
TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 020 Category: Financial Matters

UNSOLICITED PROPOSALS POLICY

The Transbay Joint Powers Authority (“TJPA”) has primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of the Transbay Program. The Transbay Program is divided into two construction phases: Phase 1 and Phase 2. Phase 1 consists of the above-ground portion of the new Transit Center and the train box. Phase 1 construction is complete, and the new Salesforce Transit Center is operational. Phase 2 of the Transbay Program primarily will include design and construction of the Downtown Rail Extension Project to connect the new transit center to the regional rail system and California High Speed Rail (Phase 2 scope sometimes collectively referred to here as “DTX”).

This Unsolicited Proposals Policy (“Policy”) applies to proposals primarily relating to design and construction of the DTX; it does not apply to proposals primarily relating to Phase 1, the operation of the Salesforce Transit Center, or projects outside the scope of the DTX (although matters such as operation and maintenance of the facility as a whole, excluding rail operations and rail systems maintenance, upon completion of the DTX could be addressed in a proposal). This Policy also does not apply to projects outside the TJPA’s jurisdiction.

The TJPA is actively engaged in developing the DTX to ready-for-procurement status, with the support of its partners and consistent with the San Francisco Peninsula Rail Program Memorandum of Understanding (MOU). The TJPA employs policies and procedures to ensure, among other things, robust competition; fair, transparent, and rationale decision making regarding design, construction, financing, and related matters; and adherence to federal law and regulation. These efforts and processes are expected to result in optimized value for the public in delivery of the DTX.

The TJPA recognizes, however, that there may be interest in developing and submitting Unsolicited Proposals related to the DTX. An Unsolicited Proposal is distinguishable from the TJPA’s plans for the DTX if it uses innovative and unique solutions that the TJPA has not previously considered to offer added value, such as cost reduction, enhanced financing/funding options, technical innovation, schedule acceleration, and/or risk transfer.

The purpose of this Policy is to describe the TJPA’s planned procedures for receiving and reviewing Unsolicited Proposals. The Policy is expected to ensure that the TJPA maintains open competition, rationale decision making, and adherence to federal requirements, while potentially adding value for the public. While the TJPA does not commit to any particular outcome relating to an Unsolicited Proposal (including not committing that the TJPA’s engagement with a proposer will lead to the TJPA’s adoption of a proposal or a contract with the proposer) nor to any specific timeframe, the TJPA intends this Policy to provide adequate guidelines such that not-for-profit, academic, industry, or others that have identified innovative and unique proposals related to the DTX have clarity on the procedures and level of investment they may incur to present such a proposal to the TJPA. Recognizing the potential significant investment of resources by a proposer, the TJPA commits to dealing professionally with proposers and to conducting the unsolicited proposals process as efficiently as possible, based on the nature of a proposal and the TJPA’s needs.

I. SCOPE

- A. What is an Unsolicited Proposal?** For purposes of this Policy, an Unsolicited Proposal is a written proposal submitted to the TJPA on the initiative of the proposer for the purpose of proposing an idea that could lead to a contract with the TJPA and that meets all of the below criteria.
- B. What distinguishes an Unsolicited Proposal?** An Unsolicited Proposal must have all of the following qualities:
- Related to the TJPA’s plans for the DTX;
 - Innovative and unique – not previously considered by the TJPA;
 - Independently originated and developed by the proposer;
 - Prepared without the TJPA’s supervision, endorsement, direction, or involvement, and not submitted in response to a formal or informal request by the TJPA;
 - Of sufficient potential size and benefit to warrant a full review process by the TJPA;
 - Sufficiently detailed that its potential benefits in support of the TJPA’s mission and responsibilities are apparent; and
 - Submitted in adherence with the procedures outlined in this Policy.
- C. What types of proposals do not qualify as an Unsolicited Proposal?** An Unsolicited Proposal is not:
- A proposal that the TJPA has previously considered but declined to pursue.
 - A suggestion or idea for further research or further development by the TJPA without further involvement of the offering party;
 - An offer of standard, off-the-shelf products or services to satisfy a present or future known, standard TJPA need;
 - Requests for product endorsement or capital funds to bring a product to market;
 - An offer responding to a formal or informal request by the TJPA; or
 - A proposal that is too vague or lacks sufficient detail to allow evaluation.

The TJPA retains sole discretion in determining whether an offer meets the minimum criteria to be deemed an Unsolicited Proposal.

