

# California High-Speed Train Project



## Request for Proposal for Design-Build Services

**RFP No.: HSR 11-16**  
**Book 2, Part A.2: Special Provisions**

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# PART A – Special Provisions

## 1 Contract Type

The design-build contract is a firm fixed price contract.

## 2 Notice to Proceed

The Contractor shall not proceed with any Work under the Contract without a written notice to proceed for such Work from the Authority. Any Work performed or expenses incurred by the Contractor prior to the Contractor's receipt of a written notice to proceed for such Work is the Contractor's risk.

- NTP-1 authorizes Work on Construction Package 1A and Construction Package 1B.
- NTP-2 authorizes Work on Construction Package 1C.

If the Authority issues NTP-1 within 180 days after the Proposal Deadline, the Contract shall remain in full force and effect without escalation or any other modification to the terms and conditions hereof. If the Authority issues NTP-1 after 180 days after the Proposal Deadline due to no fault, negligence, act or failure to act of any Contractor-Related Party, the Contract shall remain in full force and effect, without any modification to the terms and conditions hereof, provided that the Contract Price may be subject to an adjustment using the following formula:

$$\{[(\text{Final Component Value CCI San Francisco}/\text{Base Component Value CCI San Francisco}) + (\text{Final Component Value CCI Los Angeles}/\text{Base Component Value CCI Los Angeles})]/2\} \times \text{Contract Price} = \text{Adjusted Contract Price}$$

Where:

- **Base Component Value CCI San Francisco** - the latest current Construction Cost Index (CCI) values published by Engineering News Record as of 180 days after the Proposal Deadline for San Francisco.
- **Base Component Value CCI Los Angeles** - the latest current CCI values published by Engineering News Record as of 180 days after the Proposal Deadline for Los Angeles.
- **Final Component Value CCI San Francisco** - the latest current CCI values published by Engineering News Record as of the date of issue of NTP-1 for San Francisco.
- **Final Component Value CCI Los Angeles** - the latest current CCI values published by Engineering News Record as of the date of issue of NTP-1 for Los Angeles.

If NTP-1 has not been issued within 360 days after the Proposal Deadline due to no fault, negligence, act or failure to act of any Contractor-Related Party, the Contractor may seek to



negotiate a Change Order including an extension in time for issuance of NTP-1 and an increase in the Contract Price mutually acceptable to the Contractor and the Authority. If the Contractor does not wish to seek a Change Order as provided above or if the Authority fails to issue a Change Order acceptable to the Contractor, then the Contractor's sole remedy shall be to terminate the Contract, and such termination shall be deemed to be a termination for convenience under the "Termination for Convenience" clause (Section 40) of the General Provisions.

Any price increase under this Section 2 shall be amortized proportionally over all Work remaining to be performed, and shall be evidenced by a Change Order.

The Authority may issue NTP-2 at any time on or before 120 days after NTP-1. If NTP-2 has not been issued within 120 days after NTP-1 due to no fault, negligence, act or failure to act of any Contractor-Related Party, Construction Package 1C will be deleted from the Work and the Contract Price will be reduced by the price for Construction Package 1C set forth in the Signature Document. Such changes shall be evidenced by a Change Order. At any time the Authority may seek to negotiate a Change Order regarding Construction Package 1C mutually acceptable to the Contractor and the Authority.

### **3 Completion Deadlines**

The "Substantial Completion Deadline" is 42 months after NTP-1, as such deadline may be extended in accordance with the Contract Documents. The Contractor shall achieve Substantial Completion by the Substantial Completion Deadline.

The "Final Acceptance Deadline" is 44 months after NTP-1, as such deadline may be extended in accordance with the Contract Documents. The Contractor shall achieve Final Acceptance by the Final Acceptance Deadline.

### **4 Maintenance of Access**

The Contractor shall maintain access to the business at parcels APN 459-023-56, 459-023-57 and 459-023-59, commonly known as La Tapatia, through the driveway to East Belmont Street, approximately 400-feet east of North H Street, at all times during construction and after completion of the Project.

