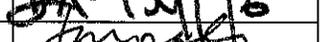
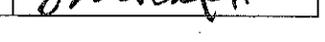

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

Unsolicited Proposals Policy Procedures

PPI Number	PPI Description	Revision Number	Date
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	Name	Date	Signature
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Checked	Thomas Fellenz	February 18, 2016	
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CALIFORNIA HIGH-SPEED RAIL AUTHORITY

Procedure

PROC-BOARD-02

Approved By


Jeff Morales
Chief Executive Officer

3-7-16
Date

SUBJECT: Unsolicited Proposals Policy Procedures¹ (Implementing Unsolicited Proposals Policy approved by Authority Board on October 14, 2013, in Resolution #HSRA 13-29)

- 1.0 **Applicability.** These procedures apply to Unsolicited Proposals received by the Authority.
- 1.1. ***What is an Unsolicited Proposal?*** It is a written proposal submitted to the Authority on the initiative of the submitter for the purpose of proposing a unique and innovative idea that could lead to a contract with the Authority, not in response to a formal or informal request.
- 1.2. ***What distinguishes an Unsolicited Proposal?*** It must have the following qualities:
- 1.2.1. Innovative and unique;
- 1.2.2. Independently originated and developed by the proposer;

¹ The Original of this document is retained in a database, and will be posted on the Authority's website. Any printed copies of this document are not necessarily the latest version of the document. The Authority will maintain a copy of these Procedures on its public website. The Authority may revise these Procedures at any time, if consistent with Board Resolution #HSRA 13-29.

- 1.2.3. Of sufficient size and benefit to potentially warrant a full review process by the Authority;
- 1.2.4. Prepared without the Authority's supervision, endorsement, direction, or direct involvement; and
- 1.2.5. Sufficiently detailed that its benefits in support of the Authority's mission and responsibilities are apparent.

An Unsolicited Proposal is distinguishable from a project or component already part of the Authority's long-term budget planning process if it uses innovative and unique solutions to offer added value, such as cost reduction, enhanced financing/funding options, technical innovation, schedule acceleration and/or risk transfer.

1.3. ***What types of proposals do not qualify as an Unsolicited Proposal?*** An Unsolicited Proposal is not:

- 1.3.1. A suggestion or idea for further research or further development by the Authority without further involvement of the offering party;
- 1.3.2. An offer of standard, off-the-shelf products or services to satisfy a present or future known, standard Authority need;
- 1.3.3. Requests for product endorsement or capital funds to bring a product to market;
- 1.3.4. An offer responding to an Authority-published solicitation (e.g., a Request for Proposals or Request for Qualifications); or
- 1.3.5. A proposal that is too vague or lacks sufficient detail to allow evaluation.

2.0 **Costs of Proposer; No Commitments by Authority to Proceed with Procurement.** All costs incurred by a proposer in discussing an Unsolicited Proposal with the Authority, in preparing any materials, and in any way engaging with the Authority regarding an Unsolicited Proposal will be borne solely and completely by the proposer.

The Authority commits to dealing professionally with the proposer and to conducting this unsolicited proposals process as efficiently as possible, given the nature of the proposal and the Authority's needs. The Authority does not commit to any particular outcome (including that Authority engagement with the proposer will lead to a procurement or a contract with the proposer) nor to any specific timeframe, even if the

proposer has paid the Authority an Optional Detailed Proposal Evaluation Charge (defined in paragraph 5.2).

- 3.0 **Process Overview.** Unsolicited Proposals shall be submitted to the Authority Office of Procurement and Contracts (OPAC). The Authority receives and evaluates Unsolicited Proposals using a two-phased approach. Phase One is intake and screening of Conceptual Proposals. Phase Two is detailed evaluation and decision regarding Detailed Proposals (which are Conceptual Proposals that are enhanced with more detail if they continue after Phase One). At the end of Phase Two, if the Authority decides to proceed to procurement, the Authority's general procurement procedures and policies (as applicable to competitive and sole-source procurements) will apply.

The Authority may, at any time, decide not to proceed any further with a received Unsolicited Proposal. OPAC shall inform the proposer in writing of any such decision, after consulting the Chief Deputy Director (who may consult the Chief Executive Officer, as appropriate) and the Chief Financial Officer.

