



## **REQUEST FOR PROPOSALS (RFP)**

**RFP Number: 12-31-113-00**

**To Design and Construct the State Route 91 Corridor Improvement  
Project**

**Through a Design-Build Contract**

**Volume I**

## **INSTRUCTIONS TO PROPOSERS (ITP)**



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## TABLE OF CONTENTS

<b>1</b>	<b>General Information.....</b>	<b>1</b>
1.1	Definitions.....	1
1.2	Project Goals.....	1
1.3	General Project Description and Scope Of Work.....	3
1.3.1	General Project Description.....	3
1.3.2	Scope of Work.....	3
1.3.3	Project Environmental Status.....	3
1.4	Procurement Schedule.....	4
1.5	Documents Comprising the RFP.....	5
1.5.1	Reference Materials.....	5
1.6	General Provisions Regarding Proposals.....	5
1.6.1	Proposal Contents.....	5
1.6.2	Inclusion of Proposal in Contract Documents.....	6
1.6.3	Commitments in the Proposal.....	6
1.6.4	Ownership of Proposal and Applicability of California Public Records Act.....	6
1.7	Project Funding and Financing.....	6
1.8	Federal Requirements.....	7
1.8.1	General Obligations.....	7
1.8.2	DBE Project Goal and Design-Build Contract Specific DBE Requirements.....	7
1.9	Labor Compliance.....	7
1.10	toll system integration work.....	8
1.11	Contractor's license.....	8
<b>2</b>	<b>Procurement Process.....</b>	<b>9</b>
2.1	Procurement Method.....	9
2.2	Receipt of the Request For Proposal Documents, Communications, and Other Information.....	9
2.2.1	Authorized Representative.....	9
2.2.2	Designation of Proposer Authorized Representative.....	10
2.2.3	Rules of Contact.....	10
2.2.4	Language Requirement.....	11
2.3	Question and Response Process, and Addenda.....	11
2.3.1	Questions and Responses Regarding the RFP.....	11
2.3.2	Addenda.....	12
2.4	Pre-Proposal Submittals.....	13
2.5	Pre-Proposal Meetings.....	13
2.5.1	General Informational Meetings.....	13
2.5.2	One-on-One Meetings.....	13
2.5.3	Questions and Responses during One-on-One Meetings.....	14
2.5.4	Statements at Meetings.....	14
2.6	Confidentiality/Public Records Act Disclosure Requests.....	14
2.6.1	Disclosure Waiver.....	14
2.6.2	Observers during Evaluation.....	14
2.6.3	Confidential Materials.....	14
2.6.4	Following Award.....	15
2.6.5	Litigation.....	15
2.6.6	Exceptions.....	16
2.7	RCTC Studies and Investigations.....	16

2.8	Examination of RFP and Site Access.....	16
2.8.1	Examination of RFP Documents.....	16
2.8.2	Site Access.....	16
2.8.3	Right-of-Way.....	16
2.9	Errors.....	17
2.10	Improper conduct.....	17
2.10.1	Non-Collusion.....	17
2.10.2	Organizational Conflicts of Interest.....	17
2.10.3	Restrictions on Participation.....	17
2.10.4	Participation on More than One Team.....	19
2.11	Changes in Proposer’s Organization.....	19
<b>3</b>	<b>Alternative Technical Concepts.....</b>	<b>20</b>
3.1	Alternative Technical Concepts gENERAL.....	20
3.2	Pre-ATC Concept Requirements.....	20
3.3	Submission of ATCs.....	21
3.3.1	ATC Submittal Requirements.....	21
3.4	RCTC Review of ATCs.....	23
3.5	Incorporation of ATCs in the Contract Documents.....	24
3.6	Confidentiality.....	24
<b>4</b>	<b>Submittal of Proposals and Acceptance by RCTC.....</b>	<b>25</b>
4.1	General Submittal Requirements.....	25
4.1.1	Proposal Due Date.....	25
4.1.2	Signatures Required.....	25
4.1.3	Consequences of Failure to Follow Requirements.....	25
4.1.4	Requirement to Submit a Compliant Proposal.....	25
4.1.5	Format.....	26
4.1.6	Additional Requirements for Proposal Delivery.....	26
4.2	Technical Proposal Submittal.....	27
4.2.1	General.....	27
4.2.2	Proposal Security and Escrow Agreement.....	27
4.3	Financial Proposal Submittal.....	27
4.3.1	Portions of Financial Proposal Submitted Directly to RCTC.....	27
4.3.2	Portions of Financial Proposal Submitted to Escrow.....	27
4.4	Currency.....	28
4.5	Modifications, Withdrawals, and Late Submittals.....	28
4.5.1	Modifications to a Proposal.....	28
4.5.2	Withdrawal and Validity of Proposals.....	28
4.5.3	Late Proposals.....	28
4.6	Forfeiture of Proposal Security.....	28
4.7	Acceptance of Delivery by RCTC.....	29
4.8	Costs Not Reimbursable.....	29
<b>5</b>	<b>Evaluation and Post-Selection Process.....</b>	<b>30</b>
5.1	Organization of the RCTC Evaluation Subcommittees.....	30
5.2	Best-Value Determination.....	30
5.3	Pass/Fail and Responsiveness Evaluation.....	31
5.3.1	Technical Proposals.....	31
5.3.2	Financial Proposals.....	32
5.3.3	RCTC Right to Exclude Proposals from Consideration or Waive Mistakes.....	32
5.4	Evaluation of Technical Proposal by TPES.....	32

5.4.1	Technical Proposal Evaluation Factors .....	33
5.4.2	Evaluation Guidelines .....	34
5.4.3	Technical Score .....	34
5.5	Evaluation of Financial Proposal by FPES .....	34
5.5.1	Present Value of the Contract Price .....	34
5.5.2	Schedule Adjustments .....	35
5.6	RCTC Evaluation of Technical and Financial proposals .....	35
5.7	Requests for Clarification .....	36
5.8	Requests For Proposal Revisions .....	36
5.9	Identification of Apparent Best-Value Proposal .....	36
5.10	Recommendation to Commission .....	36
5.11	Finalization of Contract Documents; Post-Selection Process .....	37
5.12	Post-Selection Deliverables .....	37
5.12.1	Documents to be Submitted Following Award .....	37
5.12.2	RCTC Comments on Post-Selection Deliverables .....	38
<b>6</b>	<b>Final Award and Execution; Post-Execution Actions .....</b>	<b>39</b>
6.1	Final Award, Execution, and Delivery of Contract .....	39
6.1.1	Contract Documents .....	39
6.1.2	Documents to be Delivered by Proposer with Executed Contract .....	39
6.2	Debriefings .....	41
6.3	Payment to Unsuccessful Proposers .....	41
6.4	Disposition of Escrowed Materials Following Conclusion of Procurement Process ..	42
<b>7</b>	<b>Protests .....</b>	<b>43</b>
7.1	Applicability .....	43
7.2	Required Early Communication for Certain Protests .....	43
7.3	Deadlines for Protests .....	43
7.3.1	RFP Terms .....	43
7.3.2	Responsiveness or Pass/Fail Determinations .....	43
7.3.3	Contract Award .....	43
7.4	Content of Protest .....	43
7.5	Filing of Protest .....	43
7.6	Comments from Other Proposers .....	44
7.7	Burden of Proof .....	44
7.8	Decision on Protest .....	44
7.9	Protestant's Payment of Costs .....	44
7.10	Rights and Obligations of Proposers .....	44
<b>8</b>	<b>RCTC's Rights and Disclaimers .....</b>	<b>45</b>
8.1	RCTC Rights .....	45
8.2	RCTC Disclaimers .....	46

Exhibit A – Definitions and Acronyms

Exhibit B – Technical Proposal Instructions

Exhibit C – Financial Proposal Instructions

Exhibit D – Required Forms

Exhibit E – Summary and Order of Proposal

Exhibit F – Form of Stipend Agreement

Exhibit G – RCTC SR-91 Conflict of Interest Policy

Exhibit H – One-on-One Meeting Protocols

## Instructions to Proposers

### 1 GENERAL INFORMATION

This Request for Proposals (as amended from time to time, the "RFP") is issued by the Riverside County Transportation Commission ("RCTC") to seek competitive proposals (individually a "Proposal" and collectively, "Proposals") for design and construction of the State Route 91 Corridor Improvement Project ("Project") as more specifically described herein and in the form of the Design-Build Contract ("Contract") and the Technical Provisions ("TP") included in this RFP. RCTC will select the design-build contractor for the Project (the "Design-Builder") in accordance with the procurement method described in Section 2.1.

RCTC is issuing the RFP to those Proposers prequalified based on RCTC's evaluation of Statements of Qualifications ("SOQs") delivered to RCTC on October 21, 2010 in response to the Request for Qualifications for the Project issued on September 2, 2010 (as amended, the "RFQ").

Proposers must comply with these Instructions to Proposers ("ITP") during the procurement and in their responses to the RFP. Proposers shall also take the Project goals identified in Section 1.2 below into consideration in preparing their Proposals.

All forms identified in this ITP are found in Exhibit D unless otherwise noted. All times in this ITP are Pacific Standard Time ("PST") or Pacific Daylight Savings Time ("PDT"), as applicable.

#### 1.1 DEFINITIONS

Refer to Exhibit A hereto for the meaning of various capitalized terms and acronyms used herein, and refer to Appendix 1 to the Contract for the meaning of capitalized terms and acronyms used, but not defined herein or in Exhibit A of this ITP.

#### 1.2 PROJECT GOALS

RCTC aspires to adhere to certain values in connection with this procurement and the Project. Those values include:

- (a) Safety of employees, workers, and the traveling public
- (b) Open and transparent communications between all parties
- (c) Accountability in meeting time, budget, and quality criteria
- (d) Integrity through the honoring of personal commitments
- (e) Meeting project commitments made to Riverside County voters from the Measure A sales tax
- (f) Delivering excellent service to OCTA 91 Express Lanes customers
- (g) Providing travel options to Riverside County residents in the region

As the Project has progressed, the Project goals identified in the RFQ have been advanced to reflect specific objectives as they relate to each goal of the Project.

- a) Achievement of Project substantial completion no later than October 2017 and final Project acceptance no later than April 2018.
  - Development of a Project schedule that demonstrates effective coordination and cooperation with the toll systems integrator to achieve the successful and timely opening of the Toll Facilities.
  - Development of a Project schedule that demonstrates early relief to the traffic movements associated with the I-15 NB to SR-91 WB connectors.
  - Development of a fast-track Project schedule that allows for overlapping work phases, leading to timely completion.
  - Implementation of Project improvements that reduce congestion while saving travel time for the general public.
- b) Implement an effective safety program.
  - Development of a superior safety program that protects the health and safety of employees, workers, and the traveling public.
- c) Construct a high-quality Project with improved roadway safety to accommodate traffic volumes, as defined in the Project scope.
  - Development of a quality program that meets or exceeds the requirements of the Contract Documents and that reflects an understanding of and compliance with the technical and management criteria and Governmental Rules.
  - Development of an enhanced aesthetics and landscaping program that reflects an understanding of the Project requirements and a plan for effective coordination and cooperation with the stakeholders.
  - Achievement of recognition in sustainable solutions that demonstrates leadership and practices that enhance the environmental, economic, and social-cultural balance through Project implementation activities.
- d) Minimize impact on the public during Project construction.
  - Development of an effective maintenance of traffic program that includes proper planning, advance notifications, and communications to mitigate the time impact and inconvenience to residents, the traveling public, local businesses, and public institutions.
- e) Maintain positive public relations during construction through an effective public information program and efficient maintenance of traffic.
  - Development of a proactive community outreach program that includes community involvement; effective, responsive communications regarding construction activities; and other activities to mitigate the inconvenience to residents, the traveling public, and local businesses.
  - Development and implementation of a Disadvantaged Business Enterprise (“DBE”) Performance Plan that seeks to provide supportive services and contract opportunities to DBEs.

The goals, values, and desired outcomes set forth in this Section 1.2 are intended to provide Proposers with some further background into the Project and its evolution, but are not intended to affect, alter, limit, constrain, or change the evaluation criteria (including subcriteria) set forth in Section 5.4.

### **1.3 GENERAL PROJECT DESCRIPTION AND SCOPE OF WORK**

#### **1.3.1 General Project Description**

The proposed State Route (“SR”) 91 Corridor Improvement Project (“Project”) will increase the capacity of the severely congested SR-91 corridor by extending the existing Orange County Transportation Authority (“OCTA”) SR-91 Express Lanes approximately 7.5 miles east into Riverside County, to Interstate 15 (“I-15”). The Project also includes improvements from the I-15/SR-91 interchange to McKinley Street and direct connectors to the tolled express lanes from SR-91 south on I-15 to Ontario Avenue. The Project is sponsored by RCTC, in cooperation with the California Department of Transportation (“Caltrans”), and is in conformity with the charter of Measure A (Riverside County). The scope of the Project is set forth in the Contract Documents, which compose Volume II of the RFP Documents.

The estimated cost of this Design-Build project (in 2010 US dollars) is approximately **\$700,000,000**.

RCTC is the procuring and contracting agency for the Project, working in cooperation with Caltrans and the Federal Highway Administration (“FHWA”). Caltrans and FHWA will have certain oversight and approval rights with respect to the Project (including Caltrans’ rights to review, comment, and/or approve certain Project design submittals and certain change orders). In addition, Caltrans will provide certain oversight and technical services to the Project. RCTC and Caltrans have entered into a cooperative agreement setting forth their respective roles and responsibilities with respect to development, design, and construction of the Project. That cooperative agreement is referenced in the Contract and included in the Contract Documents (Volume II of the RFP Documents). The Contract Documents, including the Technical Provisions, set out the roles and relationships among RCTC, Caltrans, and FHWA in detail.