### **5 General Office Requirements for Facilities Provided by the Contractor**

For office trailers or spaces provided by the Contractor, the Contractor shall provide offices in good repair and in a clean and sanitary condition, at least of the same quality as the facilities that the Contractor provides its counterpart project management, design, and field staff. These facilities shall be available for occupancy as specified. The Contractor shall secure sites, obtain all site permits, install, set up, and provide utility services, and maintain the facilities as part of



the Work. The offices shall have at least two exits from each building/trailer. Entrance to offices shall be secured with a door lock plus a dead bolt lock. All interior spaces shall have overhead lighting meeting OSHA and code requirements for office space. Each office space shall have at least two duplex receptacles. Minimum circuit capacity shall be 20 amps. Each office space shall be wired for phone and computer Local Area Network (LAN). The office space shall include a conference room large enough for 20 people and separate restrooms for male and female. In the event that office spaces or appurtenant facilities are destroyed or damaged during the Contract period, except by fault of the Authority or its personnel, the Contractor shall, at its expense, repair or replace those items, which the Contractor provided, to their original condition within 10 days. For the facilities it provides, the Contractor shall have the following responsibilities:

- Be responsible for installing, maintaining, and paying all utilities.
- Provide daily janitorial service (except weekends and Authority Designated Holidays) and shall provide service and maintain trash containers and trash pickup service.
- Be responsible for maintenance of the exterior area of office spaces including access to parking areas.
- Include desks, chairs, filing cabinets, bookcases and telephones in all offices.
- Provide copying, computer, printing and facsimile equipment services, including paper, supplies and maintenance.
- Be responsible for disposal or removal of all Contractor-provided facilities and any site restoration Work required.
- Provide ventilation and air conditioning/cooling systems capable of maintaining temperature between 70 and 75 degrees Fahrenheit in all spaces throughout the year.
- Provide facilities that meet local code requirements for office space.
- Provide telephone service with outside lines for each office space in the field office facility. At least one additional line will be dedicated for facsimile service and one additional line will be dedicated to high speed data service. The phone system shall be capable of providing voicemail service to each extension. The Authority will pay all local and long distance phone charges after installation.
- Provide and maintain all Authority offices that it provides for at least 30 Days after Final Acceptance of the Work included in the Contract or until facilities are no longer needed, whichever is earlier, unless otherwise agreed by the Authority in writing. Ownership of the field office, equipment and telephone shall remain with the Contractor and shall be removed when instructed by the Authority.



## 5.1 Field Office for Authority's Field Staff

The Contractor shall provide a field office for the Authority's field staff co-located with the Contractor's management personnel. Not later than 15 Days after NTP-1, the Contractor shall provide office space not less than the size indicated below:

Item	No. Required	Requirement
Private Office	1	Min 150 square feet, enclosed with lockable door
Staff Cubicles	50	Min 80 square feet each
Conference room	1	Min 500 square feet, enclosed, with lockable door
Visitor cubicles	5	Min 60 square feet each
Storage/filing space	1	250 square feet, enclosed, with lockable door
Restrooms	5	Men's & women's
Paved parking	50	Min 50 spaces including 5 visitor spaces
Break room	1	Min 150 square feet, 8 feet of counter space with sink
Server room space	1	[TBD]

The Contractor shall provide a well-graded site for the office with access road and parking area. The parking area shall be reasonably level. The parking area, including visitor parking, shall have an all-weather surface.

If the Contractor has a separate design office, the Contractor will make available at that location five typical staff cubicles for the Authority staff. If the Contractor elects to set up remote field offices along the alignment during construction, the Contractor will make available at each of these locations two typical staff cubicles for the Authority staff.

The Contractor shall equip the field office with the following:

- **Security** – Either a 24-hour security service or silent watchmen-type security system.
- **Lighting** – The Contractor shall install sufficient exterior security lighting that is automatically activated at low light levels to maintain two footcandles of lighting in the office site area, including parking.
- A conference room with a large table and 20 chairs.
- Individual office file cabinets and 25 total commercial grade 5-drawer vertical lockable file cabinets for project files.

## 5.2 Connectivity

The Contractor shall make necessary arrangements for allowing access to the Authority-provided server, printers and other hardware either through "hardwiring" or remote access. The Contractor shall also make arrangements for all of the Authority's computers to be linked directly to the Authority's network through a T1 internet connection.



### **5.3 Backup of Electronic Files and Protection of Hardcopy Files**

The Contractor shall provide a secure, fireproof location in which to store electronic and hardcopy backup files. The Authority's representative will provide backup for their electronic files.

### **5.4 Site Identification Signing**

The Contractor shall provide site identification signing at all project offices and all sites of Work.

