



**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**



**SAN FRANCISCO COUNTY TRANSPORTATION
AUTHORITY**

**REQUEST FOR PROPOSALS
NUMBER 04-1637U4**

**TO DESIGN, BUILD, FINANCE, OPERATE AND
MAINTAIN**

**THE
PRESIDIO PARKWAY PROJECT**

**THROUGH A
PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**

ADDENDUM No. 5 ISSUED SEPTEMBER 24, 2010

The Sponsors issue this Addendum No. 5 to inform Proposers of the following changes and corrections to the RFP.

INSTRUCTIONS TO PROPOSERS

4.14 Base Interest Rates

Proposers will provide the Base Interest Rates to be applied by the Proposers to the relevant financing in their respective Financial Models to calculate the Maximum Availability Payment. The Proposer must price the Base Interest Rates at 10:00 a.m. EDT on the date two weeks prior to the Financial Proposal Due Date, and provide the Sponsors with all supporting information (including the screen from which the Benchmark Rate was extracted, the average life and / or drawdown and repayment profile of the financing) that would allow the Sponsors and their advisors to verify the referenced Base Interest Rates. Proposers shall deliver this information in writing to the Designated Contact no later than the date set forth in Section 1.5. The Base Interest Rates provided by the Preferred Proposer, and the TIFIA loan interest rate assumption set forth in Appendix D, Section 1(f), shall be appended to the Agreement as Appendix 2-C with the successful Proposer.

Appendix A

“Base Interest Rates” means the complete set of rates identified and used by the Proposer in the Financial Model to calculate the Base Maximum Availability Payment and the First Year Maximum Availability Payment set forth in Appendix D-1. The Base Interest Rates shall be determined in accordance with Benchmark Interest Rates provided by the Proposer in accordance with Section 4.14, provided that the Base Interest Rate to be used by Proposers for any TIFIA loan shall be 4.5%. The Base Interest Rates do not include any credit spread, margin or fee components.

Appendix E

See revised Exhibit E, Form A-2 at the end of this Addendum.

PUBLIC-PRIVATE PARTNERSHIP AGREEMENT

In addition to corrections of spacing, punctuation, grammar, capitalization, underlining and formatting that do not affect meaning, the form of Agreement is modified as indicated by the deletions and additions set forth below.

9.3.4 If the Department elects to compensate Developer through Deferral of Compensation, Developer shall use diligent efforts to obtain (a) funding from the Lenders, or other lenders if permitted by the Funding Agreements, and/or (b) equity support from the shareholders or members of Developer, in either case, to finance the Extra Work Costs and, if applicable, the Delay Costs relating to the Relief Event in advance of receiving the required compensation payments from the Department. If despite such diligent efforts and the additional compensation that would be paid under Section 9.4, if any, Developer is unable to obtain such funding and equity support, then the Department’s election to compensate through Deferral of Compensation shall be deemed void, and the Department shall pay the applicable Extra Work Costs and Delay Costs through another method set forth in Section 9.3.2.

9.3.54 If the Department chooses to compensate Extra Work Costs and Delay Costs owed under this Article 9:

9.3.54.1 As a lump sum payment other than a negotiated fixed price, then payment shall be due and owing 30 days following the Department's receipt of (a) all required Claim documentation in full compliance with Section 9.1.1.1, and (b) all pertinent data, documents and information on an Open Book Basis;

9.3.54.2 As a lump sum payment that is a negotiated fixed price, then payment(s) shall be due and owing 30 days after the Department receives from Developer (a) all required Claim documentation in full compliance with Section 9.1.1.1, (b) all pertinent data, documents and information on an Open Book Basis and (c) documentation required pursuant to the negotiated fixed price terms in order to receive scheduled payments under the negotiated fixed price terms; and

9.3.54.3 As progress payments invoiced as Work is completed, then payment shall be due and owing 30 days after each date the Department receives from Developer (a) all required Claim documentation through and including a certified written supplemental notice of potential Claim in full compliance with Section 9.1.1.1 and (b) an invoice, not more often than monthly, of such Extra Work Costs and Delay Costs incurred for such Work during the previous month, which invoice shall be itemized as set forth in Section 9.1.1.1(6)(d) and by the components of Extra Work Costs and Delay Costs allowable under Appendix 6.

9.3.65 In exchange for the payment by the Department of any such compensation amounts (and additional compensation amounts under Section 9.4, if any), Developer shall execute a full, unconditional, irrevocable waiver, release and acknowledgement of satisfaction by Developer, in form reasonably acceptable to the Department, of any claim for Extra Work Costs, Delay Costs, compensation for losses due to delays in commencement of Availability Payments or for additional interest costs due to delayed receipt of the Milestone Payment, and other rights to compensation or other monetary relief associated with such event that is not the subject of a Dispute.