#### **1.3.2 Scope of Work**

Design-Builder’s work (“Work”) generally includes all work and efforts required to design and construct the Project in accordance with the requirements of the Contract Documents. A more specific description of the scope of the Work is set forth in the Technical Provisions.

#### **1.3.3 Project Environmental Status**

The Project is currently undergoing California Environmental Quality Act/National Environmental Policy Act (“CEQA/NEPA”) environmental review by RCTC and Caltrans. It is important for Proposers to note, at this time, that the proposed Project remains in the environmental process and that a record of decision (“ROD”) has not been obtained. Federal regulation (23 CFR 636.109) allows for the issuance of the RFP prior to signature of the ROD. Additional alternatives, including a no-build alternative, are being considered in the environmental process, and it is possible that the Project scope may be modified through the environmental process or that a no-build alternative may be adopted. Nothing contained in this RFP is intended to modify, limit, or otherwise constrain the environmental process or commit RCTC or any other entity to



undertake any action with respect to the Project, including any procurement or the final design and construction of the proposed Project.

RCTC currently anticipates that a ROD will be issued for the Project in fall 2012. RCTC anticipates that Proposals will be submitted after receipt of the ROD. A draft Environmental Impact Report/Environmental Impact Statement (“EIR/EIS”) resides in Volume III (Reference Materials). Design-Builder’s scope of work with respect to anticipated environmental parameters are set forth in the Contract Documents, including the “Design-Builder Environmental Requirements” appearing in TP Attachment 6-1 (Project Environmental Commitment Requirements).

#### 1.4 PROCUREMENT SCHEDULE

The following represents the current schedule for the procurement:

Milestone	Date	Time
Issue Final Request for Proposals	July 26, 2012	3:00 PM PT
General Information Meeting with Proposers and Third Parties	July 26, 2012	TBD
Last Day for Submission of First Round of Comments & Pre-ATC Submittal Concept Packages	August 16, 2012	3:00 PM PT
Initial Round of One-on-One Meetings with Proposers to Discuss Contract Documents and Pre-ATC Concepts	August 27, 28, 29 & 30, 2012	TBD
Second Round of One-on-One Meetings with Proposers (ATCs)	September 13 & 14, 2012	TBD
Last Date for Submittal of Key Personnel	September 14, 2012	3:00 PM PT
Last Date for Submittal of Final RFP Questions	October 19, 2012	3:00 PM PT
Final Round of One-on-One Meetings with Proposers to Discuss Contract Documents (Optional)	October 29 & 30, 2012	TBD
Last Date for Submittal of Changes in Organization	November 1, 2012	3:00 PM PT
Deadline for Submittal of ATCs	November 7, 2012	3:00 PM PT
Last Date for RCTC Response to Proposers’ Questions	November 20, 2012	TBD
Last Date for RCTC ATC Responses	November 26, 2012	3:00 PM PT
Proposal Due Date	January 14, 2013	3:00 PM PT
Anticipated Award	TBD	TBD

All dates set forth above and elsewhere in the RFP are subject to change, at RCTC's sole discretion, by Addendum.

## **1.5 DOCUMENTS COMPRISING THE RFP**

The RFP Documents consist of the volumes listed below, and any other documents that may be issued by Addendum, as such documents may be amended and supplemented.

- (a) Volume I –this ITP (including exhibits and forms)
- (b) Volume II – the Contract Documents
- (c) Volume III – the Reference Materials

Refer to Section 1.3 of the Contract for a list of the Contract Documents and their respective order of precedence and to Volume III for the Reference Materials.

### **1.5.1 Reference Materials**

The Reference Materials are included in the RFP for the purpose of providing certain information to Proposers that is in RCTC's possession. RCTC has not determined whether the Reference Materials are accurate, complete, pertinent, or of any value to Proposers. The Reference Materials will not form a part of the Contract between RCTC and the Design-Builder. Except as may be expressly provided otherwise in the Contract Documents, RCTC makes no representation, warranty, or guarantee as to, and shall not be responsible for, (i) the accuracy, completeness, or pertinence of the Reference Materials (including any information, reports, or studies about site conditions, geotechnical conditions, Utilities, or structures and bridge design); (ii) any recommendations, extrapolations, interpretations, or analyses contained in the Reference Materials; and (iii) any interpretations, extrapolations, analyses, or conclusions drawn therefrom. Although the Reference Materials may include interpretations, extrapolations, analyses, and recommendations concerning data, design solutions, technical issues and solutions, and constructions means and methods, such interpretations, extrapolations, analyses, and recommendations are (i) preliminary in nature and, in many cases, are obsolete; (ii) not intended to express the views or preferences of RCTC or any other Governmental Entity or to represent any statement of approval or acceptance thereof by RCTC or any other Governmental Entity; and (iii) not intended to form the basis of a Proposer's design solutions, technical solutions, or construction means and methods. Proposers shall use or not use the Reference Materials at their sole risk and remain solely responsible and liable for (x) all investigations and analyses relating to the Project, including those relating to site conditions, geotechnical conditions, Utilities, structures and bridge design; (y) the preparation of their Proposals; and (z) any design and construction solutions, means, and methods that they select, in each case, without regard to anything contained in the Reference Materials, except as otherwise expressly provided in the Contract Documents.

## **1.6 GENERAL PROVISIONS REGARDING PROPOSALS**

### **1.6.1 Proposal Contents**

As used in this procurement, the term "Proposal" means a Proposer's complete response to the RFP, including (a) a Technical Proposal and (b) a Financial Proposal. Requirements for the Technical Proposal and the Financial Proposal are set forth in Exhibits B and C, respectively, and a checklist showing the required contents of the entire Proposal is found in Exhibit E. The

Proposal shall be organized in the order listed in Exhibit E and shall be clearly indexed. Each Proposal component shall be clearly titled and identified and shall be submitted without reservations, qualifications, conditions, or assumptions. Any failure to provide all the information and all completed forms in the format specified or any submittal of a Proposal subject to any reservations, qualifications, conditions, or assumptions may result in RCTC's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

### **1.6.2 Inclusion of Proposal in Contract Documents**

Portions of the successful Proposal will become part of the Contract Documents, as specified in the Contract. All other information is for evaluation purposes only and will not become part of the Contract Documents.

### **1.6.3 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 because they do not indicate a firm commitment.

### **1.6.4 Ownership of Proposal and Applicability of California Public Records Act**

All documents submitted by the Proposer in response to the RFP shall become the property of RCTC and will not be returned to the Proposer. Additionally, if Proposer accepts the stipend offered by RCTC, as specified herein, the concepts, ideas, and other information contained in the Proposal shall become the property of RCTC, without further action on RCTC's part.

Subject to the exceptions specified herein, all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, and other graphic and visual aids submitted to RCTC during this procurement process, whether included in the Proposal or otherwise submitted, become the property of RCTC upon delivery to RCTC and will not be returned to the submitting parties.

All material submitted by Proposers, including Proposals, are subject to the provisions of the California Public Records Act (Government Code §§ sections 6250 *et seq.*) (the "Public Records Act") and any other laws and regulations applicable to the disclosure of documents submitted under this RFP. RCTC's use and disclosure of its records are governed by such laws.

Proposers should familiarize themselves with the provisions of the Public Records Act requiring disclosure of public information, and exceptions thereto. In no event shall RCTC or any of its agents, representatives, consultants, directors, officers, or employees be liable to a Proposer or Proposer team member for the disclosure of any materials or information submitted in response to the RFP. See also Section 2.6.

## **1.7 PROJECT FUNDING AND FINANCING**

RCTC's plan of finance contemplates that RCTC, using RCTC sales tax, State, and/or federal funds (including Transportation Infrastructure Finance and Innovation Act ["TIFIA"] financing) will fund the design and construction of the Project. Payments will be made in accordance with the Contract Documents.

RCTC submitted a TIFIA letter of interest to USDOT on December 22, 2011 and received notification on April 24, 2012 that it is invited to submit a TIFIA application. The approximate loan amount sought by RCTC is \$444 million. Additional details about the status of RCTC's pursuit of TIFIA financing will be provided to Proposers as it becomes available.

## **1.8 FEDERAL REQUIREMENTS**

### **1.8.1 General Obligations**

Proposers are advised that the Project will require the use of federal funds. Accordingly, applicable federal law and FHWA regulations, including those set forth in Appendix 14 to the Contract, will govern the Project's procurement and contract documents. RCTC reserves the right to modify the RFP to address any concerns, conditions, or requirements of the FHWA. Proposers shall be notified by Addendum of any such modifications.

### **1.8.2 DBE Project Goal and Design-Build Contract Specific DBE Requirements**

The DBE Program requirements, stipulated in Title 49 Code of Federal Regulations, Part 26 (49 CFR Part 26), apply to this Project. In response to these requirements, RCTC has adopted Caltrans' DBE Policy and has established a DBE Goal for the Project. The Design-Build Contract Specific DBE Requirements are set forth in Appendix 4 to the Contract. The Proposer is required to make Good Faith Efforts, as defined in 49 CFR Part 26, to meet the DBE Project goal.

All Proposers are required to submit, with their Proposals, a draft DBE Performance Plan (no more than 10 pages in length) describing how the Proposer plans to implement the Design-Build Contract Specific DBE Requirements, including the DBE goal for the Project. The draft DBE Performance Plan must address all elements identified in Section D of Appendix 4 to the Contract.

As a condition to award of the Contract, the selected Proposer is required to provide RCTC with a final DBE Performance Plan that meets the requirements set forth in Appendix 4 to the Contract. This DBE Performance Plan will be subject to review, comment, and approval by RCTC prior to and as a condition of final award of the Contract. The successful Proposer shall be required to revise the submitted DBE Performance Plan to incorporate and address RCTC's comments.

Proposer's compliance with RCTC's DBE Requirements shall be governed by all applicable federal DBE regulations, including 49 CFR Part 26, as well as applicable requirements set forth in the Contract Documents, including Appendix 4 to the Contract

## **1.9 LABOR COMPLIANCE**

Proposer is advised that Proposer must comply with all applicable requirements of the California Labor Code, including those set forth in Appendix 16 to the Contract, together with all applicable regulations (8 CCR §§, title 8, sections 16000 *et seq.*) and the Department of Fair Employment and Housing regulations set forth in CCR, title 2, sections 8101 *et seq.*, Proposer Nondiscrimination and Compliance (2 CCR §§ *et seq.*), and with all applicable federal labor requirements, including those set forth in Appendix 14 to the Contract.

Pursuant to Section 1773 of the California Labor Code, the general prevailing wage rates in the county in which the Work is to be done have been determined by the Director of the California

Department of Industrial Relations (the "DIR"). These wages are set forth in the General Prevailing Wage Rates for this Project, available at the address set forth in Section 2.2.1 and also available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov>. The federal minimum wage rates for this Project, as predetermined by the United States ("US") Secretary of Labor, are set forth in Attachment 3 to Appendix 14 of the Contract. Addenda to modify the federal minimum wage rates, if necessary, will be issued to all recipients of this RFP. Future effective general prevailing wage rates, which have been predetermined and are on file with the DIR, are referenced, but not printed, in the general prevailing wage rates.

In addition, the Project will be subject to the California Department of Industrial Relations' Compliance Monitoring Unit ("CMU") for labor compliance oversight and enforcement.

#### **1.10 TOLL SYSTEM INTEGRATION WORK**

Design-Builder will be required to construct the civil elements of the electronic toll infrastructure as set forth in the Contract Documents, but the design, installation, integration, operation, and maintenance of the electronic toll collection system for the tolled managed lanes portion of the Project will not be included in Design-Builder's scope of work, and, except as otherwise set forth in the Contract Documents, RCTC will retain responsibility for such work. Design-Builder will be required to coordinate its work with the toll systems integrator retained by RCTC to perform the toll collection systems installation and toll systems testing and acceptance as more specifically set forth in the Contract Documents.

#### **1.11 CONTRACTOR'S LICENSE**

In accordance with Public Contract Code Section 3300, RCTC 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 Contract execution.

## 2 PROCUREMENT PROCESS

### 2.1 PROCUREMENT METHOD

This RFP is issued pursuant to section 6800 *et seq.* of the Public Contract Code (the “Code”), authorization from the California Transportation Commission (“CTC”) dated as of April 7, 2010 (the “CTC Authorization”), and other applicable provisions of California and federal law. RCTC will select the Design-Builder through a competitive sealed proposal method using best-value selection criteria as authorized by the Code and the CTC Authorization.

RCTC will award the Contract (if at all) to the responsive and responsible Proposer offering a Proposal that meets the standards established by RCTC and that is determined by RCTC, through evaluation based upon the criteria set forth in the Code, the CTC Authorization, and the RFP, to provide the best value to RCTC.

RCTC will accept Proposals only from the prequalified Proposers. RCTC will not review or consider alternative Proposals or Proposals with options.

### 2.2 RECEIPT OF THE REQUEST FOR PROPOSAL DOCUMENTS, COMMUNICATIONS, AND OTHER INFORMATION

The RFP will be issued to prequalified Proposers in electronic format on the secure website for the Project ([http://www.rctc.org/sr91\\_design\\_build.asp](http://www.rctc.org/sr91_design_build.asp)).

