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~~Release of November 21, 2022~~



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**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
REQUEST FOR QUALIFICATIONS (23-1002870)**

for the Shortlisting of Design-Build Teams for the

TUNNEL TO ONTARIO INTERNATIONAL AIRPORT PROJECT

RFQ Issuance Date: November 21, 2022

[Addendum No. 1 Issuance Date: December 23, 2022](#)

[Addendum No. 2 Issuance Date: January 10, 2023](#)

[Addendum No. 3 Issuance Date: February 16, 2023](#)

[Addendum No. 4 Issuance Date: March 5, 2023](#)

SOQ Submission Deadline: 12:00 pm PT, ~~January 26~~April 20, 2023

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Form 7: Safety Record Questionnaire

Form 8: Key Personnel

Form 9: Credit Ratings

~~Form 10: Form of Proposal and Performance Bond~~



PART A: PROJECT INTRODUCTION

1. INTRODUCTION TO THE PROJECT

1.1 Project Overview

San Bernardino County Transportation Authority ("SBCTA"), in partnership and cooperation with the City of Rancho Cucamonga, the City of Ontario, Ontario International Airport Authority ("OIAA"), and Omnitrans, presents this Request for Qualifications (as modified by any Addenda, this "RFQ") to prospective entities or groups of entities interested in the project to construct an approximately 4-mile tunnel and autonomous vehicle transit connection from the Rancho Cucamonga Metrolink Station, also known as Cucamonga Station, to the Ontario International Airport ("ONT"), with one surface station at Cucamonga Station and two surface stations at ONT (the "Project").¹

The Project further ~~includes~~ contemplates that the Lead Operator (defined below) will enter into a separate Operating Contract (defined below) with Omnitrans for the operations and maintenance of the Operating System ~~on a transitional basis, in partnership with Omnitrans,~~ for a period of ~~one year~~ five years following commencement of revenue operations.

The purpose of the Project is to provide a fast and low-cost connection to the Southern California regional rail/transit system and future interstate high speed rail service for air passengers and other users of ONT. Specifically, the goals of the Project include the following (which are not listed in order of importance):

- a. providing a reliable trip time and ability to accommodate capacity during peak demand;
- b. minimizing wait times for those using the system to transfer to and from Cucamonga Station Metrolink trains and other transit services feeding Cucamonga Station over the majority of the day;
- c. promoting sustainable travel and livability for the region;
- d. providing a convenient, safe, and reliable method of transportation connecting the ONT passenger terminals to the regional transit network;
- e. minimizing environmental impacts and ROW acquisitions;

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¹ For clarity and brevity, SBCTA has used the term "Project" to refer to the subject matter of this RFQ and the subsequent contemplated RFP. Proposers should note, however, that neither the issuance of the RFQ nor any action taken thereunder is an "approval" of a "project" as those terms are defined under CEQA. Until any necessary CEQA compliance is complete, SBCTA will take no action that would (i) have a significant adverse effect on the environment or (ii) limit SBCTA's choice of alternatives or mitigation measures.



- f. using flexible design, construction, and technology;
- g. commencement of service targeted for no later than fall 2027; and
- h. promoting a safe work environment throughout the duration of the Project.

1.2 Procurement Approach

SBCTA is procuring the Project utilizing a hybrid-~~progressive~~ design-build methodology. This Request for Qualifications (the "Design-Builder RFQ") is intended to lead to shortlisting of two (2) design-build teams, which will consist of Major Participants to include the submitting entity or groups of entities (each company, team or Joint Venture acting together for such purpose, the "Proposer") that would become the counterparty to the ~~Preconstruction~~ Pre-Proposal Works Agreement (on behalf of the Shortlisted Design-Build Team, as defined below) and the Design-Build Contract if ultimately selected (thereafter, the "Design-Builder"), as well as the Lead Contractor, Lead Tunneling Contractor, and Lead Designer, and any identified Financially Responsible Parties (together comprising a "Design-Build Team" and, if shortlisted at the conclusion of this procurement process, a "Shortlisted Design-Build Team"). The Design-Builder will ultimately be responsible for all Work to complete the Project, however, SBCTA's evaluation of Proposer's qualifications under this RFQ will not consider the qualifications related to the Operating System. SBCTA is proceeding in parallel with a separate Request for Qualifications to evaluate the qualifications of and prequalify potential Operating System Providers (the "Operating System Provider RFQ") for the Project.

Each Shortlisted Design-Build Team will enter into a ~~Preconstruction~~ Pre-Proposal Works Agreement with SBCTA for the approximately 10-month Preconstruction Period ("Phase 1" or the "Preconstruction Period"), commencing in ~~March~~ June 2023 with the execution of the ~~Preconstruction~~ Pre-Proposal Works Agreements, and concluding with the submission of Proposals in response to the Design-Build Request for Proposals in ~~January~~ March 2024.

Each Shortlisted Design-Build Team will be expected to select a single Prequalified Operating System Provider to join its team from among the SBCTA-provided list of Prequalified Operating System Providers no later than 2-3 months into Phase 1, or around ~~mid-May~~ August 2023. The Operating System Provider will thereafter be considered a Major Participant of the Shortlisted Design-Build Team, and subsequent changes will be subject to the organizational change requirements set forth in the ~~Instructions to Proposers (the "ITP"). More information on this process will be included in the~~ RFP.

SBCTA anticipates releasing the ~~ITP~~ RFP, which will include the best-value evaluation criteria that will be used by SBCTA to select a Preferred Proposer to become the Design-Builder ~~at the conclusion of Phase 1, as well as concurrent with the announcement of the Shortlisted Design-Build Teams. The RFP will include~~ the draft Design-Build Contract, ~~the draft Operating Contract, the~~ Technical Provisions, any ~~reference documents~~ Reference Documents to supplement the Project Information previously provided, and Third-Party

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~~Agreements (together comprising the "RFP") during the Preconstruction Period as set forth in the Procurement Schedule. Each Shortlisted Design-Build Team will be given the opportunity to comment on these RFP materials during Phase 1. At the conclusion of Phase 1, each Shortlisted Design-Build Team will submit to SBCTA a Proposal in response to the requirements of the ITP, including a Guaranteed Maximum Price ("GMP"), which together will comprise the "RFP" that will govern the Preconstruction Period.~~ Concurrent with this RFQ and for reference only, SBCTA is releasing a draft form of the RFP (the "Draft RFP") containing many of the key provisions that will govern the Preconstruction Period, in addition to those requirements set forth in the Pre-Proposal Works Agreement.

During the Preconstruction Period, each Shortlisted Design-Build Team will collaborate with SBCTA through a series of individual confidential ~~meetings~~ workshops and One-on-One Meetings with SBCTA ~~and, as well as~~ structured meetings with key third-party stakeholders ~~to develop the Shortlisted Design-Build Team's approach for the Project. Each Shortlisted Design-Build Team will be expected to participate in these structured meetings and will be required to submit specified design and other deliverables that will be set forth in the~~ Preconstruction-Pre-Proposal Works Agreement.

~~SBCTA plans to utilize a modified process for the review and approval of. The RFP will provide the opportunity for the Shortlisted Design-Build Teams to submit alternative technical concepts ("ATCs") to SBCTA on a confidential basis to allow for the incorporation of innovations during Phase 1, including modifications to the base technical requirements for the Project that are to be set forth in the RFP. SBCTA anticipates releasing a draft form of Preconstruction Works Agreement during the RFQ phase, as set forth in the Procurement Schedule, included with the Design-Build Contract.~~

~~The Preconstruction~~ SBCTA has released a draft form of Pre-Proposal Works Agreement concurrent with this RFQ. The Pre-Proposal Works Agreement will provide for a payment provides for payments for work product for each Shortlisted Design-Build Team, ~~which will be payable subject to satisfactory completion of the requirements for participation and submission of deliverables during Phase 1.~~ SBCTA will have the right to use the unsuccessful Shortlisted Design-Build Team's work product and to incorporate such work product, including ATCs, into the Design-Build Contract entered into with the Preferred Proposer for the construction phase, or "Phase 2."

The Shortlisted Design-Build Team that is selected at the conclusion of Phase 1 will enter into the Design-Build Contract with SBCTA, in the final form included as part of the RFP materials at the conclusion of Phase 1, which will govern the remainder of the Project, including final design, construction, testing, and commissioning ("Phase 2" or the "Construction Period") ~~followed by a one-year period of transitional operations and maintenance (the "Transitional Operating Period").~~

Each Shortlisted Design-Build Team will also be ~~expected~~ required to identify a Lead Operator as a Major Participant during the Preconstruction Period. ~~The Lead Operator will~~



~~incorporate the experience necessary for operating and maintaining the Operating System during the Transitional Operating Period, but will not be responsible for fare collection, fare enforcement, security, or other customer-facing functions, which will be retained by Omnitrans.~~ The Lead Operator may be, but is not required to be, the Operating System Provider identified by the Shortlisted Design-Build Team from among the Prequalified Operating System Providers. More information on the qualifications, requirements, and approval process for the Lead Operator will be included in the RFP.

As a condition to achieving Readiness for Revenue Service and following the successful testing and commissioning of the Operating System, the Lead Operator will be required to enter into a separate contract with Omnitrans that will provide for operations of the Operating System for a period of five (5) years from the commencement of revenue service (the "Operating Contract"). The draft Operating Contract will be included in the RFP.

SBCTA's determination of Prequalified Operating System Providers will not serve as a guarantee or endorsement of any specific technology or supplier, nor will it guarantee the performance of any specific technology or supplier.

The specific extent of the Operating System Provider's scope of work, and its relation to the design and construction of the Fixed Facilities by other Major Participants, is to be separately negotiated with any Shortlisted Design-Build Team that a Prequalified Operating System Provider is invited to join, without specific direction to be provided by SBCTA. SBCTA does not represent or warrant that any Prequalified Operating System Provider selected at the conclusion of this procurement will become part of any Shortlisted Design-Build Team, or that they will have any particular scope of work within such team.

1.3 State Law Provisions

SBCTA is issuing this RFQ and carrying out the procurement as described below in accordance with the provisions of California Public Contract Code § 22160 et. seq. (the "DB Law"), and other applicable provisions of Applicable Law, and SBCTA's Contracting and Procurement Policy. Pursuant to the DB Law, the California Legislature has authorized regional transportation agencies to award design-build contracts for transit capital projects.

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1.4 Federal Law Provisions

The RFQ is drafted based on the assumption that the Project will utilize federal-aid funds. Accordingly, this RFQ and the procurement will conform to the requirements of applicable federal law, including FTA regulations set out in FTA Circular 4220.1F "Third Party Contracting Guidance," and other applicable provisions of Applicable Law.

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2. PROCUREMENT SCHEDULE

SBCTA anticipates carrying out the procurement process in accordance with the following indicative schedule (the "Procurement Schedule"). This Procurement Schedule is subject



to modification at the discretion of SBCTA. Proposers will be notified of any change by an Addendum to the RFQ or, following identification of Shortlisted Design-Build Teams, in the ~~Preconstruction~~ Pre-Proposal Works Agreement and/or in the RFP.

Event		Date/Time
RFQ Process		
Operating System Provider Prequalification RFQ Issuance		November 15, 2022
Design-Builder RFQ Issuance		November 21, 2022
Deadline for Submission of Notice of Intent and Pre-SOQ One-on-One Meeting Request <u>Issuance of Addendum No. 1 to Operating System Provider RFQ</u>		November 30 <u>22</u> , 2022
Deadline for RFQ Comments to be Discussed at the Pre-SOQ One-on-One Meetings	December 7, 2022	
Pre-SOQ One-on-One Meetings <u>with Potential Design-Builders</u>		December 14-16 <u>15 & 20</u> , 2022
<u>Issuance of Addendum No. 2 to Operating System Provider RFQ</u>		<u>December 23, 2022</u>
<u>Issuance of Addendum No. 1 to Design-Builder RFQ</u>		<u>December 23, 2022</u>
<u>Issuance of Addendum No. 3 to Operating System Provider RFQ</u>		<u>January 10, 2023</u>
<u>Issuance of Addendum No. 2 to Design-Builder RFQ</u>		<u>January 10, 2023</u>
<u>Issuance of Addendum No. 4 to Operating System Provider RFQ</u>		<u>February 16, 2023</u>
<u>Issuance of Addendum No. 3 to Design-Builder RFQ</u>		<u>February 16, 2023</u>



Release of ~~November 21~~ March 5, 2022 2023

Event	Date/Time
Anticipated Release of Addendum #1 to RFQ (Including Form of Preconstruction Works (Phase 1) Agreement <u>No. 4 to Design-Builder RFQ, including:</u> <ul style="list-style-type: none"> • <u>Draft Pre-Proposal Works Agreement,</u> • <u>Design-Build Contract Term Sheet, and</u> • <u>Draft RFP.</u>² 	January 4 <u>March 5</u> , 2023
Additional Pre-SOQ One-on-One Meetings <u>with</u> <u>Potential Design-Builders (If Needed in San Bernardino; virtual/hybrid option available)</u>	January 11-12 <u>March 16-17</u> , 2023
<u>Anticipated Date for Release of Addendum No. 5 to Design-Builder RFQ (if needed)</u>	<u>March 22, 2023</u>
Final Date to Submit <u>Design-Builder</u> RFQ Comments to SBCTA ("RFQ Comment Deadline")	January 16 <u>March 30</u> , 2023
Anticipated Last Date <u>for Issuance</u> of Final Addendum to <u>Design-Builder</u> RFQ	January 18 <u>April 6</u> , 2023
<u>Operating System Provider Statements of Qualifications Due ("SOQ Submission Deadline")</u>	<u>12:00 pm PT, April 18, 2023</u>
<u>Design-Builder Statements of Qualifications Due ("SOQ Submission Deadline")</u>	<u>12:00 pm PT, January 26 April 20, 2023</u>
Anticipated Qualitative Interviews with Design-Build Teams	February 13-14 <u>May 8-10</u> , 2023
Anticipated Announcement of Prequalified Operating System Providers	Late February <u>June</u> 2023
Anticipated Announcement of Shortlisted Design-Build Teams	Late February <u>June</u> 2023
Preconstruction Period Process	

² The draft RFP, to be released following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreements, is provided with this RFQ for informational reference only. The RFP sets forth, among other things, the contemplated ATC process; the process for Pre-Proposal Workshops and One-on-One Meetings; RFP Comment Submissions during the Preconstruction Period; and the form of Performance Security required during the Preconstruction Period. Proposers are encouraged to submit RFQ Comments on the draft form of RFP and/or discuss provisions thereof during the Pre-SOQ One-on-One Meetings.



Release of ~~November 21~~ March 5, 2022 2023

Event		Date/Time
Execute Preconstruction Works (Phase 1) Agreements with Shortlisted Design-Build Teams	March 2023	
Preconstruction Work Activities	March 2023-January 2024	
Anticipated Release of RFP (Including Instructions to Proposers; Draft <u>Execute Pre-Proposal Works (Phase 1) Agreements with Shortlisted Design-Build Teams; Release Draft RFP, including:</u> <ul style="list-style-type: none"> • <u>Lead Operator Qualification Requirements;</u> • Design-Build Contract <u>Term Sheet</u>³; • Technical Provisions; • Reference Documents; and • <u>Third-Party Agreements</u>) 		April <u>June</u> 2023
<u>Pre-Proposal Workshops and One-on-One Meetings</u>		<u>July 2023 – January 2024</u>
Deadline for Shortlisted Design-Build Teams to Provide Notice to SBCTA of Selection of Operating System Provider		Mid-May <u>August</u> 2023
<u>Deadline for Shortlisted Design-Build Teams to Submit a Supplemental SOQ for the Lead Operator</u>		<u>August 2023</u>
Environmental Decision Anticipated		Winter 2023- <u>2024</u>
Proposals Due (Including Guaranteed Maximum Price)		January <u>Early March</u> 2024
Execute Design-Build Contract		March <u>Early April</u> 2024

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³ SBCTA anticipates releasing the full form Design-Build Contract by Addendum to the draft RFP shortly following announcement of the Shortlisted Design-Build Teams and execution of the Pre-Proposal Works Agreements.



Release of ~~November 21~~ March 5, 2022 2023

Event	Date/Time
Issuance of NTP 1 (Final Design)	April <u>30</u> , 2024
Target <u>Substantial</u> Completion (Commencement of Revenue Service) Date	November 2027

**Shaded terms are from the related Operating System Provider RFQ and provided for informational purposes.*

3. HOW TO USE THIS RFQ

- a. For background information on the Project, see Parts A and B.
- b. For information on the procurement process and the rules that govern it, see Parts C and F.
- c. For the requirements that govern preparation of a SOQ for submission in response to this RFQ, see Part D.
- d. For the process that will govern how SBCTA will evaluate SOQs submitted in response to this RFQ, see Part E.
- e. For definitions that give specific meaning to capitalized terms and standard rules of interpretation, see Part G.

