



19-01 REQUEST FOR PROPOSALS OF DESIGN-BUILD ENTITIES

FOR MONTEREY-SALINAS TRANSIT DISTRICT

SOUTH COUNTY OPERATIONS AND MAINTENANCE FACILITY PROJECT



**SUBMITTAL LOCATION: 19 UPPER RAGSDALE, SUITE 200
MONTEREY, CA 93940**

SUBMITTAL DEADLINE: MAY 17, 2019 BY 3:00 P.M. PDT

Monterey-Salinas Transit District (MST) is requesting Proposals from qualified firms to provide Design-Build Services for the MST South County Operations and Maintenance Facility Project in King MST California.

Proposal packages must be addressed and submitted to MST on or before **3:00 PM, Monday, May 17, 2019**.

Proposal packages are to be submitted to:

Sandra Amorim, Purchasing Manager
Monterey-Salinas Transit District
19 Upper Ragsdale Drive,
Suite 200
Monterey, CA 93940

Proposals may be obtained via MST's webpage at <https://mst.org/about-mst/procurement/> or by contacting Sandra Amorim at samorim@mst.org.

TABLE OF CONTENTS

REQUEST FOR PROPOSAL

1. INTRODUCTION & PROJECT SUMMARY

- 1.1 Introduction
- 1.2 Project Description and Scope of Services
- 1.3 Project Criteria
- 1.4 Project Budget and Funding
- 1.5 Design and Preconstruction Services Fees
- 1.6 Contract Time
- 1.7 Changes by MST

2. SUMMARY OF REQUEST FOR PROPOSAL (RFP) PROCESS

- 2.1 Informational Summary
- 2.2 Owner's Team
- 2.3 RFP Procedures
- 2.4 RFP Schedule
- 2.5 RFP Submission Requirements

3. INSURANCE, BONDING AND INDEMNITY

- 3.1 Minimum Bonding Requirements
- 3.2 Insurance
- 3.3 Builder's Risk Insurance
- 3.4 Indemnification

4. REQUEST FOR PROPOSAL (RFP) TERMS AND CONDITIONS

- 4.1 Prevailing Wages and Federal Labor Standards
- 4.2 Apprenticeship Program
- 4.3 Worker's Compensation
- 4.4 Conflict of Interest
- 4.5 CEQA Summary
- 4.6 Proposer Acknowledgements
- 4.7 No Warranty by MST
- 4.8 Confidentiality of Design and Pricing Information Prior to Award
- 4.9 Proposal Validity
- 4.10 Ownership, Copyright
- 4.11 MST Rights
- 4.12 Regulatory Compliance
- 4.13 Contracting with Small and Minority Owned Firms, Women's

Business Enterprises, and Labor Surplus Area Firm

- 4.14 Clean Air and Water Acts
- 4.15 Inaccuracies or Misrepresentations
- 4.16 Changing Team Member
- 4.17 Proposal Expenses
- 4.18 MST Supplied Inspections
- 4.19 DBE Supplied Inspections
- 4.20 Liquidated Damages

EXHIBITS (separate attachments)

- EXHIBIT A** Basis for Design (Separate documents)
- EXHIBIT B** Proposal Evaluation Factors, Scoring and Ranking Methodology
- EXHIBIT C** Federal Laws and Regulations
- EXHIBIT D** USDA Required Forms

- EXHIBIT E** Insurance Requirements
- EXHIBIT F** Payment and Performance Bonds
- EXHIBIT G** Proposal Packet
- EXHIBIT H** Design-Build Agreement and General Conditions
- EXHIBIT I** Project Criteria

1. INTRODUCTION AND PROJECT SUMMARY

1.1 INTRODUCTION

The Monterey-Salinas Transit District (MST) is utilizing the Design-Build method of project delivery for the South County Operations and Maintenance Facility, (Project), which will be constructed in King MST, California. MST is issuing this Request for Proposals (RFP) for the stated purpose and to ensure that the stakeholders of MST receive the highest quality facility at the most economical price. MST wishes to implement an approach that integrates people, systems, and practices into a process that collaboratively employs the expertise, creativity, and insights of all participants to maximize efficiency through design and construction, optimize project results, and deliver the best value to the transit community.

This RFP provides instructions to the prospective Design-Build Entity (DBE) regarding the project requirements. For purposes of this solicitation, DBE is defined as the entity that will be awarded a contract for the complete design and construction of the Project and all its key design and subcontractor members, either pre-qualified or added later, per the terms of the contract documents. Federal, State, and USDA Grant requirements mandate this Project to comply with the requirements of the California Public Contract Code and other provisions of State and Federal law applicable to this Project. Nothing in this RFP is intended nor should be interpreted as contravening the provisions of these codes. DBE shall be fully knowledgeable of, and shall comply with, the provisions of Federal, State and County law, rules and regulations applicable to this Project.

