

May 13, 2013

Thomas Fellenz
California High Speed Rail Authority
records@hsr.ca.gov

SENT VIA EMAIL ONLY

Dear Mr. Fellenz,

We are requesting the immediate posting of all the questions posed by bidders with the responses on the California High Speed Rail Authority website.

- 1) The Authority has been delaying and obstructing our access to these records.
- 2) The records are Public Records.
- 3) Under the terms of the RFP for Construction Package #1, the Authority committed to the bidders that these would be posted on the Authority's website.

The Authority has not been providing records on a prompt basis.

April 18, 2013: CARRD requests several items related to the change in the bidding process where all bidders, not just those with the top three technical scores, would be eligible to win including “the release of any questions and answers submitted by bidders that relate to this provision.” CARRD noted that it would receive items as they became available.

April 26, 2013: CHSRA (Mr. Fellenz) “Authority staff are researching the questions received and answers from that time period, if any are responsive to your request on this topic they will be provided within the next twenty one (21) days.”

May 6, 2013: CHSRA (staff) “We would like to request clarification on your PRA request with the Authority. Could you please clarify what documents you are looking for? See highlighted portion below in red [3) We are requesting the release of any questions and answers submitted by bidders that relate to this provision.]. Any additional guidance you can give us would be much appreciated.”

May 7, 2013: CARRD: “The questions and answers discussed in the extracted page attached to this email [Section 7.5 from Instructions for Proposers, Addendum 9].

Please note: we made additional requests for questions in a subsequent request. In lieu of providing documents to us and / or spending the time to sort through 700 different questions to see which ones pertain to this, we would recommend posting all of these on your website so that the public may have access to them. Hopefully they will answer some of the many questions that have arisen with this bid process.”

May 13, 2013: CARRD speaks to CHSRA staff about arranging a time on May 16th for CARRD to examine the records at the CHSRA office.

May 14, 2013: CARRD sends a version of this document to CHSRA, explaining why these types of records are disclosable during an RFP process and suggesting a way to CHSRA to exclude any potentially non-disclosable items.

May 14, 2013: CHSRA (Mr. Fellenz): Backtracks on April 26th correspondence which not only demonstrates an understanding of what CARRD is requesting but also agrees to disclose responsive records by May 19th. Mr. Fellenz claims an exemption from disclosure, “The Authority appreciates the clarification of the request you provided. The questions and answers submitted by bidders you have requested cannot be made available until the contract has been formally awarded by the California Authority Board of Directors later this year. Therefore the Authority is claiming a public records act exemption pursuant to Government Code §6254(h) at this time.”

The questions by bidders and answers by the project sponsor during an RFP are public records.

1) They do not contain any confidential information. The instructions given to bidders were very specific to not include any confidential or even identifying information in the body to the question.

2) The questions (without the name of the proposer) and answers have already been given to all the bidders. There is an exemption that allows certain records to be withheld during contract negotiations (the proposals themselves) but prior to award by an agency to avoid giving a winning proposer access to the specific details of other competing proposals. In this case, the questions and answers are specifically distributed to **all** bidders and are not part of a proposal.

Even if the questions and answers were part of a proposal, the 2006 case involving LAWA stated that even such confidential information should be disclosed after contract negotiations were concluded but prior to board approval of such contract.

3) Questions and answers are a standard part of the RFP process and are routinely posted for public viewing during RFP processes by California agencies, including the California High Speed Rail Authority during its recent RFP for Right of Way services (<http://www.bidsync.com/DPX?ac=view&auc=1928361#attach> see document 23)

4) If the Authority is concerned about releasing the name of the questioner, they could simply exclude that and release the remaining information. As per California Government Code 6253(a), “Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.”

The Authority should have already posted the questions and answers “Request for information and clarification” on their website, according to the RFP terms themselves.

In Section 7.5.2 (“Authority Responses”) of the Instructions to Bidders, it states, “The Authority will post responses to questions and requests for clarification in the form of a response matrix posted on the **Project Website**.”

The **Project Website** is defined in the same document as “as the official website of the California High-Speed Rail Authority,” which until May 20th is <http://cahighspeedrail.ca.gov/>.

If these have been posted, the Authority can simply direct us to where they are on the website.

If not, the Authority should immediately rectify this situation as it ensures that all the bidders did have access to the questions and answers, which are considered an integral part of the bidding process.

Thank you very much for your assistance.

Regards,

Elizabeth

Elizabeth Goldstein Alexis
Co-founder Californians Advocating Responsible Rail Design (CARRD)

California High-Speed Train Project



Request for Proposal for Design-Build Services

RFP No.: HSR 11-16

**Book 1, Parts A - C: Instructions to Proposers,
Certifications, and Forms**

Revision(s)	Date	Description
0	03/22/2012	Initial Release, R0
1	04/30/2012	Addendum 1
2	06/05/2012	Addendum 2
3	07/02/2012	Addendum 3
4	08/22/2012	Addendum 4
5	10/29/2012	Addendum 5
6	11/13/2012	Addendum 6
7	12/14/2012	Addendum 7
8	01/08/2013	Addendum 9