PART B: BACKGROUND INFORMATION

4. KEY STAKEHOLDERS

4.1 Omnitrans

- a. Omnitrans is the public transit agency serving the San Bernardino Valley, providing safe, reliable, affordable, friendly, and environmentally responsible transportation. Omnitrans was established in 1976 through a joint powers agreement. Omnitrans carries approximately 11 million passengers each year throughout its 480-square mile service area, covering 15 cities and portions of the unincorporated areas of San Bernardino County.
- b. Omnitrans will be a participant alongside SBCTA throughout all stages of the procurement process. The Shortlisted Design-Build Teams, including the Operating System Providers participating as Major Participants during Phase 2, will be required to interface with and respond to comments from Omnitrans at all stages during the Preconstruction Period and during implementation.
- c. ~~The Design-Builder, through the Lead Operator, will be required to provide training to Omnitrans staff during the Transitional Operating Period. Omnitrans will assume operating responsibility for the Operating System at the conclusion of the Transitional Operating Period.~~
- c. The Design-Builder will be required to retain the Lead Operator to provide services from construction through testing and commissioning, and to provide operations and maintenance following construction, testing, and commissioning pursuant to the separate Operating Contract.

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4.2 Ontario International Airport Authority (OIAA)

- a. SBCTA entered into a MOU with OIAA with respect to the Project that has expired. SBCTA is in the process of finalizing a new MOU with OIAA that will govern the Project through completion of construction. ~~An additional MOU is contemplated for the Transitional Operating Period and will be provided at a later date.~~
- b. In addition to the matters covered by the MOU, SBCTA anticipates additional arrangements to coordinate Project operations and maintenance with OIAA.
- c. The Project is expected to require certain ROW on existing ONT property, and coordination with OIAA on the final proposed station layout(s) and ROW will be required.

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4.3 City of Rancho Cucamonga and City of Ontario

- a. The Project will pass through the City of Rancho Cucamonga and the City of Ontario. Accordingly, the Project will adhere to Applicable Law and require coordination with each respective city with respect to permitting. Specifically,

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SBCTA will enter into a MOU with the City of Ontario and the City of Rancho Cucamonga with respect to each city's anticipated role during the Project.

- b. The City of Ontario is the permitting agency for ONT.
- c. SBCTA and the City of Rancho Cucamonga jointly own the Cucamonga Station. Coordination with both entities with respect to the proposed station layout and design will be required.

4.4 Cucamonga Station, Brightline West, and West Valley Connector

- a. Metrolink operates at the Cucamonga Station and schedule coordination with Metrolink service may be necessary during construction.
- b. Although currently in the conceptual design phase, the private high-speed Brightline West rail line from Las Vegas to the Cucamonga Station is expected to impact the Project and be delivered within the same time period. Coordination with Brightline West will be necessary. SBCTA plans to enter into a MOU with Brightline West with respect to station planning efforts, which is expected to be provided as part of the RFP.
- c. Although currently in the final design phase, the West Valley Connector bus rapid transit line is expected to impact the Project with respect to the final layout at the Cucamonga Station. It will be delivered by SBCTA within the same time period and subsequently operated by Omnitrans.

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4.5 Caltrans

The tunnel is expected to cross under Interstate I-10, and coordination with Caltrans will be required to obtain long-term rights to operate underneath Interstate I-10.

4.6 Union Pacific Railroad

The tunnel will cross the UPRR Alhambra Subdivision. Construction may result in temporary impacts to the railroad operations requiring the phasing of portions of the construction of the Project. Coordination with the UPRR will be required, and the crossing of the UPRR right of way will be subject to all railroad requirements and approvals.

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4.7 San Bernardino County

The Project will adhere to County rules and regulations.

5. PROJECT STATUS UPDATES

5.1 PCM Procurement

SBCTA has procured a comprehensive PCM consultant team to assist with the implementation of the Project. The PCM's role will be to jointly work together with the stakeholders, on behalf of SBCTA, to successfully oversee environmental approvals, permitting, ROW acquisition, design, construction and implementation of the Project.

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The PCM (separately engaged by SBCTA) will administer the Design-Build Contract on behalf of SBCTA, provide review services on behalf of SBCTA for all design submittals, and provide construction management and verification of the Design-Builder's construction operations and work product on behalf of SBCTA.

5.2 NEPA/CEQA

- a. FTA is the lead agency for NEPA review of the Project.
- b. SBCTA is the lead agency for CEQA review of the Project.
- c. SBCTA is currently undertaking the environmental review for the Project and anticipates receiving both NEPA and CEQA decisions in Winter 2023 - 2024, prior to the conclusion of the Preconstruction Period.
- d. Any determination by SBCTA to proceed with the Project is contingent upon receipt of all required environmental clearances. The execution of a Design-Build Contract at the conclusion of this procurement process will not commit SBCTA to a particular course of action beyond work completed during the Preconstruction Period.

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5.3 ~~5.1~~ ROW Acquisition

SBCTA will be responsible for all ROW acquisition. Procedures for the acquisition of additional ROW not identified by SBCTA for acquisition in the Project Information will be set forth in the RFP. Any acquisitions that require the exercise of eminent domain will be conducted by SBCTA, in its discretion, subject to applicable eminent domain laws.

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5.4 ~~5.2~~ California Public Utilities Commission

Pursuant to Public Utilities Code Section 211, any person or corporation providing transportation for compensation to the public is a "common carrier" and every common carrier is a public utility (Pub. Util. Code Section 216(a)). SBCTA anticipates the Project may be subject to regulation by the California Public Utilities Commission. The Design-Builder, through the Operating System Provider, will be responsible for obtaining any approvals from the California Public Utilities Commission.

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6. DESCRIPTION OF REQUIRED WORK

6.1 Project Scope

- a. This Section 6 provides basic background information regarding the general scope of the Project to assist Proposers in understanding the scope of the Project as a whole, including the Fixed Facilities. Complete details of the scope of the Work will be included in the ~~Preconstruction~~ Pre-Proposal Works Agreement and in the RFP and may differ from the high-level information provided in this RFQ.

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- b. The Work to be completed under the ~~Preconstruction~~ Pre-Proposal Works Agreement and the Design-Build Contract is anticipated to include:
- i. design, permitting, and construction of a tunnel from the Cucamonga Station to two stations at ONT in each of parking lots 2 and 4 as identified in the Project Information;
 - ii. design, permitting, and construction of the stations at Cucamonga Station and ONT;
 - iii. systems, including lighting, ventilation, fire suppression, emergency access/egress, other life/safety requirements, power, video surveillance, cell phone and Wi-Fi infrastructure, remote data collection and transmission, intercom/PA systems, and a fully equipped control room with access provided to relevant public agency staff;
 - iv. design, permitting, and construction of a vehicle maintenance facility;
 - v. related features for a fully operational point-to-point public transportation system, including wayfinding, fare collection, and seamless integration with the Cucamonga Station and ONT; and
 - vi. design, permitting, and construction of the Operating System.
- c. All Work will be required to be in accordance with Applicable Law and approvals, industry best practices, and the requirements of the ~~Preconstruction~~ Pre-Proposal Works Agreement and the Design-Build Contract.
- d. The station at the Cucamonga Station will be a surface station coordinated with the planned Brightline West-related modification to the existing station. The anticipated location available for station construction is identified in the Project Information.

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6.2 Key Operating System Parameters

- a. The following are the minimum expected characteristics of the Operating System that will be utilized for the Project:
- i. The Project will consist of two surface stations at ONT. More information regarding the contemplated ONT station locations is provided in the Project Information.
 - ii. The Operating System shall be capable of operating at a peak period capacity of 100 passengers per hour per direction.
 - iii. Vehicles shall be rubber-tired zero-emission electric vehicles. Traction power utilizing either overhead catenary wire or third-rail systems is not to be utilized.

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- iv. Vehicles shall operate safely in fully autonomous operations inside the tunnel with no GPS signal or driver.
- v. Vehicles shall be able to access the maintenance facility without entering mixed flow traffic or interfacing in any way with traditional, human-driven vehicles.
- vi. The Operating System should be expandable to accommodate higher peak hour capacities in the future.
- vii. The Operating System will maintain a customer focus, provide expedited boarding, and make efficient use of operating funds.
- viii. Station-to-station travel times from the Cucamonga Station to the furthest ONT Station will not exceed 11 minutes.
- ix. Point-to-point travel time from Cucamonga Station to the ONT terminal doorways should be as short as possible.
- b. More detailed minimum requirements for the proposed Operating System are set forth in the Operating System Provider RFQ.

6.3 Funding Availability and Phased Delivery

- a. It is anticipated that authority to proceed with Work during the Construction Period will be sequenced through issuance of notices to proceed (each an "NTP"), which correspond to SBCTA's planned funding availability for the Work. The Design-Builder will be prohibited from undertaking any Work prior to issuance of the relevant NTP. The currently contemplated NTPs are:
 - i. "NTP-1-" will authorize final design work.
 - ii. "NTP-2-" will authorize tunnel boring machine procurement.
 - iii. "NTP-3-" will authorize certain early works prior to the commencement of construction.
 - iv. "NTP-4-" will authorize construction work.
 - v. "NTP-5-" will authorize Vehicle procurement.
 - vi. "NTP-6-" will authorize testing ~~of the Operating System and commissioning of the Operating System, following completion of the NTP-4 Work ("Substantial Completion")~~.
 - vii. "Readiness for Revenue Service" will be achieved upon completion of the NTP-6 Work, including all necessary approvals for the commencement of revenue service. Execution of the Operating Contract by the Lead Operator will be a condition to Readiness for Revenue Service.

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~~vii. Revenue service and the Transitional Operating Period will commence upon completion of testing and commissioning of the Operating System following NTP-6.~~

- b. SBCTA currently estimates the cost of construction for the Work that will be required under the Design-Build Contract (including the Operating System) will be approximately four hundred million (\$400,000,000).

7. KEY DESIGN-BUILD CONTRACT TERMS

~~Subject to review and final approval of the Project following completion of the environmental review processes required under NEPA and CEQA, including any modifications to the proposed Project scope and/or additional mitigations that may be required, the Design-Build Contract is expected to include each of the general requirements set forth in this Section 7. The Design-Build Contract will also reflect best practices and risk allocation provisions typical for a design-build project of similar scope and complexity in the State, appropriately tailored for the particular needs of the Project, and reflective of the hybrid progressive procurement approach being undertaken by SBCTA and the work to be undertaken during the Preconstruction Period, which is intended to increase Project certainty, reduce contingencies, and result in a commercially balanced risk allocation that maximizes overall benefit to the Project.~~

7.1 ~~Payment and Performance Security~~

~~SBCTA anticipates requiring payment and performance bonds in the full amount of the construction contract value from the commencement of Phase 2 until completion of testing and commissioning of the Operating System and the start of the Transitional Operating Period. Performance security will also be required during the Transitional Operating Period.~~

7.2 ~~Decommissioning~~

~~The Design-Build Contract will include provisions surrounding payment and decommissioning obligations related to the Project in the event of an early termination under the Design-Build Contract, including a Design-Builder default (such as abandonment) and SBCTA exercising its right to not issue an NTP. Decommissioning specifications will address safety concerns, transitional use, and "closing and securing" of the then-built infrastructure, among others. Further details will be provided in the RFP.~~

7.3 ~~Insurance~~

~~The Design-Build Contract will require the Design-Builder to furnish insurance for the Project satisfying the requirements of Applicable Law for insurance typically provided for or otherwise appropriate for projects of a similar size and scope and providing insurance adequate to protect the interests of SBCTA in connection with all risks, including all aspects of the Design-Builder's Work. Without limiting the generality of the foregoing, the Design-Builder will be required to verify that subcontractors engaged or employed to~~

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~~provide work for the Project will carry and maintain similar insurance set forth in the Design-Build Contract.~~

7.4 Vehicles

~~The selection and acquisition of vehicles, including the initial vehicle fleet and a specified number of spares, will be the responsibility of the Design Builder, through the Operating System Provider, but will be in coordination with SBCTA and Omnitrans.~~

7.5 Key Performance Indicators

~~The Design-Build Contract will include Key Performance Indicators (“KPIs”) to track measurable performance outcomes of availability and reliability during the Transitional Operating Period. Payments made to the Design Builder during the Transitional Operating Period will be subject to deductions for Design Builder’s failure to meet the requisite performance requirements.~~

7.6 Warranties

~~The Design-Build Contract will set forth warranty requirements for the Project, which are anticipated to run for a period of two years from the conclusion of the Transitional Operating Period for all elements of the Project except the Vehicles, which are expected to be subject to extended manufacturer warranties. SBCTA anticipates requiring a warranty bond to cover the Design Builder’s warranty obligations during the two-year warranty period.~~

Concurrent with this RFQ, SBCTA is releasing a draft form of RFP containing many of the key provisions that will govern the Preconstruction Period, in addition to those requirements set forth in the Pre-Proposal Works Agreement. The RFP will be formally issued following the announcement of Shortlisted Design-Build Teams and the execution of the Pre-Proposal Works Agreement. The draft RFP appended to this RFQ includes as Annex B a draft Design-Build Contract Term Sheet. Proposers are encouraged to provide comments on the draft Design-Build Contract Term Sheet as RFQ Comments prior to the SOQ Submission Date. SBCTA anticipates that the initial release of the RFP will include the Design-Build Contract Term Sheet. The full form of Design-Build Contract, which will be materially consistent with the Design-Build Contract Term Sheet, will be released by subsequent Addendum during the Preconstruction Period.

8. FEDERAL REQUIREMENTS

8.1 Generally

This procurement is subject to various federal requirements. The federal requirements set forth in this Section 8 and otherwise in this RFQ are not an exhaustive list of Federal requirements that the Design-Builder may be ultimately required to follow. In this Section

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8, the Operating System Provider and/or the Design-Builder may be referred to as "Offeror," "Bidder," and "Contractor."

8.2 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity

- a. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- b. SBCTA anticipates setting goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, in the RFP.
- c. The goals will be applicable to all of the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it will apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.
- d. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 will be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor will make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals will be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.
- e. The Contractor will provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any construction subcontract in excess of ten thousand dollars (\$10,000) at any tier for construction work under the contract resulting from this solicitation. The notification will list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
- f. As used in this notice and in the contract resulting from this solicitation, the "covered area" is any property controlled by OIAA.

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8.3 DBE

~~a.~~ As a sub-recipient of Federal Transit Administration (FTA) funds, SBCTA is required to comply with all regulations in conformance with Title 49, Code of Federal Regulations (CFR), Part 26, entitled "Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs" ("Regulations"). The Regulations in their entirety are incorporated herein by this reference. As a sub-recipient of federal funds, SBCTA is obligated to comply with the regulations set forth by Omnitrans, the direct recipient of federal funds. As Omnitrans has established a Race-Neutral FTA DBE program, there is no Race Conscious DBE goal on this Project; however, the Omnitrans 2.9% Race Neutral Goal is applicable to this project. ~~However, it~~ it is the obligation of SBCTA to ensure nondiscrimination in the award and administration of all contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts. As the sub-recipient, SBCTA highly encourages the participation of DBE contractors and the utilization of DBE subcontractors in this project. Omnitrans, as direct recipient of funds, has an overall agency DBE goal of 2.9%, and any DBEs on this project will be used to satisfy the overall agency DBE goal.

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8.4 Buy America

The Design-Builder will be required to comply with the Buy America Act, 49 U.S.C. 5323(j) and 49 C.F.R. part 661.

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8.5 Public Transit Employee Protections

The Design-Builder will be required to comply, if applicable, with 49 U.S.C. 5333(b) (also known as Section 13(c) of the Federal Transit Act).

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8.6 Other Federal Requirements

The Design-Builder will be required to comply with the following requirements:

- a. the Davis-Bacon Act;
- b. Byrd Anti-Lobbying Amendment;
- c. Section 6002 of the Solid Waste Disposal Act;
- d. Common Grant Rule (49 CFR Part 18);
- e. Rolling stock procurement requirements (49 USC § 5323(u)); and
- f. Video surveillance and/or telecommunications services requirements (2 CFR § 200.216).

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PART C: PROCUREMENT RULES

9. COMMENTS, QUESTIONS AND REQUESTS FOR CLARIFICATION

9.1 General Requirements for Preparation and Delivery of RFQ Comments

9.1.1 Timing of RFQ Comments

- a. Proposers may submit written comments, questions and/or requests for clarification (collectively, "RFQ Comments") relating to the RFQ, including any Addenda, to SBCTA at any time prior to the RFQ Comment Deadline set forth in the Procurement Schedule.
- b. Notwithstanding the RFQ Comment Deadline, Proposers are encouraged to submit RFQ Comments with respect to the RFQ, or a particular Addendum, as and when they are ready for submission. To the extent reasonably practical, substantively related comments should be delivered simultaneously.
- c. Proposers should assume that SBCTA will not consider any RFQ Comments that are submitted after the RFQ Comment Deadline in the Procurement Schedule, except reasonable logistical questions received after such deadline, the response to which may be necessary to facilitate timely and compliant delivery of SOQs.