South County Operations and Maintenance Facility

The Monterey-Salinas Transit (MST) South County Operations and Maintenance Facility Project (project) consists of developing an approximately 4.8-acre, vacant parcel in King MST, California, to construct an operations and maintenance facility for vehicles that primarily serve southern Monterey County. The proposed project would accommodate future transit needs in the surrounding rural communities of Monterey's South County. The proposed project site is part of the existing industrial park site for which King MST has approved the East Ranch Business Park Specific Plan (Specific Plan). The Specific Plan Final Initial Study/Mitigated Negative Declaration (Final IS/MND) was certified as adequate and the Specific Plan was approved by the King MST Council on August 14, 2007. The proposed project is allowed under the Specific Plan as an industrial type use pursuant to acquiring a Conditional Use Permit and Architectural Review approval.

The Project will be funded by MST utilizing a combination of funding sources. A short-term construction loan will be obtained from Rabobank (\$6,835,253). MST will receive a grant from the Federal Transit Administration (FTA) 5339(b) Bus and Bus Facilities Program in the amount of \$4,119,172 for pre-construction and construction activities. The award (project D2016-BUSP-006) was announced in the Federal Register on October 12, 2016. Some State of California Proposition 1B funds (\$472,000) are available from the Public Transportation Modernization Improvement and Service Enhancement Account (PTMISEA). State of California will also contribute a grant of \$242,000 through the state's Local Partnership Program (LPP).

MST will receive a Community Facilities Loan through the United States Department of Agriculture's (USDA) Rural Development Program (\$5,000,000). Upon construction completion, the USDA loan would be used to re-pay the short-term construction loan. The USDA funds would cover the majority of the amount financed by Rabobank. In November 2016, Monterey County voters approved a local sales tax measure (Measure X) dedicated to funding transportation-related projects. Measure X will be used to repay the balance of the Rabobank short-term construction loan (\$1,835,253) and the future USDA loan payments.

The table below summarizes the funding breakdown.

Total Project Cost	\$	12,510,265
<i>Items already paid for or not to be financed during construction</i>	\$	<i>841,840</i>
Construction Cost	\$	11,668,425
FTA grant	\$	4,119,172
PTMISEA funds	\$	472,000
LPP	\$	242,000
USDA Loan Request	\$	5,000,000
Measure X	\$	1,835,253

This is a Federally assisted construction project and Federal labor standards, including prevailing wage requirements of the Davis-Bacon Act and related acts, will be enforced. In the event of a conflict between Federal and State wages rates, the higher of the two will prevail.

Affirmative action to ensure against discrimination in employment practices on the basis of race, color, national origin, ancestry, sex, or religion will also be enforced.

MST hereby affirmatively ensures that minority business enterprises will be afforded full opportunity to submit Proposals in response to this notice and will not be discriminated against on the basis of race, color, religion, ethnic or national origin, sex, or on the basis of age or with respect to an otherwise qualified handicap, in accordance with the Civil Rights Act of 1964, Title VI and Title I of the Housing and Community Development Act of 1974, Section 109 as amended, in any consideration leading to the award of the contract.

Best Value with Stipulated Sum Award

The Project will be awarded to the selected DBE based on a best value evaluation pursuant to California Public Contract Code Section 22614 and in compliance with Federal regulations. The selection and award shall use a “Stipulated Sum” approach for the Price component, where the Stipulated Sum is included as a fixed price and will not be scored for purposes of the RFP best value competition. However, factors such as DBE’s design and preconstruction fees, along with general condition costs and markups, will be evaluated in the best value competition.

1.2 PROJECT DESCRIPTION AND SCOPE OF SERVICES

Project Description

The project shall include the following facilities:

A 10,972 square-foot, Operations and Maintenance Facility (OMF) Building, which will include services for drivers and equipment related to bus maintenance. The building will be designed for the construction of a future phase with 2,128 square feet expansion of the maintenance bays and 3,566 square feet of office space on a second floor.

A 2,860 square-foot Fuel/Service Canopy comprised of a covered service lane. The canopy will be extended to cover the lane. The structure will include fueling equipment to dispense

diesel and gasoline fuels, connection to a new above-ground diesel gasoline tank for servicing gas-powered fleet vehicle types.

A new 3,032 square-foot Bus Wash Facility, which will include a bus washer system, water reclamation equipment, a reverse osmosis final rinse water system, bus air dryers. A wash pad for hand-washing trolleys will be covered by the canopy. A new 2,490 square foot Tire Storage and Canopy and a new 900 square foot covered Hazardous Material Storage with concrete curb containment.

The Scope of Services for the Project includes all disciplines necessary to completely design and construct the Project, including, without limitation, all on-site and off-site work. The services sought for this Project include all customary services normally provided under the umbrella of the design-build method of project delivery. This includes, but is not limited to, full design services, agency approvals, site survey for design and construction (including any additional information required beyond the topographic survey provided by MST), construction, procurement, scheduling, estimating, value engineering, general contracting, building commissioning, project closeout, and warranty services. The completed Project is to be a fully functioning facility as described in the contract between MST and DBE.

1.3 PROJECT CRITERIA

It is the intent of MST that the Work to be performed by DBE as part of the Project shall be designed and constructed in accordance with the Project Criteria included in Exhibit I.