4.0 **Phase One – Intake and Screening of Conceptual Proposal.**

- 4.1. ***Introduction – Conceptual Proposal.*** The purpose of Phase One is for the Authority to receive written, concept-level proposals and to screen those proposals to determine whether the Authority would like to review additional information in Phase Two.
- 4.2. ***Required Submission Content – Conceptual Proposal.*** Conceptual Proposals should include the information identified in the Conceptual Proposal Form (Exhibit A to this Policy).
- 4.3. ***Prohibition on Use of Confidential Information; Proposals Subject to Public Records Act.***
- 4.3.1. Authority personnel shall not use any confidential patented, trade secret, proprietary, trademarked, or copyrighted part of an Unsolicited Proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm, unless the proposer is notified of and agrees to the intended use. Concepts or ideas are not considered proprietary by the Authority but specific implementing methodologies that are unique to the proposer may be recognized. Generally speaking, information contained in an Unsolicited Proposal that would be exempt from disclosure under the California Public Records Act (PRA) as trade secret or proprietary should not be used by Authority staff in a solicitation or negotiations with another firm without the permission of the proposer. If in doubt, OPAC staff shall consult the Chief Counsel.

- 4.3.2. To aid in implementation of the above paragraph, OPAC staff shall place a cover sheet (attached as Exhibit B) on the proposal, unless the proposer clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal.
- 4.3.3. Notwithstanding the above, proposers should recognize that all materials submitted to the Authority as part of an Unsolicited Proposal could be considered records subject to the California Public Records Act (PRA). The Authority will use its best efforts to inform the proposer of any PRA request for any proposal materials marked as trade secret or proprietary. Under no circumstances will the Authority be liable to a proposer related to Authority actions to comply with the PRA.
- 4.3.4. To the extent the Authority determines that it must share Authority-created confidential information with the proposer in order to continue discussions with the proposer, the Authority may require the proposer to sign a confidentiality agreement.

4.4 ***Process – Conceptual Proposal.***

- 4.4.1. Threshold Requirements and Review (Intake). Upon receipt of an Unsolicited Proposal, OPAC staff will take the following threshold steps:
 - a. Promptly acknowledge, in writing to the submitter, receipt of the proposal;
 - b. Determine whether the proposal meets the definition of an Unsolicited Proposal (see paragraphs 1.2 and 1.3);
 - c. Contains the required content (per Exhibit A);
 - d. Has been approved by a responsible official or other representative authorized to contractually obligate the proposer; and
 - e. Complies with the marking requirements for use and disclosure of data (per Exhibit A).
- 4.4.2. Conceptual Proposal Review – Process. If the proposal meets the threshold requirements, OPAC staff will take the following steps:
 - a. Log in the proposal and assign it a number;

- b. Set and notify the proposer of the schedule for internal evaluation;
- c. After consulting the Chief Deputy Director, Chief Financial Officer and Chief Program Manager, the head of OPAC (the Contracts Officer) will identify a team of persons to review the proposal (Evaluation Team) that includes technical and financial subject-matter experts related to the Unsolicited Proposal (If evaluation by others outside of the Authority and its contract staff (including its contract financial advisors), the proposer's permission will be requested.);
- d. Schedule a meeting with the proposer, if the proposer requested a meeting or if a meeting would be helpful to more fully understand the proposal;
- e. Facilitate the evaluation process as needed, applying the evaluation criteria in paragraph 4.4.3; and
- f. After evaluation, notify the proposer of the Authority's decision. The possible outcomes may be to discontinue the process, proceed to Phase Two, or pursue a procurement without Phase Two. The Authority will provide a general explanation of the reasons for the decision.

4.4.3. Conceptual Proposal Review – Evaluation Criteria. At Phase One, the Evaluation Team will determine the evaluation criteria as necessary to reflect the specific proposal, but generally will consider the following factors:

- a. The proposal offers direct or anticipated benefits to the Authority, its passengers, and the community;
- b. The proposal satisfies a need for the Authority that can be accommodated in a manner consistent with the Authority's objectives and goals;
- c. The proposal offers unique goods or services that the Authority did not intend to purchase through the normal Authority contract process;
- d. If the proposal contains significant financial, technical and legal components, those disciplines have approved an action that proceeds to Phase Two; and

- e. Other factors appropriate for the particular proposal.