9.1.2 Form and Submission of RFQ Comments

- a. All RFQ Comments will be:
 - i. in the form of Form 1 and compliant with the instructions provided in that form; and
 - ii. written so as not to identify Proposer in the body of the question or comment.
- b. In accordance with the instructions provided in Form 1, Proposers will categorize their comments by reference to one of three categories: Categories "A" and "B" correspond to different types of substantive comments and Category "C" corresponds to drafting comments.
- c. RFQ Comments will be submitted to the SBCTA Procurement Contact by e-mail to tunneltoontario@gosbcta.com, with the subject line "Tunnel to Ontario International Airport Procurement: [Proposer Name] RFQ Comment Submission No. []". ~~Proposers~~ Proposers are responsible for ensuring the receipt of their RFQ Comments by SBCTA through the use of automated receipt and read message confirmations.
- d. Proposers should assume that SBCTA will not consider any RFQ Comments that are:
 - i. telephone or oral comments; or



- ii. submitted (A) by a person with no clear affiliation to the Proposer that such person purports to represent or (B) to a person other than the SBCTA Procurement Contact.

9.1.3 Responses to RFQ Comments

- a. SBCTA may, in its discretion, elect to address RFQ Comments within an Addendum to this RFQ that by its terms either reflects, or declines to reflect, a response to the substance of such comments.
- b. SBCTA may also, but is not obligated to, provide written responses to RFQ Comments. SBCTA will endeavor to provide any written responses within the timeframes indicated in the Procurement Schedule and otherwise within a reasonable period following receipt. In responding to RFQ Comments, SBCTA may rephrase them as it deems appropriate and may consolidate similar comments. SBCTA may also create and answer questions independent of those submitted by Proposers.

10. ADDENDA

SBCTA reserves the right to revise this RFQ by issuing Addenda to this RFQ at any time before the SOQ Submission Deadline. All effective Addenda will be in writing and will only be posted to the Project Website. In issuing an Addendum shortly before the SOQ Submission Deadline, SBCTA will consider whether an extension of the SOQ Submission Deadline or any other step(s) in the procurement process is warranted.

11. COMMUNICATIONS AND CONTACTS

11.1 Proposer Contacts

Following a Proposer's submission of a SOQ, all future communications by SBCTA will be made to that Proposer's "Official Representative" whose contact information is included in the "Proposal Letter" submitted in the SOQ.

11.2 Rules for Communications and Contact

11.2.1 Application of the Rules

- a. The rules of contact specified in Section 11.2.2 will apply during the procurement for the Work, effective as of the date of issuance of this RFQ through the execution of the Contract (the "Restricted Contact Period").
- b. These rules are designed to promote a fair, competitive, and unbiased procurement process. Additional rules or modifications to these rules may be issued by SBCTA in connection with the draft RFP process and in the RFP.
- c. Contact includes face-to-face, telephone, any form of video conferencing, facsimile, e-mail, or written communication, either directly or indirectly by an agent, representative, promoter or advocate of a Proposer.



11.2.2 Rules of Contact

The specific rules of contact during the Restricted Contact Period (unless another period is otherwise noted) are as follows:

- a. After release of the RFQ, no Restricted Person will communicate with another Proposer or its team members with regard to the RFQ, the RFP, or either team's SOQ; provided, however, that subcontractors that are shared between two or more Design-Build Teams (subject to the restrictions in Section 13.3) may communicate with their respective team members so long as those Proposers establish reasonable protocols to ensure that the subcontractor will not act as a conduit of information between the teams. In addition, contact among Proposer organizations is allowed during SBCTA-sponsored informational meetings.

~~b. After release of the RFQ, until such time that SBCTA announces the identity of the Prequalified Operating System Providers, no Restricted Person will communicate with any prospective Operating System Provider or its team members with regard to this RFQ, the Operating System Provider RFQ, the RFP, or the Project. This restriction will no longer apply following formal announcement of the Prequalified Operating System Providers.~~

- b. ~~e.~~ SBCTA will be the sole contact for purposes of this procurement, the RFQ, and the RFP. Proposers will correspond with SBCTA regarding the RFQ and RFP only through SBCTA's designated representative which initially will be:

Ms. Shaneka Morris, Procurement Manager,
Special Projects and Strategic Initiatives
San Bernardino County Transportation Authority
1170 W. 3rd St., Second Floor
San Bernardino, CA 92410
Phone: 909.884.8276 x-167
tunneltoontario@gosbcta.com

(as updated by SBCTA from time to time, the "SBCTA Procurement Contact"). Any official information regarding the Work and the Project will be disseminated from SBCTA either from an official email account or on agency letterhead, in either case from the SBCTA Procurement Contact. SBCTA will not be (and will be deemed not to be) responsible for, and Proposers may not rely (and will be deemed not to have relied) on, any oral or written communication or contact or any other information or exchange that occurs outside the official process specified in this RFQ.

- c. ~~d.~~ Commencing with the issuance of this RFQ and continuing until the earliest to occur of (i) notification that Proposer was not identified as a Shortlisted Design-Build Team, (ii) rejection of all SOQs by SBCTA, (iii) cancellation of the procurement, or (iv) SBCTA entering into a Design-Build Contract with a Preferred Proposer at the conclusion of the Preconstruction Period, no Proposer or



representative thereof will have any *ex parte* communications regarding the RFQ, RFP, the ~~Preconstruction~~ Pre-Proposal Works Agreement, the Design-Build Contract, or the procurement described in this RFQ with:

- i. any SBCTA Board member; and/or
- ii. any SBCTA staff, advisors, contractors or consultants involved with the procurement (including those referenced in Section 12.4), except for communications expressly permitted by the RFQ or RFP or except as approved in writing in advance by the SBCTA Procurement Contact, in his or her sole discretion.

The foregoing restriction will not, however, preclude or restrict communications with regard to matters unrelated to the Work, the Project, this RFQ, the RFP, the ~~Preconstruction~~ Pre-Proposal Works Agreement, the Design-Build Contract, or the procurement, or limit participation in public meetings or any public or Proposer workshop related to the Work, the Project, this RFQ, or the RFP.

d. ~~e.~~ Proposers will not directly or indirectly contact or communicate the following identified stakeholders regarding the Work, the Project, this RFQ, or the RFP, including employees, representatives, members, consultants, and advisors of the stakeholders listed below (provided that, with respect to consultants and advisors, such restrictions on contact and communications only apply to the extent any such consultant or advisor provides or has provided services related to the Project, this RFQ, or the RFP):

- ~~iii-i.~~ i. OIAA;
- ~~iv-ii.~~ ii. City of Rancho Cucamonga;
- ~~v-iii.~~ iii. City of Ontario;
- ~~vi-iv.~~ iv. San Bernardino County;
- ~~vii-v.~~ v. FTA; and
- ~~viii-vi.~~ vi. FAA.

e. ~~f.~~ In order to ensure that, among other things, the procurement is implemented in a fair, competitive and transparent manner, SBCTA will provide any necessary intermediary coordination during the procurement process between Proposers, on the one hand, and the stakeholders and related Persons who are the subject of the restrictions in Section ~~11.2.2.e~~ 11.2.2.d, on the other hand, provided that Proposers are permitted to submit written requests to SBCTA, via the SBCTA Procurement Contact, for its approval, to be given in its discretion, to:

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~~ix.~~ i. engage a consultant or advisory firm that also acts for any such stakeholder in connection with the Project, this RFQ or the RFP, subject to such firm's implementation of Information Barriers; and

~~*~~ ii. engage in SBCTA-monitored contacts or communications with any such stakeholder or related Person.

Any such requests should identify the anticipated benefits to the Project and/or the procurement process that may result from the requested engagement, contact or communication.

11.2.3 Violation of Rules of Contact

Any communications or contacts determined to be prohibited by the rules outlined in Section 11.2.2 or otherwise improper, at the sole discretion of SBCTA, may result in disqualification of one or more Proposers.

12. ORGANIZATIONAL CONFLICTS OF INTEREST

12.1 General Requirements

- a. Proposers are required to comply with certain FTA and SBCTA conflict of interest policy requirements for the Project, as more fully set forth in Section 12.2 below.
- b. This Section 12.1 provides information regarding conflict of interest policies and requirements applicable to Proposers and their team members. SBCTA's goals in adopting these policies and requirements include:
 - i. protecting the integrity, transparency, competitiveness and fairness of the planning, procurement, design, construction, and development of the Project;
 - ii. avoiding circumstances where a Proposer obtains, or appears to obtain, an unfair competitive advantage as a result of work performed by a consultant;
 - iii. providing guidance to Proposers in establishing teams for the procurement of the Project; and
 - iv. ensuring compliance with applicable legal requirements.

12.2 Federal and SBCTA Requirements and Prohibitions

12.2.1 Federal Requirements

Proposers are required to comply with FTA's organizational conflict of interests guidance found in Circular 4220.1F and the Federal Common Grant Rule, 2 C.F.R. 200.11. All Persons participating in the procurement should be familiar with all requirements of applicable federal law and FTA regulations, circulars and guidance, including all applicable FTA-third-party procurement and contracting requirements and FTA Circular 4220.1F terms regarding organizational conflicts of interest. Any failure to comply with the FTA



requirements in any respect, including the failure to disclose any actual, perceived or potential conflict of interest, may result in Proposer's disqualification from participating in the solicitation.

12.2.2 SBCTA Requirements

- a. Proposers are required to comply with SBCTA's Conflict of Interest Policy for the Project, which is available at <http://www.gosbcta.com/about-sbcta/do-biz-contracting.html>.
- b. Without an exception granted by SBCTA with respect to SBCTA's Conflict of Interest Policy, it is SBCTA's policy that any Person under contract, or previously under contract with SBCTA to prepare procurement documents, preliminary plans, planning reports or other project development products for the Project will not be allowed to participate in any capacity on a Proposer or on a Design-Build Team. Exceptions to this policy may be granted by SBCTA, consistent with Applicable Law, upon written request from such Person, if it is determined that the Person's involvement is in the best interest of the public and would not constitute an unfair advantage. Proposers seeking such exception will submit such written request as soon as possible. No extension of the SOQ Submission Deadline will be given, nor will SBCTA be responsible for any inability or failure to respond to any such request prior to the SOQ Submission Deadline.
- c. Proposers are also advised that SBCTA's guidelines relating to organizational conflicts of interest in this RFQ are intended to augment applicable federal and state law, including federal organizational conflict of interest laws and rules ~~and the laws and rules relating to NEPA~~. Such Applicable Law will also apply to Design-Build Teams and teaming and may preclude certain firms and their entities from participating on a Design-Build Team.

12.3 Disclosure of Conflicts

- a. Proposer will provide information concerning organizational conflicts of interest and disclose all relevant facts concerning any past, present or currently planned interests which may present an organizational conflict of interest (i) at any time during the Restricted Contact Period, as soon as such conflict is discovered, and (ii) in its SOQ (which requirement may be satisfied by inclusion of a confirmation that no such organizational conflicts of interest exist in relation to such Proposer).
- b. With regard to each disclosure pursuant to 12.3.a, Proposer will state how its interests or those of any of its team members, consultants, contractors or subcontractors, including the interests of any chief executives, directors, or Key Personnel thereof, may result in, or could be viewed as, an organizational conflict of interest.



- c. By submitting its SOQ, each Proposer agrees that, if an organizational conflict of interest is discovered, Proposer must make an immediate and full written disclosure to SBCTA 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 Proposer knew, or should have known about, but failed to disclose is determined to exist during the procurement process, SBCTA may disqualify Proposer. If an organizational conflict of interest that Proposer knew, or should have known about, but failed to disclose exists and Proposer has entered into a ~~Preconstruction~~ Pre-Proposal Works Agreement or a Design-Build Contract, SBCTA may terminate the ~~Preconstruction~~ Pre-Proposal Works Agreement or the Design-Build Contract, or disqualify one or more Major Participants from continued participation on a Design-Build Team, in its discretion. In either case, SBCTA reserves all legal rights and remedies. Proposers should not view the list in Section 12.4 as an exhaustive list of those firm(s) that have or may have conflicts of interest.

12.4 Persons with Organizational Conflicts of Interest

Proposer is prohibited from teaming with, including on a Design-Build Team (as a Major Participant or other contractor, subcontractor, consultant or subconsultant), receiving any advice from, or discussing any aspect relating to the Work or the Project or the procurement of the Work or the Project with any Person or entity with an organizational conflict of interest, including, but not limited to:

- a. 2kbrt Consulting, LLC;
- b. AECOM;
- c. Epic Land Solutions;
- d. Grimshaw Architects;
- e. HNTB Corporation;
- ~~f. Jacobs Engineering Group Inc., and Leigh Fisher Consultants, a wholly owned subsidiary;~~
- ~~f.~~ g. Kaplan Kirsch and Rockwell, LLP;
- ~~g.~~ h. KavPlan, LLC;
- ~~h.~~ i. Lea+Elliott;
- ~~i.~~ j. Leighton Group;
- ~~j.~~ k. LSA Associates;
- ~~k.~~ l. Monument ROW Services;
- ~~l.~~ m. Morgner Construction Management;

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m. ~~n.~~ RailPros;

n. ~~e.~~ Towill; and

o. ~~p.~~ any other Person that, to the best of Proposer's knowledge and belief:

- i. was or is engaged by SBCTA or any of the above listed entities in connection with the Project, this RFQ or the RFP; or
- ii. had access to non-public information regarding the same by virtue of an otherwise unrelated engagement; and

p. ~~q.~~ Affiliates of the foregoing.

13. LIMITATIONS ON DESIGN-BUILD TEAM MEMBERSHIP

13.1 Design-Build Team Members on More Than One Team

Major Participant and Key Personnel

- a. To ensure a fair and competitive procurement process, no Major Participant (or partner or Joint Venture member thereof) or Affiliate of the same, nor any Key Personnel, nor any Person related thereto, may be a member in any capacity or otherwise participate in the submission of a SOQ for any other Proposer, Design-Build Team, or Operating System Provider, during the course of the procurement process.
- b. If a Proposer is not selected as a Shortlisted Design-Build Team, then following public announcement of SBCTA's shortlisting determination, the members of each unsuccessful Design-Build Team will be free to participate on Shortlisted Design-Build Teams, subject to compliance with the still applicable requirements of this RFQ, the ~~Preconstruction~~ Pre-Proposal Works Agreement, and/or the RFP.

13.2 Licensing Requirements

- a. SBCTA will not require Proposer to be licensed as a condition of submitting a SOQ. However, each of the Proposer, Lead Contractor, Lead Designer, and Lead Tunneling Contractor will be required to be licensed and authorized to conduct business in the State as a condition to a Shortlisted Design-Build Team entering into the ~~Preconstruction~~ Pre-Proposal Works Agreement. Each entity shall provide evidence that it has, or within ten (10) days following notification of shortlisting will have, all licenses, registrations, and credentials required to design and construct the Project, including date(s) obtained or anticipated to be obtained, type, number, classification, issuing agency, and expiration date.
- b. In addition, members of Design-Build Team and individuals (including professional engineers) that will be undertaking work that requires a California license must be prequalified and licensed prior to performing the applicable work assigned to such member. For those individuals that are currently licensed and/or certified,

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identification of such professional licenses and certifications (including the state within which the license or certificate is granted and license or certificate number) must be referenced on resumes included with Form ~~9-8~~ of this RFQ.

- c. Proposer's attention is directed to California Public Contract Code Section 20103.5, which provides:

"The first payment for work or material under any contract will not be made unless and until the Registrar of Contractors verifies to the agency that the records of the Contractors' State License Board indicate that the contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed will be subject to all legal penalties imposed by Applicable Law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board."

- d. Additional licensing requirements with respect to the submission of Proposals will be included in the RFP.

13.3 Other Limitations on Design-Build Team Membership

- a. To ensure a fair and competitive procurement process:
- Lead Contractors, Lead Designers, Lead Tunneling Contractors, Financially Responsible Parties, and legal advisors of Design-Build Teams are forbidden from participating, in any capacity, as a team member of another Design-Build Team during the course of the procurement.
 - Individuals serving Key Personnel roles on one Design-Build Team may not serve any role on another Design-Build Team.
 - Entities that are under direct or indirect common ownership or have the same upstream parent may not be on separate Design-Build Teams or act as Lead Contractors, Lead Designers, Lead Tunneling Contractors, or Financially Responsible Parties on separate Design-Build Teams.

14. ORGANIZATIONAL CHANGES

14.1 General Restrictions on Changes

Subject to Section 14.2, no Proposer will:

- add, delete or substitute a Major Participant, Key Personnel, or other Persons specifically identified in its SOQ as being part of its team;
- materially alter the relationships or responsibilities among any of the Major Participants, Key Personnel, or other Persons specifically identified in its SOQ, or with any Affiliate of a Major Participant, the experience of which is included in its SOQ; or

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- c. otherwise reorganize its team to the extent that such reorganization would render the organizational charts and descriptions provided in its SOQ inaccurate or incomplete,

(each, an “Organizational Change”) at any time from the SOQ Submission Deadline to the date of the public announcement of the identity of the Shortlisted Design-Build Teams.