### **5.5 Communication**

The Contractor shall establish and maintain telephone and radio communications, as appropriate, to control the Work and maintain communications with the Authority, Utility Owners, and local and regional emergency response agencies or entities. The Contractor shall not use police or other emergency services' radio frequencies.

The Contractor shall provide daily courier service between the Contractor's main Project office and the Authority's and any Authority field office on the Project at 10:00 a.m. and 3:00 p.m. each Working Day or as mutually agreed by the Contractor and the Authority.

## **6 Provisional Sums**

The Authority has reserved funds in the amount set forth in the Signature Document for the following Provisional Sums:

- Utility/Third Party Provisional Sum
- Construction Contract Work Provisional Sum
- Hazardous Materials Provisional Sum

Use of the Utility/Third Party Provisional Sum is described in the "Third Party Entities" clause (Section 49) of the General Provisions.

To the extent available funds remain in the Construction Contract Work Provisional Sum, the Authority may elect, in its sole discretion, to pay for an Owner Directed Change for any enabling Work that is identified to impact the Project right-of-way or limit the freedom of action of the Contractor during Construction with funds in the Construction Contract Work Provisional Sum.

To the extent available funds remain in the Hazardous Materials Provisional Sum and the Contractor is entitled to an equitable adjustment for additional costs under the "Hazardous Materials" clause (Section 44) of the General Provisions, the Authority may elect, in its sole



discretion, to pay for Hazardous Materials remediation Work with funds in the Hazardous Materials Provisional Sum.

## 7 Liquidated Damages

In the event that the Contractor fails to achieve Substantial Completion by the Substantial Completion Deadline, the Contractor agrees to pay the Authority Liquidated Damages as set forth below:

- For each day (or any part thereof) of delay up to 60 days: \$80,000/day;
- For each day (or any part thereof) of delay between 61 days and 120 days: \$180,000/day;
- For each day (or any part thereof) of delay between 121 days and 180 days: \$230,000/day; and
- For each day (or any part thereof) of delay over 180 days: \$290,000/day.

For example, if the Contractor achieves Substantial Completion 65 days after the Substantial Completion Deadline, the Contractor will owe the Authority Liquidated Damages in the amount of:  $(\$80,000/\text{day})(60 \text{ days}) + (\$180,000/\text{day})(5 \text{ days}) = \$5,700,000$ .

Liquidated damages will be subject to a cap set forth in the Signature Document.

## 8 Environment

In August 2011, the Authority and the Federal Rail Administration (FRA) released for public review and comment two environmental documents: the California High-Speed Train, Merced to Fresno Section Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS), and the Fresno to Bakersfield Section DEIR/EIS. Information for the Merced to Fresno environmental document, including discussion of permitting requirements and proposed mitigation commitments, can be found in Book 3.

[http://www.cahighspeedrail.ca.gov/lib\\_Merced\\_Fresno.aspx](http://www.cahighspeedrail.ca.gov/lib_Merced_Fresno.aspx).

Similarly, information for the Fresno to Bakersfield environmental document can be found in Book 3.

[http://www.cahighspeedrail.ca.gov/Lib\\_Fresno\\_Bakersfield.aspx](http://www.cahighspeedrail.ca.gov/Lib_Fresno_Bakersfield.aspx)

The comment period for both environmental documents closed on October 13, 2011. Furthermore, in response to public input, the Authority and FRA plan to release a Revised Draft EIR/Supplemental Draft EIS (DEIR/EIS) for the Fresno to Bakersfield HST Project for additional public comment in late spring of 2012.



Following the close of the comment period on the Draft EIR/EIS, the Authority and FRA will consider all substantive comments, and identify a preferred alignment alternative to be included in the Final EIR/EIS for each High-Speed Train (HST) project. In spring of 2012, the Authority and FRA intend to release a Final EIR/EIS for the Merced to Fresno HST Project, with the Authority Board considering certification of the Final EIR/EIS and final decision in May 2012, along with filing of a Notice of Determination (NOD). The FRA is anticipated to issue a Record of Decision (ROD) following the Authority Board's action. The Fresno to Bakersfield Final EIR/EIS is anticipated before the end of 2012 after which Authority Board approval of the final document and subsequent ROD/NOD is anticipated.

