



Questions Received and Answers No. 3

#	Question	Response
1	Concerning Part 1 Section 3-40.9.1. Define what Caltrain considers a calendar work week. Our company work week runs from Thursday thru Wednesday. Will this be acceptable?	Yes, as long as it conforms the Labor Code described in Section 40.9.1.
2	Part 3 – Proposal Content and Submission, Section 1 – Proposer’s Contractual Requirements, Sub-section D. - Conflict Of Interest and Levine Act: Will the Authority allow the Engineering Consultant Firms listed, i.e. Parsons Brinckerhoff, HNTB, Jacobs Engineering, Railpros, Stantec, Systra, and Rail Surveyors and Engineers (RSE), the same waiver as is being provided to Wabtec/Xorail as long as that firm is subject to the four conditions cited in Part 3, Section 1, Sub-section D.1.a, D.1.b, D.1.c and D.1.d? If no, please explain the rationale that other firms are not allowed to participate under similar restrictions.	The JPB is committed to maximizing competition while also ensuring (1) that no firm has any unfair advantage and (2) that the award of any contract resulting from this solicitation will not present any prohibited conflicts of interest. All firms will be treated equally and fairly in this regard. The JPB has carefully reviewed the facts and circumstances known to it regarding roles and relationships of the referenced firms to the JPB and its projects. As a result, the JPB has determined that each of the firms listed in your question fail to satisfy all four conditions cited in the RFP and referenced in your question. Therefore, these firms are not permitted to participate on a proposer’s team.
3	In order to allow the Contractor to make a proper determination of exposure and risk, will the Authority agree to limit the Contractor’s maximum liability under the Contract to the amount paid by the Authority to the Contractor in connection with said contract or the contract’s value?	All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.
4	In order to allow the Contractor to make a proper determination of exposure and risk, will the Authority add to the following disclaimer of consequential damages to the awarded contract: "In no event, regardless of cause or legal theory, shall Contractor be liable to the other for any incidental, special, indirect, consequential or punitive damages, including but not limited to, loss of profits, railway costs, revenue, production, goodwill, reputation or interest, whether real or alleged even if advised of the possibility of such"?	All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.
5	In order to allow the Contractor to make a proper determination of exposure and risk, will the Authority agree to limit liquidated damages to 10% of the Contract value?	All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.

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6	RFP Part 3 Form F-12 states in Note 1 that The prices listed above dose [sic] not include sales and use taxes, since these taxes will be calculated and assessed upon Contract Award". To protect against possible future increases in sales and use taxes, please change the wording from "upon Contract Award" to "as payable by the Contractor".	Contractor is responsible for all applicable California sales tax and may include the amount of such tax on invoices as applicable. See Addendum No. 7 for an updated Revision 2: Form F-12 - Form of Pricing Proposal for Base Contract, and Section 6 of the Sample Agreement.
7	Sample Agreement part 26.1 defines the warranty period as beginning at Final Acceptance. We propose that the warranty period begin when the system is put into revenue service, as Caltrain will obtain beneficial use at that point in time. This will minimize additional costs for extended warranty duration.	All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.
8	Sample Agreement part 26.1 defines the warranty for goods or Materials replaced or repaired under the warranty shall be extended for a period of one year from the time JPB accepts the replaced or repaired Goods or Materials. This "evergreen" provision increases the Contract price significantly, so we would suggest that the warranty for replaced or repaired Goods or Materials be one year from the completion of such replacement or repair.	All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.
9	Sample Agreement part 31 defines Liquidated Damages. Please define an overall cap on Liquidated Damages at 5% of the total Contract Price.	All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.
10	To provide a more cost effective contract structure, we suggest the deletion of the 10% retention (Exhibit A Part 2 - Section 3 01730.1.04) on payments, as the Contractor has posted a Performance Bond which exceeds the Contract Value.	All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.
11	Sample Agreement Part 1, Section 3, Section 7 addresses "Manner of Payment". This section provides in part that the JPB "will endeavor to pay" approved invoices within 30 calendar days of receipt from the Contractor. For the sake of clarity, we propose that the JPB replace "will endeavor to" with "shall".	All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.

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12	<p>Sample Agreement Part 1- Section 3, Section 12 addresses "Confidentiality". This section provides that "materials prepared by the CONTRACTOR during the course of the Agreement" will be considered "Confidential Information". This is would define a very large amount of material and information as "Confidential". We respectfully request that for practical reasons this section be limited to information which the Contractor and/or the JPB labels as "Confidential".</p>	<p>All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.</p>
13	<p>Sample Agreement Part 1 - Section 3, Section 13 (1st bullet paragraph) provides "CONTRACTOR, not the JPB, is solely responsible for payment to the Subcontractor for any amounts owing and the Subcontractor shall take no action against the JPB (or its officers, directors, employees or sureties) for nonpayment by CONTRACTOR". We request that this section be revised accordingly: "To the extent the JPB complies with all of it payment obligations under this Agreement and as required by law and has tendered all undisputed and approved payments relating to a Subcontractor's work CONTRACTOR, not the JPB, is solely responsible for payment to the Subcontractor for any amounts owing - and the Subcontractor shall take no action against the JPB (or its officers, directors, employees or sureties) for nonpayment by CONTRACTOR."</p>	<p>All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.</p>
14	<p>Sample Agreement Part 1- Section 3, Section 19 sets forth Contractor's indemnification obligations. In order to afford prospective bidders a better opportunity to provide the most competitive bids possible and without contingencies for unknown/unquantifiable events, we suggest that the following language in the 6th be deleted: "that may occur, or that may be alleged to have occurred,".</p>	<p>All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.</p>

