

**METRO GOLD LINE Foothill Extension
Construction Authority**

Request for Proposals (RFP)

**For Phase 2A Alignment
Design-Build Project**

**RFP C1135
August 30, 2010**

**Addendum #1 Issued November 10, 2010
Addendum #2 Issued December 17, 2010
Addendum #3 Issued December 30, 2010
Addendum #4 Issued January 7, 2011**

VOLUME 1 - INSTRUCTIONS TO PROPOSERS

Proposal Due Date: January 27, 2011, 11:00 A.M.

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS.....	1
1.1 Introduction	1
1.2 Scope of Work.....	1
1.3 Project Goals.....	1
1.4 RFP Documents	2
1.5 Definitions	2
1.6 Procurement Schedule	2
1.7 Property of the Authority	3
1.8 Improper Conduct.....	3
1.8.1 Prohibited Activities.....	3
1.8.2 Non-Collusion	4
1.8.3 Organizational Conflicts of Interest	4
1.9 Subcontractor Listing Law	4
1.10 Equal Employment Opportunity	5
1.11 SBE Compliance	5
1.12 Labor Compliance	6
1.13 Performance Security	6
1.14 Pre-Proposal Submittal Requirement	6
SECTION 2.0 PROCUREMENT PROCESS.....	7
2.1 Method of Procurement	7
2.2 Correspondence and Information	7
2.2.1 Receipt of the Request for Proposal Documents and Other Information	7
2.2.2 Authority Designated Point of Contact.....	7
2.2.3 Rules of Contact	8
2.2.4 Proposer Representative	9
2.2.5 Language Requirement.....	9
2.3 Addenda and Responses to Inquiries	9
2.3.1 Addenda	9
2.3.2 Responses to Inquiries	9
2.4 Public Records Act	10
2.5 Examination of the Request for Proposals Package and Work Site	11
2.6 Changes to the Proposer’s Organization	11
SECTION 3.0 SUBMITTAL REQUIREMENTS.....	12
3.1 Compliant Proposal	12
3.2 General Submittal Requirements.....	12
3.3 Number of Copies	13
3.4 Currency.....	13
3.5 Modifications, Withdrawals, Late Submittals and Validity Period	13
3.5.1 Modifications.....	13
3.5.2 Withdrawal	14
3.5.3 Late Submittals	14
3.5.4 Proposal Validity Period.....	14
3.6 Escrowed Proposal Documentation.....	14

3.6.1	Escrow Instructions.....	15
3.7	No Public Opening	15
SECTION 4.0 EVALUATION OF PROPOSALS.....		16
4.1	Evaluation Factors and Criteria	16
4.1.1	“Pass/Fail” Evaluation Factors	16
4.1.2	Technical Evaluation Factors and Their Relative Importance	18
4.1.3	Financial Proposal Evaluation	20
4.2	Evaluation Guidelines.....	20
4.2.1	Evaluation Factors	20
4.2.2	Communications	22
4.2.3	Commitments in the Proposal	22
4.3	Competitive Range.....	22
4.4	Discussions.....	22
4.4.1	Purpose	22
4.4.2	Procedures	23
4.4.3	Prohibited Conduct	23
4.5	Proposal Revisions and BAFOs	24
4.6	Negotiations	24
4.7	Proposal Stipend.....	24
SECTION 5.0 CONTRACT AWARD AND EXECUTION; POST-AWARD ACTIONS.....		26
5.1	Contract Award.....	26
5.2	Execution of Contract	26
5.3	Debriefing of Unsuccessful Proposers.....	27
SECTION 6.0 PROTESTS		28
6.1	Protests Regarding RFP Documents or Procurement Process.....	28
6.2	Protests Regarding Award.....	28
SECTION 7.0 AUTHORITY’S RIGHTS AND DISCLAIMERS		29
7.1	Authority’s Rights	29
7.2	Disclaimers.....	31

Appendices

- A - Administrative Proposal Requirements
- B - Technical Proposal Requirements
- C - Financial Proposal Requirements
- D - Forms

SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

The Request for Proposals (“RFP”) is issued by the Pasadena Metro Blue Line Construction Authority, also known as the Metro Gold Line Foothill Extension Construction Authority (the “Authority”) to seek proposals (“Proposals”) for the design and construction of the Phase 2A Alignment Design-Build Project (the “Project”). Following completion, the Project will be owned and operated by the Los Angeles County Metropolitan Transportation Authority (“Metro”). Refer to www.metrogoldline.org for additional information regarding the Project.

This solicitation is the second step of a best value procurement. Proposals are only invited from and will only be considered from Shortlisted Proposers (“Proposers”) based on their Statements of Qualifications (“SOQ”) submitted in response to the Request for Qualifications (“RFQ”) issued by the Authority on January 28, 2010.

This document provides instructions to be followed by Proposers in their responses to the RFP. Proposals must comply with these Instructions to Proposers, including the Appendices and Exhibit A (“ITP”) and shall address and/or consider the Project goals identified in Section 1.3.

In accordance with Public Contract Code Section 3300, the Authority has determined that the Design-Builder shall possess a valid Class A (General) License and other specialty licenses applicable to the Project at the time of execution.

1.2 Scope of Work

Refer to the Technical Provisions for a description of the scope of the Work for the Project.

1.3 Project Goals

Authority’s primary goals in connection with this procurement and the Project include:

- A) completion of design and construction in an expedient fashion, thus minimizing impacts to the public;
- B) achievement of high quality standards for design and construction;
- C) maintenance of good relationships with stakeholders;
- D) completion of the Project within Authority’s budget;
- E) achievement of an exemplary safety record; and
- F) satisfying the needs identified in the Final Environmental Impact Report for the Project (FEIR) and meeting all requirements of the FEIR and associated Mitigation Monitoring and Reporting Program.

1.4 RFP Documents

The objective of the RFP is to set forth the requirements governing preparation and submission of Proposals that will be evaluated to determine which Proposer can provide the best value to the Authority in delivering the Project, considering quality, price and other factors.

The RFP includes the following documents (RFP Documents):

- A) Instructions to Proposers (ITP) (including Appendices) (RFP Volume 1);
- B) Contract Documents:
 - 1) Contract (RFP Volume 2);
 - 2) Technical Provisions (RFP Volume 3);
 - 3) Environmental Requirements (RFP Volume 4);
 - 4) Agreements (RFP Volume 5);
- C) Reference Documents; and
- D) Addenda to the RFP issued by the Authority.

The Contract Documents will also include portions of the Design-Builder's Proposal, as specified in Contract Section 1.3.

The ITP and the Reference Documents will not form a part of the Contract. The Authority makes no representation or guarantee as to, and shall not be responsible for, the accuracy, completeness, or pertinence of the Reference Documents, and, in addition, shall not be responsible for any conclusions drawn therefrom. They are made available to the Proposer for the purpose of providing such information as is in the possession of the Authority, whether or not such information may be accurate, complete or pertinent, or of any value.

1.5 Definitions

Refer to Appendix 1 to the Contract for the meaning of various abbreviations, acronyms and terms used but not defined herein.

"Major Participant" shall mean each entity which is a Principal Participant or is a Primary Participant.

"Primary Participant" shall mean each entity with primary responsibility for construction of the Project and each entity with responsibility for 20% or more of the design work for the Project.

"Principal Participants" shall mean the general partners or joint venture members of the Proposer.

1.6 Procurement Schedule

The Authority currently anticipates the following procurement schedule leading to the award of the Contract.

Activity	Due Date and Time
Issue RFP	August 30, 2010
Last date to submit questions and requests to Authority*	January 12, 2011
Last date for Authority to respond to questions and requests	January 17, 2010
Last date to conduct meetings with stakeholders to discuss public information-related issues	January 20, 2010
Last date to submit lead insurance broker representative information	January 7, 2011
Last date for Authority to approve or disapprove lead insurance broker representative information	January 12, 2011
Proposal Date	January 27, 2011
Discussions, if applicable	February 14, 2011 February 15, 2011
Issue Request for Revised Proposals, if applicable	February 16, 2011
Revised Proposals Due, if applicable	March 9, 2011
Discussions, if applicable	March 22, 2011 March 23, 2011
Issue Request for Revised Proposals (Final), if applicable	March 24, 2011
Revised Proposals (Final) Due, if applicable	April 12, 2011
Board Authorization to Execute Contract	April 27, 2011
Distribution of Execution Version of Contract	April 28, 2011
Notice to Proceed	TBD

* Proposers may only submit questions and requests regarding new information provided in Addenda 4 and only if such questions and requests have not been submitted previously.