RCTC shall provide prequalified Proposers with the address of the website related to this procurement that RCTC will maintain. The website access criteria will be provided separately to each prequalified Proposer, and each will be required to treat the address as confidential information and to check the site regularly for Addenda to this RFP and for other procurement-related information, including Reference Materials.

#### 2.2.1 Authorized Representative

Except as otherwise provided in ITP Section 7.2, all correspondence and submissions in connection with this RFP should be directed to RCTC’s Authorized Representative, at the following address:

Riverside County Transportation Commission  
4080 Lemon Street, 3rd floor  
Riverside, CA 92501  
Mailing address: P.O. Box 12008  
Riverside, CA 92502-2208  
Attention: Matt Wallace – Procurement Manager  
Phone: 951-787-7141  
Fax: 951/787-7906  
E-mail: [SR91DesignBuild@rctc.org](mailto:SR91DesignBuild@rctc.org)

From time to time during the procurement process or during the term of the Contract, RCTC may designate another Authorized Representative or authorized representatives to carry out some or all of RCTC’s obligations pertaining to the Project.

All correspondence shall be clearly labeled on the envelope:

State Route 91 Corridor Improvement Project  
“To Be Opened by RCTC Authorized Representative Only”

## **2.2.2 Designation of Proposer Authorized Representative**

Prior to issuance of this RFP, Proposer shall have submitted to RCTC the name and address of a representative authorized to receive documents, notices, and Addenda and act on behalf of Proposer relating to this procurement (“Proposer Authorized Representative”). Proposer shall further notify RCTC of any changes in the Proposer Authorized Representative or the address for any notices or Addenda to be sent to Proposer by RCTC. Failure to identify a Proposer Authorized Representative in writing or to notify RCTC of any changes thereto may result in the Proposer failing to receive Addenda or other important communications from RCTC. RCTC is not responsible for any such failure.

## **2.2.3 Rules of Contact**

From the date of issuance of the RFQ until May 6, 2012, the rules of contact provisions in the RFQ were applicable to this procurement. Starting on the date the industry review package was issued, which was May 7, 2012, and ending on the earliest of (i) execution and delivery of the Contract, (ii) rejection of all Proposals by RCTC or (iii) cancellation of the RFP, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (email), or formal written communication.

The specific rules of contact are as follows:

- (a) No Proposer nor any of its team members may communicate with another Proposer or its team members with regard to the RFP or either team’s Proposal, except that (i) subcontractors that are shared between two or more Proposer teams may communicate with their respective team members so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams and (ii) this prohibition does not apply to public discussions regarding the RFP at any RCTC sponsored informational meetings.
- (b) Each Proposer shall designate one designated representative responsible for contact with RCTC, and shall correspond with RCTC regarding the RFP only through RCTC’s Authorized Representative and the Proposer Authorized Representative.
- (c) No Proposer or representative thereof (including lobbyists or similar consultants) shall have any ex parte communications regarding the RFP or the procurement described herein with any member of the Riverside County Transportation Commission, OCTA, Caltrans, California Transportation Commission, the City of Corona, Riverside County and other Stakeholders or with any RCTC staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance in writing by the Authorized Representative, in his/her sole discretion. Proposer requests to contact Stakeholders shall be submitted in writing and shall identify (1) the Stakeholder that the Proposer intends to contact, including the specific individual(s) Proposer intends to contact, if possible; and (2) the specific purpose and subject matter of the proposed contact. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or participation in public

- meetings of RCTC, including the Riverside County Transportation Commission, or any public or Proposer workshop related to the RFP.
- (d) Any communications determined by RCTC, in its sole discretion, to be improper may result in disqualification.
  - (e) Any official information regarding the Project will be disseminated in writing, on RCTC letterhead, and signed by RCTC's Authorized Representative or designee.
  - (f) RCTC will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

Proposer shall note that no correspondence or information from RCTC or anyone representing RCTC regarding the RFP or the Proposal process in general shall have any effect unless it is in compliance with Section 2.2.3(e).

## **2.2.4 Language Requirement**

All correspondence regarding the RFP, Alternative Technical Concepts ("ATCs"), Proposal, and the Contract Documents are to be in the English language. If any original documents required for the Proposal are in any other language, Proposer shall provide a certified English translation, which shall take precedence in the event of a conflict with the original language.

## **2.3 QUESTION AND RESPONSE PROCESS, AND ADDENDA**

### **2.3.1 Questions and Responses Regarding the RFP**

Proposers shall be responsible for reviewing the RFP and any Addenda issued by RCTC prior to the Proposal Due Date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision that Proposer fails to understand. Failure of Proposer to so examine and inform itself shall be at its sole risk, and no relief for discrepancy, deficiency, ambiguity, error, or omission will be provided by RCTC. Proposers shall submit, and RCTC will respond to, requests for written clarification in accordance with this Section 2.3.1. To the extent that responses are provided, they will not be considered part of the Contract Documents, nor will they be relevant in interpreting the Contract Documents, except as expressly set forth therein.

RCTC will only consider comments or questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a prequalified Proposer Authorized Representative to RCTC's Authorized Representative by hard copy, facsimile, or other electronic transmission in the prescribed format.

Such comments or questions may be submitted at any time prior to the applicable last date specified in Section 1.4 or such later date as may be specified in any Addendum and shall be subject to the requirements set forth in Exhibit H. Questions and comments, including requests for clarification or interpretation, shall (i) be sequentially numbered; (ii) specifically reference the relevant RFP volume, section, and page number, unless such request is of general application (in which case the request for clarification shall so note); (iii) identify the relevant section number and page number or, if it is a general question, indicate so; (iv) include any suggested alternative RFP language and/or solutions that would provide the clarification sought by Proposer; and (v) not identify the Proposer's identity in the body of the question.



No telephone or oral requests will be considered. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. No requests for additional information or clarification to any person other than RCTC's Authorized Representative will be considered. Questions may be submitted only by the Proposer Authorized Representative and must include the requestor's name, address, telephone and facsimile numbers, and Proposer he/she represents.

The questions and RCTC's responses will be in writing and will be delivered to all Proposers, except that RCTC intends to respond individually to those questions identified by a Proposer or deemed by RCTC as containing confidential or proprietary information relating to Proposer's Proposal and ATCs. RCTC reserves the right to disagree with Proposer's assessment regarding confidentiality of information in the interest of maintaining a fair process or complying with applicable Governmental Rules. Under such circumstances, RCTC will inform Proposers and may allow Proposer to withdraw the question, rephrase the question, or have the question answered non-confidentially, or, if RCTC determines that it is appropriate to provide a general response, RCTC will modify the question to remove information that RCTC determines is confidential. RCTC may rephrase questions as it deems appropriate and may consolidate similar questions. RCTC may also create and answer questions independent of the Proposers. RCTC contemplates issuing multiple sets of responses at different times during the procurement process. Except for responses to questions relating to Addenda, the last set of responses will be issued no later than the date specified in Section 1.4. A consolidated, final set of questions and answers will be compiled and distributed prior to final award of the Contract.

RCTC may convene pre-Proposal meetings with Proposers as it deems necessary (see Section 2.5), and Proposers must make themselves available to RCTC for such pre-Proposal meetings and to discuss any matters they submit to RCTC under this Section 2.3.1. If RCTC determines, in its sole discretion, that its interpretation or clarification requires a change in the RFP, RCTC will prepare and issue an Addendum.

### **2.3.2 Addenda**

RCTC reserves the right, in its sole discretion, to revise, modify, or change the RFP and/or procurement process at any time before the Proposal Due Date (or, if Proposal Revisions are requested, prior to the due date for Proposal Revisions). Any such revisions will be implemented through issuance of Addenda to the RFP. Addenda will be posted on the website, and Proposers will be notified of the issuance of such Addenda. If any Addendum significantly impacts the RFP, as determined at RCTC's sole discretion, RCTC may change the Proposal Due Date. The announcement of such new date will be included in the Addendum. In addition, if the last date for Proposer to submit questions regarding the RFP has occurred or has changed, the Addendum will indicate the latest date for submittal of any clarification requests concerning the Addendum.

Proposer shall acknowledge in its Proposal Letter (see Form A) receipt of all Addenda and question-and-answer responses. Failure to acknowledge such receipt may cause the Proposal to be deemed non-responsive and be rejected. RCTC reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer to discuss any Addenda or response to requests for clarifications. RCTC does not anticipate issuing any Addenda later than five Business Days prior to the Proposal Due Date. However, if the need arises, RCTC reserves the right to issue Addenda after such date. If RCTC finds it necessary to issue an

Addendum after such date, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum.

## **2.4 PRE-PROPOSAL SUBMITTALS**

Pre-Proposal Submittals are required as provided in Section 2.11 (regarding changes in a Proposer's organization) and Exhibit B, Section 3.2.4 (regarding Key Personnel). Proposers are required to designate changes in their Proposer Authorized Representatives in accordance with Section 2.2.2. In addition, any Proposer that wishes to submit an ATC pursuant to Section 3.3 must make an ATC Submittal as described therein.

## **2.5 PRE-PROPOSAL MEETINGS**

### **2.5.1 General Informational Meetings**

RCTC may hold joint informational meetings with all Proposers at any time prior to the Proposal Due Date. Informational meetings may be held either in person or by telephonic or electronic means. If held telephonically or electronically, the meeting will permit interactive communication between all Proposers and RCTC. Written notice of any informational meetings will be sent to all prequalified Proposers. If the meeting is conducted by telephonic or electronic means, the notice will inform Proposers of the manner of the meeting.

If any informational meeting is held, each Proposer shall attend with appropriate members of its proposed key management personnel, and if required by RCTC, senior representatives of proposed team members identified by RCTC.

### **2.5.2 One-on-One Meetings**

RCTC intends to conduct one-on-one meetings with each Proposer on the dates set forth in Section 1.4, and on such other dates designated by RCTC in writing to the Proposers, to discuss issues and clarifications regarding the RFP and Proposer's ATCs. RCTC reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent that RCTC determines, in its sole discretion, such disclosure would impair the confidentiality of an ATC or would reveal a Proposer's confidential business strategies. Participation at such meetings by the Proposers shall be mandatory, provided, however, if an ATC or a question concerning an ATC raises an issue to which RCTC determines that it is appropriate to provide a general response, RCTC will modify the question to remove the information that RCTC determines is confidential.

The one-on-one meetings are subject to the following:

- The meetings are intended to provide Proposers with a better understanding of the RFP.
- RCTC will not discuss with any Proposer any Proposal or ATC other than its own.
- Proposers shall not seek to obtain commitments from RCTC in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers, and no part of the evaluation of Proposals will be based on the conduct or discussions that occur during these meetings.

Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules and to identify all participants from Proposer, whether attending in person or by phone.

The protocols that will apply in connection with any such one-on-one meetings are set forth in Exhibit H to this ITP.

### **2.5.3 Questions and Responses during One-on-One Meetings**

During one-on-one meetings, Proposers may ask questions, and RCTC may provide responses. However, any responses provided by RCTC during one-on-one meetings may not be relied upon unless questions were submitted in writing and RCTC provided written responses in accordance with Section 2.3.1 (and then, only to the extent provided in Section 2.3.1 and in the Contract Documents). The questions and RCTC's responses will be provided in writing to all Proposers, except to the extent that those such questions are deemed by RCTC to contain confidential or proprietary information relating to a particular Proposer's Proposal or ATCs. See also Section 2.3.1, Section 2.5.2, and Section 2.6 regarding confidentiality of questions and ATCs.

### **2.5.4 Statements at Meetings**

Nothing stated at any pre-proposal meeting or included in a written record or summary of a meeting will modify the ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to Section 2.3.2.

## **2.6 CONFIDENTIALITY/PUBLIC RECORDS ACT DISCLOSURE REQUESTS**

### **2.6.1 Disclosure Waiver**

Each Proposer, by submitting a Proposal to RCTC in response to the RFP, consents to the disclosures described in this Section 2.6 and expressly waives any right to contest, impede, prevent, or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing, or delaying such disclosure, under the Public Records Act or any other law relating to the confidentiality or disclosure of information. Under no circumstances will RCTC be responsible or liable to a Proposer or any other party as a result of disclosing any such materials.

### **2.6.2 Observers during Evaluation**

Proposers are advised that non-participating observers may observe the Proposal evaluation process and will have the opportunity to review the Proposals after the Proposal Due Date. RCTC has agreed to allow Caltrans and FHWA officials and their outside advisors to observe the procurement process, which includes access to the Financial Proposals. Outside advisors to Caltrans and FHWA, if any, will be required to sign RCTC's standard confidentiality agreement.

### **2.6.3 Confidential Materials**

RCTC will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" by the submitting party. In addition, each Proposal must include a cover sheet listing the pages and forms on which there is confidential information. Any such proprietary information, trade secrets, or confidential commercial and financial information that a Proposer believes should be exempted from disclosure shall be specifically identified and

marked as such. Blanket, all-inclusive identifications by designation of whole sections as containing proprietary information, trade secrets, or confidential commercial or financial information are discouraged and may be deemed invalid. Any specific proprietary information, trade secrets, or confidential commercial and financial information shall be clearly identified as such and shall be accompanied by a concise statement of reasons supporting the claim. RCTC will endeavor to advise the submitter of any request (pursuant to Government Code sections 6250 *et seq.* and any other applicable laws) for disclosure or release of any material properly labeled as proprietary, trade secret, or confidential so as to allow the submitter the opportunity to seek a court order to protect such materials from disclosure. Under no circumstances will RCTC or Caltrans be responsible or liable to a Proposer or any other party as a result of disclosing any such labeled materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake, or negligence on the part of RCTC, Caltrans, or their respective officers, employees, contractors, consultants, or agents.

