

3 Procurement and Project Schedules

Table 1 summarizes the schedule of events in this RFP phase of the two-step procurement process (the “RFP Schedule”). The RFP Schedule is subject to modification at the sole discretion of the Authority. Proposers will be notified of any change in the RFP Schedule by an addendum to this RFP.

Table 1: RFP Schedule

Activity	Deadline ¹	Responsibility
Issue RFP	March 22, 2012	Authority
One-on-One Meetings with Potential Proposers	May 14-15, 2012	Both
Mandatory Department of Labor EEO and AA Seminar	May 16, 2012	Both
Mandatory Authority Small Business Program Seminar	May 16, 2012	Both
Mandatory Authority Sponsored Small Business Outreach Meeting	May 17, 2012	Both
Meetings with Potential Proposers on Possible ATCs	June 4-6, 2012	Both
Follow-up Meetings with Potential Proposers on ATCs	June 18-20, 2012	Both
Proposal Agreement Submittal Deadline	June 15, 2012	Proposers
ATC Submittal Deadline	July 9, 2012	Proposers
Follow-up One-on-One Meetings with Potential Proposers	July 10-12, 2012	Both
List of Critical Right-of-Way Parcels Submittal	Within 60 Days of receipt of RFP	Proposers
Response to ATC Submittals	September 14, 2012	Authority
Deadline to Submit Agenda for One-on-One Meetings	November 21, 2012	Proposers
Deadline for Proposer Questions ²	December 21, 2012 at 12:00pm (PST)	Proposers
Deadline to Submit Changes to Proposer Teams	November 26, 2012	Proposers
One-on-One Meetings with Potential Proposers	November 28-30, 2012	Both
Proposal Deadline	January 18, 2013	Proposers
Deadline to Submit Escrowed Proposal Documentation (See 8.2.5)	January 23, 2013	Proposers
Anticipated Contract Award	June 2013	Authority

¹ All deadlines are 3:00 p.m. Pacific Time unless otherwise indicated.

² Proposers will be limited to five (5) comments/questions following release of Addendum No. 7.



public necessity requires proposers for each design-build contract (including the Contract) be allowed to postpone identification of subcontractors who would otherwise be required to be identified under the Subcontracting Act at the time of bid submission, subject to the prime contractor's compliance with the procedure set forth in the referenced Board resolution and summarized below.

In accordance with the Authority's Subcontractor Listing Policy for Design Build Projects, Subcontractors not identified in the Proposals and whose respective Subcontract values are estimated to exceed one-half of one percent (0.5%) of the difference between (a) the Total Contract Price and (b) the amount bid for design services shall be selected through a fair and open competitive selection process, which procedure shall be subject to the review and approval of the Authority. Such procedure shall include times for each step of the process and shall provide that award of any Subcontract will go to the lowest responsive bid by a responsible Proposer approved by the Authority (which approval shall not be unreasonably withheld). The Contractor shall promptly notify the Authority in writing of the identity of each Subcontractor selected.

7.16 Alternative Technical Concepts

This Section sets forth a process for early review of Alternative Technical Concepts ("ATCs"). This process is intended to allow Proposers to incorporate innovation and creativity into their Proposals, in turn allowing the Authority to:

- Consider Proposer ATCs in making the selection decision
- Avoid delays and potential conflicts in the design associated with deferring reviews of ATCs to the post-award period, and, ultimately
- To obtain the best value for the public

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 the Authority, the Authority recommends that the Proposer submit such concept for review as an ATC.

Any ATC that has been approved or conditionally approved may be included in the Proposal, subject to the conditions set forth herein.

7.16.1 Submittal and Review of ATCs

The Proposer may submit ATCs for review to the Authority until the deadline identified in [Section 3](#). All ATCs shall be submitted in writing to the Authority Point of Contact, with a cover letter clearly identifying the submittal as a request for review of an ATC under this procurement. If the Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by the Authority.

The Authority will review each ATC submitted. If the Authority needs more information to determine whether or not the ATC will be approved or not approved, the Authority will submit



written questions to the Proposer and/or request a one-on-one meeting in order to better understand the details of the ATC. The Authority may conditionally approve an ATC based on required revisions to a portion or portions of the ATC.

If an ATC is not approved or conditionally approved, and the Proposer feels that the non-approval or the conditions for approval were due to an incorrect conclusion on the part of the Authority, it may re-submit the ATC for one (1) additional review. If a re-submittal is made, it shall be accompanied by a cover letter that clearly (i) identifies such submission as an ATC submitted for an additional review and (ii) summarizes the clarifications to assist the Authority in its re-evaluation of the ATC.