1.7 Property of the Authority

Subject to Section 2.4, all documents submitted by the Proposer in response to this RFP shall become the property of the Authority and will not be returned to the Proposer, except for the Escrowed Proposal Documents which may be retrieved by the unsuccessful Proposers as provided in Section 3.6.

1.8 Improper Conduct

1.8.1 Prohibited Activities

If the Proposer, or anyone representing the Proposer, offers or gives any advantage, gratuity, bonus, discount, bribe, or loan of any sort to the Authority, including agents or anyone representing the Authority at any time during this procurement process, the Authority shall immediately disqualify the Proposer, the Proposer shall forfeit its Proposal Bond (Form C), the Proposer shall not be entitled to any payment, and the Authority may sue the Proposer for damages.

1.8.2 Non-Collusion

Neither the Proposer nor any Major Participant shall undertake any of the prohibited activities identified in the Non-Collusion Affidavit (Form J).

1.8.3 Organizational Conflicts of Interest

The Authority will only award a Contract to a Proposer whose objectivity is not impaired because of any past, present, or planned organizational conflict of interest, financial or otherwise.

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.

The refusal to provide the required disclosure on Form B, or any additional information required, may result in disqualification of the Proposer for award. If nondisclosure or misrepresentation is discovered after award, the resulting Contract may be terminated.

1.9 Subcontractor Listing Law

The Subletting and Subcontracting Fair Practices Act, sections 4100 et seq. of the California Public Contract Code (the "Subcontracting Act") requires persons bidding on public works contracts to identify certain Subcontractors as part of their Proposals. The Authority has established the requirements referred to in this Section in order to assure compliance with the Subcontracting Act to the extent that it is applicable to this procurement. Section 4109 of the Subcontracting Act permits a contractor to enter into subcontracts at a later date even though no subcontractor was designated in its Proposal, in the event of public necessity. The Authority recognizes that, due to the nature of a design-build contract, it will be impractical for the Proposers to name, at the time the Proposals are made, all Subcontractors who will perform work as described in the Subcontracting Act. The Authority recognizes that certain Subcontractors can only be selected by the Design-Builder after a certain amount of the design work is completed. As a result, the Authority's Board has adopted a resolution determining that public necessity requires the Design-Builder's obligation to identify Subcontractors with a Subcontract or combination of Subcontracts with a price in excess of ½ of 1% of the Total Price (as set forth in Box 1C of Form S) but less than or equal to 4% of the Total Price (as set forth in Box 1C of Form S) to be postponed, subject to the Design-Builder's compliance with the Authority's Subcontractor selection policy.

The Authority's Subcontractor selection policy provides as follows:

The prime contractor awarded the Design-Build-Finance Contract shall, prior to soliciting any bids for performance of work or labor or rendering of services in or about the construction of the Project or for special fabrication and installation of a portion of the work for the Project, submit to the Authority for its review and approval, a reasonable procedure for the conduct of the bidding and approval process (including Authority's approval) applicable to all such subcontracts (or combination of subcontracts with a single subcontractor) with a price in excess of 1/2 of 1% of the total proposal price and less than 4% of the proposal price. Such procedure shall conform generally with the Authority's Administrative Code

and the Instructions to Proposers. The prime contractor shall promptly notify the Authority in writing of the identity of each subcontractor selected.

The prime contractor shall not enter into any subcontracts (or combination of subcontracts with a single subcontractor) with a total price in excess of 1/2 of 1% of the total proposal price and less than 4% of the proposal price, except with subcontractors listed in the Proposal or subcontractors selected in accordance with the foregoing procedure and approved by the Authority. Once a subcontractor approved by the Authority has been selected for any such work, the prime contractor shall not have the right to make any substitution of such subcontractor except in accordance with the provisions of the Subcontracting Act.

Said policy does not apply to Subcontractors with a Subcontract (or combination of Subcontracts) valued at or greater than 4% of the Total Price (as set forth in Box 1C of Form S). All such Subcontractors are required to be listed in the Proposal.

The Proposer is encouraged to review the provisions of the Subcontracting Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized subcontractors or by making unauthorized substitutions as such provisions will apply to this RFP, the Work and the Contract.

1.10 Equal Employment Opportunity

In connection with this RFP and the Contract, the Proposers shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, or being physically challenged. The Proposers shall take affirmative action to ensure that all applicants are treated equally during employment, without regard to their race, color, religion, sex, national origin, age, marital status, or being physically challenged. The areas requiring such affirmative action shall include, but not be limited to, the following: layoff or termination; rates of pay or other forms of compensation; employment; job assignment; upgrading; demotion; transfer; recruitment/recruitment advertising; and selection for training, including apprenticeship, pre-apprenticeship and/or on-the-job training.

1.11 SBE Compliance

The Authority has recently adopted a Small Business Enterprise (“SBE”) Program for businesses interested in providing goods and/or services to the Authority. It is the Authority’s policy to undertake efforts to ensure that small businesses have opportunities to fully participate in its contracts. The SBE Program operates in a race and gender neutral manner. All Proposers, including small businesses, are required to make good faith efforts to achieve established contract goals. A copy of the SBE Program is attached to the Contract as Appendix 6.

The aspirational goal for the Contract is 16%.

Each Proposer is required to provide information in its Proposal as required by the SBE Program, including a statement demonstrating its commitment to comply with the requirements of the SBE Program. The selected Design-Builder will be required to comply with SBE requirements as specified in the Contract.

1.12 Labor Compliance

The Proposers are advised that the Design-Builder must comply with all applicable California Labor Code sections, together with all applicable regulations and the applicable Department of Fair Employment and Housing regulations, applicable Bidder Nondiscrimination and Compliance regulations, and with all applicable federal labor requirements, including those set forth in Appendices 2 and 3 to the Contract. Copies of the prevailing rate of per diem wages are on file at Authority's offices, and they will be made available to any interested party on request.

1.13 Performance Security

Concurrently with execution and delivery of the Contract by the successful Proposer, it will be required to provide Payment and Performance Bonds securing performance of the Contract and meeting all requirements of the Contract. The successful Proposer will also be required to provide a Guaranty on Form Q, from each entity whose financial statements were submitted with the Proposal, except that no such Guaranty will be required from the Proposer or from any Principal Participant. Following review of the financial statements included in the Proposals, the Authority may determine that it is appropriate to obtain additional performance security from a Proposer, and in such event the Authority may offer a Proposer the opportunity to provide such additional performance security.

1.14 Pre-Proposal Submittal Requirement

Based on the fact that Authority will be a named insured on Design-Builder's insurance policy, a Proposer will be ineligible to submit a Proposal unless the Proposer first obtains Authority's approval of the individual serving as its insurance broker's lead representative. No later than 11:00 a.m. Pacific time on the date specified in Section 1.6, each Proposer shall submit to Authority (a) the name of the individual serving as its insurance broker's lead representative who will be responsible for arranging insurance required by the Contract, (b) the company affiliation of such individual, and (c) a brief resume of no more than one page setting forth such individual's basic professional qualifications and licenses. If Proposer uses a team of more than one individual who collectively have the effect of being responsible for arranging insurance required by the Contract, then Proposer shall submit by the date set forth above, the information required in (a), (b), and (c) for each individual who is part of such team. Authority will approve or disapprove the individual(s) submitted no later than the date specified in Section 1.6. A Proposer may only use Authority-approved individuals as described in this Section 1.14.

SECTION 2.0 PROCUREMENT PROCESS

2.1 Method of Procurement

The Contract will be a lump sum, design-build contract procured using a best value selection process as described herein.