RCTC will not advise a submitting party as to the nature or content of documents entitled to protection from disclosure under Government Code sections 6250 *et seq.* or other California laws, as to the interpretation of such laws, or as to definition of trade secret. The submitting party shall be solely responsible for all determinations made by it under applicable law and for clearly and prominently marking each and every page or sheet of materials with "TRADE SECRET" or "CONFIDENTIAL" as it determines to be appropriate. Each submitting party is advised to contact its own legal counsel concerning the effect of applicable laws to the submitting party's own circumstances.

#### **2.6.4 Following Award**

RCTC will endeavor to keep the Proposal pricing information confidential within RCTC (including its designees and consultants) until such time as a Proposer is selected for award, at which time RCTC intends to disclose such information to individuals with a need to know it. Once the Contract is executed, some or all of such data may lose its protection under Government Code sections 6250 *et seq.* Each Proposer, by submission of a Proposal, agrees that it will not be grounds for protest if any member of RCTC's selection committee or any evaluation team member becomes aware of a Proposer's price at any time during the review process.

#### **2.6.5 Litigation**

In the event of any proceeding or litigation concerning the disclosure of any material submitted by the submitting party, RCTC will be a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and the submitting party will be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk, provided, however, that RCTC reserves the right, in its sole discretion, to intervene or participate in the litigation in such a manner as it deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by RCTC in connection with any litigation, proceeding, or request for disclosure shall be reimbursed and paid by Proposer objecting to disclosure. Each Proposer shall be responsible for all of its own costs in connection with any litigation, proceeding, or request for disclosure.

### **2.6.6 Exceptions**

The foregoing will not preclude RCTC from using ideas contained in the Proposal in accordance with Section 6.3 and will not preclude RCTC from releasing information as required in connection with any protest filed under Section 7.

### **2.7 RCTC STUDIES AND INVESTIGATIONS**

To the extent RCTC undertakes any additional investigative activities, the information obtained by RCTC from such activities may be made available to Proposers in the Reference Materials. All information provided by RCTC will be subject to the same limitations applicable to similar information furnished in the Reference Materials. Specifically, RCTC makes no representation or warranty as to the accuracy, completeness, or suitability of the additional information. See also Section 1.5.1.

### **2.8 EXAMINATION OF RFP AND SITE ACCESS**

#### **2.8.1 Examination of RFP Documents**

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP Documents, including Reference Materials and any Addenda, and material posted on the website and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Proposal or the performance of the Work, if Proposer enters into the Contract with RCTC. The Proposal Letter (Form A) includes an acknowledgment that Proposer has received and reviewed all materials posted thereon. Any failure of Proposer to so examine and inform itself shall be at Proposer's sole risk, and RCTC will provide no relief for any error or omission therefor.

Each Proposer is responsible for conducting such investigations as it deems appropriate in connection with its Proposal regarding the condition of existing facilities and Site conditions, including Hazardous Materials and permanent and temporary Utility appurtenances, keeping in mind the provisions in the Contract Documents regarding assumption of liability by Proposer and the prohibitions on reliance by Proposers on Reference Documents. Proposer's receipt of Reference Documents and other RCTC-furnished information does not relieve Proposer of such responsibility.

The submission of a Proposal shall be considered prima facie evidence that Proposer has made the above-described examination and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the Contract Documents.

#### **2.8.2 Site Access**

Any Proposers wishing to undertake soil borings and additional exploratory investigations on certain portions of the Project right-of-way ("ROW") shall advise RCTC of its proposed plan and obtain all necessary permits and approvals from Caltrans and other applicable Governmental Entities. Proposers shall request right-of-entry onto properties for this purpose from RCTC. No contact of individual property owners or occupants shall be made during the procurement stage.

#### **2.8.3 Right-of-Way**

RCTC has not yet procured all of the ROW necessary to construct the Project. The current proposed schedule for delivery by RCTC of RCTC-Provided Property to the Design-Builder is

set forth in TP Section 9 (Right-of-Way), which will be updated by Addendum as additional ROW activities are performed.

## **2.9 ERRORS**

If any discrepancy, mistake, error, omission, or ambiguity is identified by Proposer at any time during the procurement process in any of the documents supplied by RCTC, Proposer shall notify RCTC of the recommended correction in writing in accordance with Section 2.3.1.

## **2.10 IMPROPER CONDUCT**

### **2.10.1 Non-Collusion**

Neither Proposer nor any of its team members shall undertake any of the prohibited activities identified in the Non-Collusion Affidavit (Form E).

### **2.10.2 Organizational Conflicts of Interest**

Proposers' attention is directed to California Government Code section 14135 and the organizational conflict of interest rules found in 23 CFR § 636, Subpart A, including 23 CFR § 636.116, which apply to this procurement. Proposers are advised that 23 CFR, section 636.116(a)(2) and Public Contract Code section 6800 *et seq.* and the RCTC SR-91 Conflict of Interest Policy (Exhibit G) may preclude certain firms and their subsidiaries and affiliates from participating on a Proposer team. Please note that notwithstanding the name listed in Exhibit G, conflict of interest inquiries for this Project should be submitted to the individual listed in Section 2.2.1. Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposers' obligations to disclose potential conflicts of interest are continuing throughout the procurement process, as well as the term of the Contract. By submitting its SOQ, each Proposer agreed that, if an organizational conflict of interest (as defined in Exhibit G) is thereafter discovered, Proposer must make an immediate and full written disclosure to RCTC that includes a description of the action that Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest that the Proposer knew or should have known about but did not disclose is determined to exist during the procurement process, RCTC may, at its sole discretion, cancel the procurement, disqualify Proposer with the conflict or take other action as necessary to mitigate the conflict. If Proposer was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to RCTC, RCTC may pursue remedies under the Contract Documents, Governmental Rules, and/or in equity, including termination of the Contract, for default.

### **2.10.3 Restrictions on Participation**

Proposers are advised that the following nonexclusive list of RCTC advisors are precluded from participating in any of the Proposer organizations relating to this Project; providing technical, legal, or financial advice to Proposers; or directly discussing any aspect of the RFP with any Proposer:

- (a) Parsons Brinckerhoff, Inc.
- (b) Bechtel Corporation

- (c) Parsons Transportation Group Inc.
- (d) HDR, Inc.
- (e) KPMG LLP
- (f) Nossaman LLP
- (g) Best Best & Krieger LLP
- (h) Fieldman Rolapp & Associates
- (i) The Goldman Sachs Group, Inc.
- (j) Bank of America Merrill Lynch (“BAML”)
- (k) JP Morgan Chase Bank
- (l) Stantec
- (m) Orrick Herrington
- (n) Cofiroute USA, LLC
- (o) Ron Rakich & Associates, Inc.
- (p) Arellano Associates
- (q) Group Delta Consultants Inc.
- (r) Overland, Pacific & Cutler Inc.
- (s) Padilla & Associates, Inc.
- (t) Psomas
- (u) Southstar Engineering and Consulting Inc.
- (v) TEC Management Consultants Inc.
- (w) LSA Associates
- (x) RBF Consulting
- (y) Rahimian Management and Consulting (“Trans Systems”)
- (z) MBI Media, Inc.
- (aa) Associated Engineers, Inc.
- (bb) Paragon Partners, Ltd
- (cc) PB Consult
- (dd) Value Management Strategies, Inc.
- (ee) GCAP Services
- (ff) Bickmore Risk Services

The above list represents firms that have been identified by RCTC as being prohibited from participating on any of the Proposer organizations and is not intended to be an all-inclusive or exhaustive list. It is the Proposer’s responsibility to notify RCTC of any potential conflicts of interest and seek determination from RCTC in accordance with RCTC’s Conflict of Interest policy (Exhibit G).

In addition, any entity that is currently suspended, debarred or voluntarily excluded under 49 CFR Part 29, or is otherwise determined to be ineligible to participate in the federal-aid highway program is precluded from participating on any of the Proposer teams.

#### **2.10.4 Participation on More than One Team**

To ensure a fair procurement process, Equity Participants, Major Participants, and any required Guarantors of Proposer teams are forbidden from participating, in any capacity, including as a Guarantor, on another Proposer team during the course of the Project procurement. This prohibition extends to affiliated entities of Equity Participants, Major Participants, and Guarantors. RCTC reserves the right to disqualify any Proposer that fails to comply with this prohibition.

### **2.11 CHANGES IN PROPOSER'S ORGANIZATION**

In order for a Proposer to remain qualified to submit a Proposal after it has been prequalified, unless otherwise approved in writing by RCTC, Proposer's organization as identified in the SOQ must remain intact for the duration of the procurement process. If a Proposer wishes to make changes in the Major Participants identified in its SOQ, including, without limitation, additions, deletions, reorganizations, changes in equity ownership interests, and/or role changes in or of any of the foregoing, Proposer shall submit to RCTC a written request for approval of the change from RCTC as soon as possible, but in no event later than the applicable last date set forth in Section 1.4. Any such request shall be addressed to RCTC at the address set forth in Section 2.2.1, accompanied by the information specified for such entities in the RFQ. If a request is made to allow a change in equity ownership interests or deletion or role change of any Major Participant identified in its SOQ, Proposer shall submit such information as may be required by RCTC to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). Proposer shall submit an original and five copies of each request package. RCTC is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein and in the Contract Documents, a Proposer may not make any changes in the Major Participants identified in its SOQ after the "Last Date for Submittal of Changes in Organization" set forth in Section 1.4. Between such date set forth in Section 1.4 and execution of the Contract, RCTC, in its sole discretion, will consider requests by Proposers to make changes in their organizations based only on unusual circumstances beyond Proposer's control. See also Section 3.2.4 of Exhibit B to this ITP regarding changes in Key Personnel and approval of Key Personnel prior to the Proposal Due Date.



### **3 ALTERNATIVE TECHNICAL CONCEPTS**

#### **3.1 ALTERNATIVE TECHNICAL CONCEPTS GENERAL**

Sections 3.1 through 3.6 set forth a process for pre-Proposal review of ATCs conflicting with the requirements for design and construction of the Project, or otherwise requiring a modification of the Technical Provisions. ATCs also include those concepts that do not require a modification of the Technical Provisions, but that, if implemented, would require further environmental evaluation of the Project or a portion of the Project. This process is intended to allow Proposers to incorporate innovation and creativity into their Proposals, in turn allowing RCTC to consider Proposer ATCs in making the selection decision, to avoid delays and potential conflicts in the design and/or construction associated with deferring of reviews of ATCs to the post-award period, and, ultimately, to obtain the best value for the public.

ATCs eligible for consideration hereunder shall be limited to those deviations from the requirements of the as-issued Contract Documents, or those concepts requiring further environmental evaluation, that result in performance and quality of the end product that is equal to or better than the performance and quality of the end product absent the deviation or concept, as determined by RCTC, in its sole discretion. A concept is not eligible for consideration as an ATC if, in RCTC's sole judgment, it is premised upon or would require (a) a reduction in Project scope, performance, or reliability; (b) the addition of a separate RCTC or Caltrans project to the Contract (such as expansion of the scope of the Project to include additional roadways); (c) changes or additions to tolling operations; or (d) an increase in the amount of time required for Substantial Completion or any other Completion Deadline. If an ATC that would require further environmental evaluation of the Project is approved by RCTC for inclusion in a Proposal, RCTC may require that Design-Builder will bear the schedule and cost risk associated with such additional environmental evaluation. If Design-Builder is not able to obtain the approvals or satisfy the other conditions identified by RCTC that are necessary to implement an ATC, Design-Builder will be obligated to develop the Project in accordance with the Contract Documents without regard to the ATC and without additional cost or extension of time (and RCTC may be entitled to a reduction in the Contract Price and/or schedule as set forth in the Contract Documents).

Any ATC that has been pre-approved may be included in the Proposal, subject to the conditions set forth herein or in any approval letter.

If a Proposer is unsure whether a concept is consistent with the requirements of the RFP or if that concept would be considered an ATC by RCTC, RCTC recommends that Proposer submit such concept for review as an ATC.

#### **3.2 PRE-ATC CONCEPT REQUIREMENTS**

Proposers are provided an opportunity to deliver confidential Pre-ATC Concepts to RCTC for early consideration and review prior to formal ATC submission as defined in Section 3.3 below. Any Pre-ATC Concepts shall be delivered to the address specified in Section 2.2.1, and shall include the following:

- (a) a general (minimum of 1 page but not to exceed 2 pages) description of the proposed ATC Concept, how the proposed Pre-ATC Concept will be used on the Project,

proposed location of the Pre-ATC Concept and any other pertinent information that would provide a clear understanding of the proposed Pre-ATC Concept; and

- (b) any conceptual drawings (if applicable) of the configuration of the Pre-ATC Concept or other appropriate descriptive information that provided an understanding of the proposed Pre-ATC Concept

The confidential Pre-ATC Concept submittals are intended to afford Proposers an opportunity to have RCTC review the Pre-ATC Concept for purposes of providing the Proposer with early RCTC feedback as to the merit of a formal ATC Submittal as well as providing RCTC with a better understanding of the potential ATC to be discussed during the Pre-ATC Concept meeting described in Section 1.4.

Pre-ATC Concept submittals shall not constitute ATC Submittals pursuant to Section 3.3.1, and a Proposer that wishes to utilize an ATC must make a formal ATC Submittal pursuant to Section 3.3.1.