5.0 **Phase Two – Detailed Proposal, Evaluation and Decision.**

- 5.1 ***Introduction – Detailed Proposal.*** The purpose of Phase Two is for the Authority to receive more detailed technical and financial information to fully understand and evaluate the proposal, if necessary, to determine whether to seek a procurement.
- 5.2 ***Optional Detailed Proposal Evaluation Charge.*** The Evaluation Team and OPAC may determine that review of a specific Detailed Proposal will require significant expenditure of Authority staff, contract staff and/or outside consultant resources (including potentially costly feasibility and engineering/technical studies) that should be borne by the proposer rather than the Authority, based on the nature of the proposal and the expected relative benefits. In such case, the Authority will notify the proposer and will not proceed with evaluation of the Detailed Proposal until the Authority receives from the proposer a non-refundable, non-negotiable Detailed Proposal Evaluation Charge per the schedule contained in Exhibit C, in the form of a cashier's check payable to the Authority (or wire transfer, as authorized by the Authority).
- 5.3 ***Process – Detailed Proposal; Request for Detailed Proposal.*** If the Authority desires to proceed to Phase Two, OPAC will issue to the proposer a Request for a Detailed Proposal that formally tells the proposer to proceed to Phase Two. Depending on the circumstances, the Request may include the following:
 - 5.3.1. Essential terms and conditions the Authority believes could or should be part of any agreement between the Authority and the proposer that would effectuate the proposal;
 - 5.3.2. A goal for participation of small and disadvantaged businesses, consistent with the Authority's Small Business Program;
 - 5.3.3. Schedule and important deadlines for the proposer;
 - 5.3.4. Specific technical, financial or other information the Authority needs from the proposer to fully evaluate the proposal;
 - 5.3.5. Request for Detailed Proposal Evaluation Charge, if required;
 - 5.3.6. Evaluation criteria; and

5.3.7. Requests for specific modifications or clarifications to the scope of the original proposal.

5.4 **Processing.** Once the Detailed Proposal is received, OPAC will keep a record of the persons on the Evaluation Team and record the final disposition of the proposal. Outside advisors (i.e., those outside of the Authority and its contract staff, including its contract financial advisors, will be consulted only if the Authority evaluation team deems it necessary and beneficial; if evaluation by others outside of the Authority is deemed necessary, the proposer's permission will be requested. The prohibition on the use of proprietary information (paragraph 4.3) continues to apply in Phase Two.

5.5 **Content –Detailed Proposal.** In addition to the information provided in Phase One, a Detailed Proposal must, at a minimum, include the following information:

5.5.1 Technical Information.

- a. Names and professional information of the proposer's key personnel who would be committed to the project;
- b. Type of support needed from the Authority; e.g., facilities, equipment, materials, or personnel resources;
- c. A sufficiently detailed description of the scope of work being offered to allow the Authority to evaluate the value received for the price proposed;
- d. Estimated price or total estimated cost for the effort and/or the revenue generated in sufficient detail for meaningful evaluation, including an annual cash flow for the project;
- e. A schedule for the implementation, including specific details for any property and/or services to be provided by the Authority;
- f. Information responsive to the Request for a Detailed Proposal; and
- g. Proposed duration of effort.

5.5.2 Supporting Information.

- a. Type of contract preferred;

- b. Description of the organization, previous experience in the field, and facilities to be used;
- c. Required statements, if applicable, about organizational conflicts of interest (based on the Authority's Organizational Conflicts of Interest policy), and environmental impacts;
- d. Information demonstrating to the Authority that the proposer has the necessary financial resources to complete the project, as determined by OPAC staff. Such information may include (i) financial statements, including an Auditor's Report Letter or an Accountant's Review Letter, Balance Sheets, Statements of Income and Stockholder's Equity, and a Statement of Change in Financial Position; (ii) un-audited balance sheets; (iii) names of banks or other financial institutions with which the proposer conducts business; and (iv) letter of credit commitments;
- e. Legal ability for the Authority to participate in all aspects of the proposal requiring Authority action;
- f. Confirmation that the proposal and all components that it would create can comply with all applicable existing federal, state, regional and local laws; and
- g. Governmental approvals (including but not limited to environmental) required for the proposal.

5.6 ***Evaluation—Detailed Proposal.*** Detailed Proposals will be evaluated promptly in accordance with the criteria set out in this section.

5.6.1 **Threshold Review.** Before initiating a comprehensive evaluation, OPAC staff will determine if the Detailed Proposal continues to meet the threshold requirements set out in Phase One and the requirements specifically set out in the Request for Detailed Proposal.