14.2 Organizational Changes for Shortlisted Design-Build Teams

- a. Shortlisted Design-Build Teams may make Organizational Changes with SBCTA’s consent, to be given in SBCTA’s discretion. As a condition to making any such Organizational Change, a Shortlisted Design-Build Team must submit to SBCTA a description of the proposed change and any relevant documentation related to the change.
- b. While SBCTA reserves the right to withhold its consent to any Organizational Change under Section 14.2.a in its discretion, SBCTA expects that it will base its decision as to whether to accept a proposed Organizational Change on whether the proposed Organizational Change would:
 - i. render the Design-Build Team materially different from or less qualified than the Proposer originally selected as a Shortlisted Design-Build Team;
 - ii. result in any actual or potential organizational conflict of interest;
 - iii. cause the Shortlisted Design-Build Team to be in violation of another provision of this RFQ; and/or
 - iv. any other factors that SBCTA considers relevant or material.

15. PRE-SOQ ONE-ON-ONE MEETINGS

15.1 Intent of Pre-SOQ One-on-One Meetings

- a. SBCTA invites each Proposer, at its option, to participate in Pre-SOQ One-on-One Meetings with SBCTA. Pre-SOQ One-on-One Meetings will only be provided in SBCTA’s discretion to bona fide prospective Proposers intending to participate in the procurement.
- b. The Pre-SOQ One-on-One Meetings are intended to provide Proposers an opportunity to obtain a better understanding of the Project, ask questions and/or provide feedback on the RFQ, as well as provide SBCTA with an opportunity to obtain a better understanding of Proposer’s concerns. The Pre-SOQ One-on-One Meetings are not an opportunity for Proposers to discuss their qualifications and experience.
- c. During the Pre-SOQ One-on-One Meetings, SBCTA is interested in receiving initial feedback from Proposer on its general approach and/or major issues that it

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believes SBCTA will need to address by Addendum to ensure a successful procurement, including:

- i. SBCTA's approach to the procurement;
- ii. additional information that would assist Proposers during the RFQ and RFP processes;
- iii. substantive requirements related to the Project; and
- iv. clarification of the RFQ process, specific statements in the RFQ, and/or timeframes relating to the RFQ.

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15.2 Notice of Intent Submission

- a. As soon as reasonably practicable following issuance of this RFQ (and prior to being eligible to participate in a Pre-SOQ One-on-One Meeting), a prospective Proposer intending to participate in the procurement shall notify the SBCTA Procurement Contact of its interest in the Project by email to tunneltoontario@gosbcta.com, with the subject line "Tunnel to Ontario Project: [Proposer Name] Notice of Interest".
- b. The notice shall identify Proposer's Official Representative and provide: name, title, mailing address, phone numbers (work and cell), email address, and fax number (if any), and include an affirmative statement that Proposer possesses the necessary experience, qualifications, and interest in participating in the procurement process for the Project.

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15.3 Requesting Pre-SOQ One-on-One Meetings

Proposers, at their option, may request a Pre-SOQ One-on-One Meeting by email to the SBCTA Procurement Contact, including the following information:

- a. a list of the entities comprising Proposer's Design-Build Team,
- b. a list of Proposer's Pre-SOQ One-on-One Meeting attendees (include name, title, and firm), and
- c. a written list of issues, topics, or requirements that Proposer wishes to discuss during the meeting.

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15.4 Pre-SOQ One-on-One Meeting Rules and Procedures

The following rules and procedures will apply to the Pre-SOQ One-on-One Meetings:

- a. Proposers will adhere to the allotted time scheduled for their respective Pre-SOQ One-on-One Meeting.
- b. During Pre-SOQ One-on-One Meetings, Proposers may ask questions, make observations, or suggest possible revisions to the RFQ. SBCTA may, but is not

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required to, respond to questions asked by Proposers in one-on-one meetings. Any responses provided by SBCTA may not be relied upon. Nothing stated at a Pre-SOQ One-on-One Meeting will modify the RFQ unless incorporated by Addendum.

- c. Except as otherwise provided in the RFQ, SBCTA will not discuss with a particular Proposer any information submitted by another Proposer.
- d. Except as otherwise provided in the RFQ, SBCTA will not discuss with Proposers any information regarding particular Operating System Providers participating in the Operating System Provider RFQ procurement.
- e. Proposers will not seek to obtain commitments from SBCTA in Pre-SOQ One-on-One Meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- f. No aspect of a Pre-SOQ One-on-One Meeting is intended to provide any Proposer with access to information that is not similarly available to other Proposers.
- g. No part of the evaluation of SOQs will be based on conduct or discussions that occur during Pre-SOQ One-on-One Meetings.
- h. Proposers will not be permitted to distribute materials during the meeting.
- i. Proposers will refrain from promotional or marketing pitches related to their qualifications.

16. PROJECT WEBSITE

16.1 Project Website

- a. SBCTA has assembled documents and information relating to the Project, which will be made available to Proposers and the public via SBCTA's PlanetBids Vendor Portal at: <https://www.planetbids.com/portal/portal.cfm?CompanyID=20136> (the "Project Website").
- b. Notwithstanding the public nature of the Project Website, SBCTA recognizes that a competitive and secure procurement process requires confidential communications and disclosures with and from Proposers. As such, to the extent necessary to preserve confidentiality for such purposes, SBCTA reserves the right to establish a limited-access website, limit access to certain portions of the Project Website, and/or conduct direct written or oral communications with Proposers as provided for in this RFQ.

17. NON-RELIANCE ON/USE OF PROJECT INFORMATION

- a. SBCTA does not make, nor will it be deemed to have made, any representation, warranty, or guarantee as to the accuracy, completeness, utility, or relevance of any Project Information or information on third party websites, whether referred to

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in the RFQ, or otherwise made available by the SBCTA. SBCTA has no obligation to update any Project Information, the contents of which may reflect information available as of the date that it was prepared or as of such other date indicated therein.

- b. Proposers will assume full responsibility for their use of any Project Information and will not be entitled to rely on any such Project Information. Proposers will be solely responsible or liable for any lack of accuracy, completeness, utility, or relevance of, or for any interpretations of or conclusions drawn from, any Project Information.
- c. Without limiting SBCTA's right to require Proposer to agree to customary or necessary supplemental provisions regarding the receipt or handling of confidential or sensitive information, Proposers shall keep confidential all Project Information furnished to it by SBCTA or otherwise learned by it in oral or written communication with SBCTA or any stakeholder.
- a. Except as may be required by applicable law, Proposers shall not make any announcements or release information (including, but not limited to, any member of the public, press, or any official body) that it learns during the procurement process, including any information contained in the Project Information. Upon receipt of any request or order, including a subpoena for any documents received by Proposer in connection with the Project, Proposer will immediately advise SBCTA. For requests other than orders or subpoenas from legal or administrative bodies with jurisdiction, SBCTA will advise Proposer what information, if any, to make available and to whom.

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18. DISQUALIFICATION FOR NON-COMPLIANCE

Any violation by any Proposer or other Person of, or failure to comply with, the Procurement Rules set forth in this Part C may, in SBCTA's discretion, result in the relevant Person and/or Proposer or Major Participant with which such Person is affiliated being disqualified from further participation in the procurement or the Project.

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PART D: SOQ SUBMISSION REQUIREMENTS

19. DELIVERY TIMING AND PROCEDURE

19.1 Location and Manner of Delivery

- a. SOQs will be submitted electronically through the Project Website. To submit an SOQ in response to this solicitation, Proposers must be registered at the vendor portal on the Project Website.
- b. A firm must accept the terms and conditions in order to proceed. Proposers will have a series of tabs and may save their SOQ at any time as a draft. Proposers

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may edit the SOQ as often as they need to until the SOQ Submission Deadline. SOQs received after the SOQ Submission Deadline will not be considered or evaluated.

- c. Each Volume will be individually marked and be one document when uploaded to the Project Website.

19.2 Timeliness of Delivery

- a. SOQs must be submitted by the SOQ Submission Deadline. Time is of the essence and any SOQ received after the SOQ Submission Deadline will be rejected.

19.3 Responsibility for Delivery

- a. Proposers are solely responsible for assuring that SBCTA receives their SOQs by the SOQ Submission Deadline pursuant to Section 19.1.a.
- b. SBCTA will not bear any responsibility for any delays in delivery, including those caused by weather, difficulties with internet or servers, improper, incorrect or incomplete uploading of documents.

20. GENERAL REQUIREMENTS FOR PREPARATION AND SUBMISSION

20.1 General

- a. It is SBCTA's expectation that SOQs submitted in response to this RFQ will provide enough information about the requested items so as to allow SBCTA to evaluate Proposer's Design-Build Teams based on the criteria in this RFQ. Proposers will not electively include in SOQs any information or materials in addition to the information and materials specifically requested in this RFQ. SBCTA expects that SOQs will be developed to address the Project-specific SOQ submission requirements. As such, standard corporate brochures, awards, licenses and marketing materials should not be included in a SOQ, although reference can be made to awards and licenses where reasonably relevant or expressly requested.
- b. SOQs will be submitted exclusively in the English language inclusive of United States customary units of measure, and financial terms in United States dollar denominations.
- c. If Proposer is expected to be a Joint Venture, or a newly formed or special purpose entity, then all members or partners of that Joint Venture or other entity will collectively be considered to be the Proposer on a joint and several basis. Therefore, any information that is required to be submitted as part of the SOQ by one such entity must be submitted by each member or partner of the Joint Venture or other entity unless otherwise expressly provided. These requirements apply regardless of whether the relevant Joint Venture or other entity considers itself a partnership.

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- d. If Proposer is expected to be a Joint Venture, and the obligations of the members and partners of such Joint Venture will not be joint and several, then such Proposer must clearly and specifically identify and explain the anticipated structuring of member and partner liabilities for such Joint Venture in its SOQ. Potential Proposers should note, however, that SBCTA may, in its discretion, based upon its review of a SOQ, require all members or partners to assume joint and several liability as a condition precedent to a Proposer being identified as a Shortlisted Design-Build Team and entering into a ~~Preconstruction~~ Pre-Proposal Works Agreement.
- e. If Proposer does not include information or materials in its SOQ that are described as required only if certain circumstances apply (and such circumstances do not apply) under any of the SOQ submission requirements, then to facilitate SBCTA's evaluation, such Proposer will include in the relevant section in its SOQ a statement to the following effect: "[Cross referenced requirement of the RFQ] do[es] not apply because [to insert brief explanation]."
- f. Any units included in the SOQ will be United States customary units (and not using the International System of Units). All references to currency will use U.S. dollars. Notwithstanding such requirements, additional references may be made to the International System of Units and to monetary amounts in a different base currency provided that any such amounts are also specified in US dollars at an appropriate rate of conversion specified in the SOQ.
- g. Any reference in the SOQ submission requirements in this RFQ or in any Form to a prior time period (e.g., the past 10 years, the past 12 months, etc.) is to such period ending on the date of this RFQ's initial issuance, provided Proposers will have an obligation to promptly disclose any subsequent events or circumstances that occur prior to SBCTA's notification of award to the extent that such events would otherwise result in the SOQ containing an untrue statement of a material fact or an omission of a material fact necessary to make the SOQ's contents true and otherwise not misleading.
- h. Except for items identified below as Pass-Fail Evaluation Criteria, qualifications that may not strictly meet the stated objectives in this RFQ will not generally result in a rejection or disqualification of Proposer. However, the scoring for that particular element of the SOQ may be negatively impacted, in SBCTA's discretion.
- i. Similarly, higher scores will be awarded for qualifications that exceed the stated criteria. In scoring individual qualifications presented for evaluation, SBCTA will generally (but not necessarily) score higher those qualifications that meet many of the following attributes, in no particular order:
 - i. projects completed under budget and on an expedited schedule;
 - ii. experience with larger, more difficult projects;

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- iii. positive project references;
- iv. qualifications that demonstrate a commitment to ensuring quality in project delivery;
- v. qualifications that demonstrate cohesiveness of the proposed team;
- vi. recency of projects; and
- vii. completed projects.

20.2 Format

20.2.1 Electronic Copies

- a. Each Proposer will submit an electronic copy of each of:
 - i. the SOQ; and
 - ii. the Redacted SOQ (as defined below),
in searchable and printable format compatible with portable document format (.pdf) (except that the original executed letters need not be searchable).
- b. The “.pdf” submissions must be organized to correspond to the “tab” requirements in Section 19.
- c. Proposer will submit one clean and one redacted copy of its SOQ and will clearly mark “Clean” or “Redacted”, as applicable, in the .pdf file name.
- d. Proposer will bear sole responsibility for ensuring successful delivery of the electronic submission, by e-mail or other means, by the SOQ Submission Deadline.

20.2.2 Pages and Numbering

- a. To facilitate printing as necessary, electronic submissions must be prepared on 8-1/2” x 11” sized sheets, except as noted in paragraph “c” below.
- b. Font sizes will be no smaller than 11-point font, provided the font in organizational charts, graphics and tables may be smaller than 11-point provided it is legible, and that such graphics and tables are not produced for the primary purpose of working around the 11-point font restriction for narrative text.
- c. 11” x 17” pages are only allowed for schematics, organizational charts, other drawings and schedules but not for narrative text.
- d. 11” x 17” sized pages should not be used for the primary purpose of working around the page number restrictions. If used for that purpose, those pages will be counted as two (2) pages.
- e. All pages will be sequentially numbered within each volume.

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20.2.3 Signatures

All signed documents included in a SOQ may be executed in one or more counterparts, the originals of which together will be deemed to be an original.

21. OWNERSHIP OF SOQ

SBCTA will retain full title to and ownership of all SOQ and other Proposer submissions made pursuant to this RFQ. Notwithstanding the foregoing, Proposers may use and reproduce any elements of a SOQ or other submissions that are standard and not unique to the subject of the submission and the Project and may reuse any element of their SOQ or other submission for purposes of teaming with a Shortlisted Design-Build Team and/or for submission of a Proposal in response to the RFP.

22. SUBMISSION CONTENTS AND ORGANIZATION

Proposers must organize their SOQ in the order outlined below in this Section 22. Proposers are responsible for submitting with the SOQ all materials required by this RFQ. Additional material is subject to any applicable page limitation. Each volume may be subdivided as needed, so long as Proposers tab the content of their SOQ to correspond to the section reference for ease of SBCTA's review.

<u>SOQ Section</u>	<u>Required Material</u>			<u>RFQ Reference</u>	<u>Page Limit</u>
N/A (Cover Document)	Cover Letter	N/A	2-pages		
VOLUME 1	Legal and Administrative Submission				
	Proposal Letter			Section 23.1	N/A (Form 2)
	Information Regarding Proposer			Section 23.2	N/A (Form 3)
	Conflict of Interest Statement			Section 23.3	N/A
	Participant Disclosure Form			Section 23.4	N/A (Form 4)
	Legal and Project Performance Certifications			Section 23.5	N/A (Form 5)

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<u>SOQ Section</u>	<u>Required Material</u>	<u>RFQ Reference</u>	<u>Page Limit</u>
Proposal and Performance Security	Section 1.1	N/A (Form 10)	
VOLUME 2	Technical Submission		
N/A (Cover Document)	Executive Summary	Section 24.1	2 pages
Chapter 1	Team Background		5 pages (Chapter 1 total)
	Narrative of Organizational and Management Structure	Section 24.2.1	
	Organizational Charts	Section 24.2.2	
	Skilled Labor Force Availability	Section 24.2.3	
Chapter 2	Key Personnel		5 pages (Chapter 2 total, excluding Form 8 and resumes)
	Key Personnel Information	Section 24.3.1	N/A (Form 8)
	Key Personnel Capacity and Availability	Section 24.3.2	
Chapter 3	Technical Qualifications and Experience		25 pages (Chapter 3 total, excluding Form 6 and Form 7)
	Technical Qualifications Narrative	Section 24.4.1	(include Form 7)
	Collaboration and Coordination Experience	Section 24.4.2	



<u>SOQ Section</u>	<u>Required Material</u>	<u>RFQ Reference</u>	<u>Page Limit</u>
	Procurement Experience	Section 24.4.3	
	Reference Project Experience	Section 24.4.4	N/A (Form 6)
Chapter 4	Project Approach		15 pages (Chapter 2 <u>4</u> total)
	Conceptual Design and Construction Approach	Section 24.5.1	
	Project Cost and Schedule Control Narrative	Section 24.5.2	
Conceptual Operations Approach	Section 1.1.1		
VOLUME 3	Financial Submission		
Chapter 1	Financial Statements and Financial Capacity		N/A
	Financial Statements	Section 25.1.1	N/A
	Material Changes in Financial Condition	Section 25.1.3	N/A
	Off-Balance Sheet Liabilities	Section 25.1.4	N/A
Chapter 2	Support Letters		8 pages (Chapter 2 total)
	Financially Responsible Party Letters of Support	Section 25.2.1	N/A

<u>SOQ Section</u>	<u>Required Material</u>	<u>RFQ Reference</u>	<u>Page Limit</u>
	Surety Letters	Section 25.2.2	N/A
	Credit Ratings	Section 25.2.3	N/A
VOLUME 4	Redacted Submission		
(Provide Separately)	Redacted SOQ (excluding the materials that are exempt from disclosure under the Public Records Law)	Section 26.2.2	N/A
(Provide Separately)	Confidential Contents Index with Redacted Contents from Each of Volumes 1, 2, and 3	Section 26.2	N/A

23. VOLUME 1 – ADMINISTRATIVE SUBMISSION

23.1 Proposal Letter

- Proposer shall provide a Proposal Letter in the form of Form 2 with its SOQ.
- An authorized representative of each Major Participant must countersign the certification set out at the end of Form 2.
- Signature blocks on Form 2 may be modified to properly reflect the authority of the person signing, although the corresponding certification language must not be altered.