The procurement process includes two steps:

Step One RFQ (determination of Shortlisted Proposers)

Step Two RFP (selection of the Design-Builder based on Proposals submitted by Shortlisted Proposers)

Evaluation of Proposals will be based on information submitted in the Proposals or otherwise available to the Authority, and will involve both pass/fail factors and a combined evaluation of technical and financial factors, as further detailed below and in Appendices A, B and C.

2.2 Correspondence and Information

2.2.1 Receipt of the Request for Proposal Documents and Other Information

The RFP and other information may be obtained by Shortlisted Proposers from the person designated as the Authority point of contact in Section 2.2.2. The Authority will provide each Proposer one set of the RFP in electronic format.

2.2.2 Authority Designated Point of Contact

No correspondence or information from the Authority or anyone representing the Authority regarding the RFP or the Proposal process shall have any effect unless it is in compliance with Section 2.2.

The Chief Contracting Officer designated below, or a representative hereafter designated in writing by the Chief Contracting Officer, is the Authority's single contact and source of information for this procurement:

Mitchell S. Purcell, Esq.
Chief Contracting Officer
Metro Gold Line Foothill Extension Construction Authority
406 E. Huntington Drive, Suite 202
Monrovia, CA 91016
email: MPurcell@foothillextension.org

The Authority will only consider questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted in writing by a Proposer. All such questions and requests must be submitted on Form P e-mailed to the Chief Contracting Officer.

All questions and requests must be received at the e-mail address specified above no later than 11:00 a.m. Pacific time on the date specified in Section 1.6. No requests will be considered unless delivered as specified above. Questions may be submitted only by the Proposer's

representative (see Section 2.2.4). The e-mail must include the requestor's name, e-mail address for responses, telephone and fax numbers, and the Proposer he/she represents. However, any question itself shall not include any information identifying the Proposer or any of its team members.

The Authority will deliver copies of each question and response to all Proposers by e-mail. Each Proposer must acknowledge receipt of such e-mail communications. The Authority may rephrase questions as it deems appropriate and may consolidate similar questions. Multiple responses are anticipated. The last response will be issued no later than the date specified in Section 1.6.

In general, the Authority will not consider any correspondence delivered in any other way except as specified above, except the Authority may engage in meetings with Proposers, as it deems necessary. (See Section 2.2.3.)

2.2.3 Rules of Contact

The following rules of contact shall apply starting at the time that the draft RFP is issued and ending upon the earliest to occur of (1) execution of the Contract, (2) rejection of all Proposals or (3) cancellation of this procurement. These rules are designed to promote a fair, unbiased, and legally defensible procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail) or other written communication of any kind.

The specific rules of contact are as follows:

- A) Neither a Proposer nor any of its team members may communicate with another Proposer or members of another Proposer's team with regard to the Project or the Proposals. However, subject to the limitations in Section 1.8.3, a Proposer may communicate with a Subcontractor that is on both its team and another Proposer's team, provided that the Subcontractor may not act as a conduit of information between the teams.
- B) Unless otherwise specifically authorized by the Chief Contracting Officer, a Proposer may contact the Authority only through the Chief Contracting Officer and only in writing (by mail or e-mail, as further specified herein). The Proposer's contacts with the Authority shall be only through a single representative authorized to bind the Proposer.
- C) The Chief Contracting Officer normally will contact a Proposer in writing through the Proposer's designated representative.
- D) Neither a Proposer nor its agents may contact Authority employees, the Authority's board members or staff, its advisors or any of its contractors or consultants involved with the procurement for the Project including, members of the Evaluation Committee and any other person who will evaluate Proposals, except through the process identified above.
- E) Meetings with stakeholders to discuss public information-related issues only may be arranged until and including the last date for such meetings specified in Section 1.6, after which no further contacts will be authorized. The Authority shall be invited to any such meetings through the Chief Contracting Officer. If the Authority is unable to attend any such meeting, the Proposer shall provide a copy

of the minutes of the meeting to the Chief Contracting Officer within 7 days of the meeting.

- F) The Authority may call special meetings (group meetings or one-on-one meetings) with Proposers, as it deems necessary.
- G) The Authority will not be responsible for or bound by: (1) any oral communication, or (2) any other information or contact that occurs outside the official communication process specified herein, unless confirmed in writing by the Chief Contracting Officer.

Any contact by a Proposer determined by the Authority to be improper may result in disqualification of the Proposer.

2.2.4 Proposer Representative

Proposer shall notify the Authority of any changes in its official representative or address identified on Form A of the SOQ. Failure to provide such information in writing may result in the Proposer failing to receive Addenda or other important communications from the Authority, for which the Authority shall not be responsible.

2.2.5 Language Requirement

All correspondence regarding the RFP, Proposal, and Contract are to be in the American English language. If any original documents required for the Proposal are in any other language, the Proposer shall provide an American English translation, which shall take precedence in the event of conflict with the original language.

2.3 Addenda and Responses to Inquiries

2.3.1 Addenda

The Authority may at any time modify conditions or requirements of this RFP by issuance of addenda ("Addenda"). The Authority will provide the Addenda only to the Proposers. Persons or firms that obtain the RFP from sources other than the Authority bear the sole responsibility for obtaining any Addenda issued by the Authority. The Proposal shall include written acknowledgement of receipt of all Addenda. (See Form A.) If there are no addenda, the Proposer shall write "No Addenda" on Form A and add its authorized signature thereto. The Authority will not be bound by, and the Proposer shall not rely on, any oral communication or representation regarding the RFP Documents, or any written communication except to the extent that it is an Addendum to this RFP and is not superseded by a later Addendum to this RFP.

2.3.2 Responses to Inquiries

Each Proposer is responsible for reviewing the RFP prior to the dates specified for submission of inquiries in Section 1.6 and for requesting clarification or interpretation of any discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision that the Proposer otherwise fails to understand. Any such request must be submitted in accordance with Section 2.2.1. The Authority will provide written responses to inquiries received from Proposers as specified above. The Authority does not anticipate issuing any responses to inquiries later than the date specified in Section 1.6. Summaries of the inquiries and responses will be sent to

all Proposers without attribution. The responses will not be considered part of the Contract but may be relevant in resolving any ambiguities in the Contract. Inquiries resulting in any modifications to this RFP will be documented in Addenda.

2.4 Public Records Act

All records, documents, drawings, plans, specifications, and other material relating to the conduct of Authority business, including materials submitted by Proposers, are subject to disclosure if requested by a member of the public pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and any other laws and regulations applicable to the disclosure of documents submitted under this RFP. The Authority's use and disclosure of its records are governed by such laws.

After the announcement of a recommended award, all Proposals received in response to this RFP will be subject to public disclosure. There are a very limited number of exemptions to this disclosure requirement. Under the California Constitution, these exceptions are narrowly construed in favor of disclosure. If a Proposer asserts that there are portion(s) of the Proposal which are exempt from disclosure under the Public Records Act, the Proposer must mark it as such and state the specific provision in the Public Records Act which provides the asserted exemption as well as the factual basis for claiming the exemption. For example, if a Proposer submits trade secret information, the Proposer must plainly mark the information as "Trade Secret" and refer to the appropriate section of the Public Records Act which provides the exemption, as well as provide the factual basis for claiming the exemption. Blanket, all-inclusive identifications by designation of whole pages or sections as containing proprietary information, trade secrets or confidential commercial or financial information is not permitted and shall be deemed invalid. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

If Authority receives a request for information that Proposer has marked as exempt from disclosure under the Public Records Act as described above, the Authority will provide Proposers who submitted such information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction. Under no circumstances, however, will the Authority be responsible or liable to the Proposer, submitting party, or any other party for the disclosure of any such 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. If the Authority chooses to withhold records from disclosure at the Proposer's request and an action is brought against the Authority to compel disclosure, the Proposer shall pay all attorney fees and litigation costs associated with defending that action, including without limitation, the Authority's and the prevailing plaintiff's attorney fees and litigation costs.