### **3.3 SUBMISSION OF ATCS**

Proposer may submit ATCs for review to RCTC at the address specified in Section 2.2.1, until the applicable last date and time for submittal of ATCs identified in Section 1.4. All ATCs shall be submitted in writing, with a cover sheet identifying Proposer and stating “SR-91 Corridor Improvement Project – Confidential ATCs.” Proposer shall clearly identify the submittal as a request for review of an ATC under this ITP. If Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by RCTC. ATC submittals shall include five copies of a narrative description of the ATC and include the information described below.

#### **3.3.1 ATC Submittal Requirements**

ATC Submittals shall include:

- (a) a sequential ATC number identifying Proposer and the ATC number (multi-part or multi-option ATCs shall be submitted as separate individual ATCs with unique sequential numbers)
- (b) a description and conceptual drawings of the configuration of the ATC or other appropriate descriptive information, including a traffic operational analysis, if appropriate
- (c) the locations where, and an explanation of how, the ATC will be used on the Project
- (d) any changes in roadway or toll operations requirements associated with the ATC, including ease of operations
- (e) any changes in routine or capital maintenance requirements associated with the ATC, including ease of maintenance
- (f) any changes in the anticipated service life of the item(s) comprising the ATC or affected by the ATC
- (g) any reduction in the time period necessary to design and construct the Project resulting from implementing the ATC, including, as appropriate, a description of methods and commitments

- (h) references to requirements of the RFP that are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements, and a request for approval of such deviations
- (i) an analysis justifying use of the ATC and why the deviation, if any, from the requirements of the RFP should be allowed
- (j) a preliminary analysis and quantitative discussion of potential impacts on vehicular traffic (both during and after construction), environmental permitting, community impact, safety, and life-cycle Project and infrastructure costs, including impacts on the cost of repair, replacement, maintenance and operation
- (k) a description of any impacts on the land or facilities of third parties, including private owners, Governmental Entities, Utility owners, and railroads
- (l) if and what additional ROW will be required to implement the ATC (and Proposers are advised that they shall (i) be solely responsible for the costs of acquisition of any such ROW and the costs for obtaining any necessary Environmental Approvals, (ii) not be entitled to any Change Order for time or money as a result of Site conditions (e.g., Hazardous Materials, Differing Site Conditions, geotechnical issues, Utilities, etc.) on such additional ROW, and (iii) not be entitled to any Change Order for additional time or money as a result of any delay, inability, or cost associated with the acquisition of such ROW
- (m) a description of other projects where the ATC has been used; the degree of success or failure of such usage; and names and contact information, including phone numbers and e-mail addresses for project owner representatives that can confirm such statements
- (n) a description of added risks to RCTC or third parties associated with implementing the ATC
- (o) an estimate of any additional RCTC, Design-Builder, and third-party costs associated with implementation of the ATC
- (p) an estimate of the Contract Price adjustment, should the ATC be approved and implemented
- (q) an estimate of the schedule adjustment, should the ATC be approved and implemented
- (r) an analysis of how the ATC is equal to or better in quality, performance, and reliability than the requirements of the Contract Documents

**3.2.3** Proposer shall not make any public announcement or disclosure to third parties concerning any ATC until after pre-approval (including conditional pre-approval) from RCTC has been obtained. Following pre-approval (including conditional pre-approval), if a Proposer wishes to make any such announcement or disclosure, it must first notify the RCTC in writing of its intent to take such action, including details as to date and participants, and obtain RCTC's prior written consent, in its sole discretion, to do so.

**3.2.4** If implementation of an ATC will require approval by a third party (e.g., a Governmental Entity), Proposer will have full responsibility for, and bear the full risk of, obtaining any such approvals after award of the Contract and submission of data, provided, however, that RCTC shall retain its role as liaison with any Governmental Entities as more particularly described in the Contract Documents. If any required third-party approval is not subsequently granted with

the result that Proposer must comply with the requirements of the original RFP, Proposer will not be entitled to a Change Order for additional compensation or time under the Contract (and RCTC may be entitled to a reduction in the Contract Price and/or schedule as set forth in the Contract Documents).

**3.2.5** Proposers are advised that regarding any ATC they shall:

- (a) be solely responsible for the acquisition of any additional ROW, including the cost thereof and obtaining any necessary Governmental Approvals
- (b) not be entitled to any additional time or money as a result of Site conditions (e.g., Hazardous Materials, Differing Site Conditions, geotechnical issues, Utilities, etc.) on such additional ROW
- (c) not be entitled to any additional time or money as a result of any delay, inability, or cost associated with the acquisition of such ROW

**3.2.6** If RCTC determines, based on a proposed ATC or otherwise, that the RFP contains an error, ambiguity, or mistake, RCTC reserves the right to modify the RFP to correct the error, ambiguity, or mistake, regardless of any impact on a proposed ATC (including that such ATC no longer qualifies or is eligible for consideration as an ATC).

**3.4 RCTC REVIEW OF ATCS**

RCTC may request additional information regarding proposed ATCs at any time and will, in each case, return responses to each Proposer regarding its ATC on or before the applicable last date set forth in Section 1.4, provided that RCTC has received all required and requested information regarding such ATC.

RCTC's responses will be limited to one of the following statements:

- (a) The ATC is acceptable for inclusion in the Proposal.
- (b) The ATC is not acceptable for inclusion in the Proposal.
- (c) The ATC is not acceptable in its present form, but may be acceptable upon the satisfaction, in RCTC's sole discretion, of certain identified conditions that must be met or clarifications or modifications that must be made.
- (d) The submittal does not qualify as an ATC but may be included in Proposer's Proposal because it appears to be within the requirements of the RFP (RCTC may not reject such submittal in the Proposal for the reason that it appears to be an ATC, provided, however, that should it turn out that such submittal is not within the requirements of the RFP, RCTC reserves the right to require compliance with the requirements of the RFP, and Proposer will not be entitled to modify its Proposal or obtain a Change Order for additional compensation or time under the Contract Documents).
- (e) The submittal does not qualify as an ATC and may not be included in the Proposer's Proposal.

RCTC will make a preliminary determination on whether to accept and approve an ATC for submission. However, Proposer will be responsible for ensuring that the final submittal complies with the requirements of the RFP.

Approval of an ATC will constitute a change in the specific requirements of the Contract Documents associated with the approved ATC for that specific Proposer. Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers and waives any right to object to RCTC's determinations regarding acceptability of ATCs.

RCTC's rejection of a pre-Proposal submission of an ATC will not entitle Proposer to an extension of the Proposal Due Date or the date that the ATCs are due, provided, however, that the foregoing shall not limit RCTC's absolute and sole right to modify the Proposal Due Date or any other date in connection with this procurement.

RCTC anticipates that its comments provided to a Proposer will be sufficient to enable Proposer to make any necessary changes to its ATCs. However, if a Proposer wishes additional clarifications regarding necessary changes, Proposer may provide a written request for clarifications under Section 2.3.1.

### **3.5 INCORPORATION OF ATCS IN THE CONTRACT DOCUMENTS**

Following award of the Contract, the ATCs that were pre-approved by RCTC and incorporated in the Proposal by the successful Proposer shall be included in the Contract Documents. If RCTC responded to any ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the Contract Documents. The Contract Documents will be conformed prior to execution of the Contract to reflect the ATCs, including any RCTC conditions thereto. Notwithstanding anything to the contrary herein, if Design-Builder does not comply with one or more RCTC conditions of pre-approval for an ATC, or Design-Builder fails to obtain a required third-party approval for an ATC, Design-Builder will be required to comply with the original requirements of the Contract Documents without regard to the ATC and without additional cost or extension of time as set forth in the Contract Documents (and RCTC may be entitled to a reduction in the Contract Price and/or schedule as set forth in the Contract Documents).

Prior to execution of the Contract, ATCs from unsuccessful Proposers may, in RCTC's sole discretion, be presented to the selected Design-Builder for possible incorporation in the Contract Documents during negotiation of the final terms of the Contract pursuant to Section 5.11. In addition, following execution of the Contract, ATCs from unsuccessful Proposers may, in RCTC's sole discretion, be presented to the selected Design-Builder as an RCTC Change Order in accordance with the Contract.

### **3.6 CONFIDENTIALITY**

Subject to the provisions of this ITP and the Public Records Act, all Pre-ATC Concepts, ATCs, and all communications regarding ATCs will remain confidential until award or cancellation of the procurement, provided that, upon identification of the apparent best value Proposer, ATCs will be subject to disclosure to the apparent best value Proposer. Upon award or cancellation, such confidentiality rights shall be of no further force and effect except as otherwise allowed under the Public Records Act and applicable Governmental Rules. By submitting a Proposal, Proposer agrees, if it is not selected, to disclosure of its work product to the successful Proposer.

## **4 SUBMITTAL OF PROPOSALS AND ACCEPTANCE BY RCTC**

### **4.1 GENERAL SUBMITTAL REQUIREMENTS**

Each Proposal shall include a Technical Proposal and a Financial Proposal that meets the requirements set forth in Exhibits B and C. The Technical and Financial Proposals shall be submitted separately in sealed containers in the format and manner set forth in Sections 4.2 and 4.3.

#### **4.1.1 Proposal Due Date**

The completed Proposal shall be delivered in sealed containers no later than the Proposal Due Date as set forth in Section 1.4.

#### **4.1.2 Signatures Required**

The Proposal Letter (Form A) shall be signed in blue ink by all parties making up Proposer and shall be accompanied by evidence of signatory authorization as specified in Form A.

#### **4.1.3 Consequences of Failure to Follow Requirements**

Failure to use sealed containers or to properly identify the Proposal may result in an inadvertent early opening of the Proposal and may result in disqualification of the Proposal. Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, that result from any inadvertent opening if RCTC determines that Proposer did not follow the foregoing instructions. It is Proposer's sole responsibility to see that its Proposal is received as required. Proposals received after the time due will be rejected without consideration or evaluation.

#### **4.1.4 Requirement to Submit a Compliant Proposal**

The Proposal may not include any qualifications, conditions, assumptions, exceptions to, or deviations from the requirements of the RFP, except as contained in pre-approved ATCs (including conditionally pre-approved ATCs that have been revised to satisfy any conditions to approval). If the Proposal does not fully comply with the instructions and rules contained in this ITP, including the exhibits, it may be disqualified.

Each Proposal must be submitted in the official format that is specified by RCTC in the RFP. Proposer shall sign the original copy of the Proposal submitted to RCTC. Multiple or alternate proposals or proposals with options may not be submitted.

Proposals may be considered non-compliant and may be rejected for any of the following reasons:

- (a) If the Proposal is submitted in paper form or on disk other than that specified by RCTC if it is not properly signed, if any part of the Proposal is missing from the Proposal package, and/or if it otherwise does not meet the Proposal submittal requirements
- (b) If RCTC determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite, or ambiguous as to its meaning, including illegible text, omissions, erasures, alterations, or items not called for in the RFP, or unauthorized additions

- (c) If multiple or alternate Proposals, or Proposals with options, are submitted or if the Proposal includes any conditions or provisions reserving the right to accept or reject an award or to enter into a Contract following award
- (d) If Proposer attempts to limit or modify the Proposal Security, if the Proposal Security is not provided (see Exhibit B, Section 3.3), and/or if requested information deemed material by RCTC is not provided; and
- (e) Any other reason RCTC determines the Proposal to be non-compliant

#### **4.1.5 Format**

The Proposal shall contain concise written material and drawings that enable a clear understanding and evaluation of both the capabilities of Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of the Technical Proposal and Financial Proposal are essential. The Technical Proposal shall not exceed the page limitation set forth in Exhibit B, Section 2, and Exhibit E. No page limit applies to appendices and exhibits; however, RCTC does not commit to review any information in appendices and exhibits other than those required to be provided, and the Proposal evaluation process will focus on the body of the Proposal and any required appendices and exhibits.

An 8.5-inch by 11-inch format is required for typed submissions and an 11-inch by 17-inch format is required for drawings, except that design drawings may be submitted on scroll mats not to exceed 34 inches in width (and such design drawings may be submitted on CD or DVD in Adobe Acrobat [pdf] format and in Bentley MicroStation format). Preliminary schedule submissions shall include both a hard copy and the electronic files necessary to view and analyze the schedule in Primavera.

Submittals must be bound with all pages in a binder sequentially numbered. Each section, including appendices, exhibits, and forms, must be separately and clearly tabbed. Printed lines may be single-spaced with the type font size being no smaller than 12 point (except that tables, figures, and schedules may use 10-point font). Pages may be printed double-sided. The use of 11-inch by 17-inch foldouts for tables, graphics, and maps is acceptable in the main body of the Proposal. Each 11-inch by 17-inch foldout will be considered one page. The use of section summaries is encouraged. Proposals shall be written in the English language using English units and measurements in accordance with Caltrans standards.

#### **4.1.6 Additional Requirements for Proposal Delivery**

The completed Proposal shall be submitted and delivered in sealed containers no later than the Proposal Due Date and time specified in Section 1.4. The Proposal is to be delivered to RCTC at the address set forth in Section 2.2.1, except for the Escrowed Materials, which shall be delivered to the Escrow Agent as specified in Section 4.3.2.

Each binder of the Proposal shall be labeled to indicate its contents. The original Technical and Financial Proposals shall be clearly identified as "original". Copies of the Proposals shall be sequentially numbered, labeled, and bound.