23.2 Information Regarding Proposer

Proposer shall provide general information regarding Proposer in the form of Form 3 for each of:

- Proposer;
- the Lead Contractor;
- the Lead Designer;
- the Lead Tunneling Contractor; and
- any Financially Responsible Party.



23.3 Conflict of Interest Statement

Considering Section 12, Proposer shall provide either:

- a. confirmation of absence of any organizational conflicts of interest and any potential organizational conflict of interest; or
- b. narrative description of any organizational conflicts of interest or potential organizational conflict of interest.

23.4 Participant Disclosure Form

Proposer shall provide a completed participant disclosure forms in the form of Form 4 for each of:

- a. Proposer;
- b. the Lead Contractor;
- c. the Lead Designer;
- d. the Lead Tunneling Contractor; and
- e. any Financially Responsible Party.

23.5 Legal and Project Performance Certifications

- a. Proposer shall provide completed legal and project performance certifications in the form of Form 5 for each of:
 - i. Proposer;
 - ii. the Lead Contractor;
 - iii. the Lead Designer;
 - iv. the Lead Tunneling Contractor; and
 - v. any Financially Responsible Party.
- b. References to an entity in Form 5 are to include the relevant experience of the entity, any Affiliate, and any entity to which it is a successor or assign (but only to the extent the experience is legally deemed to be that of the firm as a result of the relevant succession or assignment).

~~23.6 Proposal and Performance Security~~

- ~~a. The SOQ shall include performance security in the amount of one million dollars (\$1,000,000) (the "Performance Security") in the form of either:~~
 - ~~i. a cash deposit in the form of a certified cashier's check payable to SBCTA (or other cash equivalent) to be held in escrow by SBCTA; or~~

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~~ii. one or more bonds each from an Eligible Surety and in the form of Form 10.~~

~~b. The Performance Security will secure the obligations of Proposer to enter into the Preconstruction Work Agreement if selected as a Shortlisted Design-Build Team and to thereafter satisfy Proposer's obligations under the Preconstruction Works Agreement, including the obligation to submit a responsive Proposal in response to the RFP at the conclusion of the Preconstruction Period~~

~~c. If provided by Proposer in the form of a bond and not as a cash deposit, Proposer will provide one (1) original and three (3) certified copies of the Performance Security with its SOQ. The original of the Performance Security shall be stamped "original" in the single envelope with the three (3) certified copies. All copies should be included and submitted to SBCTA with the original copy of Proposer's SOQ.~~

24. VOLUME 2 – TECHNICAL SUBMISSION

24.1 Executive Summary

Proposer shall provide an Executive Summary, in the form of a narrative which should:

- a. be written in a non-technical style; and
- b. contain sufficient information for reviewers with both technical and non-technical backgrounds to become familiar with the key points of Proposer's SOQ.

24.2 Chapter 1 – Team Background

24.2.1 Narrative of Organizational and Management Structure

Proposer shall provide a narrative of its proposed management structure for the Project as it relates to technical expertise and execution, including an explanation of:

- a. how Proposer anticipates constructively integrating and effectively utilizing the collective experience of all its team members (including Major Participants, Key Personnel, and other individual professionals);
- b. how Proposer anticipates working collaboratively with SBCTA and project stakeholders during the Preconstruction Phase; and
- c. how Proposer anticipates establishing and implementing interrelated processes and project controls that manage Project schedule, costs, and risks, while at the same time encouraging innovation during the Preconstruction Phase.

24.2.2 Organizational Charts

- a. Proposer shall provide an organizational chart depicting the corporate structure of the Project team, depicting each of the Major Participants, and the proposed teaming relationships between each, including:

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- i. for each such entity, identification of interim and ultimate parent companies (up to at least the level of Financially Responsible Parties), where relevant; and
 - ii. for each such entity, percentages of ownership equity holdings by each interim and ultimate parent company (up to at least the level of Financially Responsible Parties) where relevant.
- b. Proposer shall provide a Project team organizational chart identifying Key Personnel and Proposer's professional and management structure for the purposes of delivering the Project. Proposer should clearly indicate how responsibilities will be allocated between Major Participants and/or Key Personnel if any such roles are to be bifurcated.

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24.2.3 Skilled Labor Force Availability

Proposer shall provide a ~~demonstration of~~ narrative describing its approach to securing skilled labor force availability in Southern California, including reference to the existence of an agreement with a registered apprenticeship program as provided for in California Public Contract Code § 6824(c)(2) as applicable.

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24.3 Chapter 2 – Key Personnel

24.3.1 Key Personnel Information

Proposer shall provide completed Form 8 submissions, attaching resumes (each including a list of references in the form of Annex A to Form 8), for each Key Personnel.

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24.3.2 Key Personnel Capacity and Availability

- a. SBCTA understands that personnel who possess the qualifications required for this Project are likely fully or mostly committed to other project work today. Through delivery of the following information, SBCTA seeks a realistic assessment of each Key Personnel's current and future expected project assignment and availability, and a realistic comparison to that Key Personnel's expected demand from this Project.
- b. For each of the proposed Key Personnel, Proposer shall provide:
 - i. a narrative of current and expected workloads and ability to perform the work;
 - ii. a list of the Key Personnel's current assignments, current percent commitment to each current assignment, and current percent availability; and
 - iii. a list of any other known assignments not listed under paragraph (i) above, and to which the Key Personnel has made a previous commitment to fulfill.

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- c. If the Key Personnel will need to reduce their expected involvement on other projects to sufficiently free up time to fulfill his/her expected role on this Project, Proposer shall also explain its approach to achieving this while honoring the Key Personnel's previous commitments to their other projects and clients.
- d. If Proposer expects a Key Personnel to rely significantly on a deputy to assist them in fulfilling their role for this Project, Proposer shall provide the name and brief qualifications of such deputy and provide examples of where the Key Personnel and this particular deputy have successfully delivered similar projects under a similar arrangement.

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24.4 Chapter 3 – Technical Qualifications and Experience

For each of the narratives provided in this Chapter 3, to facilitate SBCTA's review, Proposer should provide specific cross-references to any cited project experience tied to the Reference Projects included in Form 6 in accordance with Section 24.4.4.

24.4.1 Technical Qualifications Narrative

Proposer shall provide a narrative detailing the prior experience of Proposer and the Major Participants, emphasizing experience that is directly relevant to Proposer's vision and technical approach for the Project. The narrative should address the prior experience of Proposer and the Major Participants:

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- a. developing and implementing an effective construction safety program for a tunnel project of similar size and complexity. Proposer should include a completed safety record questionnaire in the form of Form 7 for the Lead Contractor and the Lead Tunneling Contractor;
- b. successfully managing the design and construction of tunnel projects of similar size, scope, and complexity;
- c. successfully managing the design and construction of transit stations and maintenance facilities of similar size, scope, and complexity;
- d. overseeing tunnel systems, e.g., fire and life safety, ventilation, drainage, illumination, and communications;
- e. overseeing installation, integration, testing, and validation for transit operations; and
- f. implementing ATCs or analogous procurement processes to create project value and shared benefits.

24.4.2 Collaboration and Coordination Experience

Proposer shall provide a narrative describing the prior experience of Proposer and the Major Participants:

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- a. Utilizing collaborative approaches between its Design-Build Team members and public owners. The narrative should include relevant experience on progressive design-build, early contractor involvement, and/or CM/GC contracts;
- b. Minimizing community disruption and working with project partners to maintain strong relationships with project stakeholders, through clear and consistent communications and outreach activities;
- c. Obtaining permits for major infrastructure projects, with an emphasis on projects in Southern California with the same or similar permitting requirements as those the Proposer expects to be applicable for completion of the Project in accordance with Applicable Law. To the extent this experience is satisfied by Affiliates of Major Participants, identify the Affiliate, project name, project owner, and location;
- d. Coordinating with Caltrans, Southern California Edison, the Metropolitan Water District of Southern California, and UPRR in design, engineering, construction activities, and/or maintenance activities;
- e. Successfully managing contract interfaces with other contractors on similarly sized projects.

24.4.3 Procurement Experience

Proposer shall provide a narrative describing:

- a. Proposer's experience in successfully procuring, delivering and deploying a tunnel boring machine in an expedited manner on tunnel projects of similar size, scope, and complexity; and
- b. Proposer's experience procuring and managing the timely delivery of vehicle and system technology for transit projects of similar size, scope and complexity.

24.4.4 Reference Project Experience

- a. Proposer shall provide information in the form of Form 6 regarding at least six (6) but no more than nine (9) Reference Projects per Proposer team. Each Reference Project must have been completed within the last 10 years and should be of analogous complexity and demonstrate the requisite design and/or construction experience. To the extent possible, Reference Projects should demonstrate the relevant past experience of each Major Participant and identify Key Personnel involvement.
- b. Proposer should specifically explain how each Reference Project demonstrates relevance to key elements of Proposer's planned Project approach, with cross references to Chapter 4 of its SOQ where appropriate.

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24.5 Chapter 4 – Project Approach

24.5.1 Conceptual Design and Construction Approach

Proposer shall provide a narrative describing its conceptual approach to the design and construction of the Project, including its:

- a. Understanding of the Project alignment, stations, and maintenance and operating facilities footprint, including how Proposer intends to manage key challenges and constraints with the defined corridor;
- b. Anticipated approach to project development, design, and construction, including proposed construction sequencing/phasing to meet the Project schedule;
- c. Overall tunnel engineering strategy, focusing on key components of construction engineering for the Project, including tunneling technology that Proposer expects to employ, as well as strategies for muck handling, materials management, and trucking of tunnel waste to minimize construction impacts; and
- d. Proposed tunnel boring machine procurement and delivery strategy, including information regarding timelines for TBM procurement, delivery, and mobilization/set-up, and potential TBM launch locations.

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24.5.2 Project Cost and Schedule Control Narrative

Proposer shall provide a narrative describing its management philosophy and strategy on controlling infrastructure project costs and schedule, namely those related to tunneling that includes discussion of factors driving tunneling costs, how those costs are managed by Proposer, and what innovations are necessary to reduce total tunnel project costs. The narrative will also describe how schedules will be developed, benchmarked and managed and include any innovative approaches that may be employed to minimize the overall Project schedule duration.

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~~24.5.3 Conceptual Operations Approach~~

~~Proposer shall provide a description of its contemplated approach for the Transitional Operating Period, including its plan for integrating the Operating System Provider and Lead Operator for successful transition from construction, through testing and commissioning, and into the Transitional Operating Period. Proposer should describe the contemplated role of the Design-Build entity during the Transitional Operating Period.~~

25. VOLUME 3 – FINANCIAL SUBMISSION

25.1 Chapter 1 - Financial Statements and Financial Capacity

25.1.1 Financial Statements

- a. Proposer shall provide financial statements for Proposer, the Lead Contractor, the Lead Tunneling Contractor, and each Financially Responsible Party for the three

(3) most recently completed fiscal years. In each case, if the entity is a consortium, partnership, or any other form of Joint Venture, provide financial statements for all such members. All financial statements will be submitted in compliance with the requirements under Section 25.1.2.

- b. Financial statements will include:
 - i. opinion letter (auditor's report),
 - ii. balance sheet,
 - iii. income statement,
 - iv. statement of cash flow, and
 - v. footnotes;

provided that, if any set of financial statements did not include, when prepared, any of the above, then Proposer will include an explanation for such non-inclusion.

c. Subject to this Section 25.1.1, an Operating System Provider that files reports with the US Securities and Exchange Commission shall submit financial statements by submitting a copy of such entity's annual report on Form 10-K.

i. To the extent a Form 10-K is not yet available for the most recent fiscal year for which financial statements are required to be submitted, Operating System Provider shall submit a copy of any report filed on Form 10-Q or Form 8-K which has been filed since the latest filed Form 10-K.

25.1.2 Fiscal Year and Auditing Requirements

- a. To the extent available, all financial statements provided will be audited. For the purposes of this Section 25.1.2, to qualify as "audited" such financial statements must be audited by an independent party qualified to render audit opinions (e.g., a certified public accountant).
- b. If unaudited financial statements are provided:
 - i. Proposer or relevant entity must state that the audited statements are not available and provide a statement explaining why audited financial statements are unavailable with respect to each fiscal year for which financial statements are required to be submitted; and
 - ii. such unaudited financial statements will be certified as true, correct and accurate by the chief executive officer, chief financial officer or treasurer (or by such equivalent position or role) of the relevant entity.

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25.1.3 Material Changes in Financial Condition

- a. Provide information regarding any material changes in financial condition for any entity for which financial statements are provided for the past three (3) fiscal years and anticipated for the next reporting period. A change in financial condition is considered material when it is an excess of 10% from the prior fiscal year. In each case, if any of the foregoing entities is a consortium, partnership, or any other form of a Joint Venture, provide this information for all such members.
- b. If no material change has occurred and none is pending, each of these entities will provide a letter from its respective chief executive officer, chief financial officer, or treasurer (or equivalent position or role) so certifying.
- c. In instances where a material change has occurred, or is anticipated, the affected entity will provide a statement describing:
 - i. such change;
 - ii. actual and anticipated changes or disruptions in executive management relating to such change;
 - iii. the likelihood that such change will continue during the proposed duration of the Project;
 - iv. the projected full extent, nature and impact, positive and negative, of such change experienced and anticipated to be experienced in the proposed duration of the Project;
 - v. how such change is anticipated to affect the organizational and financial capacity and ability of the relevant entity to remain engaged in the procurement described in this RFQ and to ultimately submit a Proposal at the conclusion of the Preconstruction Period.
- d. To the extent not otherwise provided, estimates of the impact on revenues, expenses and the change in equity availability, separately for each material change, as certified by the chief executive officer, chief financial officer or treasurer (or equivalent) (if such individual is not also a signatory for the relevant entity on the Proposal Letter).
- e. If a material change will have a negative financial impact, an explanation of measures that have been taken, are currently in progress or would be reasonably anticipated to be taken to insulate the Project from any such material change.

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25.1.4 Off-Balance Sheet Liabilities

For each entity for which financial information is submitted, provide a letter from the chief financial officer or treasurer (or equivalent position or role) of the entity or the certified public accountant:



- a. identifying all off-balance sheet liabilities in excess of twenty-five million dollars (\$25,000,000) in the aggregate; or
- b. stating there are no such off-balance sheet liabilities.

25.2 Chapter 2 – Support Letters

25.2.1 Financially Responsible Party Letters of Support

- a. A Proposer may identify one or more Financially Responsible Parties where applicable throughout its SOQ in order to demonstrate the financial capacity of any Major Participant (making clear which Major Participant any Financially Responsible Party is “supporting”). A Proposer is required to identify a Financially Responsible Party for any Major Participant that is a newly formed entity that does not yet have independent financial statements for at least the three prior 12-month fiscal years.
- b. If a Proposer identifies one or more Financially Responsible Party for any Major Participant in its SOQ, then it must also submit all information required by the SOQ Submission Requirements to be submitted for such Major Participant for such entity. This information must be signed by the chief executive officer, chief financial officer or treasurer (or equivalent) of the relevant Financially Responsible Party confirming that it will financially support or, as applicable, guarantee all the obligations of the relevant entity with respect to the Project, which confirmation will include a description of the nature of such support or guarantee.
- c. Proposers should note that SBCTA may, in its discretion, based upon its review of a Proposer’s SOQ, or Proposer’s form of organization, require the addition of an acceptable Financially Responsible Party in respect of a Major Participant as a condition precedent to a Proposer being selected as a Shortlisted Design-Build Team and entering into a ~~Preconstruction~~ Pre-Proposal Works Agreement. SBCTA’s consideration for approval of any Financially Responsible Party identified by a Proposer in response to such a condition will be contingent upon Proposer’s submission of all information and materials that otherwise would have been required to be included under the SOQ submission requirements with respect to such an entity.