The Authority will not advise a Proposer or any other submitting party as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act or other applicable laws, as to the interpretation of the California Public Records Act, or as to the definition of trade secret. The Proposer and any other submitting party shall be solely responsible for all determinations made by it under applicable laws, and for clearly and prominently marking each and every page or sheet of materials as described above. Each Proposer and any other submitting party is advised to contact its own legal counsel concerning the California Public Records Act, other applicable laws and their application to the Proposer's or any other submitting party's own circumstances.

2.5 Examination of the Request for Proposals Package and Work Site

The Proposer is expected to examine carefully the site of the proposed Work and the complete RFP package, including Reference Documents, before submitting a Proposal.

By submitting a Proposal, the Proposer acknowledges that its right to rely on the Authority-furnished information in the preparation of its Proposal is subject to certain limitations as specified in the Contract Documents, and that it is responsible for undertaking such further verifications and inquiries, or otherwise addressing risks, as appropriate to properly address such limitations. The submission of a Proposal shall be considered prima facie evidence that the Proposer has made such examination and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the Contract.

2.6 Changes to the Proposer's Organization

Proposers are advised that, in order for a Proposer to remain as a Shortlisted Proposer, unless otherwise approved in writing by the Authority, the Proposer's organization as identified in the SOQ must remain intact for the duration of the procurement process. If there are any additions or other changes (including deletions) in a Proposer's organization from those shown in the SOQ, the Proposer shall obtain written approval of the change from the Authority prior to submitting its Proposal. Such requests shall be addressed to the Authority at the address set forth in Section 2.2.2 and must be accompanied with the information specified for Proposer in the RFQ, including legal and financial data as well as the information for qualitative evaluation. If any member of the Proposer team is being deleted, Proposer must submit such information as may be required by the Authority to demonstrate that the changed Proposer team, still meets the RFQ criteria. If approved by the Authority, such Proposer shall submit a copy of the Authority's approval letter with the supporting information; provided, however, that the Authority is under no obligation to approve such requests and may do so within its sole discretion.

SECTION 3.0 SUBMITTAL REQUIREMENTS

3.1 Compliant Proposal

The Proposer shall submit a Proposal consisting of an Administrative Proposal, a Technical Proposal and a Financial Proposal that provides all the information required by the ITP. If the Proposal does not fully comply with the instructions contained in the ITP it may be deemed unacceptable.

Each Proposal must be submitted in the format specified in the ITP. The Proposer shall sign each copy of the Proposal submitted to the Authority. Multiple or alternate proposals may not be submitted.

Proposals may be considered unacceptable for any of the following reasons:

- A) If the Proposal is submitted on a paper form or disk other than that furnished or specified by the Authority; if it is not properly signed; if any Form in the Proposal (see Appendix D) is altered except as expressly permitted hereby; or if any part thereof is deleted from the Proposal package;
- B) If the Proposal is illegible or contains any omission, erasures, alterations, or items not called for in the RFP or contains unauthorized additions, conditions, or other irregularities of any kind;
- C) If the Proposer adds any provisions reserving the right to accept or reject an award or to refuse to enter into the Contract following award;
- D) If the Proposer attempts to limit or modify the performance security, if the Proposal Bond is not provided, and/or if information requested by the Authority is not provided;
- E) If the Proposer has submitted multiple or alternate Proposals; and
- F) Any other reason the Authority determines the Proposal to be non-compliant.

3.2 General Submittal Requirements

- A) The Administrative Proposal shall contain the components described in Appendix A, be separated and labeled appropriately and organized in accordance with Appendix A, be enclosed in a sealed container, and shall be clearly marked with the name of the Proposer and the words "Administrative Proposal – RFP C1135."
- B) The Technical Proposal shall contain the components described in Appendix B, shall be consistent with the requirements in the Contract Documents, shall be based on applicable standards in effect as of the Proposal Date, shall be separated and labeled appropriately and organized in accordance with Appendix B, shall be enclosed in one or more sealed containers and shall be clearly marked with the name of the Proposer and the words "Technical Proposal – RFP C1135."

- C) The Financial Proposal shall contain the components described in Appendix C, be separated and labeled appropriately and organized in accordance with Appendix C, shall be sealed within one or more containers separate from the remainder of the Proposal, and shall be clearly marked with the name of the Proposer and the words “Financial Proposal – RFP C1135.”
- D) The Proposal, consisting of the Administrative Proposal, Technical Proposal and Financial Proposal, must itself be enclosed in one or more sealed containers and shall be clearly marked with the name and address of the Proposer and the words “Proposal – RFP C1135 – Phase 2A Alignment Design-Build Project” as well the date on which such materials are submitted. **The Proposal shall be delivered no later than 11:00 a.m. Pacific time on the Proposal Date set forth in Section 1.6 to the Chief Contracting Officer at the address set forth in Section 2.2.2.**
- E) Where certified copies are required, the Proposer shall stamp the document or cover with the words “Certified True Copy” and have the stamp oversigned by the Proposer’s designated point of contact.

3.3 Number of Copies

- A) Eleven copies of the Executive Summary shall be provided in an envelope separate from and in addition to the Administrative Proposal.
- B) One original of the Proposal Bond (Form C) shall be provided, with three certified copies.
- C) One original and ten certified copies of the Administrative Proposal (see Appendix A) shall be provided.
- D) One original and ten certified copies of the Technical Proposal (see Appendix B) shall be provided.
- E) One original and three certified copies of the Financial Proposal (see Appendix C) shall be provided.

3.4 Currency

The Pricing Information shall be priced in U.S.\$ currency only.

3.5 Modifications, Withdrawals, Late Submittals and Validity Period

3.5.1 Modifications

A Proposer may modify its Proposal, or a portion thereof, in writing prior to the specified time for submittal of Proposals. The modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal, or a portion thereof, and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so the Authority can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages or complete forms as described in

Appendices A, B and C. Line item changes will not be accepted. No telegraphic, facsimile, or other electronically transmitted modifications will be permitted.

3.5.2 Withdrawal

A Proposer may withdraw its Proposal only by a written and signed request that is received by the Authority prior to the specified time for submittal of Proposals. Following withdrawal of its Proposal, the Proposer may submit a new Proposal, provided that it is received prior to the specified time for submittal of Proposals.

3.5.3 Late Submittals

The Authority will not consider any late Proposals or late requests to modify or withdraw Proposals. Proposals and/or modification or withdrawal requests received after the Proposal Date will be returned to the Proposer. Each Proposer is solely responsible for assuring that the Authority receives its Proposal and any requests to modify or withdraw a Proposal in accordance with the requirements in this ITP.

3.5.4 Proposal Validity Period

The Proposer agrees that its Proposal will remain valid for 150 days following the Proposal Date. After such period, the Proposals will cease to be valid unless the Proposer(s) and the Authority agree in writing to extend the period of validity. As a condition to the release of the Proposal Bond, the 150-day period of validity must have expired unless there is an agreed upon written extension in which case the release of the Proposal Bond is conditioned upon the expiration of the extended period of validity.

3.6 Escrowed Proposal Documentation

The Escrowed Proposal Documents (“EPDs”) shall contain information regarding the Proposer’s assumptions made in calculating the Proposal Price (as set forth in Box 1A on Form S) and any other price. The Proposer shall submit its EPDs in such format as it used in preparing its Proposal.

Representatives of the Authority and the Proposer shall review the EPDs prior to Contract award to determine whether they are complete. The Authority shall have the right to review the EPDs of each Proposer with each such Proposer in connection with a decision by the Authority to proceed with Discussions and a request for revised proposals or best and final offers (“BAFOs”) as set forth in Sections 4.3, 4.4 and 4.5.

Representatives of the Authority and the Proposer shall also organize the EPDs, labeling each page so that it is obvious that the page is a part of the EPDs and so as to enable a person reviewing the page out of context to determine where it can be found within the EPDs, and shall compile an index 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. If, following the initial organization, the Authority determines that the EPDs are incomplete, the Authority may require the Proposer to supply data to make the EPDs complete. Incomplete EPDs may render the Proposal non-responsive.