7.16.2 Contents of the ATC Submittal

Each ATC submittal shall include six (6) copies and shall include each of the following:

- **Description** – A detailed description and schematic drawings of the configuration of the ATC or other appropriate descriptive information including, if appropriate, product details (e.g., specifications, construction tolerances, special provisions, etc.)
- **Usage** – Where and how the ATC would be used on the Project
- **Schedule Revisions** – Any change in the time period necessary to design and construct the Project resulting from implementing the ATC, including, as appropriate, a description of method and commitments
- **Cost Increases or Decreases** – A detailed estimate of the cost increases or decreases that would result should the ATC be approved and implemented, including life cycle cost impacts for repair, maintenance, and operations
- **Deviations** – References to any requirements of the RFP Documents or to any elements of the Contract Documents that are inconsistent with the proposed ATC, the specific proposed changes to such provisions in the Contract Documents, an explanation of the nature of the proposed deviation, and a request for approval of such deviations or a determination that the ATC is consistent with the requirements of the RFP Documents
- **Analysis** – An analysis justifying the ATC and why the deviations from the requirements of the RFP Documents should be allowed; a description of how the ATC is equal or better in quality and performance than the requirements of the RFP Documents; and a description of other projects where the ATC has been used under similar circumstances and the success of such usage. Include the name of other project owner(s) including contact name, phone number, and email address who can confirm the details of usage.
- **Impacts** – Discussion of potential impacts of the ATC on vehicular or rail traffic, rail operations, community impact, environmental, and safety and whether such impacts are consistent with the environmental analysis disclosed in the Final Environmental Documents for the applicable section. Discussion of whether and to what extent additional environmental compliance under CEQA and NEPA would be required. Include



construction plan and equipment layout showing impacts. Also address if there are any special maintenance requirements associated with the ATC.

- **Right-of-Way** – If and what additional right-of-way will be required to implement the ATC. Proposers are advised that they shall (i) not be entitled to any additional time or money as a result of site conditions (i.e., hazardous materials, differing site conditions, geotechnical issues, Utilities, etc.) on such additional right-of-way; and (ii) not be entitled to any additional time or money as a result of any delay, inability, or cost associated with the acquisition of such right-of-way
- **Risks** – A description of added risks to the Authority and other Persons associated with implementing the ATC

7.16.3 Determination by the Authority

The Authority will make one of the following determinations with respect to each properly submitted ATC:

- The ATC is approved
- The ATC is not approved
- The ATC is conditionally approved, (i.e., the ATC is not approved in its present form or limited to a specific location/application, but is approved subject to satisfaction, in the Authority's sole judgment, of specified conditions)
- The submittal does not qualify as an ATC but may be included in the Proposal without an ATC (i.e., the concept complies with the RFP requirements)
- The submittal does not qualify as an ATC and may not be included in the Proposal

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 or protest the Authority's determinations regarding acceptability of ATCs. The Authority's rejection or conditional approval of an ATC will not entitle Proposer to an extension of the Proposal Deadline or the date that the ATCs are due; provided, however, that the foregoing shall not limit the Authority's absolute and sole right to modify the Proposal Deadline or any other date in connection with this procurement.

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. Should the Contractor be unable to obtain required approvals for any ATC incorporated into the Contract Documents, or if the concept otherwise proves to be infeasible, the Contractor will be required to conform to the original RFP requirements, as such requirements may be amended by addenda.

7.16.4 Incorporating into Proposal

Subject to Section 7.16.3, a Proposer may incorporate one or more pre-approved and/or conditionally approved ATCs into its Proposal. Copies of the Authority's ATC approval letters for each incorporated ATC shall be included in the Proposal. Proposals with or without ATCs



will be evaluated against the same technical evaluation factors. Proposals incorporating ATCs, including an ATC that provides technical enhancements, may or may not receive a higher technical rating.

The Price Proposal shall reflect any incorporated ATCs. Except for incorporating approved ATCs, the Proposal may not otherwise contain exceptions to or deviations from the requirements of the RFP Documents.

Following award of the Contract, the ATCs that were approved or conditionally approved by the Authority and incorporated in the Proposal by the successful Proposer shall be included in the Contract Documents. If the Authority 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. Notwithstanding anything to the contrary herein, if Contractor does not comply with one or more Authority conditions of approval for an ATC or Contractor fails to obtain a required third party approval for an ATC, Contractor will be required to comply with the original requirements of the RFP without additional cost or extension of time as set forth in the Contract.

Prior to execution of the Contract, ATCs from any unsuccessful Proposers that submitted agreements to receive compensation for work product as described in [Section 7.12](#) and [Form L](#) may, in the Authority's sole discretion, be presented to the selected Proposer for possible incorporation in the Contract Documents during negotiation of the final terms of the Contract. In addition, following execution of the Contract, ATCs from unsuccessful Proposers may, in the Authority's sole discretion, be presented to the Contractor as an Authority Change in accordance with the "Changes" clause in Book 2, Part B, General Provisions, Section 17.

7.16.5 Confidentiality of ATCs

Except as provided in [Section 7.16.4](#), ATCs properly submitted by a Proposer and all subsequent communications regarding its ATCs will be considered confidential subject to the Open Government Laws, until the Contract is awarded or the procurement is canceled as specified herein; provided, however, that, if the Authority, in its sole discretion, determines, based on a proposed ATC or otherwise, that the RFP contains an error, inconsistency, ambiguity or mistake, the Authority reserves the right to modify the RFP to correct the error, inconsistency, ambiguity or mistake, regardless of any impact on a proposed ATC.

7.16.6 Design Variances and ATCs

Contractor may rely on the Design Variances as preliminarily approved and included in Book 3. New Design Variances required as part of ATCs shall be subject to Authority review and preliminary approval as delineated in the Authority's Design Variance Guidelines and CHSTP Design Criteria in Book 3. Proposers shall therefore prepare, submit, and ensure approval of all new Design Variances to be included as part of ATCs. Design Variances are location and condition specific. New Design Variances required as part of ATCs shall be equal or better in performance and safety.