II. UNSOLICITED PROPOSAL REVIEW PROCEDURES

The TJPA receives and evaluates Unsolicited Proposals using a two-phased approach. Phase One is the intake and screening of conceptual proposals, and Phase Two is a detailed evaluation and decision regarding detailed proposals, each as described in more detail below. At any time, if the TJPA decides to proceed to procurement, the TJPA’s standard procurement procedures and policies will apply. The TJPA may, at any time and in its sole discretion, decide not to consider or further evaluate an Unsolicited Proposal. The TJPA shall promptly inform the proposer in writing of any such decision.

A. Phase One – Conceptual Proposal

The purpose of Phase One (Conceptual Proposal) is for the TJPA to receive written, concept-level proposals and to screen those proposals to determine whether the TJPA would like to proceed.

1. **Submission.** Conceptual Proposals shall be submitted in writing to the TJPA in

the manner specified and including all of the information identified in the Conceptual Proposal Form (Exhibit A to this Policy, as may be updated by the TJPA Executive Director from time to time). Failure to adhere to the submission requirements may result in immediate rejection of the proposal.

2. Review Process

- a. **Threshold Review.** Upon appropriate receipt of a Conceptual Proposal, the TJPA will take the following steps:
 - i. Promptly acknowledge, in writing to the proposer, receipt of the Conceptual Proposal.
 - ii. Determine whether the Conceptual Proposal contains the information required by the Conceptual Proposal Form.
 - iii. Determine whether the Conceptual Proposal appears to meet the definition and qualities of an Unsolicited Proposal.
 - iv. Publicly disclose the receipt of a qualifying Unsolicited Proposal (see Section III below).

- b. **Evaluation Criteria.** The Evaluation Team (defined below) will determine on a case-by-case basis the evaluation criteria appropriate to review a specific Conceptual Proposal, but generally will consider the following factors:
 - i. The Conceptual Proposal offers a unique or innovative approach to the DTX that the TJPA had not previously considered;
 - ii. The Conceptual Proposal offers high probability of direct or indirect, current or anticipated future, added value to the TJPA and the public;
 - iii. The Conceptual Proposal satisfies a need for the TJPA that can be accommodated in a manner consistent with the TJPA's objectives and goals;
 - iv. The Conceptual Proposal does not present any readily apparent financial, technical or legal impediments; and
 - v. Other factors appropriate for the particular Conceptual Proposal.

- c. **Evaluation Process.** If the Conceptual Proposal meets the threshold requirements, the TJPA will take the following steps:
 - i. Set a planned schedule for internal evaluation of the Conceptual Proposal and notify the proposer of the schedule;
 - ii. Assemble a team of persons to review the Conceptual Proposal (Evaluation Team) that includes technical, legal, and financial subject-matter experts, including from the partnering agencies. The TJPA may, in its sole discretion, engage consultants or experts to assist the TJPA to meaningfully evaluate the Conceptual Proposal. The TJPA may, in its sole discretion, revise the makeup of the Evaluation Team;
 - iii. The Evaluation Team may schedule meetings with the proposer, if it determines that meetings would be helpful to more fully understand the Conceptual Proposal;
 - iv. The Evaluation Team shall review the Conceptual Proposal, applying the evaluation criteria;
 - v. The Evaluation Team will provide a written recommendation to the TJPA Executive Director. Recommendations may be to not

proceed with the Unsolicited Proposal, postpone the evaluation process, proceed to Phase Two of the evaluation process (Detailed Proposal), or pursue a procurement without completing Phase Two of the evaluation process.

- vi. The TJPA Executive Director will consider the Evaluation Team’s recommendation and make a final decision, in their sole discretion (except that any proposal to pursue a procurement without completing Phase Two of the evaluation process must be approved by the TJPA Board of Directors); the TJPA Executive Director may accept, reject, or modify the Evaluation Team’s recommendation.
- vii. The TJPA will promptly notify the proposer in writing of its decision. The TJPA will provide a general explanation of the reasons for the decision. The TJPA will also publish this information on its website.

B. Phase Two – Detailed Proposal

The purpose of Phase Two (Detailed Proposal) is for the TJPA to receive more detailed technical and financial information, as necessary, to fully understand and evaluate the Unsolicited Proposal.