The EPDs will be available for each unsuccessful Proposer to collect after the Contract is signed with the successful Proposer or if all Proposals are rejected or withdrawn.

3.6.1 Escrow Instructions

Each Proposer shall deliver the EPDs and one signed original of the Escrow Instructions on Form T to [Title Insurance Company] at the address specified in the Escrow Instructions, within three business days after the Proposal Date. The Proposer shall concurrently deliver four additional originals of the Escrow Instructions on Form T signed by Proposer and [Title Insurance Company] to the Authority at the address specified in Section 2.2.2.

3.7 No Public Opening

There will be no public opening of Proposals. A register of Proposals will be prepared that identifies each Proposer. Such register will be disclosed publically.

SECTION 4.0 EVALUATION OF PROPOSALS

The Administrative Proposal, Technical Proposal and Financial Proposal will be evaluated on a pass/fail basis as indicated in this Section 4.0, and the Technical Proposal and Financial Proposal will be evaluated based on the evaluation factors identified herein. After evaluation committees (the “Evaluation Committees”) have conducted such evaluations, if the Authority elects to hold discussions with and request Proposal revisions or BAFOs from Proposers in the competitive range, the evaluation process will be repeated for such revised Proposals or BAFOs. The Evaluation Committees will provide a report to the CEO regarding the value provided by each Proposal (or revised Proposal or BAFO). The CEO will assess the Proposals (or revised Proposals or BAFOs) and make a recommendation to the Authority’s Board of Directors as to which Proposal (or revised Proposal or BAFO) offers the best value, considering the evaluation factors set forth in the ITP, and providing a ranking of the Proposals (or revised Proposals or BAFOs). The Authority’s Board of Directors may accept the recommendation, may request the CEO to further consider any aspect of the Proposals (or revised Proposals or BAFOs), or may reject the recommendation and terminate the procurement.

When determining the value offered by each Proposal, the Technical and Financial Proposals are approximately equal in importance.

The Authority reserves the right to reject any or all Proposals, to waive technicalities, or to advertise for new Proposals, if, in the judgment of the Authority, the best interests of the public will be promoted thereby.

In putting together their Proposals, Proposers shall address the Project goals identified in Section 1.3.

The Evaluation Committee may obtain assistance from technical, legal and financial experts and consultants, including assistance in pass/fail evaluations and providing recommended ratings for the Technical Proposals.

4.1 Evaluation Factors and Criteria

The factors identified in Section 4.1.1 will be evaluated on a “pass/fail” basis. The Technical Proposal will be evaluated as specified in Section 4.1.2. The Financial Proposal will be evaluated as specified in Section 4.1.3.

A Proposal must receive a “pass” on all “pass/fail” evaluation factors listed in Section 4.1.1 for the Proposal to be further evaluated and rated based on the technical evaluation factors identified in Section 4.1.2 and the price factors identified in Section 4.1.3.

4.1.1 “Pass/Fail” Evaluation Factors

Each Proposal must achieve a rating of “pass” on each “pass/fail” evaluation factor listed in Sections 4.1.1.1 through 4.1.1.3 to receive further consideration. Failure to achieve a “pass” rating on any “pass/fail” factor will result in the Proposal being declared unacceptable and the Proposer being disqualified. Prior to making such determination, the Authority may offer a Proposer the opportunity to provide supplemental information or clarify its Proposal, including the opportunity to identify a guarantor and provide financial information for such entity, or to provide other performance security.

4.1.1.1 Administrative Proposal “Pass/Fail” Evaluation Factors

The Administrative Proposal pass/fail requirements are as follows:

- A) Provision of the certifications and affidavits required in Section A 4.1 of Appendix A.
- B) The organizational documents shall show that the Proposer has legal capacity to undertake design and construction of the Project, shall include appropriate provisions for management and decision-making within the organization as well as for continuation of the Proposer in the event of bankruptcy or withdrawal of any of its members, and shall otherwise be consistent with Project requirements;
- C) The Proposer and its members listed in the Proposer’s SOQ shall not have changed since submission of the SOQ (including any change in ownership), or the Proposer shall have previously advised the Authority of a change, the Authority has consented to such change, and the Proposal includes a true and correct copy of the Authority’s written consent;
- D) Provision of all submittals, properly completed and signed (if required) required by Appendix A; and
- E) Compliance with any other requirements as identified in Appendix A, including provision of an SBE Subcontracting Plan that meets the requirements of the SBE Program and provision of satisfactory evidence of good faith efforts to reach the SBE goal.

4.1.1.2 Financial Proposal “Pass/Fail” Evaluation Factors

The financial pass/fail requirements are as follows:

- A) Provision of financial information as specified in Appendix C showing that the Proposer has the financial capacity to undertake design and construction of the Project, including the capability to effectively manage the cash flow of the Contract;
- B) No change has occurred since SOQ submission that has adversely affected or may adversely affect the ability of the Proposer, from a financial standpoint, to deliver the Project in accordance with Contract requirements;
- C) Provision of all other specified forms and documents, properly completed and signed (if required), and compliance with any other financial requirements, as identified in Appendix C; and
- D) Provision of the Proposal Bond as specified in Appendix C.

4.1.1.3 Other “Pass/Fail” Evaluation Factors

The pass/fail requirements include provision of all required forms included in Appendix D, properly completed and signed (if required), and provision of all information specified in Appendix B, in the manner, format, and detail specified, without alteration of the forms except as expressly permitted by the instructions.

4.1.2 Technical Evaluation Factors and Their Relative Importance

The technical evaluation factors are as follows:

- A) Fixed Facilities and Other Technical Requirements;
- B) Systems;
- C) Key Personnel and Performance History; and
- D) Management Approach.

Each of these factors is of approximately equal importance.

The technical evaluation factors listed in this Section 4.1.2 and the subfactors listed in Sections 4.1.2.1 through 4.1.2.4 will be evaluated and rated using the evaluation guidelines specified in Section 4.2, with special attention given to the desired quality expressed in the statement of each factor and/or subfactor. Proposals that receive a technical quality rating of less than “ACCEPTABLE” for any technical evaluation factor will not be selected for award.

Sections 4.1.2.1 through 4.1.2.4 provide objectives that describe the expectations of the Authority with regard to quality of Work to be performed and the related information to be submitted in the Technical Proposals. Along with the Project Goals (see Section 1.3), these objectives will guide the Authority’s evaluation of the factors and subfactors.

4.1.2.1 Fixed Facilities and Other Technical Requirements

The Authority will evaluate the Proposer’s detailed understanding and approach to progressing the Project, including capabilities, innovation and commitments to the delivery of design and construction solutions that are efficient, compliant, environmentally sound, durable, safe and maintainable and the means of coordination between the design of fixed facilities and systems.

Objective: To assure the Design-Builder has a thorough, well thought-out approach to identifying and addressing the design and associated complexities of the Project including any innovative design solutions.

The Fixed Facilities and Other Technical Requirements evaluation subfactors are listed below:

- A) Civil Works;
- B) Structures;
- C) Architecture & Urban Design; and
- D) Other Technical Requirements.

Each of these subfactors (A) through (E) is approximately equal in importance to the others.

4.1.2.2 Systems

The Authority will evaluate the Proposer's understanding, approach, capabilities, innovation and commitments to the delivery of design and construction solutions that are efficient, compliant, environmentally sound, durable, safe, reliable, compatible, and maintainable.

Objective: To assure the Design-Builder has a thorough, well thought-out, innovative and well-planned approach to identifying and addressing the needs and complexities of the Project through all phases, including design, procurement, construction and commissioning. The Systems technical evaluation subfactors are as follows:

- A) Traction Electrification;
- B) Signaling;
- C) Communications;
- D) System Integration, Testing, and Startup; and
- E) Systems Safety, Security and Assurance.

Each of these subfactors is approximately equal in importance to the others.

4.1.2.3 Key Personnel, Lead Personnel and Performance History

The Authority will evaluate the managerial and technical capabilities and experience of the key personnel and lead personnel identified in the Proposal and will evaluate the performance history of the Major Participants, key personnel, and lead personnel.