## **4.2 TECHNICAL PROPOSAL SUBMITTAL**

### **4.2.1 General**

All of the binders composing the original Technical Proposal, together with an electronic copy on one or more CDs and the envelopes described in Section 4.2.2, shall be packaged in a single or multiple containers, as necessary, clearly addressed to RCTC as provided herein and labeled “[Proposer Name]: Original Technical Proposal for the RCTC SR-91 Corridor Improvement Project.” Proposer shall provide 15 copies of the Technical Proposal (except for the Proposal Security and Escrow Agreement). The containers that include the required hard copies of the Technical Proposal shall be labeled “Copies of Technical Proposal for the RCTC SR-91 Corridor Improvement Project.”

The electronic copy shall be in Adobe Acrobat (pdf) format on CD(s), provided, however, that: (a) Proposal forms may be submitted in either Adobe Acrobat (pdf) or Word format and (b) corporate, partnership, joint venture, and limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements, and limited liability company operating agreements) may be submitted in hard copy and need not be submitted electronically.

### **4.2.2 Proposal Security and Escrow Agreement**

One original and three certified copies of the Proposal Security shall be provided with the Technical Proposal and shall be in a separate envelope labeled “[Proposer Name]: Proposal Security for the RCTC SR-91 Corridor Improvement Project.” A copy of the executed Escrow Agreement shall be provided with the Technical Proposal in a separate envelope labeled “[Proposer Name]: Escrow Agreement for the RCTC SR-91 Corridor Improvement Project.”

## **4.3 FINANCIAL PROPOSAL SUBMITTAL**

Portions of the Financial Proposal shall be submitted directly to RCTC by the Proposal Due Date as set forth in Section 4.3.1 below, and portions of the Financial Proposal shall be submitted to escrow within 3 Business Days after the Proposal Due Date as set forth in Section 4.3.2 below.

### **4.3.1 Portions of Financial Proposal Submitted Directly to RCTC**

One original and six certified copies of the Financial Proposal (excluding the components identified in Section 4.3.2) shall be delivered to RCTC at the address identified in Section 2.2.1. The documents shall be included in a sealed container labeled “[Proposer Name]: Financial Proposal for the RCTC SR-91 Corridor Improvement Project.” All parts of the Proposal that indicate pricing information shall be included in the sealed Financial Proposal container.

### **4.3.2 Portions of Financial Proposal Submitted to Escrow**

Proposer shall assemble and deliver in accordance with this Section 4.3.2 certain escrowed proposal documents (“EPDs”) containing information regarding Proposer’s assumptions made in determining the scope of work and calculating the Proposal prices and meeting all requirements of Section 21.1 of the Contract. Proposer shall submit its EPDs in hard copy and as electronic copies in Adobe Acrobat (pdf) format. The EPDs shall include detailed information from all subcontractors identified in the Proposal and any other potential subcontractors who provided data upon which the Proposal is based.



Proposer shall submit one set of EPDs (“Escrowed Materials”) to the Escrow Agent, along with (i) three completed original Escrow Agreements executed by Proposer in substantially the form attached as Form K and (ii) if Proposer is not a publicly traded company subject to SEC oversight, the documents identified in Exhibit B to Form K. The documents shall be in separately sealed containers labeled “[Proposer Name]: Escrowed Materials for the RCTC SR-91 Corridor Improvement Project” and delivered to the Escrow Agent at the address identified in the Escrow Agreement. A copy of the executed Escrow Agreement shall be included in the Technical Proposal as specified in Section 4.2.2.

#### **4.4 CURRENCY**

All required pricing, financial, and cost information shall be provided in US currency only.

#### **4.5 MODIFICATIONS, WITHDRAWALS, AND LATE SUBMITTALS**

##### **4.5.1 Modifications to a Proposal**

A Proposer may modify its Proposal in writing prior to the specified time on the Proposal Due Date set forth in Section 1.4. 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 and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so RCTC can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages, or complete forms as described in Exhibits B and C. Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

##### **4.5.2 Withdrawal and Validity of Proposals**

Proposer may withdraw its Proposal at any time prior to the time due on the Proposal Due Date by means of a written request signed by the Proposer Authorized Representative. Such written request shall be delivered to the address in Section 2.2.1. A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Proposal, provided that it is received before the time due on the Proposal Due Date. No Proposal may be withdrawn on or after the time due on the Proposal Due Date, and any attempt to do so will result in a draw by RCTC upon the Proposal Security. Proposals shall initially be valid for a period of 180 days after the Proposal Due Date. After Contract execution, RCTC shall have the right to extend this period for up to an additional 9 months, provided that the Contract Price will be subject to adjustment using the index and process described in Section 12.1.4.2 of the Contract. Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the time periods set forth above.

##### **4.5.3 Late Proposals**

RCTC will not consider any late Proposals. Proposals and/or modification or withdrawal requests received after the time for submittal of Proposals will be returned to Proposer unopened, without consideration or evaluation.

#### **4.6 FORFEITURE OF PROPOSAL SECURITY**

By submitting its Proposal, each Proposer understands and agrees that it shall forfeit its Proposal Security if: (i) it withdraws, repudiates, or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal; (ii) it is selected for negotiations, but fails to negotiate in good faith with RCTC as set forth in Section 5.11; (iii) it is selected as

the apparent best value Proposer, but fails to provide the documents required under, or satisfy the conditions set forth in Sections 5.12 and 6.1; (iv) it is awarded the Contract but fails to satisfy all of the conditions to issuance of NTP1 as set forth in Section 4.1.2 of the Contract; or (v) any other forfeiture event or condition occurs pursuant to the terms of the Proposal Security.

Any Proposal that contains a material alteration, as determined by RCTC, in its sole discretion, to the ITP Forms, including any material alteration to the form of Proposal Security (Forms J-1 and J-2), will be considered non-responsive and non-compliant. Alterations that have been approved in writing in advance by RCTC will not be considered material. If a Proposal is deemed non-responsive or non-compliant, RCTC may disqualify the Proposal from further consideration. Such disqualification will not result in the forfeiture of Proposer's Proposal Security.

Each Proposer, by submittal of its Proposal, shall be deemed to have agreed to the foregoing.

#### **4.7 ACCEPTANCE OF DELIVERY BY RCTC**

RCTC will provide a receipt for Proposals that are timely delivered to RCTC as specified herein. Proposer will be responsible for obtaining a delivery receipt from the Escrow Agent and obtaining the Escrow Agent's signature on the Escrow Agreements.

An RCTC representative may coordinate with Proposer to visit the Escrow Agent's office on or shortly after the Proposal Due Date to jointly examine the Escrowed Materials and obtain a fully executed copy of the Escrow Agreement.

#### **4.8 COSTS NOT REIMBURSABLE**

The cost of preparing the Proposal and any costs incurred at any time before final award and execution of the Contract, including costs incurred for any interviews, payments owing to Proposer's Escrow Agent, and costs associated with Post-Selection Deliverables, shall be borne by Proposer, except for any costs paid in accordance with Section 6.3.

## 5 EVALUATION AND POST-SELECTION PROCESS

RCTC intends to select the Proposer that offers the best value to RCTC, considering price, technical, and other factors described in this [Section 5](#). The intent of RCTC in this evaluation process is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all legal requirements governing this procurement.

The Proposal evaluation process will include an initial review of each Proposal for responsiveness and pass-fail criteria, a responsiveness and qualitative evaluation of the Technical Proposal, a responsiveness and quantitative evaluation of the Financial Proposal, and a best-value determination. The process may include a request for Proposal Revisions, and it may include a negotiations phase with the selected Proposer(s). The steps in the process and evaluation criteria are set forth in [Sections 5.3](#) through [5.11](#). The evaluation and selection process is subject to modification by RCTC, in its sole discretion.

The details of the evaluation and selection process are set forth more fully in this [Section 5](#).

### 5.1 ORGANIZATION OF THE RCTC EVALUATION SUBCOMMITTEES

Evaluation of Proposals will be conducted by RCTC's Technical Proposal Evaluation Subcommittee ("TPES") and Financial Proposal Evaluation Subcommittee ("FPES"), with assistance from two or more separate advisory groups. The evaluation subcommittees will comprise representatives from RCTC and certain public agency Stakeholders and will be chaired by individuals designated by RCTC's Executive Director. In addition to RCTC and Stakeholder members, the evaluation subcommittees may also be assisted by advisors, including RCTC representatives and outside consultants who will offer advice on the technical, financial, and legal aspects of each Proposal. The primary responsibility of these advisors will be to assist the TPES and the FPES in making educated and informed assessments of the individual strengths and weaknesses of the Proposals. In addition, other observers, including representatives appointed by the FHWA and/or Caltrans and other observers requested by RCTC with specific interests and responsibilities associated with the Project may be invited to observe aspects of the evaluation process. All evaluators and outside consultants and observers will be required to sign confidentiality statements and will be subject to RCTC conflict of interest control requirements.

### 5.2 BEST-VALUE DETERMINATION

The best-value determination will be based on a **100** point scale. The Price Score will represent up to **80** points of the total score, and the Technical Score will represent up to **20** points of the total score. The determination of apparent best value shall be based on the highest Total Proposal Score ("TPS"), computed based upon the following formula:

$$\text{TPS (max. 100 points)} = \text{Price Score (max. 80 points)} + \text{Technical Score (max. 20 points)}$$

The Price Score will be based on the following formula:

$$\text{Price Score} = (\text{APPV}_{\text{Low}}/\text{APPV}) * 80, \text{ where;}$$

$APPV_{Low}$  = Lowest Adjusted Proposal Present Value submitted by any Proposer as determined pursuant to Section 5.5, when taking account the schedule adjustment in accordance with Section 5.5.2.

APPV = Proposer's Adjusted Proposal Present Value as determined pursuant to Section 5.5, as adjusted by the schedule adjustment of that Proposer in accordance with Section 5.5.2.

The Technical Score will be calculated using the following formula:

$$\text{Technical Score} = (\text{TPES evaluation score}/\text{Highest TPES evaluation score for all Proposers}) * 20$$

The Technical Score calculation will be based on the TPES evaluation score for the Technical Proposal (maximum of **100** points) as described in Section 5.4.

### **5.3 PASS/FAIL AND RESPONSIVENESS EVALUATION**

Upon receipt, the Technical Proposals and the Financial Proposals will be made available for review by the relevant subcommittees. They will be reviewed for the Proposal's (a) conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP and (b) based on the pass/fail criteria set forth below. All reviews of the Escrowed Materials will take place at the Escrow Agent's offices. Any Proposer that is nonresponsive and/or fails to achieve a passing score on any of the pass/fail portions of the evaluation may not be eligible for recommendation for award.

#### **5.3.1 Technical Proposals**

Technical Proposals will be evaluated based on the following pass/fail or responsiveness criteria:

- (a) The business form of Proposer and any entities that will have joint and several liability under the Contract or will provide a guaranty (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation, bylaws or equivalent documents) is consistent with the requirements of the Project and Contract Documents, as applicable.
- (b) If the Proposer is a partnership or any other form of a joint venture, or an association that is not a legal entity, the Proposer provided a letter signed by each member indicating that each member accepts joint and several liability for the obligations of the Proposer.
- (c) Proposer has provided a DBE Certification (Form G), draft DBE Performance Plan (see Contract Appendix 4 for required elements of the draft DBE Performance Plan), and Bidders List form in accordance with the requirements of Exhibit B, Section 3.2.8.
- (d) Proposer information, certifications, signed statements and documents as listed in Exhibit B, Section 3.2 are included in the Proposal and do not identify any material adverse information.
- (e) Proposer has delivered Proposal Security in the form that complies with the requirements of Exhibit B, Section 3.3.

- (f) The Proposal provides for Substantial Completion within **1,518** days from the effective date of NTP2.
- (g) The Technical Proposal meets all applicable RFP requirements.

### **5.3.2 Financial Proposals**

Financial Proposals will be evaluated based on the following pass/fail criteria:

- (a) Proposer's financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial data submitted in the SOQ, such that Proposer continues to have the financial capacity to develop, design, construct, and maintain a project of the nature and scope of the Project. Factors that will be considered in evaluating Proposer's financial capacity include the following:
  - i. Profitability
  - ii. Capital structure
  - iii. Ability to service existing debt; and
  - iv. Other commitments and contingencies
- (b) If a Guaranty is required by RCTC, the financial condition and capabilities of Proposer's guarantor(s) demonstrate Guarantor's financial capacity and ability to guarantee the obligations of Proposer pursuant to the form of Guaranty attached as Appendix 15 to the Contract. Factors that will be considered in evaluating the guarantor's financial capacity include the following:
  - i. Profitability;
  - ii. Capital structure;
  - iii. Ability to service existing debt; and
  - iv. Other commitments and contingencies
- (c) Proposer has provided a Contract Price using Form M-1, Form M-1.1, Form M-1.1.1, and Form M-1.1.2 that complies with the requirements of Exhibit C, Section 3.1.
- (d) Proposer has provided a Maximum Payment Schedule using Form M-2 that complies with the requirements of Exhibit C, Section 3.1.

### **5.3.3 RCTC Right to Exclude Proposals from Consideration or Waive Mistakes**

Those Proposals not responsive to the RFP, or that do not pass the pass/fail criteria, may be excluded from further consideration, and Proposer will be so advised. RCTC may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation. RCTC reserves the right to waive minor informalities, irregularities, and apparent clerical mistakes that are unrelated to the substantive content of the Proposals.

### **5.4 EVALUATION OF TECHNICAL PROPOSAL BY TPES**

The Technical Proposal will be evaluated by the TPES based on the factors set forth below to determine whether it includes any improvements over the requirements of the Contract Documents and brings additional benefits and/or value to RCTC and the public.