1.4 PROJECT BUDGET AND FUNDING

Budget

DBE's Contract Price shall be a Stipulated Sum of \$12,510,265 for the full design and construction of the Project. The Stipulated Sum reflects MST's **maximum budget**. MST's goal is to establish a fair risk balance in the contract between MST and DBE so that DBE will receive appropriate compensation for its work, and MST will achieve its goals for the Project within the Stipulated Sum.

The Stipulated Sum includes all costs of the complete design, engineering, construction, subcontract work, supervision, management, general conditions, overhead, bonds, insurance, taxes, compliance with all applicable codes and agency requirements, procurement of permits (costs for MST permit fees are waived by MST), profit, allowances, contingencies, and any and all items required for the completion of the Project per the contract documents, excepting therefrom, only the costs for items specifically identified in Owner Provided Items and Other Costs Borne by MST as noted below. The Stipulated Sum includes a \$300,000 Design-Builder's Contingency (for items that are the responsibility of DBE).

Owner Provided Items

MST will provide most FFE at the building interiors and patio area required for the operation of the facility. FFE is described as any item not attached to the structures or grounds as would normally be interpreted in the industry. Exhibit F details owner-provided items in greater detail. Some FFE will be provided by DBE, such as the kitchen appliances, the smart televisions, and stage, which shall be furnished and installed by DBE.

Other Costs Borne by MST

Costs that are not part of DBE's Stipulated Sum include MST plan check, permit, and inspection fees (DBE shall be responsible for all fees for temporary utilities, permanent utility connections, and permits

required for the Work of Subcontractors or self-performed work by DBE); and construction special inspections and materials testing and geotechnical field observation and testing.

Funding

A short-term construction loan will be obtained from Rabobank (\$6,835,253). MST will receive a grant from the Federal Transit Administration (FTA) 5339(b) Bus and Bus Facilities Program in the amount of \$4,119,172 for pre-construction and construction activities. The award (project D2016-BUSP-006) was announced in the Federal Register on October 12, 2016. Some State of California Proposition 1B funds (\$472,000) are available from the Public Transportation Modernization Improvement and Service Enhancement Account (PTMISEA). State of California will also contribute a grant of \$242,000 through the state’s Local Partnership Program (LPP).

MST will receive a Community Facilities Loan through the United States Department of Agriculture’s (USDA) Rural Development Program (\$5,000,000). Upon construction completion, the USDA loan would be used to re-pay the short-term construction loan. The USDA funds would cover the majority of the amount financed by Rabobank. In November 2016, Monterey County voters approved a local sales tax measure (Measure X) dedicated to funding transportation-related projects. Measure X will be used to repay the balance of the Rabobank short-term construction loan (\$1,835,253) and the future USDA loan payments. The table below summarizes the funding breakdown.

Total Project Cost	\$	12,510,265
<i>Items already paid for or not to be financed during construction</i>	\$	<i>841,840</i>
Construction Cost	\$	11,668,425
FTA grant	\$	4,119,172
PTMISEA funds	\$	472,000
LPP	\$	242,000
USDA Loan Request	\$	5,000,000
Measure X	\$	1,835,253

1.5 DESIGN AND PRECONSTRUCTION SERVICES FEES

Proposers are requested to propose a Design Fee and Preconstruction Services Fee as separate line items with the RFP response. Under the terms of the Design-Build Agreement for South County Operations and Maintenance Facility Project, MST reserves the right at any time prior to commencement of construction to terminate the Design-Build Agreement for South County Operations and Maintenance Facility Project and to pay DBE an agreed compensation for its design, engineering, and preconstruction services (including, without limitation, all costs and expenses associated with such services) that is based upon a Design Fee and Preconstruction Services Fee that is proposed by the proposer. The amount payable to DBE in the event that the Design-Build Agreement for South County Operations and Maintenance Facility Project is terminated prior to commencement of construction shall be limited to a prorated amount of the agreed Design Fee and Preconstruction Services Fee, based on the percentage of completion of the construction documents and preconstruction services that has been accomplished by DBE at the time of such termination.

1.6 CONTRACT TIME

All design and construction Work must be substantially completed within **Five Hundred Twenty-five (525) calendar days** after the Date of Commencement established in MST's initial Notice to Proceed. Final Completion shall be within 30 days of Substantial Completion.

- The schedule for Substantial Completion of the design and construction of the Work for the project will be proposed by DBE with MST input and approval.
- Within ten (10) days after notification of award, DBE shall prepare and submit a Design-Build Schedule for the design phase of the Work, both in hard copy and electronically, for MST's approval and CM approval. The contract time for completion of the design shall include adequate time for MST review and final approval. DBE shall incorporate options to phase the design and construction permits as needed or desired by DBE. The design schedule shall include a site evaluation, schematic design phase, design development phase, construction document phase, FF&E planning phase, and MST review, back-check and final approval phase. The schedule shall allow two (2) weeks for MST review for each phase of design documents. MST review of the design shall include, but not be limited to, review by the Design Review Committee (an internal staff committee representing various MST departments), MST staff who are part of this Project team, MST's CM, and MST departments plan check and permit review. The project design may also be presented at a MST Board of Directors Meeting.