Objective: A highly qualified team of technical experts with expertise in and a record of producing quality work in the critical management and technical positions such as: quality control, safety, key design and construction elements, public information and community outreach, utility coordination, and project controls. The team is composed of firms and managers experienced in delivering large, quality projects, on or ahead of schedule with sensitivity to the owner's goals for the project.

4.1.2.4 Management Approach

The Authority will evaluate the Proposer's understanding, approach, capabilities, commitments, and organization with respect to scheduling and timely completion of the Project and the management of the Project, with emphasis on quality, design, and construction.

Objective: A design-build organization that is designed with clear lines of responsibility and well defined roles that respond to the Project and the Authority; that includes integrated specialty subcontractors and subconsultants; that embraces partnering throughout; that contains the empowerment of all levels of the organization to make decisions in coordination with their Authority counterparts and, if need be, a system to elevate issues to ensure rapid decisions; that encourages and facilitates quality through a well defined and executed quality plan for design and construction; that has a disciplined strategy for design, design quality, design review, and obtaining necessary design approvals; that likewise has a comprehensive strategy for construction management, logistics, hauling, access, construction sequencing, minimizing public disruptions, safety, and environmental compliance. Additionally, a well

coordinated network schedule that will reflect the integration of design and construction activities, fast-tracking, obtaining necessary permits, constructability, construction sequencing, and a timely completion; and a well thought-out work breakdown structure that matches the way the Project will be designed, phased and constructed to facilitate administration and payment.

The Management Approach technical evaluation subfactors are as follows:

- A) Design Management—Evaluates how well the Proposer understands and is organized for the integration of design and construction for both fixed facilities and systems, design quality control, and design review and approval for the Project; and
- B) Construction Management—Evaluates how well the Proposer understands and is organized for the construction of a quality Project, with needs for public outreach and empowered problem solving and the expeditious obtaining of necessary permits.
- C) Schedule and Time—Evaluates the integrated scheduling of design and construction and the hauling, access, and maintenance of traffic required to achieve early Project completion and to minimize disruption to the environment and the public, especially the traveling public.
- D) Organization and General Management—Evaluates the Project Control Plan and how well the Proposer is organized for quality, safety, third-party coordination, design and construction to achieve the Project's goals.

Each of these subfactors is approximately equal in importance to the others.

4.1.3 Financial Proposal Evaluation

The Price Proposal will be evaluated as described below. Those portions of the Financial Proposal other than the Price Proposal will be reviewed on a pass/fail basis only.

4.1.3.1 Price Proposal

The Price Proposal will be evaluated based on the Proposal Price (set forth in Box 1A on Form S).

4.1.3.2 Unacceptable Financial Proposal

A Financial Proposal may be deemed unacceptable if the Authority determines, in its sole discretion, that it fails to conform to the conditions of the RFP in any manner. A Financial Proposal may be unacceptable if the Price Proposal is significantly unbalanced relative to the scope of the Work or contains inaccurate, incomplete, and/or unreasonable prices.

4.2 Evaluation Guidelines

4.2.1 Evaluation Factors

The technical evaluation factors, subfactors, and requirements identified in Section 4.1.2 will be evaluated in accordance with the guidelines provided in this Section 4.2.1. The technical evaluation factors and the overall Technical Proposal will be rated by an adjectival

(qualitative/descriptive) method. The following adjectival ratings shall be used in evaluation of each subfactor, technical evaluation factor and the overall technical rating of the Proposal:

EXCEPTIONAL: The Proposer has demonstrated an approach that is considered to significantly exceed stated objectives/requirements in a way that is beneficial to the Authority. This rating indicates a consistently outstanding level of quality, with very little or no risk that this Proposer would fail to meet the requirements of the solicitation. There are essentially no weaknesses (as such term is defined below).

GOOD: The Proposer has demonstrated an approach that is considered to exceed stated objectives/ requirements. This rating indicates a generally better than acceptable quality, with little risk that this Proposer would fail to meet the requirements of the solicitation. Weaknesses, if any, are very minor.

ACCEPTABLE: The Proposer has demonstrated an approach that is considered to meet the stated objectives/requirements. This rating indicates an acceptable level of quality. The Proposal demonstrates a reasonable probability of success. Weaknesses are minor and can be readily corrected.

SUSCEPTIBLE TO BECOME ACCEPTABLE: The Proposer has demonstrated an approach that fails to meet the stated objectives/requirements, as there are weaknesses and/or deficiencies, but they are susceptible to correction through Discussions. The response is considered marginal in terms of the basic content and/or amount of information provided for evaluation but overall, the Proposer is capable of providing an acceptable or better Proposal.

UNACCEPTABLE: The Proposer has demonstrated an approach that indicates significant weaknesses/deficiencies and/or unacceptable quality. The Proposal fails to meet the stated objectives/requirements and/or lacks essential information and is conflicting and/or unproductive. There is no reasonable likelihood of success; weaknesses/deficiencies are so major and/or extensive that a major revision to the Proposal would be necessary.

In assigning ratings the Authority may assign “+” or “-” (such as, “Exceptional -”, “Good +”, and “Acceptable +”) to the ratings in order to more clearly differentiate the ratings.

The term “weakness,” as used herein, means any flaw in the proposal that increases the risk of unsuccessful contract performance. A significant weakness in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance. The term “deficiency” means a material failure of a proposal to meet an RFP requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

Certain evaluation factors include subfactors relating to the different technical disciplines (i.e., structures; landscaping) or different management areas (i.e., design; construction) involved in the evaluation. Each subfactor will be assigned a consensus rating, and all subfactors under a technical evaluation factor will be combined through consensus, taking into account the relative importance of each subfactor (see Sections 4.1.2.1 through 4.1.2.4), to arrive at an overall rating for each such factor. Evaluation factors without subfactors will also be assigned a consensus rating.

The ratings of all the technical evaluation factors will be combined by consensus, taking into account the relative importance of the evaluation factors (see Section 4.1.2), to arrive at the overall rating for the Technical Proposal.

4.2.2 Communications

The Authority may engage in communications with the Proposers after receipt of Proposals, allowing Proposers to provide clarifications to their Proposals. This process will be initiated by delivery of a written request from the Authority to the Proposer identifying the information needed and a date and time by which the information must be provided. The Proposer shall provide the requested information in writing by the date and time indicated. If the requested information is not timely received, the Proposer's ratings may be adversely affected and/or the Proposal may be declared unacceptable.

4.2.3 Commitments in the Proposal

The verbiage used in each Proposal will be interpreted and evaluated based on the level of commitment provided by the Proposer. Tentative commitments will be given no consideration. For example, phrases such as "we may" or "we are considering" will be given no consideration in the evaluation process since they do not indicate a firm commitment.

4.3 Competitive Range

If the Authority determines that discussions with multiple Proposers are advisable, it will establish a competitive range based on a careful analysis of the Technical and Price Proposals, and will schedule discussions with the Proposers found to be within the competitive range.

Proposals that would automatically be excluded from the competitive range and therefore excluded from further consideration include:

- A) Any Proposal that, even after review of supplemental information or clarification provided by the Proposer in response to an Authority request, does not pass the pass/fail evaluation factors;
- B) Any Proposal that, after the initial evaluation, is rated lower than "SUSCEPTIBLE TO BECOME ACCEPTABLE" for any technical evaluation factor or subfactor; and/or
- C) Any Proposal that includes a Price Proposal that is considered unacceptable or is priced so high as to be effectively non-competitive.

4.4 Discussions

The Authority may, at its sole discretion, conduct discussions (that is, one-on-one written or oral exchanges) with the Proposers in the competitive range, with the intent of allowing the Proposers to modify their Proposals and provide revised Proposals or best and final offers ("Discussions").