1. **Detailed Proposal Evaluation Charge.** The TJPA may determine that review of a Detailed Proposal will require significant expenditure of TJPA and/or consultant resources (including technical, legal, and financial consultants to perform feasibility, engineering, or other technical studies). In such case, the TJPA may provide the proposer an independent cost estimate of the expected services required to evaluate the Detailed Proposal (Detailed Proposal Evaluation Charge), and may condition the TJPA’s further evaluation on the proposer agreeing to deposit with the TJPA sufficient funds to reimburse the TJPA’s cost. If the proposer declines to provide such funds, the TJPA may terminate the evaluation.
2. **Request for Detailed Proposal.** If the TJPA desires to proceed to Phase Two, the TJPA will issue to the proposer a written Request for a Detailed Proposal. The Request may include, among other things, the following:
 - a. Schedule and procedure for the submission of the Detailed Proposal;
 - b. Specific technical, legal, financial, or other information the TJPA needs from the proposer to fully evaluate the Detailed Proposal;
 - c. Detailed Proposal Evaluation Charge, if required;
 - d. Evaluation criteria; and
 - e. Requests for specific modifications or clarifications to the scope of the Conceptual Proposal.
3. **Proposal Content.** The Evaluation Team will determine on a case-by-case basis the minimum requirements for a Detailed Proposal, but generally such proposals will be expected to include the following information:
 - a. **Technical Information**
 - i. Names and professional information of the proposer’s key personnel who would be committed to the project;

- ii. Type of support needed from the TJPA (e.g., facilities, equipment, materials, or personnel resources);
- iii. A sufficiently detailed description of the scope of work being offered to allow the TJPA to evaluate the value received for the price proposed;
- iv. Estimated price or total estimated cost for the effort and/or the revenue to be generated in sufficient detail for meaningful evaluation, including an annual cash flow for the project;
- v. A schedule for the implementation, including specific details for any property and/or services to be provided by the TJPA;
- vi. Information responsive to the Request for Detailed Proposal; and
- vii. Proposed duration of effort.

b. Supporting Information

- i. Type of contract preferred;
- ii. Description of the proposer organization, previous experience in the field, and facilities to be used;
- iii. Required statements, if applicable, about organizational conflicts of interest, and environmental impacts;
- iv. Information demonstrating to the TJPA that the proposer has the necessary financial resources to complete the project, as determined by TJPA. 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;
- v. Confirmation that the Unsolicited Proposal and all components that it would create can comply with all applicable existing federal, state, regional and local laws, project design standards and mitigation requirements as described in project environmental documents; and
- vi. Governmental and third party approvals (including but not limited to environmental) required for the project.

4. Review Process

- a. Threshold Review.** Before initiating a comprehensive evaluation, the TJPA 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.
- b. Evaluation Criteria.** The Evaluation Team will determine on a case-by-case basis the evaluation criteria appropriate to review a specific Detailed Proposal, but generally will consider the following factors:
 - i. The proposer’s capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives;
 - ii. The proposer’s financial capacity to deliver the goods or services defined in the Unsolicited Proposal;
 - iii. The Technical and Management approaches to achieve the

- proposal objectives
- iv. The proposer’s financial plan for the project indicating at a minimum and as appropriate source(s) of funds, financing, compensation scheme, proposer’s equity contribution;
- v. Viability of the proposed schedule and the TJPA’s ability to meet activities required of the TJPA;
- vi. The TJPA’s capacity to enter into a contract under its current legislative authorities;
- vii. The qualifications, capabilities, and experience of key personnel who are critical in achieving the proposal objective;
- viii. The specific details of the cost/revenue generated; and
- ix. Any other factors appropriate for the particular proposal.

c. **Evaluation Process.** Once the written Detailed Proposal (and the Detailed Proposal Evaluation Charge, if any) is received, the TJPA will take the following steps:

- i. Set a planned schedule for internal evaluation of the Detailed Proposal and notify the proposer of the schedule;
- ii. The Evaluation Team may schedule meetings with the proposer, if it determines that meetings would be helpful to more fully understand the Detailed Proposal;
- iii. The Evaluation Team shall review the Detailed Proposal, applying the evaluation criteria;
- iv. The Evaluation Team will provide a written recommendation to the TJPA Executive Director. Recommendations may be to not proceed with the Unsolicited Proposal, postpone the evaluation process, request modifications to the Unsolicited Proposal, or pursue a procurement.
- v. The TJPA Executive Director will consider the Evaluation Team’s recommendation. The TJPA Executive Director may accept, reject, or modify the Evaluation Team’s recommendation. The TJPA Executive Director may recommend that the TJPA Board authorize the TJPA to pursue a procurement, in which case the recommendation will be presented to the TJPA Board for its consideration. Alternatively, the TJPA Executive Director may determine not to proceed with the Unsolicited Proposal, postpone the evaluation process, or request modifications to and re-evaluation of the Unsolicited Proposal. Any decision to proceed to procurement is not a commitment or guarantee that the TJPA will enter any contract; the decision whether to enter a contract is subject to the sole discretion of the TJPA Board.
- vi. The TJPA will promptly notify the proposer in writing of its decision. The TJPA will provide a general explanation of the reasons for the decision. The TJPA will also publish this information on its website.