- T
- Within ten (10) days of starting the Schematic Design Phase, DBE shall prepare and submit a Preliminary Design-Build Construction Schedule, both in hard copy and electronically, for MST's review and approval. After completion of the Design Development drawings, DBE shall prepare and submit a detailed Design-Build Construction Schedule, both in hard copy and electronically, for MST's approval and CM's approval. The Design-Build Construction Schedule shall establish the baseline construction schedule and shall include a Submittal Schedule with material procurement information. Upon approval of the construction schedule and Notice to Proceed with Construction, DBE shall proceed with the construction of the project according to the approved schedule. The construction schedule shall include a construction phase, commissioning phase, Substantial Completion Milestone, close out phase and Final Completion Milestone.
 - After Schematic Design, the DBE shall prepare documents required by the City of King for amending the existing Conditional Use Permit. MST will prepare the application submit the application to the City of King

1.7 CHANGES BY MST

MST reserves the right to modify this RFP, to change, by additions, deletions or modifications, the Project Criteria, Project Budget, Contract Time, Design-Build Agreement for South County Operations and Maintenance Facility Project, General Conditions or any other portion of the RFQ and RFP documents prior to submittal date.

2. SELECTION PROCESS

2.1 INFORMATIONAL SUMMARY

The provisions of this Section are intended to summarize for the proposers the methodology and process that MST intends to follow with respect to the RFP. This summary is provided for the convenience of

the proposers and should not be interpreted as a complete or definitive statement of all procedures, conditions, requirements or standards that may apply to any of the aforementioned processes.

To be considered, the potential DBE must have the appropriate licenses required under provisions of the California Business and Professions Code. The design consultant(s) and contractor(s) shall hold an appropriate license for their design discipline and/or trade. Failure of a single-entity DBE to possess the required licenses by the Proposal Deadline shall be deemed as non-responsive. Failure of a joint venture DBE to be properly licensed by the date of contract award will result in loss of the contract. Failure of the design consultant(s) and subcontractor(s) to possess the required license on the Proposal Deadline shall require DBE to substitute licensed design professionals and specialty trade contractors, as applicable, prior to award of the contract without additional cost.

This project is subject to prevailing wage requirements. This is a Federally-assisted construction contract. Federal Labor Standards Provisions, including prevailing wage requirements of the Davis-Bacon and Related Acts will be enforced. In the event of a conflict between Federal and State wages rates, the higher of the two will prevail. DBE's duty to pay State prevailing wages include requirements per Labor Code Section 1770 *et seq.*; Labor Code Sections 1775 and 1777.7 outline the penalties for failure to pay prevailing wages and employ apprentices, including forfeitures and debarment. DBE's duty to pay Federal prevailing wages include requirements per Department of Labor under Labor Laws 29 USC part 50 and DOL Regulations, 29 CFR part 29.

In accordance with Labor Code Section 1720 *et seq.*, the Project is a "public work". The successful proposer (Contractor) and any Subcontractors shall pay wages in accordance with the determination of the Director of the Department of Industrial Relations (DIR) regarding the prevailing rate of per diem wages. Copies of those rates are on file with the Director of Public Works, and are available to any interested party upon request. The Contractor shall post a copy of the DIR's determination of the prevailing rate of per diem wages at each job site. This Project is subject to compliance monitoring and enforcement by the DIR in accordance with Labor Code Section 1771/1725.5 registration requirement.

MST is requesting Proposals for Design-Build services for the Project through an RFP process. Each response to the RFP must propose a business offer that will result in the delivery of a Project of a high level of design and technical quality in accordance with MST's Project Criteria and additional documentation issued with the RFP.

MST will award the Design-Build Agreement for the South County Operations and Maintenance Facility on the basis of a best value selection as provided for in Public Contract Code section 22160, *et seq.*, per Federal public law, and as specifically described in this solicitation.

The process to select DBE to implement this Project involves a two-part process including the Part A - RFQ Process and Part B - RFP Process.

- Part A – RFQ Process: required all interested proposers to complete a Pre-Qualification Questionnaire which was used to establish whether a proposer meets the prequalifying criteria and to create a short-list of the highest ranked proposers based on the Part A Pre-Qualification Questionnaire submittals. The Part A Prequalification Questionnaire was open to all interested parties.
- Part B – RFP Process: MST will invite the short-listed proposers to submit Proposals. The Part B Proposal is limited to those proposers short-listed under Part A.
- MST will assemble a Review Committee that will evaluate the Proposals received from among the short-list of eligible proposers. The Proposals submitted in response to the RFP will be

evaluated per criteria as defined in this RFP. Those submittals that do not meet the requirements may be deemed nonresponsive and disqualified from further consideration.

MST may utilize the services of appropriate experts to assist in the evaluation process.

- The Proposal evaluation process may include oral presentations/interviews with the RFP Review Committee based on review and ranking of the Proposals. One (1) firm will be selected for the Award of the Design-Build Agreement for South County Operations and Maintenance Facility Project. Selection of the successful proposer in Part B shall be based upon pre-established criteria set forth in the Request for Proposal, which include cost and technical factors, as well as results from the RFP Interview process. Award of the Design-Build Agreement for South County Operations and Maintenance Facility Project shall be made to the responsible DBE whose Proposal is determined by MST to have offered the best value to the public.