4.4.1 Purpose

If the Authority decides to engage in Discussions, the areas of Discussions may include the following:

- A) Advising the Proposers of weaknesses, significant weaknesses, and/or deficiencies in their Proposals;
- B) Attempting to resolve any uncertainties and obtaining any significant additional understanding concerning the Proposal;
- C) Resolving any suspected mistakes by calling them to the attention of the Proposers as specifically as possible without disclosing information concerning other competing Proposals or the evaluation process;
- D) Providing the Proposers a reasonable opportunity to submit any further technical or other supplemental information to their Proposals;
- E) Obtaining the best price for the Authority; and
- F) Facilitating execution of a contract that is most advantageous to the Authority, taking into consideration the technical and price factors discussed above.

4.4.2 Procedures

The following specific procedures will apply to Discussions:

- A) Discussions will only be conducted with Proposers in the competitive range. If Discussions are held, they will be held with all Proposers that the Authority determines are in the competitive range;
- B) See Section 2.4 regarding the Public Records Act;
- C) Discussions may be written and/or oral, and more than one round of Discussions may be conducted; and
- D) The Authority will not disclose to any Proposer any information regarding Proposals submitted by other Proposers or Discussions with other Proposers.

4.4.3 Prohibited Conduct

During Discussions, Authority personnel shall not engage in the following conduct:

- A) Revealing a Proposer's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise a Proposer's intellectual property to another Proposer;
- B) Revealing a Proposer's price without that Proposer's permission. However, the Authority may inform a Proposer that its price is considered by the Authority to be too high or too low and may provide information regarding the analysis supporting that conclusion;
- C) Revealing the names of individuals providing reference information about a Proposer's past performance; or
- D) Revealing selection information in violation of the Authority's procurement policies and applicable law.

4.5 Proposal Revisions and BAFOs

Although the Authority reserves the right to hold Discussions and request proposal revisions and BAFOs, the Authority is under no obligation to do so. The Authority may make its selection and award based on the initial Proposals as submitted.

At the conclusion of Discussions (if held), the Authority will request a proposal revision or BAFOs from all Proposers in the competitive range, to provide Proposers an opportunity to revise their Proposals, including correction of any weaknesses, minor irregularities, errors, and/or deficiencies identified to the Proposers by the Authority following initial evaluation of the Proposals. The request for proposal revision or BAFOs will allow adequate time, as determined by the Authority, for the Proposers to revise their Proposals. Upon receipt of the proposal revisions or BAFOs, the process of evaluation will be repeated. The process will consider the revised information and reevaluate and revise ratings as appropriate.

The Authority may require more than one series of proposal revision submissions followed by a request for a BAFO submission, but only if the Authority's CEO makes a written determination that it is in the Authority's best interest to conduct additional Discussions following receipt of proposal revisions or to change the Authority's requirements and require another BAFO submission. In the event that any Proposer requested by Authority to submit a proposal revision or BAFO fails to provide a proposal revision or BAFO, or delivers a proposal revision or BAFO that is deemed unacceptable or late, the Authority shall have the right to consider as valid such Proposer's initial or subsequently revised Proposal and to award the Contract to such Proposer based on its initial or subsequently revised Proposal.

All terms and conditions of this ITP applicable to Proposals shall also be applicable to proposal revisions and BAFOs except as otherwise specified in the request for proposal revisions and BAFOs.

4.6 Negotiations

Following receipt of initial 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 negotiations prior to execution. Any decision to commence 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. Negotiations would commence with the highest ranked Proposer. If for any reason the Authority is unable to negotiate a contract with the highest ranked Proposer, the Authority will terminate those negotiations in writing. The Authority will then enter into negotiations with the next ranked Proposer, following the above-described process, until a contract is awarded or all of the Proposals are rejected.

4.7 Proposal Stipend

Within 90 days after the Authority receives a written request from a given unsuccessful Proposer following execution of the Contract pursuant to this ITP, the Authority will pay a stipend (a "Proposal Stipend") as follows:

- A) If the Authority received three fully responsive Proposals, then the Authority will pay a stipend in the amount of \$500,000 to the highest ranked unsuccessful Proposer and \$250,000 to the second highest ranked unsuccessful Proposer; or

- B) If the Authority received two fully responsive Proposals, then the Authority will pay a stipend in the amount of \$750,000 to the highest ranked unsuccessful Proposer.

Acceptance of the Proposal Stipend by an unsuccessful Proposer entitles the Authority to use the ideas in the unsuccessful Proposer's Proposal. The Authority may provide to the successful Proposer any unsuccessful Proposer's Technical Proposal and negotiate with the successful Proposer inclusion of any technical solutions from the unsuccessful Proposer's Technical Proposal.

SECTION 5.0 CONTRACT AWARD AND EXECUTION; POST-AWARD ACTIONS

5.1 Contract Award

Award of the Contract will be made to the Proposer that the Authority determines has offered the best value to the Authority, taking into consideration the technical and financial factors discussed above. In order to be considered for award of the Contract, a Proposal must pass all the pass/fail factors and receive at least an “ACCEPTABLE” on all technical evaluation factors.

A recommendation for award may be made to the Authority’s Board of Directors by the Authority’s CEO. If the Authority’s Board of Directors makes a decision to award a Contract based on the CEO’s recommendation, the successful Proposer will be contacted by the Authority and advised of its selection. The unsuccessful Proposers will be notified of this selection. No award of a Contract pursuant to this RFP shall be binding on the Authority until a formal written agreement is signed by the CEO.

The Authority shall be under no obligation to award the Contract to the Proposer submitting the lowest priced Proposal or to award the Contract at all.

5.2 Execution of Contract

By submitting its Proposal, each Proposer commits to enter into the form of Contract included in the RFP, without negotiation or variation, except to fill in blanks and include other information that the form of Contract indicates is required from the Proposal and any negotiations as provided in Section 4.6.

Following award, the Authority will finalize the Contract by filling in blanks and including information from the Proposal as contemplated by the form of Contract. Within five days after delivery by the Authority to the successful Proposer of the execution form of Contract, the successful Proposer shall deliver to the Authority the following:

- A) Signed Contract (5 executed duplicate originals);
- B) Performance security (Payment and Performance Bonds, Guaranty(ies) if required and any additional performance security required by the Authority (5 executed duplicate originals));
- C) Insurance certificates required in the Contract;
- D) Evidence as to the authority of the signatories to the Contract, bonds and Guaranty(ies);
- E) Opinion of counsel in Form R (with regard to the Contract and any Guaranty); and
- F) Evidence of licensing (construction licenses held by the Proposer and professional registration information for the Designer’s officer, director, employee or agent in responsible charge).

Failure to comply with the above may result in cancellation of the award and forfeiture of Proposal Bond, in which case, the Authority may (but is not obligated to) proceed to award the Contract to the next highest ranked Proposer.

The Contract shall not be effective until it has been signed by both the Proposer and the Authority.

5.3 Debriefing of Unsuccessful Proposers

Unsuccessful Proposers shall be debriefed upon their written request submitted to the Chief Contracting Officer within a reasonable time.

Debriefing shall:

- A) Be limited to discussion of the unsuccessful Proposer's Proposal and may not include specific discussion of a competing Proposal;
- B) Be 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 had weaknesses or deficiencies.

Debriefing 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 selection decision and Contract award.

SECTION 6.0 PROTESTS

This Section 6.0 sets forth the exclusive protest remedies available with respect to this RFP. Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies and agrees that the decision on any protest, as provided herein, shall be final and conclusive unless wholly arbitrary. These provisions are included in this RFP expressly in consideration for such waiver and agreement by the Proposers. Such waiver and agreement by each Proposer is also consideration to each other Proposer for making the same waiver and agreement.

6.1 Protests Regarding RFP Documents or Procurement Process

A Proposer may protest the terms of the RFP Documents or the procurement process prior to the time for submission of Proposals on the grounds that (a) a material provision in the RFP Documents is ambiguous; (b) any aspect of the procurement process is contrary to legal requirements applicable to this procurement; or (c) this RFP exceeds, in whole or in part, the authority of the Authority. Protests regarding the RFP Documents shall be filed only after the Proposer has informally discussed the nature and basis of the protest with the Authority in an effort to remove the grounds for protest.

Protests regarding the RFP Documents or the procurement process shall completely and succinctly state the grounds for protest and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest.