III. PROCUREMENT

If the TJPA elects to proceed with an Unsolicited Proposal, the procurement shall take place consistent with the TJPA’s standard procurement procedures and policies, and applicable law. In particular, the

procurement shall be on a competitive basis unless the facts, state law, and policy allow and the TJPA determines otherwise.

To ensure transparency related to the TJPA's processes and full and open competition related to an Unsolicited Proposal, the TJPA will take the following steps:

A. Disclosure of Receipt of Qualifying Unsolicited Proposal. The TJPA will disclose its receipt of a qualifying Unsolicited Proposal promptly upon receipt of such proposal by posting on the TJPA's website and through email notification to the TJPA-maintained list of entities interested in potential procurement opportunities. The TJPA's publication of its receipt of the Unsolicited Proposal will include an adequate description of the proposal without disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought. The TJPA will also publish the outcome of the TJPA's review of the Unsolicited Proposal on its website.

B. Publication of Procurement Opportunity. The TJPA will publicize its interest in acquiring the goods, property, or services, or pursuing the concept described in the Unsolicited Proposal using the TJPA's standard procurement publication methods, including posting on the TJPA's website, email notification to the TJPA-maintained list of entities interested in potential procurement opportunities, and advertising in relevant trade publications that advertise contracting solicitations, as appropriate. The publication will describe the procedures, terms, conditions, and requirements for interested parties to submit competing proposals.

C. Publication of Contract Award. The TJPA will publicize its intention to award a contract based on the Unsolicited Proposal or another proposal submitted in response to the publication on the TJPA's website and otherwise as required by law.

IV. CONFIDENTIAL INFORMATION

A. Submission of Confidential Information. If a proposer includes any information that the proposer considers to be a trade secret, proprietary, trademarked, or copyrighted as part of an Unsolicited Proposal, the proposer is responsible for marking each page of such information as "Confidential" prior to submission to the TJPA.

B. Use and Disclosure of Confidential Information. The TJPA will not use any confidential information that is marked by a proposer as "Confidential" and submitted to the TJPA as part of an Unsolicited Proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other entity, unless the proposer is notified of and agrees to the intended use. Concepts or ideas are not considered proprietary or confidential by the TJPA, but specific implementing methodologies that are unique to the proposer may be recognized as proprietary or confidential.

Proposers are advised that all materials submitted to the TJPA as part of an Unsolicited Proposal may be deemed public records subject to disclosure under the California Public Records Act (PRA). The TJPA shall keep any information proposer marks as "Confidential" confidential to the extent permitted by applicable law and regulation. If the TJPA received a request for disclosure of such information under the PRA, the TJPA shall promptly notify the proposer in writing of such request, prior to any disclosure of such information by the TJPA. Within five (5) days after receiving the TJPA's notice, the proposer shall respond to the TJPA in writing, indicating the proposer's position regarding whether the requested information should be disclosed or defended as exempt from disclosure under the PRA. To the extent the TJPA

disagrees with the proposer's position, the propose shall have the right to mount defense of disclosure of the information, at its own cost. Under no circumstances will the TJPA be liable to a proposer related to the TJPA's actions to comply with the PRA.

To the extent the TJPA determines that it must share the TJPA's confidential information with the proposer in order to continue discussions with the proposer, the TJPA may require the proposer to sign a confidentiality agreement.