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15	<p>Sample Agreement Part 1 Section 3, Section 27 addresses disputes. The 2nd sentence of the 1st paragraph provides: "It is the JPB's intent to investigate and attempt to resolve any CONTRACTOR claims before the CONTRACTOR has performed any disputed work." In order to reduce the likelihood of any potential claims against the Contractor and the JPB, we suggest that this section be revised as follows: Delete "It is the" and "intent to". The revised sentence should read: "JPB shall investigate and attempt to resolve any CONTRACTOR claims before the CONTRACTOR has performed any disputed work."</p>	<p>All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.</p>
16	<p>Sample Agreement Part 1- Section 3, Section 29.1 addresses termination for convenience. In order to allow Contractor to be allowed to a reasonable amount for "profit", we suggest that the 3rd sentence be revised as follows: "The JBB shall pay CONTRACTOR its reasonable and allowable costs through the effective date of termination, including a reasonable amount for profit, and those reasonable and necessary costs incurred by CONTRACTOR to effect such termination."</p>	<p>All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.</p>
17	<p>Sample Agreement Part 1- Section 3, Section 29.2 addresses termination for default. For the sake of clarity, we propose revising the 2nd sentence of the first paragraph as follows: "If CONTRACTOR does not cure such default within thirty (30) calendar days after receipt of written notification that such failure has occurred, or provide a plan to cure such default which is acceptable to the JPB within the time specified by the JPB (which shall not be less than fifteen days), then the JPB may, in its reasonable discretion, terminate this Agreement, in whole or in part, on the basis of CONTRACTOR'S default of this Agreement."</p>	<p>All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.</p>
18	<p>Sample Agreement Part 1 - Section 3, Section 29.2 addresses termination for default. In the 5th line of the 2nd paragraph, between the words "its" and "obligation", insert "material".</p>	<p>All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.</p>

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19	<p>Sample Agreement Part 1- Section 3, Section 26.1 addresses Contractor's general warranty obligations. The 1st sentence in the 1st paragraph states that the Contractor will be liable for "all damages, direct or consequential that may result from any faulty, design, material, workmanship, or goods." In order to allow bidders the best opportunity to provide the most competitive bids possible, we suggest that the JPB revise the cited language to read as follows: "all direct, verified, receipted, and reasonable damages, direct or consequential that may result from any faulty, design, material, workmanship, or goods."</p>	<p>All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.</p>
20	<p>What assumptions should be made in terms of HSR? (Interoperability, Operations, sharing track, etc.)</p>	<p>Under current RFP Scope of work, HSR Operations is not considered for this phase of PTC implementation. Public information is available via HSR website.</p>
21	<p>Part 1 Section 3 Heading 20.1.5 of Sample Agreement states that the required professional liability policy has a minimum limit of \$100 million.</p> <p>In working with our insurance broker, we have been informed that such a policy is not currently commercially available. Insurers are simply not interested in providing the currently required professional liability policy for a project of this size and scope.</p> <p>Based on their past experience, the insurers we have contacted all seem to independently agree that a project of this nature typically requires a minimum limit of \$15,000,000.00—\$20,000,000.00 for professional liability.</p> <p>Accordingly, we request that Caltrain reduce the professional liability policy to a minimum requirement of approximately \$15,000,000.00—\$20,000,000.00.</p>	<p>All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.</p>

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22	<p>In Cover and Part 1, page N-1: Proposers are required to acknowledge receipt of all Addenda, if any, with their proposals. In both final sections of Addenda 1-4, you specify that Prospective Proposers should acknowledge receipt of the Addendums by signing below and including this page in its Proposal. To clarify, we need to submit Form F-4 Acknowledgement of Addenda and also each addendum page with acknowledgement information behind this form in the proposal?</p>	<p>Yes, that is correct. The individual Addenda need to be signed. And the Form F-4 must also detail the number of Addenda received and must be submitted with the proposal.</p>
23	<p>Sample Agreement, Part 1 - Section 3, Contract Bonds, 21.1, requires a 110% performance bond. Sureties resist bonds greater than the contract value as their exposure should be limited to the value of the work contracted. Additional, if 110% is allowed by the surety, additional bond premium will be charged for the excess amount. Will JPB accept 100% performance bonds?</p>	<p>All requested exceptions or modifications to the Sample Agreement should be included with your proposal. See Part 3, Section 2.D of the RFP.</p>
24	<p>The Caltrain RFP, Exhibit C has many specification sections. It appears that several of these sections contain elements which are not within the Scope of Work as detailed in Sections 1 & 2. For example, Section 17790, 1.02 M mentions CCTV cameras. Can Caltrain clarify which sections are within the scope of work and which are for information only (and therefore outside of the scope of work).</p>	<p>The technical specification provided in Exhibit C have been taken from Caltrain Standard specifications and minimally altered for compatibility with the Caltrain PTC system requirements. These specifications were not modified to remove aspects of work that are not defined in the Scope of Work. The Scope of Work defines the required work, not the technical specifications.</p>
25	<p>Part 1 Section 3 in 20.1.5 Professional Liability Insurance Caltrain is asking for that a professional liability policy covering a minimum of \$100 million is required. Is that number correct? It looks very high.</p>	<p>Yes. The number is correct.</p>
26	<p>Part 1 Section 1 B Agreements and Performance Periods Long Term System Support Service Agreement states that any number of years up to 10. The sample Agreement under 2.Terms and Conditions asked for up to two five years extensions. Please confirm what section is superseding and should be reflected in the price proposal.</p>	<p>Part 1, Section 1., B. Agreements and Performance Periods Long Term System Support Service Agreement is correct.</p> <p>The Sample Agreement, Part 1, Section 3, Exhibit C. Long Term System Support Service Agreement, under 2. Terms and Conditions has been amended to coincide with "any number of years up to 10" as stated in Part 1. The amended Sample Agreement language has been posted in Addendum No. 7.</p>