25.2.2 Surety Letters

For each of the Lead Contractor and the Lead Tunneling Contractor²⁴, Proposer shall submit a letter from an Eligible Surety addressed to SBCTA stating that the relevant entity

²⁴ The bonding requirement under the RFP and Design-Build Contract will be permitted to be satisfied by either the Lead Contractor or the Lead Tunneling Contractor (or any Joint Venture entity meeting the other requirements of the RFP and Design-Build Contract), provided the full construction obligations under the Design-Build Contract are secured by such entity.



is capable of obtaining both a performance bond (or bonds) and a payment bond (or bonds), each in a minimum aggregate stated amount of at least \$400 million, provided that:

- a. if the relevant entity is a Joint Venture, limited liability company or other association, separate letters for one or more of the individual Joint Venture members or partners or equity owners are acceptable, as is a single letter covering all members or partners or equity owners; provided that each such letter will reference the specific dollar figure portion of the total required amount that the Eligible Surety is indicating it is willing to provide;
- b. any such letter must not indicate unspecified "unlimited" bonding capacity;
- c. each letter will specifically acknowledge that the Eligible Surety has received and reviewed the relevant terms of this RFQ and evaluated the Lead Contractor's or Lead Tunneling Contractor's (as applicable) and/or another relevant Person's backlog and work-in-progress in determining its bonding capacity; and
- d. in instances where there has been or is anticipated to be any material change in the financial condition of an entity, a certification (to be included in each letter) that the Eligible Surety's analysis specifically incorporates a review of the factors surrounding such change(s) and identifying any special conditions which may be imposed before it would be prepared to issue surety bonds in respect of the Project.

25.2.3 Credit Ratings

For each entity for which financial statements are provided, Proposer will provide credit ratings information in the form of Form 9.

25.2.4 General Requirements

The financial statements must meet the following requirements:

- a. GAAP/IFRS: Financial statements must be prepared in accordance with GAAP or IFRS. If financial statements are prepared in accordance with principles other than GAAP or IFRS, a letter must be provided from a certified public accountant discussing the areas of the financial statements that would be affected by a conversion to GAAP or IFRS. A restatement of the financial information in accordance with GAAP or IFRS is not required.
- b. U.S. Dollars: Financial statements will be provided in U.S. dollars, if available. If financial statements are not available in U.S. dollars, Proposer must include summaries of the Income Statements, Statements of Cash Flow, and Balance Sheets for the applicable time periods converted to U.S. dollars by a certified public accountant with a description of the formula for conversion.

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- c. English Language: Financial statement information must be prepared in English. If audited financial statements are prepared in a language other than English, then, subject to Section 20.1.b, translations of all financial statement information must accompany the original financial statement information.
- d. SEC Filings: If any entity for which financial information is submitted hereby files reports with the Securities and Exchange Commission, then such financial statements will be provided through a copy of their annual report on Form ~~10K~~ 10-K. For all subsequent quarters, provide a copy of any report filed on Form ~~10Q~~ 10-Q or Form 8-K which has been filed since the latest filed Form ~~10K~~ 10-K.
- e. Discussion of Negative Net Income: If any of the financial statements submitted pursuant to this Section 25.1 indicate that the expenses and losses of an entity exceed its income in any of the fiscal years to which such financial statements relate, Proposers are required to submit an explanation of the measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.
- f. If Proposer or, if applicable, Lead Contractor, Lead Tunneling Contractor, and any Financially Responsible Party is a newly formed entity and does not have independent financial statements for at least one 12-month fiscal year, Proposer will submit financial statements for the equity owners of such entity (and the entity will expressly state that the entity is a newly formed entity and does not have independent financial statements).

26. VOLUME 4 – REDACTED SUBMISSION

26.1 PUBLIC RECORDS LAW REQUIREMENTS

26.1.1 Property of SBCTA

Once submitted, the SOQs will become the property of SBCTA and will not be returned to Proposers.

26.1.2 Compliance with Public Records Law

RFQ Comments and SOQs are subject to the California Public Records Act, Chapter 3.5, commencing with Section 6250, of Division 7 of Title I of the Government Code (and pursuant to the CPRA Recodification Act of 2021, effective January 1, 2023, Chapter 1, commencing with Section 7920.000, of Division 10 of Title 1 of the Government Code) (the "Public Records Law"). Proposers are encouraged to familiarize themselves with the Public Records Law.



26.2 Confidential and Proprietary Information

26.2.1 Submission of Confidential and Proprietary Information

- a. In the event a Proposer submits any information that Proposer believes is not subject to disclosure pursuant to the Public Records Law ("Public Records Exempt Materials"), it must:
 - i. if the submission is made part of the SOQ, include an index of such information in the form of Annex B of the Proposal Letter (Form 2) (the "Confidential Contents Index") and provide a redacted copy of the SOQ in accordance with Section 26.2.2; and
 - ii. if the submission is made other than as part of the SOQ, conspicuously mark the affected document "CONFIDENTIAL" or "CONFIDENTIAL TRADE SECRETS" in the header or footer of each such page affected.

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26.2.2 Redacted SOQ

- a. Any Proposer that submits a SOQ containing any Public Records Exempt Materials must prepare and submit one copy of the SOQ that redacts the Public Records Exempt Materials (the "Redacted SOQ"). This redacted version must be identical to the corresponding volumes of the SOQ other than redactions that only exclude Public Records Exempt Materials.
- b. The Redacted SOQ shall be included as a fourth volume of the SOQ (divided into sub-volumes, as needed) which will include:
 - i. as the first page, an index of the redacted information in the form of Annex B of the Proposal Letter (Form 2) (the "Confidential Contents Index");
 - ii. the redacted contents from each of Volumes 1 through 3, with each redaction containing a footnote cross reference to the corresponding entry in the Confidential Contents Index; and
 - iii. a redacted copy of the SOQ in accordance with Section 26.2.1.
- c. Blanket designations that do not identify the specific information deemed confidential by Proposer will not be acceptable and may be cause for SBCTA to treat the entire SOQ as public information.

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26.2.3 SBCTA Assessment of Confidential and Proprietary Information

- a. SBCTA will not advise Proposers as to the nature or content of documents entitled to protection from disclosure under the Public Records Law or other Applicable Law, as to the interpretation of such laws, or as to the definition of trade secret.



- b. Nothing contained in this Section 26 will modify or amend requirements and obligations imposed on SBCTA by the Public Records Law or other Applicable Law.
- c. SBCTA reserves the right to disagree with a Proposer's assessment regarding confidentiality or proprietary nature of information in the interest of complying with the Public Records Law. The provisions of the Public Records Law or other Applicable Law will control in the event of a conflict between the procedures described above and the Applicable Law.

26.3 Review by Key Stakeholders

Information submitted by Proposers, including Public Records Exempt Materials, may be made available to representatives of Omnitrans, OIAA, the City of Rancho Cucamonga, and the City of Ontario as necessary to facilitate review and evaluation of SOQs and other Proposers' submissions during the procurement. To the extent reasonably possible, SBCTA intends to follow procedures that will preserve confidentiality relating to Public Records Exempt Materials during the procurement.

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26.4 Preparation and Release of Redacted SOQ

SBCTA may review each Redacted SOQ for compliance with Public Records Law, provided that the results of such review will not constitute a definitive determination as to whether the Redacted SOQ (and, consequently, the designations in the Confidential Contents Index) complies with Public Records Law and other Applicable Law.

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26.5 Disputes and Liability

26.5.1 Disclosure Disputes

In the event of any proceeding or litigation concerning the disclosure of any material submitted by a Proposer, SBCTA will be the custodian retaining the material until otherwise ordered by a court or such other ~~AHJ~~ 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 SBCTA reserves the right, in its respective sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by SBCTA in connection with any litigation, proceeding, or request for disclosure will be reimbursed and paid by the Proposer objecting to the disclosure. Each Proposer will be responsible for all of its own costs in connection with any litigation, proceeding, or request for disclosure.

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26.5.2 No Liability for Disclosure

In no event will SBCTA or any of its agents, representatives, consultants, directors, officers, or employees be liable to an Proposer for the disclosure of all or a portion of a SOQ submitted under this RFQ.

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PART E: EVALUATION PROCESS AND CRITERIA

27. OVERVIEW OF EVALUATION PROCESS

27.1 Description of the Evaluation Process

SBCTA anticipates using the following three-stage process to evaluate SOQs:

- a. At the first stage of the evaluation process, SBCTA shall consider whether each SOQ complies with the Pass/Fail Evaluation Criteria set out in Section 29. Subject to SBCTA's reservation of rights under Section 34, a Proposer shall be required to obtain a "pass" (defined as having fully complied with a criterion) on all Pass/Fail Evaluation Criteria in order for it to be eligible to be selected by SBCTA as a Shortlisted Design-Build Team. A "failure" on any one of the Pass/Fail Evaluation Criteria may result in SBCTA not evaluating the relevant SOQ any further.
- b. At the second stage of the evaluation process, SBCTA shall substantively evaluate each SOQ by considering the merits of each of the following criteria (together, the "Substantive Evaluation Criteria"): Proposer's Legal and Project Performance Certifications ("Substantive Evaluation Criterion No. 1" or Form 5); Proposer's Team, Organization, and Key Personnel ("Substantive Evaluation Criterion No. 2"); Proposer's Technical Qualifications ("Substantive Evaluation Criterion No. 3"); Proposer's Conceptual Approach ("Substantive Evaluation Criterion No. 4"); Proposer's Financial Capacity ("Substantive Evaluation Criterion No. 5"); and if applicable, Proposer's Qualitative Interview ("Substantive Evaluation Criterion No. 6"). The evaluation and the scoring of the Substantive Evaluation Criteria as set out in Section 30 are subject to SBCTA's reservation of rights under Section 34.
 - i. Substantive Evaluation Criterion No. 1 will be separately scored, and SBCTA will assign a score with a maximum of 100 points (the "Substantive Evaluation Criterion No. 1 Pass/Fail Score"). SBCTA shall determine if the Proposer has "passed" this evaluation with a "pass" being achieved if Substantive Evaluation Criterion No. 1 has been assigned 60 or more points. Each Proposer must "pass" this evaluation in order for it to be eligible to be selected by SBCTA as a Shortlisted Design-Build Team.
 - ii. SBCTA shall assign scores to Substantive Evaluation Criterion No. 2, Substantive Evaluation Criterion No. 3, Substantive Evaluation Criterion No. 4, and Substantive Evaluation Criterion No. 5 in accordance with Section 30 with a maximum sum of 700 points, add the score assigned to Substantive Evaluation Criterion No. 1, and calculate the overall score (the "Aggregate Substantive Evaluation Score") by aggregating the scores. The Proposers with the highest Aggregate Substantive Evaluation Score will be invited for Qualitative Interviews in accordance with Section 30.4.

- c. At the third stage, SBCTA shall assign a score with a maximum of 200 points (the “Qualitative Interview Score”) to each Proposer that is invited to give a Qualitative Interview. The Qualitative Interview Score will be added to the Aggregate Substantive Evaluation Score for purposes of determining each Proposer’s final score, (the “Final Aggregate Substantive Evaluation Score”) with the maximum Final Aggregate Substantive Evaluation Score being 1,000 points.

27.2 SBCTA’s Rights During Evaluation Process

- a. SBCTA anticipates using one or more evaluation committees to review and evaluate the SOQs in accordance with the above criteria. The evaluation committees may include members of other public agencies.
- b. At various times during the deliberations and also following the conclusion of the initial evaluation process, SBCTA may request additional information or clarification from Proposer or may request Proposer to verify or certify certain aspects of its SOQ as contemplated by Section 27.3.
- c. Evaluations of SOQs are subject to the sole discretion of SBCTA and its staff, with assistance from such professional and other advisors as SBCTA may designate.
- d. SBCTA may contact the firm and personnel references supplied by Proposer as well as other potential references not listed, including internal personnel of SBCTA.

27.3 Requests for Additional Information

- a. SBCTA may, at any time following submission of a Proposer’s SOQ:
 - i. request written clarification or additional information from a Proposer;
 - ii. request a Proposer to verify or certify certain aspects of its SOQ, including through the Qualitative Interview or in a separate oral presentation or interview (in person or remotely held); or
 - iii. contact firm and personnel references supplied by a Proposer, as well as request additional references not initially provided by a Proposer.
- b. The scope and length of, and topics to be addressed in, any response to such a request from SBCTA will be subject to SBCTA’s discretion.

27.4 Exercise of Discretion in Evaluation Process

- a. Evaluation and scoring of SOQs and ranking of Proposers are subject to the discretion of SBCTA (with assistance from the committees referred to in Section 34.2b and such professional and other advisors as SBCTA may designate).
- b. SBCTA retains discretion to select Shortlisted Design-Build Teams based on its assessment of the best interests of the Project, its stakeholders, and San Bernardino County.

- c. Proposers should note that, unless expressly permitted by this RFQ:
- i. any failure to fully disclose requested information;
 - ii. any incomplete, inaccurate, materially misleading or non-responsive submissions; or
 - iii. any conditional or qualified submissions (i.e., “to our knowledge”, “to the extent of available information”, “such information is not readily available”, “such information is not maintained in the manner requested”, etc.) to requests or questions posed,
- may, in the discretion of SBCTA, lead to:
- iv. a “fail” as part of the Administrative Pass/Fail Evaluation Criteria;
 - v. disqualification of a Proposer or a relevant Major Participant from the procurement process; and/or
 - vi. a relatively lower score under the Substantive Evaluation Criteria.

27.5 RFP Procedure and Evaluation

Proposers are advised that the evaluation criteria and weightings for the Proposals will differ from the criteria that are being used in this RFQ to evaluate the SOQs. In addition, the scores and evaluation of the SOQs will not carry over or be used in any way in the evaluation of the Proposals at the conclusion of the Preconstruction Period.

28. PASS/FAIL EVALUATION PROCESS

28.1 Administrative Pass/Fail Evaluation

- a. Each SOQ received by the SOQ Submission Deadline will be reviewed for compliance with the Administrative Pass/Fail Evaluation Criteria set out in Section 29.a.
- b. Proposer must obtain a “pass” on all Administrative Pass/Fail Evaluation Criteria in order for its SOQ to be evaluated under Section 30.
- c. Those SOQs deemed not to satisfy all of the Administrative Pass/Fail Evaluation Criteria, at the sole discretion of SBCTA, will be excluded from further consideration and the Proposer will be so notified.

28.1.2 Financial Pass/Fail Evaluation

- a. Following, or in conjunction with, evaluation of each SOQ for compliance with the Administrative Pass/Fail Evaluation Criteria, SBCTA will evaluate each SOQ based upon the Financial Pass/Fail Evaluation Criteria set out in Section 29.b.
- b. Proposer must obtain a “pass” on all Financial Pass/Fail Evaluation Criteria in order for its SOQ to be evaluated under Section 30.

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29. PASS/FAIL EVALUATION CRITERIA

The “Pass/Fail Evaluation Criteria” consist of the following:

- a. The “Administrative Pass/Fail Evaluation Criteria” are summarized in the table below.

Administrative Pass/Fail Evaluation Criteria

<u>No.</u>	<u>Pass/Fail Evaluation Criteria</u>	<u>RFQ Sec. Ref.</u>
(1)	SOQ submitted electronically through the Project Website on or before the SOQ Submission Deadline.	Sections 19
(2)	Responsiveness of Proposer to the requirements in this RFQ, and conformance to the RFQ instructions regarding organization and format	All Sections
(3)	SOQ includes all materials required to be submitted and verified as set out in Annex A of the Proposal Letter, as independently verified by SBCTA.	Annex A to the Form of Proposal Letter

- b. The “Financial Pass/Fail Evaluation Criteria” are summarized in the table below.



Financial Pass/Fail Evaluation Criteria

No.	Pass/Fail Evaluation Criteria	RFQ Sec. Ref.
(1)	Proposer or Lead Contractor is capable of obtaining both a payment bond and performance bond in the required amount from an Eligible Surety.	Section 25.2.2
(2)	The Proposer has submitted the SOQ with the Performance Security in the required amount.	Section 1.1

30. SUBSTANTIVE EVALUATION PROCESS

30.1 General

- a. Subject to Section 30.1.b and SBCTA's reservation of rights under Section 34, SBCTA will substantively evaluate each SOQ by considering the merits of each Proposer's overall qualifications, experience and approach by reference to the Substantive Evaluation Criteria.
- b. This evaluation will conclude with a scoring process. Under this scoring process SBCTA may award an aggregate maximum of 1000 points to any SOQ, with the maximum number of points that may be awarded in relation to any subcriteria within the Substantive Evaluation Criteria being as set out against such subcriteria in Section 30.5.
- c. Subject to SBCTA's reservation of rights under Section 34, SBCTA anticipates selecting two (2) Shortlisted Design-Build Teams from among the Proposers that submitted SOQs that:
 - i. have satisfied all Pass/Fail Evaluation Criteria; and
 - ii. are determined to have received the highest Final Aggregate Substantive Evaluation Score in accordance with Section 27.1c.



30.2 Legal and Project Performance Certification Evaluation

- a. SBCTA shall substantively evaluate and separately score Proposer's Legal and Project Performance Certifications in accordance with Section 30.1. SBCTA will assign a score (the "Substantive Evaluation Criterion No. 1 Pass/Fail Score") out of up to 100 points.
- b. SBCTA shall determine if the Proposer has "passed" this evaluation with a "pass" being achieved if Substantive Evaluation Criterion No. 1 has been assigned 60 or more points. Each Proposer must "pass" this evaluation in order for it to be eligible to be selected by SBCTA as a Shortlisted Design-Build Team.