15.2.7.2 Developer has diligently and timely conducted the IPDC in accordance with Appendix 13 and diligently and timely completed all necessary steps to obtain and close any TIFIA financing indicated in Appendix 2-B, but all the potential Lenders (or, if applicable, clubs of potential Lenders) identified in the initial submission phase, or all the potential Lenders (or, if applicable, clubs of potential Lenders) shortlisted at the end of the initial submission phase, as well as all the Core Lenders, or the TIFIA Joint Program Office (if applicable), either (a) affirmatively state in writing to the Department and Developer on or prior to the Financial Close Deadline that they are not prepared to proceed to Financial Close by the Financial Close Deadline because (i) the risk of Section 143 Litigation, though not filed prior to the Financial Close Deadline, is unacceptable, or (ii) the risk associated with the Department's ability to satisfy its obligations to pay the Milestone Payment or Availability Payments in the amounts and at the times required under this Agreement is unacceptable, or (b) condition their commitments on approval of such risk of Section 143 Litigation or such risk of the Department's ability to pay and invoke such condition in writing on or prior to the Financial Close Deadline;

15.2.8.1 100% of the impact (either positive or negative) on the Base Maximum Availability Payment of changes in the base interest rates set forth in Appendix 2-C (the "base interest rates") for the period beginning at 10:00 a.m. EPT on September 22, 2010 (which base interest rate for any TIFIA Loan shall be assumed to be 4.5%) and ending on the

earliest of (a) 10:00 a.m. EPT on the date of Financial Close, (b) 10:00 a.m. EPT on the Financial Close Deadline, or (c) the date of execution of any interest rate hedging instrument by Developer (the “last date of the base interest rate protection period”). The interest rate adjustment will be based on the movement, if any, in the base interest rates. Developer and the Department shall both adjust the Original Financial Model as of the last date of the base interest rate protection period to reflect the changes (if any) in the base interest rates and any revisions approved by the Parties but not any potential errors identified as part of the updated audit opinion provided pursuant to Section 14.2.2;

15.2.8.3 85% of the impact (either positive or negative) on the Base Maximum Availability Payment of the differences between the financial terms assumed and indicated in the Original Financial Model and in Developer’s financial plan as set forth in Appendix 2-B and the financial terms of the Initial Project Debt and initial Financing Documents as obtained at Financial Close. For the purpose of this Section 15.2.8.3 only, “financial terms” shall consist of and be limited to: the ratio of Project Debt to Committed Investment (subject to the provisions of Section 15.2.9.2), base case annual debt service coverage ratio (ADSCR), base case loan life coverage ratio (LLCR), senior debt margins, interest on reserves, reserve requirements, swap credit spreads, bond spreads, underwriting fees, conduit fees, bank commitment fees, bank draw fees and the pro forma TIFIA assumptions set forth in Section 1(f) of Appendix D of the ITP (except for interest rates for TIFIA Loans governed by Section 15.2.8.1 and subsidy amounts governed by Section 15.2.8.2).

**APPENDIX E
FORM A-2**

Financial Proposal Letter

PROPOSER: _____

Financial Proposal Date: October 6, 2010

State of California
Department of Transportation
Office of the Director
P3 Program
1120 N Street , MS 49
Sacramento, CA 95814

The undersigned (“**Proposer**”) submits this Financial Proposal (this “**Proposal**”) in response to that certain Request for Proposals (the “**RFP**”) issued by the California Department of Transportation (“**Department**”), an agency of the State of California, in cooperation with the San Francisco County Transportation Authority (“**Authority**”) (collectively “**Sponsors**”), dated July 9, 2010, as amended, to design, build, finance, operate and maintain the Presidio Parkway Project (the “**Project**”), as more specifically described herein and in the documents provided with the RFP. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.

In consideration for Department supplying us, at our request, with the RFP and agreeing to examine and consider this Proposal, the undersigned undertakes [jointly and severally] ***if Proposer is a joint venture or association other than a corporation, limited liability company or a partnership, leave in the words “jointly and severally,” otherwise delete*** :

a) to keep this Proposal open for acceptance for a period of 180 days after submission of the Proposal without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of Department, in Department’s sole discretion; and

b) to provide security (including bonds, insurance and letters of credit) for the due performance of the Public Private Partnership Agreement (“**Agreement**”) as stipulated in the Agreement.

If selected by Sponsors, Proposer agrees to: (a) enter into the Agreement and satisfy all other conditions to and after award of the Agreement as set forth in Sections 6.2 and 6.3 of the Instructions to Proposers (“**ITP**”) included in the RFP; and (b) perform its obligations as set forth in the Agreement, including compliance with all commitments contained in this Proposal.

Enclosed, and by this reference incorporated herein and made a part of this Proposal, are the following Proposal components:

- Financial Proposal Executive Summary;
- Administrative Information Submittals; and
- Financial Proposal

Proposer further incorporates by reference the Technical Proposal and Administrative Information Submittals submitted by Proposer on September 13, 2010.

