concepts. The review took place at the Sacramento and Fresno offices.

We reviewed and analyzed the Authority's records and other supporting documents. In addition, the following procedures were performed:

- Review Request for Proposals and Instructions to Proposers specifically related to the design-build stipend payments for CP 1 and CP 2-3.
- Review and test all design-build stipend payments made to unsuccessful Proposers for CP 1 to ensure compliance with the requirements outlined in the Request for Proposals and Instructions to Proposers.
- Review and test all design-build stipend payments made to unsuccessful Proposers for CP 2-3 to ensure compliance with recently developed policy and procedures, and Request for Proposals and Instructions to Proposers requirements.
- Review sections within the Requests for Proposals and Instructions to Proposers related to the submission, review, acceptance and incorporation of Alternative Technical Concepts received by the Authority for CP 1 and CP 2-3.
- Review and test Alternative Technical Concepts with a materiality of one half percent of the contract value, based on the auditor's professional judgment.
- Test the current Authority policies for the submission, review, acceptance and incorporation of ATCs to determine compliance with the Request for Proposal and Instructions to Proposers for CP 1 and CP 2-3.
- Interview Authority employees involved with design-build stipend review and payment.
- Interview Authority employees involved in the Alternative Technical Concept review and incorporation.
- Review any additional documentation provided to determine compliance with the design-build stipend and Alternative Technical Concept requirements set forth in the Request for Proposal and Instructions to Proposers.

The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing issued by the Institute of Internal Auditors. However, the Authority's Audit Division has not undergone a peer review due to the recent formation of the Audit Division and lack of body of work to be reviewed. Until a peer review is performed, we cannot cite that we are in compliance with the International Standards for the Professional Practice of Internal Auditing.

The Division of Program Management provided written dispositions to the findings, which are attached to this report. The Audit Division reviewed the corrective actions and considers them adequate to address the issues identified.

RESULTS AND RECOMMENDATIONS

The results of our audit are discussed below along with recommendations for improvement.

1. All unsuccessful Proposers were paid the design-build stipend for CP 1 & CP 2-3. No issues were noted with payments for CP 2-3; however the invoices in Authority files did not document costs of \$2 million for three of the four Proposers for CP 1.

The invoices on file with the Authority for three of the four Proposers did not document costs totaling \$2 million. The Authority did not have documented internal policies and procedures for CP 1 on the payment of the stipend; however the Request for Proposal and Instructions to Proposers clearly indicates the requirements of paying the design-build stipend, but it appears employees were unaware of the Request for Proposals and Instructions to Proposers provision for CP 1.

Recommendations:

- Policies and procedures established for CP 2-3 should be utilized to review and pay design-build stipends.
 - The contract specific Request for Proposal and Instructions to Proposers should be provided to Authority employees responsible to review and payments of design-build stipends.
2. The Authority does not currently have an internal process to value net cost savings of accepted Alternative Technical Concepts. All Proposers identify a cost savings, which is assessed by the Proposer; however the total net value of Alternative Technical Concepts is not assessed by the Authority for potential savings. The Authority owns the Alternative Technical Concept intellectual property moving forward which can be incorporated into future capital contracts.

Recommendations:

- The Authority should develop policy and procedures to determine the net value and cost savings of Alternative Technical Concepts, including which Alternative Technical Concepts will be incorporated as an Authority Directed Change, and which will be incorporated as a Value Engineering Change Proposal.

Memorandum

DATE: 02/13/2014
TO: Paula Rivera, Audit Chief
FROM: Emily Poffenberger, SSMII, Program Management
CC:
SUBJECT: Response to Design-Build Stipend and Alternative Technical Concepts Report

Attached please find Program Management's response to the subject draft report. Program Management agrees with the findings and has proposed corrective actions to address the findings.

Should you have any questions please contact Emily Poffenberger at 916-403-6928 or emily.poffenberger@hsr.ca.gov.

California High Speed Rail Authority

Draft Report: Design-Build Stipend and Alternative Technical Concepts Audit, Jan 2016

Program Management Response to Draft Report

Item	Result	Recommendation	PM Response	Proposed Corrective Action
1	<p>All unsuccessful Proposers were paid the design-build stipend for CP 1 & CP 2-3. No issues were noted with payments for CP 2-3; however the invoices in Authority files did not document costs of \$2 million for three of the four Proposers for CP 1.</p> <p>The invoices on file with the Authority for three of the four Proposers did not document costs totaling \$2 million. The Authority did not have documented internal policies and procedures for CP 1 on the payment of the stipend; however the Request for Proposal and Instructions to Proposers clearly indicates the requirements of paying the design-build stipend, but it appears employees were unaware of the Request for Proposals and Instructions to Proposers provision for CP 1.</p>	<p>Policies and procedures for established CP 2-3 should be utilized to review and pay design-build stipends.</p> <p>The contract specific Request for Proposal and Instructions to Proposers should be provided to Authority employees responsible to review and payments of design-build stipends.</p>	<p>Agree</p> <p>Agree</p>	<p>As a result of lessons learned from CP 1 and continuous improvement, best practices procedures were established for CP 2-3. The procedures are being formalized to be issued as CHRA's "Stipend Procedure, PROC-PJM-02." The procedure has been circulated to stakeholders and the final comments are being resolved.</p>
2	<p>The Authority does not currently have an internal process to value net cost savings of accepted Alternative Technical Concepts. All Proposers identify a cost savings, which is assessed by the Proposer; however the total net value of Alternative Technical Concepts is not assessed by the Authority for potential savings. The Authority owns the Alternative Technical Concept intellectual property moving forward which can be incorporated into future capital contracts.</p>	<p>The Authority should develop policy and procedures to determine the net value and cost savings of Alternative Technical Concepts, including which Alternative Technical Concepts will be incorporated as an Authority Directed Change, and which will be incorporated as a Value Engineering Change Proposal.</p>	<p>Agree</p>	<p>It is the Contractor's determination what amount of savings they include in their bid for the approved ATCs. The Authority will communicate with staff on how to determine the net value and cost savings of approved ATCs to be incorporated as Authority directed CO, in order to provide a reasonable cost savings the Authority Executives may use for marketing purposes.</p>