30.3 Technical and Financial Substantive Evaluation

- a. SBCTA shall assign scores to Substantive Evaluation Criterion No. 2, Substantive Evaluation Criterion No. 3, Substantive Evaluation Criterion No. 4, and Substantive Evaluation Criterion No. 5 in accordance with Section 30.5, add the score assigned to Substantive Evaluation Criteria No. 1 described in Section 30.2, and calculate the Aggregate Substantive Evaluation Score by aggregating the scores.
- b. The Proposers with the highest Aggregate Substantive Evaluation Score will be invited for Qualitative Interviews in accordance with Section 30.4.

30.4 Qualitative Interviews

- a. SBCTA intends to conduct interviews with certain Proposers identified pursuant to Section 30.3b according to the schedule set forth in the Procurement Schedule. Such interviews ("Qualitative Interviews") will be conducted in the following manner as such process may be adjusted or supplemented by SBCTA in its discretion:
 - i. the interviews will follow a "case study" format, as part of which each invited Proposer will be provided with approximately three to five scenarios that it would be likely to face during the Preconstruction Period and/or the Construction Period;
 - ii. each invited Proposer will be provided the same scenarios, an equal opportunity to prepare for the interview, and the same maximum time interview limit which will be notified to it in advance of the meeting; and
 - iii. each invited Proposer's Key Personnel will be required to attend, provided that SBCTA reserves the right in its discretion to otherwise limit the number of Proposer attendees in such interview.
- b. Representatives of SBCTA and advisors to SBCTA may attend and participate in the Qualitative Interview.
- c. SBCTA will notify selected Proposers in writing of the schedule for interviews in conformity with the Procurement Schedule together with additional instructions

regarding the agenda for such interviews. Such interviews shall be held at a location to be identified by SBCTA in writing, provided that accommodations for remote attendance may be made at SBCTA's discretion.

- d. SBCTA will score each Qualitative Interview out of a maximum of 200 points. The Qualitative Interview Score will be added to the Aggregate Substantive Evaluation Score for purposes of determining each Proposer's final score, (the "Final Aggregate Substantive Evaluation Score"), with the maximum Final Aggregate Substantive Evaluation Score being 1,000 points.

30.5 Substantive Evaluation Criteria

<u>Substantive Evaluation Criteria</u>		<u>Maximum Points</u>	<u>Relevant SOQ Submission Requirements</u>
1	Proposer's Legal and Administrative Submission Proposer will be evaluated based on the strength of Proposer's Legal and Project Performance Certifications.	100	Volume 1, Section 23.5, Form 5
2	Proposer's Team, Organization, and Key Personnel Proposer will be evaluated based on: <ul style="list-style-type: none"> the extent to which Proposer demonstrates that Proposer's organizational and management structure accounts for all activities that are necessary to successfully complete the Project; the Major Participants can and have worked together as part of an integrated team, to deliver projects of a similar size, scope, and nature to the Project; 	150	Volume 2, Sections 24.2, 24.3, Form 8

<u>Substantive Evaluation Criteria</u>		<u>Maximum Points</u>	<u>Relevant SOQ Submission Requirements</u>
	<ul style="list-style-type: none"> the demonstrated capability and experience identified in Proposer's management structure and Key Personnel in establishing and implementing interrelated processes and project controls that manage project risks while at the same time encouraging innovation; the extent and depth of experience of Proposer's Key Personnel on comparable projects and in comparable roles; the extent to which Proposer demonstrates the availability of skilled labor force in Southern California; and the demonstrated capability and experience identified in Proposer's management structure and Key Personnel in establishing and implementing interrelated processes and project controls that manage project risks while at the same time encouraging innovation; 		
3	Proposer's Technical Qualifications Proposer will be evaluated based on: <ul style="list-style-type: none"> the strength of Proposer's safety record and the extent to which Proposer demonstrates a focus and commitment to safety through its description of worker safety approach; 	250	Volume 2, Section 24.4, Form 6, Form 7



<u>Substantive Evaluation Criteria</u>		<u>Maximum Points</u>	<u>Relevant SOQ Submission Requirements</u>
	<ul style="list-style-type: none">the extent and depth of Proposer's experience with comparable tunnel and transit station projects in an urban area;Proposer's approach to and demonstrated experience with system integration, testing, and validation of transit systems;the extent and depth of Proposer's experience on Projects with comparable progressive design-build, early contractor involvement, CM/GC, and/or similar contracting methods;Proposer's approach to coordination with third party stakeholders and authorities having jurisdiction to obtain agreements and permit approvals;The extent to which the Proposer has demonstrated experience coordinating with UPRR, Caltrans, Southern California Edison and Metropolitan Water District of Southern California;the extent to which Proposer has demonstrated experience in successfully coordinating work activities with other contractors on adjacent projects.Proposer's demonstrated experience in delivering a tunnel boring machine in an expedited manner on tunnel projects of a similar size, scope, and nature to the Project; andthe extent and depth of Proposer's experience with procuring and managing		

<u>Substantive Evaluation Criteria</u>		<u>Maximum Points</u>	<u>Relevant SOQ Submission Requirements</u>
	<p>the timely delivery of vehicle and system technology for transit projects of a similar size, scope, and nature to the Project.</p> <ul style="list-style-type: none"> the demonstrated experience in which the Proposer created project value through implementing Alternative Technical Concepts to reduce total project cost and/or schedule duration. 		
4	<p>Proposer's Conceptual Project Approach</p> <ul style="list-style-type: none"> Proposer's demonstrated understanding of, and sound approach to, the design and construction of the Project, including unique issues, specific risks and anticipated challenges associated with the design and construction of the Project; Proposer's approach to tunnel boring machine procurement, delivery, mobilization/set-up, and potential TBM launch locations; Proposer's approach for tunnel operations, including for muck handling, materials management, and reduction/re-use of tunnel waste to promote sustainable construction; the extent to which Proposer's approach utilizes the existing environmental footprint, minimizes disruptions to the travelling public, and manages and mitigates construction impacts; 	200	Volume 2, Section 24.5



<u>Substantive Evaluation Criteria</u>		<u>Maximum Points</u>	<u>Relevant SOQ Submission Requirements</u>
	<ul style="list-style-type: none"> Proposer's understanding of budget constraints for the Project, and offering solutions that achieve SBCTA's goals; Proposer's understanding of scheduling sensitivities for this Project, and offering solutions that meet SBCTA's schedule constraints; <u>and</u> the extent to which Proposer demonstrates a clear and cohesive plan for integrating the Operating System Provider and Lead Operator for successful transition from construction, through testing and commissioning, and into the Transitional Operating Period. the extent to which Proposer will incorporate and deliver innovation in the Project, including an explanation of how the innovation leads to added Project value and shared benefits. 		
5	Proposer's Financial Capacity Proposer will be evaluated based on: <ul style="list-style-type: none"> the robustness of the financial statements and Financially Responsible Party letters of support included in the SOQ as an indication of financial capacity. 	100	Volume 3, Sections 25.1, 25.2,
6	Qualitative Interview Proposer will be evaluated based on: <ul style="list-style-type: none"> its demonstrated ability to collaborate within its Design-Build Team and with SBCTA to solve problems presented by 	200	Volume 2, Section 24.3.1



<u>Substantive Evaluation Criteria</u>		<u>Maximum Points</u>	<u>Relevant SOQ Submission Requirements</u>
	SBCTA in an effective and efficient manner.		
	TOTAL	1,000	N/A

31. SHORTLISTING

- a. SBCTA will make the final determinations of the Shortlisted Design-Build Teams, as it deems appropriate, in its sole discretion, and in the best interests of the Project and the Work.
- b. SBCTA intends to identify the two (2) Proposers with the highest Final Aggregate Substantive Evaluation Scores as the Shortlisted Design-Build Teams.
- c. Each Proposer will be notified in writing whether or not it has been selected as a Shortlisted Design-Build Teams.

PART F: PROTESTS, DEBRIEFS AND RESERVED RIGHTS

32. PROTESTS

32.1 Applicability and Process

- a. This Section 32 sets forth the sole and exclusive protest remedies available with respect to this RFQ.
- b. Only Proposers who submit a responsive SOQ are permitted to file protests regarding the RFQ process in accordance with this Section 32.
- c. Any protests regarding the RFQ process, including the selection of the Shortlisted Design-Build Teams, will be addressed to SBCTA and hand delivered to SBCTA's Contact Person no later than fourteen (14) calendar days after the public announcement by SBCTA of the identity of the selected Shortlisted Design-Build Teams. Any Proposer submitting such a protest is responsible for obtaining proof of delivery.

32.2 Required Early Communication for Certain Protests

Protests may be filed only after Proposer has informally discussed the nature and basis of the protest with SBCTA, following the procedures prescribed in this Section 32. Informal discussions will be initiated by a written request to the SBCTA Procurement Contact.



SBCTA will meet with Proposer as soon as practicable to discuss the nature of the allegations.

32.3 Content of Protest

Any protest must include the following in order to be considered complete and delivered by the deadline specified in Section 32.1.c:

- a. the full legal name and address of Proposer or Major Participant(s) that is/are making the protest;
- b. a succinct statement of the grounds, legal authority and factual basis for such protest; and
- c. all documentation required to establish the merits of the protest.

32.4 Burden of Proof

The protestor has the burden of proving its protest by clear and convincing evidence. SBCTA may discuss the protest with the protestor and other Proposers. No hearing will be held on the protest. The protest will be decided on the basis of written submissions.

32.5 Decision on the Protest

SBCTA's Procurement Manager or designee will issue a written decision regarding the protest within thirty (30) calendar days after the filing of the detailed statement of protest. The written decision of SBCTA's Procurement Manager will be final and non-appealable.

32.6 Protestor's Payment of Costs

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

32.7 Rights and Obligations of Proposers

Each Proposer, by submitting its SOQ, expressly recognizes and agrees to the limitation on its rights to protest provided in this Section 37, and expressly waives all other rights and remedies that may be available to Proposer under Applicable Law. These provisions are included in this RFQ expressly in consideration for such waiver and agreement by Proposers. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this section, it will indemnify, defend and hold SBCTA and its directors, 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 SOQ, will be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.



33. DEBRIEFINGS

33.1 Availability of Debriefings

All Proposers submitting SOQs will be notified in writing of the results of the evaluation process. Proposers not shortlisted may request a debriefing within ten (10) days of notification of Shortlisting or, in the event a protest is filed prior to this date, upon the resolution of such protest, whichever is later. Debriefings will be provided at SBCTA's earliest feasible time after written notification of the Shortlisted Design-Build Teams. The debriefing will be conducted by a procurement official familiar with the rationale for the Shortlist decision.

33.2 Content of Debriefings

Debriefings will:

- a. Be limited to discussion of the unsuccessful Proposer's SOQ and may not include specific discussion of a competing SOQ nor disclose or discuss any confidential information relating to any other Proposer or its SOQ;
- b. Be factual and consistent with the evaluation of the unsuccessful Proposer's SOQ; and
- c. Provide information on areas in which the unsuccessful Proposer's SOQ had strengths, weaknesses, or deficiencies.

Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual evaluators.

34. RESERVED RIGHTS

34.1 Waiver

By requesting and participating in any debriefing session, a Proposer and its Major Participants will be deemed to have waived any right to use any information provided by SBCTA in good faith during such a debriefing against SBCTA or its representatives in any way whatsoever, including in any protest or legal action.

34.2 SBCTA's Reserved Rights

In connection with the procurement described in this RFQ, SBCTA reserves to itself any and all of the rights set out in Sections 34.2.a through 34.2.g and any other rights available to it under applicable law (any of which rights will be exercisable by SBCTA in its sole discretion, with or without cause, and with or without notice). The rights referred to in the preceding sentence include the right to:

- a. modify the procurement process described in this RFQ (including as previously modified in accordance with this Section 34.2) to address:
 - i. Applicable Law;



- ii. the best interests of SBCTA;
- iii. changes to the preferred alternative that arise from any CEQA, NEPA, or other Environmental Review process; and/or
- iv. any concerns, conditions or requirements of Caltrans, FHWA, USDOT or any other State or Federal department or agency;
- b. in reviewing and/or evaluating SOQs:
 - i. terminate evaluation of SOQs received at any time;
 - ii. appoint evaluation committees to review SOQs and make recommendations, and seek the assistance of outside technical, financial, legal and other experts and consultants;
 - iii. waive deficiencies, nonconformities, irregularities, and apparent clerical mistakes in a SOQ, accept and review a SOQ that it could otherwise have determined to have failed the Pass/Fail Evaluation or permit clarifications or additional information to be submitted with respect to a SOQ;
 - iv. make independent calculations with respect to numbers and calculations submitted in a SOQ for purposes of its evaluation;
 - v. require confirmation of information submitted by a Proposer, require additional information from a Proposer concerning its SOQ or require additional evidence of qualifications to perform the work described in this RFQ;
 - vi. seek or obtain data from any source that has the potential to improve SBCTA's understanding and evaluation of a SOQ; and/or
 - vii. if:
 - A. only one SOQ is received;
 - B. only one SOQ satisfies all Pass/Fail Evaluation Criteria; or
 - C. only one SOQ provisionally receives a sufficiently high numerical score following Substantive Evaluation to result in the relevant Proposer being selected as a Shortlisted Design-Build Team,then SBCTA may take such steps as appear to be appropriate to it under the circumstances, including:
 - D. modifying any element of this RFQ;
 - E. seeking additional or updated SOQs, information or clarifications from other Proposers; or
 - F. terminating this procurement;



- c. in otherwise conducting the procurement process under this RFQ and any RFP:
 - i. modify any and all dates set in this RFQ and in any RFP;
 - ii. add or delete Proposer responsibilities from the information contained in this RFQ or any RFP;
 - iii. reject any and all submissions, responses, SOQs and Proposals received at any time;
 - iv. not select any Proposer as a Shortlisted Design-Build Team;
 - v. add as a Shortlisted Design-Build Team any Proposer that submitted a SOQ in order to replace a previously selected Shortlisted Design-Build Team that withdraws or is disqualified from participation in this procurement;
 - vi. engage in negotiations with the highest-ranked Shortlisted Design-Build Team or with any other Shortlisted Design-Build Team;
 - vii. suspend and terminate Contract negotiations at any time;
 - viii. elect not to commence Contract negotiations;
 - ix. negotiate with a Shortlisted Design-Build Team without being bound by any provision in its SOQ or subsequent Proposal;
 - x. disqualify any Proposer or any Shortlisted Design-Build Team from the procurement process that changes its submission after the SOQ Submission Deadline without SBCTA's approval or for violating any rules or requirements of the procurement specified in (A) this RFQ, (B) the RFP, (C) any other communication from SBCTA or (D) Applicable Law; and/or
 - xi. accept, reject or seek additional information regarding a Proposer's request to make any Organizational Change;
- d. procure and develop the Project, including any portion thereof, in any manner that it deems necessary, including the right to:
 - i. modify the scope, structure, schedule and/or specific terms of, or cancel, this RFQ or any subsequent RFP, in whole or in part, at any time prior to the execution by SBCTA of a Contract, without incurring any cost obligations or liabilities;
 - ii. modify the scope of the Project or the Work during the procurement process;
 - iii. issue Addenda, supplements and modifications to this RFQ or the RFP;

- iv. issue a new request for qualifications or request for proposals after cancellation of this RFQ or the RFP;
 - v. not issue an RFP;
 - vi. elect not to commence or continue Contract negotiations with the then Preferred Proposer or any other Shortlisted Design-Build Team, and/or suspend or terminate Contract negotiations at any time; and/or
 - vii. develop some or all of the Project itself or through another State or local governmental entity;
- e. if SBCTA is unable to negotiate a Contract to its satisfaction with the Preferred Proposer, to:
 - i. negotiate with the next highest-ranked Shortlisted Design-Build Team;
 - ii. seek amended, revised or supplemented proposals from any or all Shortlisted Design-Build Teams;
 - iii. terminate the procurement;
 - iv. pursue the development of the Work and/or the Project through a procurement or contracting approach not expressly anticipated by this RFQ or the RFP; and/or
 - v. exercise such other rights under the DB Law and other provisions of California law as it deems appropriate;
- f. exercise any other right reserved or afforded to SBCTA under this RFQ or the RFP or applicable laws and regulations; and/or
- g. exercise its discretion in relation to the matters that are the subject of this RFQ or the RFP as it considers necessary or expedient in the light of all circumstances prevailing at the time which SBCTA considers to be relevant.

34.3 No Commitment or Liability

- a. This RFQ does not commit or bind SBCTA to enter into a contract or to proceed with the procurement described in this RFQ, or to any other definite course of action. SBCTA does not assume any obligations, responsibilities and 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 this RFQ or any subsequent RFP and all such costs will be borne solely by each Proposer.
- b. In no event will SBCTA be bound by, or liable for, any obligations with respect to the Project or any portion thereof, until such time (if at all) as the NEPA and CEQA processes are completed for the Project, the FTA has issued a Record of Decision for the Project, and a Contract, in form and substance satisfactory to SBCTA, has



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been executed and authorized by SBCTA and, then, only to the extent set out therein.