Protests regarding the RFP Documents or the procurement process shall be filed by hand delivery to the CEO at Metro Gold Line Foothill Extension Construction Authority, 406 E. Huntington Drive, Suite 202, Monrovia, California 91016, as soon as the basis for protest is known to the Proposer, but in no event later than ten business days before the Proposal Date, provided that protests regarding an Addendum shall be filed no later than five business days after the Addendum is issued. The Proposer is responsible for obtaining proof of delivery.

No hearing will be held on the protest, but the CEO, or his designee, whose decision shall be final and conclusive, shall decide it, on the basis of the written submissions. The CEO, or his designee, will distribute copies of the protest to the other Proposers and may, but need not, request other Proposers to submit statements or arguments regarding the protest and may, in his or her sole discretion, discuss the protest with the protestant. The Authority shall issue a written decision responding to each substantive issue raised in any protest to each Proposer. If necessary to correct any error, omission or ambiguity identified by the protest, the Authority will make appropriate revisions to the RFP Documents by issuing Addenda. The failure of a Proposer to raise a ground for a protest regarding the RFP Documents or the procurement process shall preclude consideration of that ground in any protest of a selection unless such ground was not and could not have been known to the Proposer in time to protest prior to the final date for such protests. The Authority may extend the Proposal Date, if necessary, to address any such protest issues. The Authority's decision shall be final.

6.2 Protests Regarding Award

Protests regarding any award of the Contract shall be decided in accordance with the Authority's Administrative Code, relevant excerpts from which are attached hereto as Exhibit A.

SECTION 7.0 AUTHORITY'S RIGHTS AND DISCLAIMERS

7.1 Authority's Rights

The Authority may investigate the qualifications of any Proposer under consideration, may require confirmation of information furnished by a Proposer, and may require additional evidence of qualifications to perform the Work described in this RFP. The Authority reserves the right, in its sole and absolute discretion, to:

- A) Reject any or all Proposals;
- B) Issue a new RFP;
- C) Cancel, modify, or withdraw the entire RFP;
- D) Issue Addenda;
- E) Modify the RFP process (with appropriate notice to Proposers);
- F) Enter into Discussions and solicit BAFOs from the Proposers;
- G) Appoint an evaluation committee(s) and evaluation team(s) to review Proposals and seek the assistance of outside technical, legal and financial experts and consultants in Proposal evaluation;
- H) Approve or disapprove the use of particular subcontractors and/or substitutions and/or changes in a Proposer's organization;
- I) Revise and modify, at any time before the Proposal Date, the factors it will consider in evaluating Proposals and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, the Authority shall circulate an Addendum to all Proposers setting forth the changes to the evaluation criteria or methodology. The Authority may extend the Proposal Date if such changes are deemed by the Authority, in its sole discretion, to be material and substantive;
- 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) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Proposals;
- L) Waive weaknesses, informalities, and minor irregularities in Proposals, permit corrections, and seek and receive clarifications to a Proposal;
- M) Waive or permit submittal of addenda and supplements to data previously provided with any responses to this RFP;

- N) Approve or disapprove changes in the Proposer team or Proposal (a substitution of any of the Major Participants will be carefully scrutinized and may result in disqualification of the Proposer);
- O) Accept other than the lowest price proposal;
- P) Add or delete Work;
- Q) Disqualify any Proposer that changes its submittal without Authority approval;
- R) Negotiate with one or more Proposers concerning its Proposal and/or the Contract;
- S) Suspend and/or terminate negotiations at any time, elect not to commence negotiations with any responding Proposer and engage in negotiations with other than the highest ranked Proposer;
- T) Hold the Proposals and Proposal Bonds under consideration for a maximum of 150 days after the Proposal Date until the final award is made;
- U) At no cost to Authority, modify all or any part of the financing aspects of the RFP at any time prior to Contract award and modify the RFP accordingly;
- V) Retain ownership of all materials submitted in hard-copy and/or electronic format; and/or
- W) Refuse to issue an RFP to a Proposer; refuse to consider a Proposal, once submitted; or reject a Proposal if such refusal or rejection is based upon, but not limited to, the following:
 - 1) Failure on the part of the Proposer, a Principal Participant or any Person holding (directly or indirectly) a 15% or greater interest in the Proposer to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing contracts with the Authority or Metro;
 - 2) Default on the part of the Proposer, a Principal Participant, the Designer, or any Person holding (directly or indirectly) a 15% or greater interest in the Proposer under previous contracts with the Authority or Metro;
 - 3) Unsatisfactory performance of work under previous contracts with the Authority or Metro by the Proposer, a Principal Participant, the Designer, or any Person holding (directly or indirectly) a 15% or greater interest in the Proposer;
 - 4) Existence of a notice of debarment or suspension under Authority or federal regulations to the Proposer, a Principal Participant, the Designer, or any Person holding (directly or indirectly) a 15% or greater interest in the Proposer;
 - 5) Submittal by the Proposer of more than one Proposal in response to this RFP under the Proposer's own name or under a different name;

- 6) Existence of an organizational conflict of interest under Section 1.8.3, or evidence of collusion in the preparation of a proposal or bid for any Authority design or construction contract by (a) the Proposer, a Principal Participant, the Designer, or any Person holding (directly or indirectly) a 15% or greater interest in the Proposer and (b) other Proposers or bidders for that contract;
- 7) Uncompleted work or default on a contract in another jurisdiction for which the Proposer, a Principal Participant or any Person holding (directly or indirectly) a 15% or greater interest in the Proposer is responsible;
- 8) Any other reason affecting the Proposer's ability to perform, or record of business integrity; and/or
- 9) The Proposer is not otherwise qualified and eligible to receive an award of the Contract under applicable laws and regulations.

7.2 Disclaimers

This RFP does not commit the Authority to enter into a Contract and, except as provided in Section 4.7, does not obligate the Authority to pay for any costs incurred in preparation and submission of Proposal(s) or in anticipation of a Contract. By submitting a Proposal, a Proposer disclaims any right to be paid for such costs.

In no event shall the Authority be bound by, or liable for, any obligations with respect to the Work or the Project until such time (if at all) as the Contract, in form and substance satisfactory to the Authority, has been executed and authorized by the Authority and approved by all required authorities and, then, only to the extent set forth in a written Notice to Proceed.

In submitting a Proposal in response to this RFP, the Proposer is specifically acknowledging these disclaimers.

EXHIBIT A

METRO GOLD LINE FOOTHILL EXTENSION CONSTRUCTION AUTHORITY ADMINISTRATIVE CODE TITLE III, CHAPTER 2, SECTION 10, AMENDED AS OF FEBRUARY 25, 2009

SECTION 10: PROTEST PROCEDURES

A. A party that has timely submitted a bid or proposal in response to any procurement of the Authority may file a Protest objecting to the award of a contract.

B. In order for a protest to be considered properly and timely filed, the protest must:

1. Be filed in writing with the Chief Executive Officer of the Authority, within five (5) calendar days after publication of the written recommendation for award.
2. Be filed by an actual bidder or proposer responding to the procurement. No other party has standing to protest.
3. Identify the specific procurement number involved.
4. Identify the specific recommended action or decision being protested.
5. Specify in detail the grounds of the protest, the facts supporting the protest and the status of the protester.
6. Include all relevant supporting documentation with the protest at the time of submittal.

If a protest does not comply with each and all of the above six requirements, the protest will not be considered and will be returned to the protester.

C. The Chief Executive Officer of the Authority will establish an independent team to evaluate the merits of the protest and render a decision on whether or not to deny the protest. The Chief Executive Officer will notify the protester in writing of the decision within five (5) calendar days.

D. If the decision is to deny the protest, the contract shall be recommended to the Board for award, or executed, if previously awarded by the Board subject to resolution of the protest. If the decision is to uphold the protest, a recommendation will be made to the Board to reject all proposals or bids, cancel the Request for Proposals or Invitation for Bids and solicit new proposals or bids, or award the contract to another proposer. If the recommendation for award is overturned by the Board, the previously recommended proposer may itself file a protest with the Chief Executive Officer within five (5) calendar days of the Board's decision.