

## **Fresno Station Early Works Construction Contract**

**May 1, 2025, Board Presentation**

### **Attachment to the Board Memorandum**

High-Level Exemplar of Key Terms and Conditions (to be further developed and finalized prior to solicitation of bids)

<b>Term</b>	<b>Concept Summary</b>
Type	Construction
Duration	27 months
Estimated Value	\$58,090,000
Approval	Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
Early Works Scope	Historic Fresno station building seismic, accessibility and hazardous materials improvements; relocated utilities to service Historic station building and future Fresno station structure; build-out of plazas servicing the two future Fresno station entrances located in downtown and Chinatown; transit and vehicle electric charging in a resilient mobility hub; solar power generation capacity; bicycle and scooter parking; restored tree canopy and new shade structures; improved stormwater management; park and plaza space for public activities; lease space opportunities; and improved fencing and perimeter security.
Compliance with Plans and Specifications	Contractor shall implement and complete the Work in compliance with the Plans and Specifications (defined herein). Technical Specifications will guide construction work.
Amendment	No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
State Contract Act	<p>The Contractor understands that the Authority must comply with all applicable laws in the State Contract Act, Public Contract Code Section 10100 to Section 10285.5, which are incorporated herein whether or not the individual laws are specifically referenced in the Agreement. The Contractor also acknowledges that the State Contract Act requirements may change and that such modified requirements shall apply to the Project and this Agreement.</p> <p>The Contractor shall ensure its compliance and the compliance of its Subcontractors and include appropriate flow down provisions in each of its lower-tier Subcontracts as required by applicable State Contract Act laws, whether or not specifically referenced herein.</p>

Small and Disadvantaged Business	<p>The Contractor shall comply with the Authority's Small and Disadvantaged Business Enterprise Program. The Program establishes a 25 percent SB utilization goal, which includes a 3 percent Microbusiness (MB) utilization goal, and a separate 3 percent DVBE participation goal. The Contract is anticipated to be funded with blended state and federal funds. For contracts with blended funds, the HSR Business Program Plan also includes a separate 10 percent DBE goal. The SB and MB goals are calculated from state funds while the DVBE and DBE goals are calculated based on total contract dollars. The anticipated proportions of federal to State funding are 25 percent federal and 75 percent State. Contractor shall also comply with 41 C.F.R. Part 60, Best Practices of 49 C.F.R. Part 26, California Executive Orders S-02-06 and D-43-01, Government Code §§ 4532-4535, 11148.5, 12098.4, and 14835-14846, Executive Order S-02-06, Executive Order 11246, and Title VI of the Civil Rights Act of 1964 and related statutes. The Contractor shall establish and implement a Small Business Performance Plan to address how the Contractor will meet the overall SB goal throughout the duration of the Contract. The Contractor shall provide monthly SB utilization reports to reflect the level of small business utilization, including DBE and DVBE on the Contract. Contractor shall also comply with the Department of General Services Small Business Participate and DVBE Participation Reporting Requirements (DGS GTC 18).</p>
Community Benefits Agreement	<p>The Contractor shall comply with the Authority's Community Benefits Policy (Resolution #HSRA 12-30 and POLI-SB-05) and Program, inclusive of the NTHI Plan. The Authority has entered into a CBA with the State Building and Construction Trades Council of California and the Signatory Craft Councils and Local Unions. The Contractor shall comply with the terms and conditions of the executed CBA and shall require each Subcontractor (at all tiers) to comply with the executed CBA.</p>
Bonding	<p>Pursuant to the provisions of Public Contract Code Sections 10221 to-10224, the Contractor shall ensure compliance with all applicable bonding requirements. These provisions are in addition to the bond requirements in Pursuant to the payment bond provisions of Public Contract Code Section 7103 and Civil Code Section 9554 relating to public works contracts.</p> <p>The Contractor shall provide separate payment and performance bonds for the project in the form and in the amount required by the Authority and issued by a California admitted surety. In no case shall the amount of the payment bond be less than the amount of the performance bond. PCC 6825.</p> <p>Payment Bond: 100%. PCC §7103.</p>
Substitution of Securities for Retention	<p>Pursuant to Public Contract Code section 10263, the successful bidder will be permitted to substitute securities for any moneys withheld by the Authority as provided by Public Contract Code section 10261. If the Contractor has substituted securities for any of the Retainage, then the Authority may request that such securities be revalued from time to time, but not more often than monthly. Also, Pub. Contract Code § 22300.</p>
Insurance	<p>Standard insurance coverages and amounts will be required in the contract; dependent upon the insurance structure at the Authority when the solicitation is released. In-house insurance specialist to develop insurance structure.</p>