PART G: DEFINITIONS AND RULES OF INTERPRETATION

35. RULES OF INTERPRETATION

35.1 References to SBCTA Discretion

Any reference in this RFQ to SBCTA having the right to exercise its “discretion” means SBCTA having the right to exercise its sole and absolute discretion in regard to a particular decision or action, including the ability to refrain from taking any action and the ability (where appropriate) to impose any conditions in the exercise of such discretion.

35.2 Interpretation of Certain References, Terms, Phrases and Types of Language

35.2.1 Headings and Other Internal References

- a. Headings are inserted for convenience only and will not affect interpretation of this RFQ.
- b. Except as otherwise expressly provided in this RFQ, a reference to any Section, Part, Form, Annex or Exhibit within this RFQ, is a reference to such Section or Part of, or Form or Annex set out in, or Exhibit to, this RFQ.

35.2.2 Common Terms

- a. When there are references to general words followed by a list, or a reference to a list, to make it clear that those general words “include” the matters set out in that list, then the contents of the list will not, and will not be deemed to, limit the generality of those general words.
- b. The singular includes the plural and vice versa.
- c. The word “promptly” means as soon as reasonably practicable in light of then-prevailing circumstances.

35.2.3 Professional Language and Terms of Art

Except as otherwise expressly provided in this RFQ:

- a. words and phrases not otherwise defined herein:
 - i. that have well-known technical or construction industry meanings will be construed pursuant to such recognized meanings; and
 - ii. of an accounting or financial nature will be construed pursuant to GAAP, in each case taking into account the context in which such words and phrases are used; and
- b. all statements of or references to, dollar amounts or money in this ~~RFQ~~ RFQ, including references to “\$” and “dollars”, are to the lawful currency of the United States of America.



35.2.4 References to Agreements, Documents and Laws

Except as otherwise expressly provided in this RFQ, any reference:

- a. to an agreement or other document will be construed to be a reference to such agreement or other document (including any schedules, annexes or exhibits thereto) as it may be amended, modified or supplemented from time to time in accordance with its terms; and
- b. to any Applicable Law will be construed as a reference to such Applicable Law, enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted from time to time.

36. DEFINITIONS

Except as otherwise specified herein or as the context may otherwise require, the following terms have the respective meanings set out below when used in this RFQ.

"Addenda" and "Addendum" mean any supplemental written additions, deletions, and modifications to the provisions of this RFQ as described in Section 10.

"Affiliate" means in relation to any Person:

- a. any other Person having Control over that Person;
- b. any other Person over whom that Person has Control;
- c. any Person over whom any other Person referred to in (a) above also has Control;
- d. any Financially Responsible Party for that Person; or
- e. only with respect to the use of the term "Affiliate" in Forms 5 (Legal Disclosures) and 6 (Legal Certifications), any Joint Venture involving such Person and the Joint Venture's members or partners (but only as to activities of such members or partners in their roles as members or partners of such Joint Venture),

in each case where "Control" of a Person by another Person means that other Person (whether alone or with others, and whether directly or indirectly at any tier): (i) holds the majority of voting rights in the controlled Person; (ii) has the right to appoint the majority of the board of directors (or equivalent) of that controlled Person; and/or (iii) exercises direct or indirect control over that controlled Person's affairs.

"Aggregate Substantive Evaluation Score" has the meaning given to it in Section 27.1b.ii.

"Applicable Law" means any:

- a. statute, law (including common law), code, regulation, ordinance or rule;
- ~~a-b.~~ binding judgment, judicial or administrative order or decree;

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~~b-c~~ written directive, guideline, policy requirement, methodology or other governmental restriction or requirement (including those resulting from an initiative or referendum process, but excluding those by SBCTA within the scope of their administration of this Contract); and

~~e-d~~ similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any governmental authority,

in each case that is applicable to or has an impact on the Project or the Work.

"ATC" means alternative technical concepts, which are concepts that would not (absent SBCTA approval) be permitted under the terms of the ~~Preconstruction~~ Pre-Proposal Works Agreement or Design-Build Contract.

"Authority Having Jurisdiction" means together and separately, utility owners, government authorities, regulatory authorities, and/or any other entity having jurisdiction pursuant to Applicable Law over any part of the Work or the Project.

"Caltrans" means the California Department of Transportation, an executive department within the State of California whose purpose it is to improve mobility access across the State.

"CEQA" means the California Environmental Quality Act, including any applicable regulations or Guidelines implementing the Act.

"Confidential Contents Index" has the meaning given to it in Section 26.2.1.

"Construction Period" or "Phase 2" has the meaning given to it in Section 1.2.

~~"Construction Value" means the original design-build (or equivalent) contract price for a Project, excluding any element of such price relating to debt or equity financing costs, operations or maintenance work, or land acquisition costs.~~

"Contract" means the design-build-~~operate-maintain~~ contract which is anticipated to be entered into by SBCTA and the Preferred Proposer following the conclusion of the Project procurement process in accordance with the terms of the RFP.

"County" means San Bernardino County.

"DB Law" has the meaning given to it in Section 1.3.

"Design-Build Contract" means the contract that is anticipated to be entered into by SBCTA and the Preferred Proposer following the conclusion of the Preconstruction Period in accordance with the terms of the RFP.

"Design-Builder" means the counterparty to the Design-Build Contract entered into with SBCTA at the conclusion of the procurement in respect of the Project.

"Design-Builder RFQ" has the meaning given to it in Section 1.2.



"Draft RFP" has the meaning given to it in Section 1.2.

"EIR" means Environmental Impact Report.

"Eligible Surety" means a bonding surety:

- a. licensed in the State and at all relevant times listed on the U.S. Department of the Treasury's annual Listing and Approved Sureties (Department Circular 570); and
- ~~f.~~ b. having either:
 - i. two or more of the following long-term unsecured debt credit ratings: (A) "A" by Standard & Poor's Rating Services; (B) "A" by Fitch, Inc.; (C) "A2" by Moody's Investors Service, Inc.; or (D) "A" by DBRS, Inc., in each case with an outlook of "stable" or better, and provided that such rating agency is at all relevant times a nationally recognized statistical rating organization registered with the Securities and Exchange Commission; or
 - ii. a rating of at least A and X, respectively, or higher, according to A.M. Best's Financial Strength and Financial Size Ratings.

"FAA" means the Federal Aviation Administration.

"FHWA" means the Federal Highway Administration.

"Final Aggregate Substantive Evaluation Score" has the meaning given to it in Section 27.1c.

"Financially Responsible Party" means each parent company or other entity (in either case, if any) that provides a letter of support in accordance with Section 25.2.1. Each Financially Responsible Party is a Major Participant.

"Fixed Facilities" means all elements of the Project that are to be constructed by the Design-Builder under the Design-Build Contract, including but not limited to the tunnel, stations, and all associated infrastructure, excluding the Operating System.

"FTA" means the Federal Transit Administration.

"GAAP" means Generally Accepted Accounting Principles in the United States as in effect from time to time.

"Guaranteed Maximum Price" or "GMP" means the price to complete all Work under the Design-Build Contract that is submitted with a Shortlisted Design-Build Team's Proposal as provided for under the ~~ITP as described in Section 1.2~~ RFP.

"IFRS" means International Financial Reporting Standards as issued by the IFRS Foundation and International Accounting Standards Board (IASB) from time to time.

"Information Barriers" means, with respect to any Person, the implementation of internal safeguards and confidentiality protection protocols, including the exclusion of involvement

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of any individual who himself or herself has consulted or advised on, or otherwise has non-public knowledge of, the Project, this RFQ or any RFP, which barriers are customary and appropriate for the relevant industry of such Person and this Project and which barriers otherwise comply with such Person's obligations under Applicable Law.

~~"Infrastructure Equity Member" if any, means a member of the Design-Build Team that will contribute equity (directly or indirectly) to Developer as part of the financing of the Project.~~

~~"ITP" means Instructions to Proposers.~~

"Joint Venture" means a consortium, partnership, joint venture or any other unincorporated grouping acting together for a common purpose and, for purposes of Section 20.1.c, each individual member or partner of such Joint Venture.

"Key Personnel" means the Project Director, ~~Environmental Manager, Design Manager, Tunnel Engineering Manager, ROW Manager, Utilities~~ Design Manager, Construction Manager, ~~Quality Manager, Operations Manager, and Construction~~ Safety and Security Manager, Tunnel Systems Integration Manager, and the individuals filling the roles listed in Form ~~9-8~~ 9-8 as identified by Proposer in its SOQ, subject to adjustment through an Organizational Change in accordance with this RFQ.

~~"Key Performance Indicators" or "KPIs" has the meaning given to it in Section 1.1.~~

"Key Project Parameters" has the meaning set forth in Section 6.2.

"Lead Contractor" means the single entity or joint venture that will be primarily and directly responsible for construction of the Project. If this role will be performed by a Joint Venture, then all members or partners of that Joint Venture will be considered to be the Lead Contractor.

"Lead Designer" means the single entity or joint venture that will be primarily and directly responsible for design of the Project. If this role will be performed by a Joint Venture, then all members or partners of that Joint Venture will be considered to be the Lead Designer.

"Lead Operator" means the entity that is identified as a Major Participant on a Shortlisted Design-Build Team pursuant to the process to be set forth in the ~~ITP-RFP~~ that is primarily responsible for operations and maintenance of the Operating System ~~during and will enter into the Transitional Operating Period Contract~~.

"Lead Tunneling Contractor" means the entity that will be primarily and directly responsible for tunnel construction on the Project.

"Major Participant" means each of Proposer, Lead Contractor, Lead Designer, Lead Tunneling Contractor, and any Financially Responsible Parties. One entity may fill more than one Major Participant role.

"MOU" means memorandum of understanding.



“NEPA” means the National Environmental Policy Act, including any applicable regulations implementing the Act.

“NTP” means notice to proceed.

“Official Representative” has the meaning given to it in Section 11.1.

~~“O&M Period” means the operations and maintenance period, determined by whether the procurement proceeds under the DB Law or the IFA.~~

“OIAA” means the Ontario International Airport Authority.

“ONT” has the meaning given to it in Section 1.1.

“Operating Contract” has the meaning given to it in Section 1.2.

“Operating System” means the vehicles, control systems, power distribution and vehicle charging, communications systems, station equipment, and maintenance facility fit out and equipment, along with all related equipment and services as required to provide a complete autonomous, on demand transportation system.

“Operating System Provider” means the Major Participant that will be responsible, in whole or in part, for the design, fabrication, delivery, installation, testing, integration, commissioning, verification of passenger service readiness, permitting, and safety certification, of the Operating System.

“Operating System Provider RFQ” has the meaning given to it in Section 1.2.

“Organizational Change” has the meaning given to it in Section 14.

“Pass/Fail Evaluation Criteria” has the meaning given to it in Section 29.

“PCM” or “Program Management Construction Management Consultant” means the entity contracted by SBCTA to manage the Project, which includes among other things, administering the Design-Build Contract on behalf of SBCTA, providing design reviews for the Project on behalf of SBCTA, and providing construction management, and, on behalf of SBCTA, verification of ~~Developer’s~~ Preferred Proposer’s construction operations and product.

“Performance Security” ~~has the meaning given to it in Section 23.6~~ means the security submitted by Proposer in accordance with the requirements of the RFP to secure its obligations under the Pre-Proposal Works Agreement.

“Person” means any of a natural person, a corporation, a limited liability company, a trust, a partnership, a limited liability partnership, a joint stock company, a consortium, a Joint Venture, an unincorporated association, or any other entity recognized as having legal personality under the laws of the State, in each case as the context may require.

“Phase 1” or “Preconstruction Period” has the meaning given to it in Section 1.2.



"Phase 2" or "Construction Period" has the meaning given to it in Section 1.2.

"Preconstruction Period" or "Phase 1" has the meaning given to it in Section 1.2.

~~"Preconstruction Works Agreement" has the meaning given to it in Section 1.2.~~

"Preferred Proposer" means the Proposer that is selected by SBCTA to enter into the Design-Build Contract following the evaluation of all Proposals submitted by the Shortlisted Design-Build Teams in response to the RFP.

"Pre-Proposal Works Agreement" has the meaning given to it in Section 1.2.

"Prequalified Operating System Providers" means the Operating System Providers that are identified by SBCTA at the conclusion of the procurement process contemplated by this RFQ as eligible to proceed in the procurement and be selected as a Major Participant on a Shortlisted Design-Build Team.

"Pre-SOQ One-on-One Meeting" means a confidential meeting between a prospective Operating Systems Provider and SBCTA to discuss the Project and the terms and conditions of this RFQ that is held prior to the SOQ Submission Date, as provided for in the RFQ.

"Procurement Schedule" has the meaning given to it in Section 2.

"Project" has the meaning given to it in Section 1.1.

"Project Information" means any information provided to Proposers during the RFQ stage of this procurement.

"Project Website" has the meaning given to it in Section 16.1a.

"Proposal" means the submission of the Proposer in response to the requirements set forth in the ~~ITP at the conclusion of the Preconstruction Period as described in Section 4.2~~ RFP.

"Proposal Letter" has the meaning given to it in Section 23.1.

"Proposer" has the meaning given to it in Section 1.2.

"Public Records Exempt Materials" has the meaning given to it in Section 26.2.1.

"Public Records Law" has the meaning given to it in Section 26.1.2.

"Qualitative Interview" has the meaning given to it in Section 30.4a.

"Qualitative Interview Score" has the meaning given to it in Section 27.1c.

~~"Railroad" means each of UPRR and the SCRR.~~

"Readiness for Revenue Service" has the meaning given to it in Section 6.3a.vii.



"Reference Document" means the documents provided to Proposer through the Project Website or otherwise to assist Proposer in their Project due diligence and to supplement the Project Information provided under this RFQ.

"Reference Project" means a project submitted by Proposer in the form of Form 6.

"Responsible Agency" means a public agency which proposes to carry out or approve a project, for which a lead agency is preparing or has prepared an EIR or negative declaration. For the purposes of CEQA, the term "responsible agency" includes all public agencies other than the lead agency which have discretionary approval power over the project.

"Responsiveness Criteria" means the list of materials required to be submitted with Proposer's SOQ and verified as set out in Annex A to the Proposal Letter.

"Restricted Contact Period" has the meaning given to it in Section 11.2.1.

"Restricted Person" means each Proposer and Major Participant, ~~as well as any prospective Operating System Provider under the separate Operating System Provider RFQ process,~~ and any Subcontractor otherwise engaged at the relevant time by any of the same in connection with the Project, in each case including each such Person's agents and representatives (including Key Personnel).

"RFP" has the meaning given to it in Section 1.2.

"RFQ" has the meaning given to it in Section 1.1.

"RFQ Comment" has the meaning given to it in Section 9.1.1a.

"RFQ Comment Deadline" has the meaning given to it in the Procurement Schedule.

"ROW" means right-of-way.

"SBCTA" means the San Bernardino County Transportation Authority.

"SBCTA Procurement Contact" has the meaning given to it in Section ~~11.2.2.c~~ 11.2.2.b.

~~"SCRRA" means the Southern California Regional Rail Authority.~~

"Shortlisted Design-Build Teams" means those Proposer entities and their Major Participants selected at the conclusion of the Design-Builder RFQ procurement process to respond to the RFP.

"SOQ" means a statement of qualifications submitted by a Proposer in accordance with Part E for SBCTA's evaluation in accordance with Part F.

"SOQ Submission Deadline" means the date and time indicated as such on the cover to this RFQ.

"State" means the State of California.



"Substantive Evaluation Criteria" has the meaning given to it in Section 30.

"Substantive Evaluation Criterion No. 1" has the meaning given to it in Section 27.1b.

"Substantive Evaluation Criterion No. 1 Pass/Fail Score" has the meaning given to it in Section 27.1b.i.

"Substantive Evaluation Criterion No. 2" has the meaning given to it in Section 27.1b.

"Substantive Evaluation Criterion No. 3" has the meaning given to it in Section 27.1b.

"Substantive Evaluation Criterion No. 4" has the meaning given to it in Section 27.1b.

"Substantive Evaluation Criterion No. 5" has the meaning given to it in Section 27.1b.

~~"Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.~~

"Technical Provisions" has the meaning given to it in Section 1.2.

"Third-Party Agreements" has the meaning given to it in Section 1.2.

~~"Transitional Operating Period" has the meaning given to it in Section 1.2.~~

"UPRR" means the Union Pacific Railroad.

"USDOT" means the United States Department of Transportation.

"Vehicle" means a rubber-tired zero-emission passenger carrying unit capable of autonomous operations as contemplated by this RFQ.

"Work" has the meaning given to it in Section ~~6.1.b~~ 6.1b.



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PART H: FORMS

Separately provided.