2.2 OWNER'S TEAM

Owner:

Monterey-Salinas Transit District
Carl Sedoryk, General Manager and CEO
Phone: (831) 264-5001
Email: gsedoryk@mst.org

Monterey-Salinas Transit District
Carl Wulf
Facilities/Capital Projects Manager
Phone: (831) 264-9437
Email: cwulf@mst.org

Monterey-Salinas Transit District
Sandra Amorim
Purchasing Manager
Phone: (831) 264-9437
Email: samorim@mst.org

The Paul Davis Partnership, LLC
Paul Davis
Principal
Phone: (831) 373-2784
Email: paulw@pauldavispartnership.com

Whitson Engineers
Nathan Milam
Senior Civil Engineer
Phone: (831) 649-5225
Email: nmilam@whitsonengineers.com

2.3 RFP PROCEDURES

RFP Copies

The complete set of the RFP documents (including all attachments thereto) are available for download from MST's website at: <http://www.mst.org>

Proposers are solely responsible for any reproduction costs. MST assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of RFP documents.

MST will notify short-listed proposers when addenda are released. The addenda, when released, will also be available for download from MST's website at: <http://www.mst.org>

Duty of Review

Each proposer, in submitting its Proposal, acknowledges and understands its obligation to carefully and thoroughly examine all RFP documents and other information available to the proposer relating to the Project and the conditions under which the Work will be performed. Each proposer shall seek clarification prior to such submission of any and all items of information contained in the RFP documents or in any other documents upon which the proposer has relied in preparing its Proposal that it observes, or should have observed in the exercise of reasonable care in its capacity as a DBE responsible for both design and construction of the Project, constitute or indicate: (1) errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Laws; (2) problems associated with design feasibility, constructability, availability of labor, materials, products or equipment; or (3) difficulties or obstructions affecting proposer's ability to perform the Work within the constraints of the Stipulated Sum or Contract Time. Failure by a proposer to fully inform itself of the matters described herein and to seek clarification in the manner required herein shall not relieve the proposer from its responsibilities under the Design-Build Agreement for South County Operations and Maintenance Facility Project and other contract documents should it receive the Award thereof nor serve as the basis for any claim by the proposer that it was mistaken or misled in connection with the preparation of its Proposal or its planning for design or construction of the Work.

Issuance and Acknowledgement of Receipt of Addendum

MST will notify all short-listed proposers of any addenda. It is solely the responsibility of each of these proposers to ensure that they receive any and all addenda. Proposers shall also send email acknowledgement of receipt of addenda to Sandra Amorim, samorim@mst.org, within 24-hours of issuance of each addenda.

Requests for Clarification

Proposers should submit Requests for Clarification in written form via email to Sandra Amorim as set forth below. Requests for Clarification must be submitted prior to the deadline set forth in Section 2.4 below. All questions received by this time and date will be responded to, in writing, by issuance of an addenda. Requests for clarification received after this time and date will not receive a response, except in the sole discretion of MST. Anonymity of the source of specific questions will be maintained in the written responses. Responses to all questions will be emailed to all registered RFP recipients.

All requests for clarification must be sent via email to the following:

Owner: Monterey-Salinas Transit District
Sandra Amorim, Purchasing Manager
Email: samorim@mst.org

RFP Optional Pre-Proposal Meeting

For all proposers who have been shortlisted and invited to submit the Proposal, MST will conduct an optional pre-proposal meeting with each proposer. The intent of the meeting will be to brainstorm and communicate Project information or answer questions to clarify Project requirements, in an open collaborative environment. Meetings will be held individually and confidentially with each proposer. Requests for such meetings must be received in writing at least one (1) week prior to the requested meeting date. Available dates for the meeting are indicated in Section 2.4.

Review Committee

MST will establish a Review Committee with responsibility for conducting the: (1) evaluation, scoring and ranking of the Proposals, (2) interviews, (3) negotiations; and (4) providing recommendation of the successful proposer for award of the Design-Build Agreement for South County Operations and Maintenance Facility Project based on best value.

Evaluation of the Proposal

The Review Committee will evaluate each Proposal for completeness and content and will utilize the Proposal evaluation factors, scoring and ranking methodology as indicated in Exhibit B. Each Proposal will be evaluated based upon the relevant factors of the proposer. License status and references will also be verified.

The Proposal review will focus on the following factors:

- Technical Design and Construction Expertise
- Design-Build Team Organization and Personnel
- Work Plan Approach
- Life Cycle Costs
- Skilled and Trained Workforce Commitment
- Safety Record
- Cost Proposal

Selection

Upon review of the submitted Proposals, MST will rank the Proposals based on a point system established to determine the best value to the public and may select a shortlist of DBEs to interview. Staff may choose to interview two or more closely ranked firms, but will not expect or schedule elaborate presentations. After the interviews (if interviews are conducted) and the determination by the Review Committee of the apparent best value proposer, the highest ranking DBE and MST will enter into negotiations. Upon successful completion of negotiations, the highest ranking best value proposer will be recommended for contract award by MST Board of Directors. Following MST Board of Directors authorization and execution of the contract, the selected DBE will commence design and construction of the Project for MST.