Payment of Undisputed Invoices	Authority must pay properly submitted, undisputed invoices, refunds or other undisputed payments due the Contractor within 45 days of receipt or notification thereof. Gov. Code § 927.
Subcontractor Progress Payments	Contractor or subcontractor must pay the amount owed to its subcontractor within 7 days of receipt of each progress payment. Bus. & Prof. Code § 7108.5 (as modified by SB 293, 2011).
Release of Retainage at Completion	Within 60 days after completion of the project, Authority must release any remaining retention, provided that if there is a dispute, Authority may withhold an amount not to exceed 150% of the disputed amount. Pub. Contract Code § 7107(c).
Retainage Withholding	5% of Contract Price (retainage may not exceed 5% for contracts after 2016). Pub. Contract Code § 7201.
Limit on Retention Withholding from Subcontractors	No retention to be withheld by Contractor from its subs in excess of amount held under the prime contract. Pub. Contract Code § 7200.
Contractor's Release of Retainage to Subcontractors	Contractor to pay retention to subcontractors within 7 days of its receipt of retention from Authority. 2% penalty for improper withholding. Subcontract may not waive the requirements of the statute. Pub. Contract Code § 7107(d).
Net savings for value engineering	The state or any other public entity in any public works contract awarded to the lowest bidder, may provide for the payment of extra compensation to the contractor for the cost reduction changes in the plans and specifications for the project made pursuant to a proposal submitted by the contractor. The extra compensation to the contractor shall be 50 percent of the net savings in construction costs as determined by the public entity. Pub. Contract Code § 7101.
Ineligible Subcontractors	No Subcontractor shall perform Work if that Subcontractor is ineligible to perform work on public works projects pursuant to Section 1777.1 or Section 1777.7 of the Labor Code. PCC §6109.
Subcontractor Listing Law	The Contractor shall not have the right to make any substitution of identified Subcontractors with a price in excess of ½ of 1% of the difference between: the Total Contract Price and the amount bid for design services.  Subcontractors identified in proposal subject to protections of Subcontractor Listing Law; contractor may not award subcontracts over specified amount to unlisted firms. PCC §4100 et. seq.
Labor Code Adherence	Pursuant to the provisions of Public Contract Code Section 10128, the Contractor shall ensure compliance with the Labor Code provisions relating to public works contracts. All contracts awarded under this part shall comply with the applicable provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code relating to public works contracts and shall contain all the contract provisions required therein.
Prevailing Wage	Prevailing wages must be paid on project. Various associated requirements. Labor Code §1770 to 1781.
Prevailing wages/Registration requirements	Contractor affirms that it is registered with the DIR. Lab. Code §§ 1771.1, 1771.4 (SB 854, 2014).
Payroll Records	Contractor shall implement and effectuate Labor Code's requirements with respect to contractor and subcontractor payroll records. Lab. Code, § 1776 (as amended by AB 551, 2011).

Work Hours	Contractor agrees that for each calendar day during which contractor or sub is required to work more than 8 hours (40 hours/week), contractor must forfeit \$25 (1813(b)). Lab. Code §§ 1810-1815.
Contract Work Hours and Safety Standards Act	No laborer, worker or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. 2 CFR 200, Apx. II(E).
Compliance with Federal Labor Standards	Contractor shall remain in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), for the term of the contract. 2 CFR 200, Apx. II(E).
Compensation	The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
Buy America Compliance	Contractor must use steel, iron, and manufactured goods produced in the U.S. Contractor must provide Buy America certifications with the Contract and each Change Order Proposal. 49 USC 24405(a) and CA6, Att. 1 #17, Att. 1A #11.
Copeland “Anti-Kickback” Act Compliance	The Contractor and its subcontractors are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. See, Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).
Safety Oversight	Contractor shall comply with any federal regulations, laws or policies and other guidance that FRA or DOT may issue pertaining to safety oversight in general, and in the performance of the Contract in particular. CA6, Att. 2 #18.
Workers Compensation	Mandatory inclusion of workers compensation certifications and provisions in the contract. Lab. Code §§ 1860-1861.  Contractor must provide certification prior to performing the work: “I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”
Records Retention	Contractor shall comply with all applicable record retention and access requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and as set forth in OMB Circulars A-87, and A-133.
Public Records Act	Certain documents submitted by a contractor to a public agency are subject to disclosure under the Public Records Act. Gov. Code §§ 6250 et seq.
Freedom of Information Act	Records of federally funded projects may be subject to FOIA and burden is on Contractor to prove exceptions for trade secrets or confidential commercial information. 5 U.S.C. § 552.
Generative AI Disclosure obligations	Contractor shall comply with the Department of General Services Generative AI Disclosure obligations (DGS GTC 21) and shall also immediately notify the State in writing if it: (1) intends to provide GenAI as a deliverable to the State; or (2), intends to utilize GenAI, including GenAI from third parties, to complete all or a portion of any deliverable that materially impacts: (i) functionality of a State system, (ii) risk to the State, or (iii) Contract