### **5.4.1 Technical Proposal Evaluation Factors**

The evaluation factors for the Technical Proposal are as follows:

- (a) Technical Approach
- (b) Project Delivery Approach
- (c) Quality Management Plan

The Technical Proposal evaluation factors identified in clauses (a) through (c) above are listed in descending order of importance, provided, however, that the factors may have equal importance with the factors listed immediately above it. Subfactors and their relative weighting are listed in Sections 5.4.1.1 through 5.4.1.3.

The Technical Proposals will be evaluated based on the preceding evaluation factors and rated using the rating guidelines specified in Section 5.4.2.

#### **5.4.1.1 Technical Approach**

The Technical Approach evaluation subfactors are as follows:

- (a) Construction staging and maintenance of traffic;
- (b) Design solutions;
- (c) Toll system integrator coordination;
- (d) Aesthetics and landscaping; and
- (e) Life cycle cost

The subfactors are listed in descending order of importance, provided, however, that a subfactor may have equal importance with the subfactors listed immediately above it. The subfactors identified in clauses (b) and (d) relate to, among other things, technical design. The subfactors identified in clauses (a) and (c) relate to the Proposer's construction expertise as well as other matters. The subfactor identified in clause (e) includes consideration of life cycle costs for 25 years.

See Exhibit B for additional detail regarding the specific information concerning the Technical Approach factor and its subfactors that is to be submitted as part of the Technical Proposal.

#### **5.4.1.2 Project Delivery Approach**

The Project Delivery Approach evaluation subfactors are as follows:

- (a) Project management approach;
- (b) Environmental approach;
- (c) Public outreach approach; and
- (d) Sustainability approach

The subfactors are listed in descending order of importance, provided, however, that a subfactor may have equal importance with the subfactors listed immediately above it.

See Exhibit B for additional detail regarding the specific information concerning the Project Delivery Approach factor and its subfactors that is to be submitted as part of the Technical Proposal.

#### **5.4.1.3 Quality Management Plan**

The Quality Management Plan evaluation subfactors are as follows:

- (a) Quality organization, roles and responsibilities
- (b) Design quality management approach
- (c) Construction quality management approach

The subfactors are listed in descending order of importance, provided, however, that a subfactor may have equal importance with the subfactors listed immediately above it.

See Exhibit B for details regarding the specific information concerning the Quality Management Plan factor and its subfactors that is to be submitted as part of the Technical Proposal.

#### **5.4.2 Evaluation Guidelines**

The TPES will review the Technical Proposal with reference to the evaluation factors specified in Section 5.4.1, in accordance with the guidelines provided in this Section 5.4.2. The major categories of the Technical Proposal will be qualitatively evaluated and assigned a rating.

#### **5.4.3 Technical Score**

During the evaluation, each subfactor as described above will be assigned a consensus rating by the TPES, which will be converted to points. The points for each subfactor will be summed in accordance with their weighting to determine the Proposal's score for each of the corresponding evaluation factors. The score of each of the evaluation factors will then be summed in accordance with their weighting to arrive at the overall TPES score for the Technical Proposal, with **100** maximum possible points. The Technical Score for a Proposal will be calculated using the following formula:

$$\text{Technical Score} = (\text{TPES evaluation score of Proposal/Highest TPES evaluation score for all Proposals}) * 20$$

### **5.5 EVALUATION OF FINANCIAL PROPOSAL BY FPES**

The Financial Proposal will be evaluated by the FPES. The FPES will conduct blind reviews and evaluations of the Financial Proposals to determine the Adjusted Proposal Present Value of the Financial Proposal ("APPV"). The APPV will be the sum total of the present value of the Contract Price as determined in accordance with Section 5.5.1 and the value of the schedule adjustments as determined in accordance with Section 5.5.2. To the extent reasonably practicable, the blind evaluation of the Financial Proposals will be maintained throughout any requests for clarification and one-on-one meetings. The FPES will not participate in the oral presentation process (if held).

#### **5.5.1 Present Value of the Contract Price**

The Proposal Present Value (PPV) will be the Price as set forth in Form M-1 discounted monthly, using a discount rate of 4% per annum, using the discount factors shown in Form M-2.

### 5.5.2 Schedule Adjustments

RCTC values schedule in connection with the Project and this procurement achieving Substantial Completion on a relative basis to other Proposers will provide benefit to RCTC and the public. Earlier Substantial Completion by a Proposer relative to the other Proposals submitted will be considered an advantage worth **\$95,000** per day up to the maximum amount allowed pursuant to Form N. The Proposer with the shortest duration to achieve Substantial Completion after the effective date of NTP2 that is deemed reasonable and feasible by RCTC, in its sole discretion, will not receive an adjustment to its Proposal Present Value. However, the Proposal Present Value for each of the other Proposers will be increased by **\$95,000** per day times the number of calendar days' difference between its Proposal and the Proposal with the shortest duration (see example below). The Proposers' Preliminary Baseline Schedules (without cost information) will be provided with the Technical Proposals, evaluated for feasibility and reasonableness by the TPES, and the corresponding difference in calendar days forwarded to the RCTC Deputy Executive Director or his designee, who will forward the information to the FPES. The FPES will compare the Project schedule information to the duration proposed in Form N submitted with the Financial Proposal.

#### Schedule Adjustment Example

Proposers 1 – 4 submit Substantial Completion durations of 1218, 1300, 1400, and 1518 days after the effective date of NTP2, respectively.

Proposer 1 = \$0 adjustment to Proposal Present Value

Proposer 2 = \$7,790,000 addition to Proposal Present Value (\$95,000 x 82 days between Proposer 2 days and Proposer 1 days)

Proposer 3 = \$7,290,000 addition to Proposal Present Value (\$95,000 x 182 days between Proposer 3 days and Proposer 1 days)

Proposer 4 = \$28,500,000 addition to Proposal Present Value (\$95,000 x 300 days between Proposer 4 days and Proposer 1 days)

### 5.6 RCTC EVALUATION OF TECHNICAL AND FINANCIAL PROPOSALS

Distinct from the FPES, the TPES will review the Technical Proposal, and the ratings and points recommendations provided by the TPES with respect to each Technical Proposal will be submitted to the RCTC Deputy Executive Director.

Distinct from the TPES, the FPES will review the Financial Proposal and FPES evaluation results and determine each Proposal's Price Score, which will be presented to the RCTC Deputy Executive Director.

Finally, the RCTC Deputy Executive Director will determine the Total Proposal Score for each Proposal based on the formula set forth in Section 5.2 and the recommendations of the FPES and TPES, and he/she will present the FPES and TPES recommendations and Total Proposal Score to the RCTC Executive Director. The RCTC Executive Director may accept the recommendations of the TPES or may request the TPES to reconsider its recommendations. The RCTC Executive Director may accept the evaluation results of the FPES, may request the FPES to re-perform the evaluation, or may confirm the quantitative evaluation.



## **5.7 REQUESTS FOR CLARIFICATION**

RCTC may at any time issue one or more requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to verify or certify certain aspects of its Proposal. Proposers shall respond to any such requests within two Business Days (or such other time as is specified by RCTC) from receipt of the request. The scope, length, and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of, RCTC.

Upon receipt of requested clarifications and additional information as described above, if any, the Proposals may be re-evaluated to factor in the clarifications and additional information.

## **5.8 REQUESTS FOR PROPOSAL REVISIONS**

RCTC may, at any time after receipt of Proposals and prior to final award and execution of the Contract, determine that it is appropriate to request changes to the Proposals ("Proposal Revisions"). If Proposal Revisions are requested, RCTC will follow the procedures for revised proposals described in 23 CFR Part 636. RCTC may request Proposal Revisions with or without discussions as described therein. The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. In the event that Proposal Revisions are requested, the term "Proposal," as used in the RFP, shall mean the original Proposal, as modified by the Proposal Revision.

Upon receipt of Proposal Revisions, the TPES or FPES, as appropriate, will re-evaluate the Proposals as revised and will revise scoring as appropriate, following the process described above.

## **5.9 IDENTIFICATION OF APPARENT BEST-VALUE PROPOSAL**

Once the RCTC Deputy Executive Director has determined a Total Proposal Score for each Proposal and assigned rankings to the Proposals based on the Total Proposal Scores (whether based on the original Proposals or Proposal Revisions), the RCTC Executive Director will notify all Proposers of the apparent best-value proposer.

## **5.10 RECOMMENDATION TO COMMISSION**

The RCTC Executive Director will review the recommendations and supporting information provided by the RCTC Deputy Director and evaluation subcommittees and may accept the recommendation as to the apparent best-value proposer, reject the recommendation and cancel the procurement, or request the evaluation subcommittees to reconsider the recommendation, reserving the right to review the Proposals as necessary. The RCTC Executive Director may agree to negotiate various aspects of the Contract Documents with the apparent best-value Proposer, including incorporation of unsuccessful Proposers' ATCs and work product; however, any decision to commence negotiations regarding the terms of the Contract Documents is at the RCTC Executive Director's sole discretion. If the RCTC Executive Director accepts the evaluation subcommittees' recommendation, the RCTC Executive Director will authorize staff to commence negotiations with the apparent best-value proposer. If a Contract satisfactory to the RCTC Executive Director cannot be negotiated with the best-value Proposer, the RCTC Executive Director may suspend or end negotiations with that Proposer and take action that may include (a) recommendation to RCTC's Commission rejection of all Proposals; (b) issuance of a request for Proposal Revisions to Proposers, but only if the ATCs of one or more Proposers

have not been revealed to the original successful Proposer; or (c) proceeding to the next most highly ranked Proposal to attempt to negotiate a Contract with that Proposer in accordance with this [Section 5.10](#). When the negotiations are deemed successful, in the sole discretion of the RCTC Executive Director, the RCTC Executive Director will provide a recommendation to the Commission to award the contract to the recommended Proposer. The Commission will evaluate the recommendations and will determine whether to proceed with award of a Contract to the recommended Proposer or take any other action.

The Commission may accept the recommendation of the RCTC Executive Director, reject the recommendation and cancel the procurement, or request the RCTC Executive Director to reconsider the recommendation.

Award of the Contract will be conditioned upon (a) successful completion of negotiations (if held), (b) concurrence in award by Caltrans and FHWA, (c) receipt by RCTC of all of the documents required to be provided prior to execution of the Contract under [Section 6.1](#), (d) execution of the Contract by the RCTC Executive Director or her designee, and (e) any other conditions required by the Commission.

The Commission's decision regarding award of the Contract shall be final.

#### **5.11 FINALIZATION OF CONTRACT DOCUMENTS; POST-SELECTION PROCESS**

If authorized by the Commission, RCTC will proceed with the apparent best-value Proposer to finalize the Contract Documents. RCTC may agree to negotiate various aspects of the Contract Documents with the apparent best-value Proposer, including incorporation of unsuccessful Proposers' work product; however, any decision to commence negotiations regarding the terms of the Contract Documents is at RCTC's sole discretion. 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 information that the form of Contract indicates is required from the Proposal.

In the event that RCTC elects to commence negotiations with a Proposer, such Proposer is deemed to have failed to engage in good faith negotiations with RCTC and shall forfeit its Proposal Security as set forth in [Section 4.6](#) if Proposer fails to attend and actively participate in reasonably scheduled negotiation meetings with RCTC or insists upon terms or conditions for any documents to be negotiated or provided by Design-Builder hereunder that are inconsistent with the Contract Documents.

#### **5.12 POST-SELECTION DELIVERABLES**

##### **5.12.1 Documents to be Submitted Following Award**

As a condition precedent to award of the Contract, the successful Proposer shall deliver the following to RCTC within ten days after notification of award:

- (a) Evidence that Proposer, each member of Proposer's team, and each member of other Major Participants that will transact business in the State are authorized to do so. Such evidence may be in the form of (i) a certificate of good standing from the state of its organization dated no earlier than 30 days prior to the Proposal Due Date, if such Proposer or Proposer team member is not organized or formed in the State of California;

- (ii) a Certificate of Status from the California Secretary of State dated no earlier than 30 days prior to the Proposal Due Date; or (iii) other evidence acceptable to RCTC.
- (b) If not previously submitted in a manner acceptable to RCTC, a copy of the final organizational documents for Design-Builder and, if Design-Builder is a limited liability company, partnership, or joint venture, for each member or partner of Design-Builder. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal.

During the negotiation period, as a condition to final award, Proposer shall deliver drafts of the deliverables identified in Section 6.1.2 for review and approval by RCTC.

#### **5.12.2 RCTC Comments on Post-Selection Deliverables**

RCTC shall provide comments on any Post-Selection Deliverables required to be delivered to RCTC hereunder within 14 days of the date of RCTC's receipt of such deliverable. RCTC shall have five Business Days to review and respond to subsequent submittals of the deliverable.

## **6 FINAL AWARD AND EXECUTION; POST-EXECUTION ACTIONS**

### **6.1 FINAL AWARD, EXECUTION, AND DELIVERY OF CONTRACT**

#### **6.1.1 Contract Documents**

Upon the successful completion of negotiations, finalization of the Contract Documents, and satisfaction of all conditions to final award specified in this ITP other than this Section 6.1, RCTC will deliver four sets of execution copies of the Contract Documents to the selected Proposer, along with a number of sets of execution copies as reasonably requested by Proposer. The selected Proposer shall obtain all required signatures and deliver all of the execution sets to RCTC within seven days of receipt, together with the required documents described in Section 6.1.2. If Design-Builder is a joint venture or a partnership, the Contract must be executed by all joint venture members or general partners, as applicable. Within 15 Business Days of RCTC's receipt of all required and compliant documents from Proposer, RCTC will execute the agreements, retain four sets of the agreements, and deliver the other executed sets to Proposer. Final award shall be deemed to have occurred upon delivery of the fully executed sets to Proposer.