Interviews

At MST's discretion, interviews may be conducted after scoring of the Proposals and consistent with the schedule and dates set forth in Section 2.4. Each proposer invited to participate in an Interview will be notified in writing by MST. During the interview, each DBE will present their team and project approach to MST's Review Committee. The interviews will entail a confidential exchange between a proposer and the RFP Review Committee. After scoring of the Proposals and the interviews, if applicable, the Review Committee will determine the apparent best value proposer and may enter into negotiations with that proposer.

Negotiations

MST reserves the right, but shall not have the obligation, as part of the RFP process to hold discussions or negotiations. If negotiations are conducted, they may be conducted with some or all short-listed DBEs. Negotiations shall be confidential exchanges between the potential DBE and the RFP Review Committee conducted for the purpose of “bargaining”, alteration of assumptions and positions, and may apply to price, schedule and technical requirements. These discussions or negotiations will be conducted honestly, fairly, and in good faith to respect the right of both parties. Procedures for discussions or negotiations shall be in accordance with the RFP.

MST will identify the proposer that offers the best value to the public and enter contract negotiations with that highest ranked proposer. Should MST fail to reach an agreement with the top ranked proposer, MST may enter negotiations with the next highest rated proposer and so on. MST Staff will make a recommendation to MST Council for the award of the Design-Build Agreement for South County Operations and Maintenance Facility Project to the proposer that best furthers MST’s objectives, if any.

The successful proposer will be expected to execute the Design-Build Agreement for South County Operations and Maintenance Facility Project at a minimum of five (5) calendar days prior to the date of MST Council consideration of the contract award. Additionally, the successful proposer shall also secure all insurance required under the Design-Build Agreement for South County Operations and Maintenance Facility Project. Within a minimum of ten (10) calendar days.

Any proposer with objections to terms contained in MST’s Design-Build Agreement for South County Operations and Maintenance Facility Project must advise MST of such objections and request modifications, with its Proposal. Failure of a proposer to accept the terms of MST’s Design-Build Agreement for South County Operations and Maintenance Facility Project may result in the rejection of the Proposal. It shall be the responsibility of the prospective proposer to review all sections and exhibits of the Design-Build Agreement for South County Operations and Maintenance Facility Project, including insurance requirements. If no objections are received, MST will assume the proposer is able to and will enter into the Design-Build Agreement for South County Operations and Maintenance Facility Project and fulfill the terms and requirements set therein. MST may recover any damages accruing to MST as a result of the successful proposer’s failure or refusal to execute MST’s Design-Build Agreement for South County Operations and Maintenance Facility Project.

Award

MST will issue a written decision supporting its Award of the Design-Build Agreement for South County Operations and Maintenance Facility Project to the successful proposer, stating the basis of the Award. The identity of the successful proposer will be publicly announced, along with the shortlist of proposers.

The resulting Design-Build Agreement for South County Operations and Maintenance Facility Project will include a complete Scope of Services for all elements of the design-build process necessary for the Project which include site and off-site work, buildings, landscaping, and all services necessary to complete the Project in a condition ready for occupancy. MST will review DBE’s management of design and construction of the Project to ensure compliance with the contract documents.

2.4 RFP SCHEDULE

The following is the anticipated schedule for the RFP process and Award of the Design-Build Agreement for South County Operations and Maintenance Facility Project:

Milestone	Date/Time
1. Invitation to shortlisted proposers to submit Proposals	December 10, 2018
2. Optional Pre-Proposal Meetings (tentative)	April 8th to 12 th 2019
3. Requests for Clarification Deadline	April 26, 2019
4. Final Addenda Issued (if required)	May 6, 2019
5. Proposal Deadline	May 17, 2019, 3:00 PM
6. Interview (if required)	May 22-24, 2019
7. Notification of Best Value Proposer (tentative)	June 10, 2019
8. MST Council award of contract (tentative)	TBD June 10, 2019

MST reserves the right, at any time, to make additions, modifications or deletions to any of the events or dates that comprise the RFP Schedule. Such changes shall be made by RFP Addendum. References in the RFP documents to the RFP Schedule or to dates in the RFP Schedule shall mean the RFP Schedule and dates set forth above, as adjusted by any changes thereto made pursuant to this Paragraph.

2.5 RFP SUBMISSION REQUIREMENTS

The responses to the RFP must be made according to the requirements set forth in this Section and in Exhibit G. Noncompliance with these requirements or the inclusion of conditions, limitations, or misrepresentations may be cause for rejection of the Proposal. Responses shall be addressed and delivered to:

Sandra Amorim, Purchasing Manager
 Monterey-Salinas Transit District
 19 Upper Ragsdale, Suite 200
 Monterey, CA 93940

- Submissions must be received by the specified submittal date and time.
- Submissions received after the deadline will not be accepted.
- Faxed and emailed Proposals will not be accepted.
- Number of Copies: Submit a sealed package containing (7) seven bound copies of completed **Proposal** plus one complete electronic copy in PDF format on CD, flash drive, or external hard drive. The package shall include seven (7) copies of the **Part One - Technical Proposal** and seven (7) copies of the **Part Two - Cost Proposal** as outlined in Exhibit G.