5.6.2 **Evaluation Criteria.** At Phase Two, the evaluation team will consider the same evaluation criteria set forth in Phase One in addition to following factors:

- a. The proposer's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives;
- b. The proposer's financial capacity to deliver the goods or

services defined in the proposal;

- c. Viability of the proposed schedule and the Authority's ability to meet activities required of the Authority;
- d. The Authority's capacity to enter into a contract under its current legislative authorities;
- e. The qualifications, capabilities, and experience of key personnel who are critical in achieving the proposal objectives;
- f. The specific details of the cost/revenue generated; and
- g. Any other factors appropriate for the particular proposal.

5.7 ***Recommendation/Decision.*** The Evaluation Team will make a recommendation on the disposition (i.e., termination or proceed to procurement) of the Detailed Proposal to the Authority's CEO for review and approval. If Board of Directors' approval is required, the proposer will be notified of the date of the meeting when the proposal will be discussed.

6.0 **Procurement.** Upon the necessary approval, the procurement shall take place consistent with the Authority's standard procurement procedures. The procurement shall be on a competitive basis unless the facts, state law, and policy allow and the Authority determines otherwise.

EXHIBIT A

**UNSOLICITED PROPOSALS SUBMITTED TO THE AUTHORITY
PHASE ONE: CONCEPTUAL PROPOSAL FORM**

Phase One of the Authority's Unsolicited Proposal process involves submitting this form. Submit only the information required by this form. If the Authority determines that the proposal should proceed to Phase Two, the Authority will issue a Request for Detailed Proposal.

PART 1. BASIC INFORMATION

Proposer Information:

Name: _____

Address: _____

Further Contact Information: _____

Type of Organization: _____

Technical Personnel Names & Contact Information:

Business Personnel Names & Contact Information:

These individuals should be responsible for answering the Authority's technical or business questions concerning the proposal or any subsequent agreement concerning the proposal.

PART 2. TECHNICAL INFORMATION

Title of the Proposal: _____

- Abstract of the Proposal is attached. To move forward in the Unsolicited Proposal process, the Abstract must include a brief—but complete—discussion of the following:

- (1) Objectives;
- (2) Method of approach;
- (3) Nature and extent of anticipated results; and

(4) Manner in which the work will help support accomplishment of the Authority's mission.

Technical expertise the proposer needs from the Authority: _____

PART 3. FINANCIAL INFORMATION

Proposed Price or Total Estimated Cost: _____

Revenue: _____

Be concise but provide sufficient detail for the Authority to meaningfully evaluate the Proposal.

Financial information the proposer needs from the Authority: _____

PART 4. PROCEDURAL INFORMATION

Period of Time for which the proposal is valid: _____

- Proprietary data has been submitted with this proposal. *Any proprietary data (but only such data) must be clearly designated.*
- Other government entities or private parties have received this proposal.
Please explain: _____
- Other government entities or private parties may provide funding for this proposal.
Please explain: _____
- There are patents, copyrights and/or trademarks applicable to the goods or services proposed.
Please explain: _____
- A meeting with the Authority staff is requested.

Questions, comments or concerns that the proposer intends to raise at a meeting, if granted: _____

There is additional information not requested in this form that would allow the Authority to evaluate this proposal at this conceptual phase. Describe: _____

Confirmation that Proposer and its parent and affiliate companies have not ever been found by a court of law to be in breach of a contract with the State of California or have not ever been disqualified by the State of California from contracting with any State of California department.

PART 5. SIGNATURE.

Name: _____

Date: _____

Title: _____

The individual who signs this form must be authorized to represent and contractually obligate the Proposer.

EXHIBIT B

UNSOLICITED PROPOSAL USE OF PROPRIETARY DATA PRIOR TO CONTRACT IS PROHIBITED

All Authority personnel must exercise extreme care to ensure that any proprietary information in this proposal is not disclosed to an individual who has not been authorized access to such data and is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the proposal, without the written permission of the proposer. If a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use of any such proprietary data.

EXHIBIT C

DETAILED PROPOSAL EVALUATION CHARGE SCHEDULE (UNSOLICITED PROPOSALS)

<u>ESTIMATED CAPITAL COST OF PROJECT PROPOSED IN THE UNSOLICITED PROPOSAL</u>	<u>DETAILED PROPOSAL EVALUATION CHARGE</u>
< \$100 million	\$35,000
\$100 million to <\$250 million	\$60,000
\$250 million to <\$500 million	\$85,000
\$500 million to <\$1 billion	\$110,000
>\$1 billion	\$135,000