Proposer acknowledges receipt, understanding and full consideration of the following:

- Addendum No. 1 to Final RFP, issued August 13, 2010
- Addendum No. 2 to Final RFP, issued August 30, 2010
- Addendum No. 3 to Final RFP, issued September 7, 2010
- Addendum No. 4 to the Final RFP, issued September 17-October 6, 2010
- Addendum No. 5 to the Final RFP, issued September 24, 2010
- Final Clarification Matrix RFCs 1-306 081310
- Final Clarification Matrix RFCs 307-491 081310
- Final Clarification Matrix RFCs 492-504 081310
- Final Clarification Matrix RFCs 505-589 083010
- Final Clarification Matrix RFCs 090410
- Final Clarification Matrix RFCs 092310
- ***[list any other addenda to the RFP and sets of questions and answers by dates and numbers***

Proposer certifies the following: the Proposal is submitted without reservation, qualification, assumptions or conditions; Proposer has carefully examined and is fully familiar with all of the RFP documents and is satisfied that the RFP documents provide sufficient detail regarding Developer's obligations and do not contain internal inconsistencies; Proposer has carefully checked all the words, figures and statements in the Proposal; Proposer has conducted such other field investigations and additional design development as is prudent and reasonable in preparing this Proposal; and that Proposer has notified Department of any deficiencies in or omissions from any RFP documents or other documents provided by Department and of any unusual site conditions observed prior to the date hereof.

Proposer agrees to comply with the terms of the Initial Project Debt Competition set forth in Appendix G to the ITP.

Proposer represents that all statements made in the Statement of Qualifications previously

delivered to Department, including those in Request for Qualifications Form F, are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal and Proposal forms. Proposer agrees that such Statement of Qualifications, including Request for Qualifications Form F, except as modified by the enclosed Proposal and Proposal forms, is incorporated as if fully set forth herein.

Proposer further represents that all statements made in the Technical Proposal and Administrative Information Submittals previously delivered to Department, including those in the completed ITP Appendix E, Forms A-1, C, E, G, I, K, L, M, and O, are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal and Proposal forms. Proposer agrees that such Technical Proposal and Administrative Information Submittals, including those in the completed ITP Appendix E, Forms A-1, C, E, G, I, K, L, M, and O, except as modified by the enclosed Proposal and Proposal forms, are incorporated as if fully set forth herein.

Proposer understands that Department is not bound to award the Agreement to the lowest priced Proposal, the highest scoring Proposal or any Proposal Department may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer, except any payment for work product that Department may pay Proposer in accordance with Appendix H. Proposer further agrees to accept the stipend offered for such work product and to the terms in Appendix H.

Proposer agrees that Sponsors will not be responsible for any errors, omissions, inaccuracies or incomplete statements in the Proposal.

The Proposal shall be governed by and construed in all respects according to the laws of the State of California.

Proposer's business address:

(No.) (Street) (Floor or Suite)

(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: _____

[insert appropriate signature block from following pages]

1. Sample signature block for corporation or limited liability company:

[Insert the Proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for partnership or joint venture:

[Insert the Proposer's name]

By: *[Insert general partner's or member's name]*

By: _____

Print Name: _____

Title: _____

[Add signatures of additional general partners or members as appropriate]

3. Sample signature block for attorney in fact:

[Insert the Proposer's name]

By: _____

Print Name: _____

Attorney in Fact

ADDITIONAL REQUIREMENTS:

- A. If the Proposer is a corporation, enter the state or country of incorporation in addition to the business address. If the Proposer is a partnership, enter the state or country of formation. If the Proposer is a limited liability company, enter the state or country of organization.
- B. Describe in detail the legal structure of the entity making the Proposal.
1. Provide a table showing the organization of the anticipated contracting entity. This table shall describe the role of all Equity Members, Major Non-Equity Members, Contractors and Guarantors (if any).
 2. If the Proposer (or any member, partner or joint venturer of the Proposer) is a corporation or includes a corporation as a joint venturer, partner or member, provide articles of incorporation and bylaws for the Proposer and each corporation certified by an appropriate individual.
 3. If the Proposer (or any member, partner or joint venturer of the Proposer) is a partnership or includes a partnership as a joint venturer, partner or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer and each general partner (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual.
 4. If the Proposer (or any member, partner or joint venturer of the Proposer) is a joint venture or includes a joint venture as a joint venturer, partner or member, attach the full names and addresses of all joint venturers and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer and each joint venturer (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual.
 5. If the Proposer (or any member, partner or joint venturer of the Proposer) is a limited liability company or includes a limited liability company as a joint venturer, partner or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer and each member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture) certified by an appropriate individual. Attach evidence to the Proposal and to each letter that the person signing has authority to do so.
- C. With respect to authorization of execution and delivery of the Proposal and validity

thereof, if the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If the Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If the Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If the Proposer is a joint venture, such evidence shall be in the form of a resolution of each joint venturer, certified by an appropriate officer of such joint venturer. If the Proposer is a joint venture or a partnership, the Proposal must be executed by all joint venture members or all general partners, as applicable.

- D. The Proposer must also identify those persons authorized to enter into clarification discussions (if any) on its behalf with Sponsors in connection with this RFP, the Project and the Agreement.
- E. The Proposer's partnership agreement, limited liability company operating agreement, and joint venture agreement, as applicable, must include an express provision satisfactory to Department, in its sole discretion, stating that, in the event of a dispute between or among joint venturers, partners or members, as applicable, no joint venturer, partner or member, as applicable, shall be entitled to stop, hinder or delay work on the Project. Proposers should submit the applicable agreement to Department and identify on a cover page where in the agreement the provision can be found.