3. INSURANCE, BONDING AND INDEMNITY

3.1 MINIMUM BONDING REQUIREMENTS

If DBE is awarded a contract for this Project, DBE shall obtain a Payment Bond in an amount equal to one hundred percent (100%) of the contract amount, excluding design services and errors and omission insurance for all design/architectural services, and a Performance Bond in an amount equal to one hundred percent (100%) of the contract amount, excluding design services and errors and omission insurance for all design/architectural services. These bonds shall utilize a form that complies with the forms provided in Exhibit F and shall be secured from a surety company or companies satisfactory to MST within five (5) calendar days of the contract award. The Payment Bond shall remain in full force and effect for the period specified in the attached form of bond. The Performance Bond shall remain in full force and effect for as long as DBE has obligations under the contract documents. The Bonds must comply with all conditions regarding bonds detailed in the Design-Build Agreement for South County Operations and Maintenance Facility Project and the Design-Build General Conditions. The cost of the bonds shall be deemed included in the proposer's costs.

It is the General Contractor Member's prerogative to purchase bonds for subcontracted work, and this cost must be provided for within DBE's Overhead and Profit percentage. Fees for subcontractor bonds will not be allowed to be included with the Direct Cost of the Work.

3.2 INSURANCE

If DBE is awarded a contract for this Project, DBE shall procure and maintain for the duration of this contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by DBE, his agents, representatives, employees or subcontractors. DBE shall not commence work until all insurance has been obtained that is required under this section and such insurance has been verified by MST, nor shall DBE allow any Subcontractor to commence work on its contract until all similar insurance required of the Subcontractor has been so obtained and approved.

Minimum Scope and Limits of Insurance

DBE shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

- Commercial General Liability Insurance with a minimum limit of Three Million Dollars (\$3,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Three Million Dollars (\$3,000,000) per project or location. If DBE is a limited liability company, the commercial general liability coverage shall be amended so that DBE and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds. The indemnified parties referenced under "Additional Insured" in Section 3.2 must also be named as additional insured.
- Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage. If DBE does not use any owned, non-owned or hired vehicles in the performance of services under this Agreement, DBE shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under Subparagraph A. 1) of this Section 3.2.

- Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If DBE has no employees while performing services under this Agreement, workers' compensation policy is not required, but DBE shall provide an executed declaration that it has no employees.
- Professional Liability Insurance [or Errors and Omissions Insurance] with minimum limits of Two Million Dollars (\$2,000,000) per claim and in aggregate

Acceptability of Insurers

The insurance policies required under this Section 3 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under this Section 3.

Additional Insured

The commercial general, automobile liability, and professional liability insurance policies shall contain an endorsement naming the Monterey-Salinas Transit District, Community Development Commission of the County of Los Angeles, HUD, and the Los Angeles County Regional Park and Open Space District, their officers, employees, agents and volunteers (indemnified parties) as additional insureds for all activities arising from this contract. DBE shall name "Los Angeles County Regional Park and Open Space District" as an additional insured on any and all liability insurance policies applicable to the Project, and DBE shall mail a copy of the additional insured endorsement to 510 South Vermont Avenue, Room 230, Los Angeles, CA 90020-1975.

Primary and Non-Contributing

The insurance policies required under this Section 3.2 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to MST. Any insurance or self-insurance maintained by MST, its officers, employees, agents or volunteers, shall be in excess of DBE's insurance and shall not contribute with it.

DBE's Waiver of Subrogation

The insurance policies required under this Section 3 shall not prohibit DBE and DBE's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. DBE hereby waives all rights of subrogation against MST.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be approved by MST. At MST's option, DBE shall either reduce or eliminate the deductibles or self-insured retentions with respect to MST, or DBE shall procure a bond guaranteeing payment of losses and expenses.

Cancellations or Modifications to Coverage

DBE shall not cancel, reduce or otherwise modify the insurance policies required by this Section 3 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) calendar days' prior written notice to MST. If any insurance policy required under this Section 3 is canceled or reduced in coverage or limits, DBE shall, within two (2) business days of notice from the insurer, phone, fax or notify MST via certified mail, return receipt requested, of the cancellation of or changes to the policy.

MST Remedy for Noncompliance

If DBE does not maintain the policies of insurance required under this Section 3 in full force and effect during the term of this Agreement, or in the event any of DBE's policies do not comply with the requirements under this Section 3, MST may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, MST may, but has no duty to, take out the necessary insurance and pay, at DBE's expense, the premium thereon. DBE shall promptly reimburse MST for any premium paid by MST or MST may withhold amounts sufficient to pay the premiums from payments due to DBE.

Evidence of Insurance

A minimum of ten (10) calendar days prior to MST Council consideration of award of the contract, DBE shall furnish a certificate of insurance and all original endorsements evidencing and effecting the coverages required under this Section 3 for review by MST's Risk Manager. The certificate of insurance and all original endorsements evidencing and effecting the coverages required under this Section 3 must receive approval from MST's Risk Manager a minimum of five (5) calendar days prior to MST Council consideration of award of the contract. The endorsements are subject to MST's approval. DBE may provide complete, certified copies of all required insurance policies to MST. DBE shall maintain current endorsements on file with MST's Risk Manager. DBE shall provide proof to MST's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. DBE shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

Indemnity Requirements not Limiting

Procurement of insurance by DBE shall not be construed as a limitation of DBE's liability or as full performance of DBE's duty to indemnify MST under Section 3 of this Agreement.