	performance. For avoidance of doubt, the term “materially impacts” shall have the meaning set forth in State Administrative Manual (SAM) § 4986.2 Definitions for GenAI.
Rights in Data and Copyright	The Authority and FRA shall retain certain rights in data and copyright; required language from applicable grant agreements to be incorporated (CA6, Att.2, #14).
Patent Rights	Contractor shall notify the Authority of any invention, improvement, or discovery conceived of or reduced to practice relating to the project. Grant Requirement: CA6, Att.2, #13.
Indemnification	Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
Change Orders	<p>Under development with executive leadership to reflect best practices and lessons learned from the Construction Packages.</p> <p>Execution of Change Orders: The Contractor’s acceptance, in writing, of a Change Order shall constitute final and binding agreement to the provisions thereof and a waiver of all claims, including all losses and damages, in connection therewith, whether direct, indirect, or consequential in nature.</p>
Continuing Application of Federal, State, and Local Laws and Regulation	Contractor acknowledges that federal, state and local laws, regulations and requirements may change and the changed requirements will apply to the Contract. CA6, Att. 2 #2(b).
No FRA Obligations to Third Parties	FRA shall not be subject to any obligations to third party contractors/subcontractors or any other person.
Federal Environmental Protection	<p>Contractor shall comply with all applicable federal environmental requirements including, but not limited to:</p> <ul style="list-style-type: none"> <li>• 33 USC 1318 (Part of Federal Water Pollution Control Act)</li> <li>• 42 USC 7414 (Part of Clean Air Act)</li> <li>• 42 USC 4321 et seq. (National Environmental Policy Act)</li> <li>• 42 USC 6962 (Resource Conservation and Recovery Act)</li> <li>• CA6, Att. 2 #21(b)</li> <li>• 2 CFR 200, Apx. II(G)</li> </ul>
False Claims	Contractor must not submit false claims, subject to procedures and penalties set forth by implementing regulations and law.
No Assignment	Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

State Audit	Contractor agrees that the Authority, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
Federal Audit	Authority shall have the right to conduct audits using an independent auditor in accordance with generally accepted government auditing standards covering financial audits and Contractor shall comply with the audit and the requirements of 2 CFR 300.333, 200.501 OMB Circular A-133; OMB Circulars A-87 and A-122; and CA6, Att. 2 #6(b).
Federal Inspection	FRA, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents. 2 CFR 200.336.
Disputes	Contractor shall continue with the responsibilities under this Agreement during any dispute.
Dispute Resolution - Arbitration	The remedy for the resolution of claims arising under contracts made under the provisions of this chapter shall be arbitration pursuant to Chapter 1, Article 7.1 (Resolutions and Contract Claims) of the Public Contract Code.
Liquidated Damages	Can include; under development with executive team. Gov. Code § 53069.85.
Termination for Cause	The Authority may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
Termination for Convenience	Authority may, at any time at its convenience, terminate the Contract in whole or in part, upon 30 days written notice to Contractor. Required by 2 CFR 200 Apx. II(B).
Independent Contractor	Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
Non-Discrimination Clause	During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, etc. ... nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, etc... Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors

	shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.) Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
Non-discrimination in provision of benefits	Contractor shall not discriminate against employees with domestic partners in the contractor's provision of benefits. Pub. Contract Code § 10295.3.
Americans with Disabilities Act	Use of federal funds must be consistent with Americans With Disabilities Act requirements. 42 USC 12101 et seq. and CA6, Att. 2 #20.
Drug-free workplace	The Contractor shall comply with or exceed the U.S. DOT's "Government Requirements for Drug-Free Workplace under 49 C.F.R. Part 32, and shall provide a drug-free workplace by taking specified actions set forth in 49 CFR 32. Also a Grant requirement CA6, Att.2, #11(d).
Certification Clauses	The Contractor Certification Clauses contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
Antitrust Claims	The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections including but not limited to: Government Code Section 4550, 4552, 4553, 4554, as well as Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.
Assignment of Causes of Action	Design-builder and its subs must agree to assign to Authority interest in all causes of action under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (B&P code § 16700 et seq. (antitrust laws). PCC§7110.
Recycling Certification	The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
Timeliness	Time is of the essence in this Agreement.
Child Support Compliance Act	For any Agreement in excess of \$100,000, the contractor acknowledges compliance with Public Contract Code 7110 and Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code.

Priority Hiring Considerations	If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.
Federal Terms	The Authority will attach its standard template of applicable federal terms applicable to the project, including those required by the applicable Grant agreements.
Other State Terms	The Authority will attach its standard template of applicable state terms applicable to the project (and not specifically called out in the body of the contract).
Governing Law	This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
Jurisdiction	Sacramento County.
Unenforceable Provisions	In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
Umbrella Compliance Certificate Incorporation	Contractor will be required to submit a sworn certificate with its bid certifying under oath that it is not in violation of numerous state and federal requirements (i.e., convictions for employing undocumented workers, eligibility to contract under the Labor Code, DIR registration requirements, tax delinquencies, compliance with NLRB orders, etc.). The certificate will be incorporated into the contract.