- Other events known to the affected entity, a related business unit or parent corporation of the affected entity which represents a material change in financial condition over the past three (3) years or may be pending for the next reporting period.
- **Offeror** – A Person that submitted an SOQ in response to the RFQ.
- **Principal Participant** – is defined as one or all of the following:
 - The Proposer
 - If the Proposer is a joint venture, partnership, or limited liability company, any joint venture, general partner, or member thereof
 - Any Person holding (directly or indirectly) a 15 percent or greater interest in the Proposer
- **Project Website** – is defined as the official website of the California High-Speed Rail Authority.
- **Proposer** – The Shortlisted Offeror submitting a Proposal in response to this RFP.
- **Proposer Team** – Collectively, the Proposer, other Major Participants, Subcontractors, including their respective employees, agents, and officers.
- **Request for Qualifications (RFQ)** – The Request for Qualifications, including all addenda thereto, issued by the Authority for the Project on November 15, 2011.
- **Request for Proposals (RFP)** – This written solicitation, issued by the Authority in March 2012 to all Shortlisted Offerors for submission of detailed proposals to undertake the Project.
- **RFP Documents** – Those documents included in Books 1-4 of the RFP.
- **Shortlisted Offerors** – Offerors invited by the Authority, based on the Authority's evaluation of each Offeror's SOQ, to submit Proposals in response to this RFP.
- **Statement of Qualifications (SOQ)** – The document submitted by an Offeror in response to the RFQ issued on November 15, 2011.
- **Surety** – A properly licensed surety company, insurance company, or other Person approved by the Authority, which has issued a Proposal Bond and/or will issue a Performance Bond and Payment Bond. To be considered a Surety for purposes of this ITP the surety company, insurance company, or other Person approved by the Authority shall:
 - Be registered with the California State Insurance Commissioner;
 - Appear on the current Authorized Insurance List in the State of California published by the Office of the Insurance Commissioner, and
 - Possess an A.M. Best and Company rating level of A- or better and Class X or better, or as otherwise approved by the Authority in its sole discretion.



7.5 Requests for Information and Clarifications

7.5.1 Proposer Requests

Except as otherwise provided by the Authority, questions and requests for clarification regarding this RFP must be submitted in writing on the Request for Information and Clarification (Form H, provided in Part B) to the Authority Point of Contact. All questions and requests must be received by email no later than the date and time specified in Section 3.

Questions and requests for clarification regarding this RFP shall:

- Be sequentially numbered
- Identify the document (i.e., Book 2, Part B, etc.)
- Identify the relevant section number and page number (i.e., Section 1.2, page 2) or, if it is a general question, indicate so
- Not identify the Proposer's identity in the body of the question or contain proprietary or confidential information
- Indicate whether the question is a Class 1, 2, 3 or 4 question
- Each page of questions shall be marked with the Proposer's name and date of submission

As used above, "Class 1" means a potential "go/no-go" issue that, if not resolved in an acceptable fashion, may preclude the Proposer from submitting a Proposal. "Class 2" means a major issue that, if not resolved in an acceptable fashion, will significantly affect price or, taken together with the entirety of other issues, may preclude the Proposer from submitting a Proposal. "Class 3" means an issue that may affect price, or another material issue, but is not at the level of a Class 1 or Class 2 issue. "Class 4" means an issue that is minor in nature, a clarification, or a comment concerning a conflict between documents or within a document, etc.

Proposers will be limited to seventy (70) comments/questions per the released RFP, and per each addendum released modifying the RFP. Each Proposer's allotment of comments/questions will be reset upon release of each addendum, unless otherwise provided. If a question has more than one subpart, each subpart will be considered a separate question. Corrections of typographical errors, incorrect cross references or inconsistencies within or among the RFP documents will be excluded from the question limitation and shall be categorized as a "Class 4" question.

7.5.2 Authority Responses

The Authority will use the following guidelines when responding to questions and requests for clarification:

- Questions and requests for clarification from all Proposers will be reviewed by the Authority's procurement team.



- The Authority will post responses to questions and requests for clarification in the form of a response matrix posted on the Project Website.
- The Authority will send an e-mail notification as soon as each response to questions and requests for clarification is issued.

7.6 Not Used

7.7 Rules of Contact

The rules of contact for this procurement are designed to promote a fair, unbiased, and legally defensible procurement process. “Contact” includes any face-to-face, telephone, email, or other written communication.

These rules of contact shall apply for the duration of the Project’s procurement process, which began on the date the Authority issued the RFQ and ends when the Contract is awarded and the protest period has lapsed.

Proposer, Major Participants and other members of a Proposer Team may not communicate with another Proposer or members of any other Proposer Team about the Project, the RFP or the Proposals. However, a Proposer, Major Participants and other members of a Proposer Team may communicate with a Subcontractor that is on more than one (1) Proposer Team if the two (2) Proposers establish a protocol to ensure that the Subcontractor will not act as a conduit of information between the two (2) Proposers.

Contact between any Proposer, Major Participant, or other member of a Proposer Team and the Authority shall only be made through the Authority Point of Contact identified herein and the Proposer’s RFQ/Proposal Manager, except for communications expressly permitted by this RFP.

The Authority will not be bound by any oral exchange, nor will the Authority be bound by any other information exchange that occurs outside of the official Project-related communications specified herein.

Except for communications expressly permitted by this RFP, no employee, member, or agent of any Proposer Team shall directly or indirectly contact any officer, administrator, employee, member, consultant or other agent of the Authority, California Department of Transportation (Caltrans), California Department of General Services (DGS), FRA, or any of the firms identified in Table 3 of this ITP as being subject to Proposer ex parte communications regarding the Project, the RFP, the Proposals or any other aspect of this procurement. Proposers shall not contact any person serving on an advisory or selection committee regarding the RFP, Proposals or Project.

The Authority may call special meetings (group meetings or one-on-one meetings) with Proposers as it deems necessary. The Authority may establish separate protocols for special meetings which will allow Proposers to communicate with Authority staff or consultants other than the Authority Point of Contact during one-on-one meetings and with other Proposers during any group meetings.