#### **6.1.2 Documents to be Delivered by Proposer with Executed Contract**

Proposer shall deliver the documents listed below to RCTC concurrently with the executed Contract as a condition to execution of the Contract by RCTC. On or before the date that RCTC delivers the execution sets of the Contract to Proposer, RCTC shall notify Proposer regarding the number of originals and copies required to be delivered.

- (a) For each Proposer, its general partners, its joint venture members, and each member of other Major Participants, (i) a certificate of good standing from the state of its organization or formation, if such Proposer or Proposer team member is not organized or formed in the State of California and (ii) a Certificate of Status from the California Secretary of State, in each case dated no earlier than 30 days prior to the Proposal Due Date and in form and substance acceptable to RCTC. If such documents are not available due to the form of organization of the entity, Proposer shall provide appropriate documents in a form acceptable to RCTC evidencing that it is qualified to do business in the state of its organization and the State of California.
- (b) For entities formed after submission of the Proposal, a copy of the entity's final organizational documents. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal.
- (c) If a Guaranty is required by RCTC, Proposer shall submit one or more guarantees in the form of Appendix 15 to the Contract from a guarantor(s) acceptable to RCTC, in its sole discretion, together with appropriate evidence of authorization thereof.
- (d) Evidence of approval of the final form, and of due authorization, execution, delivery and performance, of the Contract by Design-Builder and, if Design-Builder is a joint venture, by its joint venture members. Such evidence shall be, in form and substance, satisfactory to RCTC. If Design-Builder is a corporation, such evidence shall be in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Design-Builder is a partnership, such evidence shall be in the form of a resolution (or resolutions) signed by each of the general partners and appropriate

evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of each general partner. If Design-Builder is a limited liability company, such evidence shall be in the form of: (i) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company; (ii) a managing member(s) resolution, certified by an appropriate officer of the managing member(s); or (iii) if there is no managing member, a resolution from each member, certified by an appropriate officer of such member. If Design-Builder is a joint venture, such evidence shall be in the form of a resolution of each joint venture member (in the manner described above), certified by an appropriate officer of such joint venture member.

- (e) A written opinion from counsel for Design-Builder, which counsel shall be approved by RCTC (which may be in-house or outside counsel, provided that the organization/authorization/execution opinion shall be provided by an attorney licensed in the state of the formation/organization of the entity for which the opinion is rendered [i.e., Design-Builder, joint venture member, etc.] and the qualification to do business in California, and the delivery and enforceability opinion shall be provided by an attorney licensed in the State of California), in the form attached hereto as Form L (with such changes as agreed to by RCTC in its sole discretion), provided, however, that the organization/authorization/execution opinion for an entity formed or organized under the laws of the State of Delaware may be issued by an in-house or outside counsel not licensed in Delaware.
- (f) The insurance policies, endorsements, and/or certificates required under Section 9 of the Contract required to be in effect upon issuance of NTP1.
- (g) Evidence that Design-Builder and its Major Participants hold all licenses required for performance of the work under the Contract Documents.
- (h) A letter from a licensed Surety, rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide the NTP1 Performance Bond, and the NTP1 Payment Bond, the NTP2 Performance Bond, and the NTP2 Payment Bond, each in the amount specified and in the forms (including riders) attached as Appendix 8 to the Contract. If multiple Surety letters are provided, the Proposal shall identify which Surety will be the lead Surety. The commitment letter may include no conditions, qualifications, or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the Contract and issuance of NTP1 and NTP2; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the Contract Documents, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments.
- (i) A letter signed by Proposer, each Major Participant, and each Subcontractor listed in the Proposal indicating the commitment to work on the Project and the commitment of Proposer to retain the specified services of the designated Major Participant or Subcontractor.
- (j) RCTC-approved DBE Performance Plan in accordance with the requirements of Section 1.8.2.

- (k) Any other requirements identified by RCTC during pre-award negotiations.

Proposers are advised that at the time of Contract execution, the Design-Builder will be required to possess a valid Class A (General) contractor's license and other specialty licenses as reflected in Section 1.11.

## **6.2 DEBRIEFINGS**

All Proposers submitting Proposals will be notified in writing of the results of the evaluation process. Proposers not selected for award may request a debriefing. Debriefings shall be provided in RCTC's sole discretion at the earliest feasible time after execution of the Contract. If conducted, the debriefing shall be conducted by an RCTC representative familiar with the rationale for the selection decision and Contract award.

Debriefings 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 members of the TPES or FPES, but may include a summary of the rationale for the selection decision and Contract award.

## **6.3 PAYMENT TO UNSUCCESSFUL PROPOSERS**

Each unsuccessful Proposer submitting a responsive Proposal that passes all of the pass/fail criteria in Section 5.3 of the ITP will be entitled to receive a stipend from RCTC, provided that such Proposer has timely executed and delivered the Stipend Agreement (Exhibit F) to RCTC. No Proposer will be required by RCTC to accept a stipend. The successful Proposer shall not otherwise be entitled to a stipend under this Section 6.3 and shall only be entitled to such compensation as is set forth in the Contract. No unsuccessful Proposer shall be entitled to reimbursement for any of its costs in connection with this RFP except as expressly specified in this Section 6.3.

The amount of the stipend payable to a Proposer is **\$650,000.00**.

In consideration for RCTC's agreement to make payment pursuant to the Stipend Agreement, each Proposer receiving a stipend agrees that RCTC will be entitled to use any and all concepts, ideas, and information contained in its Proposal (including proposed ATCs, techniques, methods, processes, drawings, reports, plans, and specifications), without any further compensation or consideration to Proposer.

Each Proposer acknowledges that RCTC will have the right to inform the successful Proposer, after award, regarding the contents of all Proposals for which stipends have been (or will be) paid, for the purpose of allowing concepts to be reviewed by the selected Proposer and incorporated into the Contract as deemed advisable. Furthermore, upon Proposer's receipt of

payment hereunder, the right to use such Work product will extend to other projects undertaken by RCTC, as RCTC deems appropriate. However, RCTC acknowledges that the use of any of the work product by RCTC or Design-Builder is at the sole risk and discretion of RCTC and Design-Builder, and it will in no way be deemed to confer liability on the unsuccessful Proposer.

As a condition to collection of the stipend, the Proposer must submit a request to RCTC affirmatively and clearly stating, in a manner acceptable to RCTC, in its sole discretion, that the Proposer will not contest RCTC's award of the Contract and including an express and irrevocable waiver thereof. Such request shall be submitted within seven days after notice of award is posted. Any Proposer that contests the award will not be eligible to receive a stipend.

In no event will any Proposer that is selected for award but fails to satisfy the award conditions set forth in Section 6.1 be entitled to receive the foregoing payment or any other reimbursement or payment for Work product under this Section 6.3. Any ideas contained in such Proposer's Proposal will be the property of RCTC without any requirement to make payment thereof.

#### **6.4 DISPOSITION OF ESCROWED MATERIALS FOLLOWING CONCLUSION OF PROCUREMENT PROCESS**

Following execution of the Contract, the Escrowed Materials of the successful Proposer will be available for review as specified in the Contract Documents.

In accordance with the procedures set forth in the Escrow Agreement (Form K), each unsuccessful Proposer shall have the right to retrieve its Escrowed Materials after the Contract Documents have been executed and delivered, after RCTC rejects all of the Proposals, or after RCTC terminates this procurement.

## **7 PROTESTS**

### **7.1 APPLICABILITY**

This Section 7 sets forth the exclusive protest remedies available with respect to the RFP and prescribed exclusive procedures for protests regarding:

- (a) allegations that the terms of the RFP are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed RCTC's authority
- (b) a determination as to whether a Proposal is responsive to the requirements of the RFP and/or passes all pass/fail criteria, as applicable
- (c) award of the Contract

### **7.2 REQUIRED EARLY COMMUNICATION FOR CERTAIN PROTESTS**

Protests concerning the issues described in Section 7.1(a) may be filed only after Proposer has informally discussed the nature and basis of the protest with John Standiford, RCTC Deputy Executive Director, following the procedures for those discussions prescribed in the RFP.

### **7.3 DEADLINES FOR PROTESTS**

#### **7.3.1 RFP Terms**

Protests concerning the issues described in Section 7.1(a) must be filed as soon as the basis for the protest is known, but no later than 60 days prior to the Proposal Due Date, unless the protest relates to an Addendum to the RFP, in which case the protest must be filed no later than five business days after the Addendum is issued (but in any event, prior to the Proposal Due Date).

#### **7.3.2 Responsiveness or Pass/Fail Determinations**

Protests concerning the issues described in Section 7.1(b) must be filed no later than five business days after receipt of the notification of non-responsiveness or failure to pass all pass/fail criteria.

#### **7.3.3 Contract Award**

Protests concerning the issues described in Section 7.1(c) must be filed no later than 10 days after the earlier of the notification of intent to award (or conditional award) and the public announcement of the apparent best-value Proposer.

### **7.4 CONTENT OF PROTEST**

Protests shall completely and succinctly state the grounds for protest, its legal authority, and its factual basis and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Statements shall be sworn and submitted under penalty of perjury.

### **7.5 FILING OF PROTEST**

Protests shall be filed by hand delivery on or before the applicable deadline to the address specified in Section 2.2.1, as soon as the basis for protest is known to Proposer, with a copy to Steve DeBaun, Esq., Best, Best & Krieger LLP, as soon as the basis for protest is known to Proposer. Proposer filing the protest shall concurrently submit a copy of the protest to the other



Proposers, whose addresses may be obtained from the RCTC Project website at [http://www.rctc.org/sr91\\_design\\_build.asp](http://www.rctc.org/sr91_design_build.asp).

#### **7.6 COMMENTS FROM OTHER PROPOSERS**

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

#### **7.7 BURDEN OF PROOF**

The protestant shall have the burden of proving its protest. RCTC may, in its sole discretion, discuss the protest with the protestant and other Proposers. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

#### **7.8 DECISION ON PROTEST**

The Executive Director or designee shall issue a written decision regarding the protest within 30 days after the filing of the detailed statement of protest. The decision by the Executive Director or designee shall be final and binding. If necessary to address the issues raised in a protest, RCTC may, in its sole discretion, make appropriate revisions to the RFP by issuing Addenda.

#### **7.9 PROTESTANT'S PAYMENT OF COSTS**

If a protest is denied, Proposer filing the protest shall be liable for RCTC's costs reasonably incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by RCTC as a consequence of the protest.

#### **7.10 RIGHTS AND OBLIGATIONS OF PROPOSERS**

Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest provided in this Section 7, and expressly waives all other rights and remedies and agrees that the decision on the protest is final and conclusive. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section 7, it shall indemnify, defend, and hold RCTC and its commission members, officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's actions. Each Proposer, by submitting a Proposal, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

## **8 RCTC'S RIGHTS AND DISCLAIMERS**

### **8.1 RCTC RIGHTS**

RCTC may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer, may require additional information from a Proposer concerning its Proposal, and may require additional evidence of qualifications to perform Design-Builder's obligations under the Contract Documents. RCTC further reserves the right, in its sole discretion to the Proposer, to:

- (a) Develop the Project in any manner that it, in its sole discretion, deems necessary
- (b) Reject any or all of the Proposals
- (c) Modify any dates set or projected in the RFP
- (d) Cancel, modify, or withdraw the RFP in whole or in part
- (e) Terminate this procurement and commence a new procurement for part or all of the Project
- (f) Terminate evaluations of Proposals received at any time
- (g) Suspend 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
- (h) Modify the procurement process and terms of the RFP (with appropriate notice to Proposers, as determined by RCTC)
- (i) Waive or permit corrections to data submitted with any response to the RFP until such time as RCTC declares in writing that a particular state or phase of its review of the responses to the RFP has been completed and closed
- (j) Permit submittal of Addenda and supplements to data previously provided in a Proposal pursuant to a request for clarification issued by RCTC until such times as RCTC declares that a particular stage or phase of its review of the responses to the RFP has been completed and closed
- (k) Appoint evaluation committees to review Proposals, make recommendations, and seek the assistance of outside technical experts and consultants in Proposal evaluation
- (l) Consider information relating to a Proposer or Proposal based on information outside of the Proposal available to the evaluators, including the evaluators' personal experiences or knowledge
- (m) Disclose information contained in a Proposal to the public as described herein
- (n) Approve or disapprove Proposer's Key Personnel
- (o) Approve or disapprove changes in Proposer's organization
- (p) Accept a Proposal other than that which has the lowest Contract Price
- (q) Waive deficiencies, informalities, and irregularities in Proposals; accept and review a non-conforming Proposal; or seek clarifications or modifications to a Proposal
- (r) Not issue a notice to proceed after execution of the Contract Documents

- (s) Disqualify any Proposer that violates the terms of the RFP
- (t) Request Proposal Revisions as specified herein
- (u) Offer a Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties) of the Contract by a third party
- (v) Exercise any other right reserved or afforded to RCTC under the RFP and applicable Governmental Rules

## **8.2 RCTC DISCLAIMERS**

The RFP does not commit RCTC to enter into any contract. Except as expressly set forth in Section 6.3, RCTC assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to the RFP. All of such costs shall be borne solely by each Proposer and Proposer team.

**In no event shall RCTC be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the Contract Documents, in form and substance satisfactory to RCTC, have been authorized and executed by RCTC and then, only to the extent set forth therein. In submitting a Proposal in response to the RFP, Proposer is specifically acknowledging these disclaimers.**