## 8.1 Environmental Approvals and Permits

In preparing the environmental documents, the Authority has been working to obtain agency approvals needed for the ROD (e.g., issuance of a Section 7 Biological Opinion from the U.S. Fish and Wildlife Service and NOAA Fisheries) and initiated work to secure a Section 404 individual project permit from the U.S. Army Corps of Engineers. For the permits, in most instances, a two-step process has been adopted, with the first step consisting of the Authority obtaining a programmatic permit for the entire HST section and assuming a minimum of 15 percent design. Subsequently the Contractor shall obtain clearances from the applicable agencies under the programmatic permits for the Construction Package. The Authority's approach to environmental approvals, permits, and the assignment of the Authority and the Contractor responsibilities for Construction Package 1 is shown in the Approach for Obtaining Initial Construction Segment (ICS) Environmental Approvals/Permits in Book 3.

To the extent the Authority fails to provide any permit for which it is responsible for providing by the deadline therefor as set forth in the Approach for Obtaining ICS Environmental Approvals/Permits in Book 3, and such failure has the effect of increasing the time of performance of the Work, then the Contractor may request a time extension (excluding delay damages) in accordance with the "Changes" clause (Section **Error! Reference source not found.**) of the General Provisions.

Notwithstanding "Permits, Fees and Notices" (Section 7.7) and "Environmental Requirements" (Section 42) of the General Provisions, the Authority will, by \_\_\_\_\_, [date to be provided by the Authority] directly implement all off-Site mitigation measures and permit conditions for short term and long term habitat acquisition, preservation, creation, restoration, enhancement and maintenance.

The geographic limits of Construction Packages 1A and 1B are evaluated in the Merced to Fresno EIR/S (i.e., from an area north of the San Joaquin River south to the end of the proposed Fresno HST Station track), while the geographic limits for Construction Package 1B and 1C are evaluated as part of the Fresno to Bakersfield EIR/S (i.e., from the Fresno station track south to East American Way in Fresno).



## 9 Warranty

In addition to the warranties required by the “Warranty” clause (Section 7.8) of the General Provisions, and notwithstanding the “Use and Possession Prior to Completion” clause (Section 7.15) of the General Terms, the Contractor warrants that the Project, other than elements of the Project that will be owned by Third Parties, remains in the same condition as it is in at Final Acceptance excluding normal wear and tear and any damage caused by contractors other than Contractor-Related Entities working at the Site. During the warranty period, the Contractor shall be subject to the “Risk of Loss; Protection of Existing Site” clause (Section 7.9) of the General Provisions.

The warranties required by the “Warranty” clause (Section 7.8) of the General Provisions, as supplemented by this Section, commence upon Substantial Completion and continue for a period of two years from Final Acceptance. This two year warranty shall be priced in the Contractor Price. The Authority also has five options to extend the warranty period for each option by one year. The warranty option prices are set forth in the Signature Document. The Authority will exercise its warranty options, if at all, prior to the expiration of the initial two year warranty.

If the Contractor exercises its option to extend the warranty under this clause, the Contract Price will be increased by the Extended Warranty Price. The “Extended Warranty Price” shall be the sum of the Warranty Option prices as set forth in the Signature Document for the duration determined by the Authority up to five years. For example, if the Authority elects to extend the Warranty by three years, the Extended Warranty Price shall be the sum of the Warranty Option 1st Year price, the Warranty Option 2nd Year price and the Warranty Option 3rd Year price.

Notwithstanding the foregoing, the Warranty term for elements of the Project that will be owned by Third Parties will be as follows:

- If the warranty term is governed by a Master Agreement or Task Order, the warranty for such element shall remain in effect for such term as required under the applicable Master Agreement and/or Task Order.
- If the warranty term is not governed by a Master Agreement or Task Order, the warranty for such element shall commence upon completion of such element and continue for a period of one year from Final Acceptance.

The warranty on any repair, rework or replacement as a result of a warranty claim or damage as a result of this clause shall extend beyond the original warranty period if necessary to provide at least a one year warranty period from the date of acceptance of the repairs, rework, or replacement.

Upon Final Acceptance, the Contractor will have the right to replace the performance bond required hereunder with a replacement bond in the amount of 10 percent of the sum of the Total Contract Price in a form satisfactory to the Authority in its sole discretion guaranteeing



due and punctual performance of the Contractor's obligations under the Contract that survive Final Acceptance, or with such other security as is approved by the Authority in its sole discretion.