V. OTHER TERMS AND CONDITIONS

- A. **Proposer Bears Its Own Costs.** All costs incurred by a proposer in discussing an Unsolicited Proposal with the TJPA, in preparing any materials, and in any way engaging with the TJPA regarding an Unsolicited Proposal will be borne solely and completely by the proposer.
- B. **Standards of Conduct.** The TJPA's standards of conduct for procurements shall apply to all Unsolicited Proposals, including Conflict of Interest, Gift Restrictions, prohibitions on Collusion in Contracting, Communications Prohibition, Violations of Standards of Conduct, and Organizational Conflicts of Interest, as provided in TJPA Board Policy No. 001: Procurement Policy. Among other things, there shall be no communications concerning a qualifying Unsolicited Proposal between members of the TJPA Board of Directors, TJPA staff, other consultants already engaged by the TJPA, or members of the Evaluation Team, and proposers and their employees or agents, except as expressly authorized in the Procurement Policy or this Policy. Similarly, members of the Evaluation Team will be required to submit the TJPA's standard qualification/proposal evaluation confidentiality and conflict of interest certification.
- C. **Appeal/Protest.** The decisions of the TJPA hereunder are made in its sole and absolute discretion. There is no right to appeal/protest the TJPA's decisions regarding whether a submittal meets the definition and qualities of an Unsolicited Proposal; evaluation of a Conceptual Proposal; or evaluation of a Detailed Proposal. The TJPA's protest procedures shall apply to any procurement resulting from an Unsolicited Proposal, as provided in TJPA Board Policy No. 002: Protest Procedures for the Bidding and Award of Federally Assisted Third Party Contracts.

ATTACHMENTS

A – Phase One: Conceptual Proposal Form

ATTACHMENT A

**Unsolicited Proposals Policy
Phase One: Conceptual Proposal Form**

Phase One (Conceptual Proposal) of the TJPA’s Unsolicited Proposal evaluation process involves submitting this form. Submit only the information required by this form. The TJPA may reject without consideration information that is not requested. Proposers may attach additional sheets as needed if more space is required to complete the form.

Submit via electronic mail to: rfp@tjpa.org

PART 1. BASIC INFORMATION

Proposer Name: _____

Proposer Address: _____

Type of Organization: _____

Technical Personnel Names & Contact Information (email and phone): _____

Business Personnel Names & Contact Information (email and phone): _____

These above individuals should be responsible for answering the TJPA’s technical or business questions concerning the proposal.

PART 2. TECHNICAL INFORMATION

Title of the Proposal: _____

- Abstract of the Proposal is attached. The Abstract must include a brief—but complete—discussion of the following:
 - Objectives
 - Method of approach
 - Nature and extent of anticipated results
 - Manner in which the work will help support accomplishment of the TJPA’s mission

Technical information the proposer requests from the TJPA: _____

PART 3. FINANCIAL INFORMATION

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

Proposed Price or Total Estimated Cost: _____

Proposed Revenue or Proposer’s Desired Compensation Scheme: _____

Financial information the proposer requests from the TJPA: _____

PART 4. PROCEDURAL INFORMATION

Period of time for which the proposal is valid: _____

Check all of the following that apply:

- Confidential information has been submitted with this proposal. *Any confidential information (but only such information) must be clearly marked on each applicable page as “Confidential” prior to submission.*
- 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, property, or services, or the concept, proposed.
Please explain: _____
- There is additional information not requested in this form that would allow the TJPA to evaluate this proposal at this conceptual phase. Summarize the types of information:

PART 5. ACKNOWLEDGEMENTS

By signing and submitting this form, proposer acknowledges that: the TJPA does not commit to any particular outcome relating to an Unsolicited Proposal nor any particular timeframe; the TJPA retains sole discretion in determining whether an offer meets all of the minimum criteria to be deemed an Unsolicited Proposal; the TJPA may, at any time and in its sole discretion, decide not to consider or further evaluate an Unsolicited Proposal; the TJPA may accept, reject, or modify any recommendation from the team evaluating an Unsolicited Proposal; if the TJPA elects to proceed with an Unsolicited Proposal, the procurement shall take place consistent with the TJPA’s standard procurement procedures and policies, and applicable law; all materials submitted to the TJPA as part of an Unsolicited Proposal, including materials marked as “Confidential”, may be deemed public records subject to disclosure under the California Public Records Act (PRA); proposers bear all costs incurred by a proposer in discussing an Unsolicited Proposal with the TJPA; the TJPA may require the proposer to deposit with the TJPA sufficient funds to reimburse the TJPA’s costs of review of a Detailed Proposal as a condition of proceeding with evaluated of same; and the TJPA’s standards of conduct for procurement apply to all Unsolicited Proposals, including Conflict of Interest, Gift Restrictions, prohibitions on Collusion in Contracting, Communications Prohibition, Violations of Standards of Conduct, and Organizational Conflicts of Interest, as provided in TJPA Board Policy No. 001: Procurement Policy.

PART 6. SIGNATURE

The individual who signs this form represents that they are authorized to submit this proposal and represent the proposer.

Proposer Name: _____

By: _____

Title: _____

Date: _____