Subcontractor Insurance Requirements

DBE shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 3.

3.3 BUILDER'S RISK INSURANCE

Within ten (10) calendar days following MST Council award of the Design-Build Agreement for South County Operations and Maintenance Facility Project, DBE must provide adequate/sufficient Builder's Risk Insurance to protect the indemnified parties referenced under "Additional Insured" in Section 3.2 from a catastrophic event should one occur. DBE's policy must be submitted to MST for review and must be deemed acceptable by MST. MST reserves the right to require modifications should they be necessary to provide the protection being requested by MST.

3.4 INDEMNIFICATION

Indemnity for Design Professional Services

To the fullest extent permitted by law, DBE shall, at its sole cost and expense, protect, indemnify and hold harmless the indemnified parties referenced under “Additional Insured” in Section 3.2 and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those MST agents serving as independent contractors in the role of MST officials (collectively “Indemnitees”), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens and losses of any nature whatsoever, including fees of accountants, attorneys or other professionals, and all costs associated therewith, and reimbursement of attorney’s fees and costs of defense (collectively “Liabilities”), whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to, in whole or in part, the negligence, recklessness or willful misconduct of DBE, its officers, agents, servants, employees, subcontractors, material men, contractors or their officers, agents, servants or employees (or any entity or individual that DBE shall bear the legal liability thereof) in the performance of design professional services under this Agreement by a “design professional,” as the term is defined under California Civil Code Section 2782.8(c)(2).

Other Indemnities

- Other than in the performance of design professional services, and to the fullest extent permitted by law, DBE shall, at its sole cost and expense, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens and losses of any nature whatsoever, including fees of accountants, attorneys or other professionals, and all costs associated therewith, and the payment of all consequential damages (collectively “Claims”), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of DBE, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that DBE shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by judicial decision or by the agreement of the parties. DBE shall defend the Indemnitees in any action or actions filed in connection with any Claim with counsel of the Indemnitees’ choice, and shall pay all costs and expenses, including all attorneys’ fees and experts’ costs actually incurred in connection with such defense. DBE shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.
- DBE shall pay all required taxes on amounts paid to DBE under this Agreement, and indemnify and hold the indemnified parties referenced under “Additional Insured” in Section 3.2 harmless from any and all taxes, assessments, penalties, and interest asserted against the indemnified parties referenced under “Additional Insured” in Section 3.2 by reason of the independent contractor relationship created by this Agreement. DBE shall fully comply with the workers’ compensation law regarding DBE and DBE’s employees. DBE shall indemnify and hold the indemnified parties referenced under “Additional Insured” in Section 3.2 harmless from any failure of DBE to comply with applicable workers’ compensation laws. MST may offset against the amount of any fees due to DBE under this Agreement any amount due to MST from DBE as a result of DBE’s failure to promptly pay to MST any reimbursement or indemnification arising under this Subparagraph B. 2).

- DBE shall obtain executed indemnity agreements with provisions identical to those in this Section 3.4 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of DBE in the performance of this Agreement. If DBE fails to obtain such indemnities, DBE shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of DBE's subcontractor, its officers, agents, servants, employees, subcontractors, material men, contractors or their officers, agents, servants or employees (or any entity or individual that DBE's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by judicial decision or by the agreement of the parties.

Workers' Compensation Acts not Limiting

DBE's obligations under this Section 3.4, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. DBE expressly waives its statutory immunity under such statutes or laws as to the indemnified parties referenced under "Additional Insured" in Section 3.2 its officers, agents, employees and volunteers.

Insurance Requirements not Limiting

MST does not, and shall not, waive any rights that it may possess against DBE because of the acceptance by MST, or the deposit with MST, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provisions in this Section 3.4 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability, Claim, tax, assessment, penalty or interest asserted against MST.

Survival of Terms

The indemnification in this Section 3.4 shall survive the expiration or termination of this Agreement.

4. REQUEST FOR PROPOSAL (RFP) TERMS AND CONDITIONS

4.1 PREVAILING WAGES AND FEDERAL LABOR STANDARDS

The successful proposer who is awarded the Design-Build Agreement for South County Operations and Maintenance Facility Project will be required to comply with all applicable provisions of the Federal public law and State labor codes, including all prevailing wage requirements of US Department of Labor and State of California Department of Industrial Relations. This is a Federally-assisted construction contract. Federal Labor Standard Provisions, including prevailing wage requirements of the David- Bacon and related Acts will be enforced. DBE is required to pay the prevailing wage rate as determined by the Labor Statistics and Research Division of the California State Department of Industrial Relations. In the event of a conflict between Federal and State wage rates, the higher of the two will prevail. The Contractor's duty to pay State prevailing wages can be found under Labor Code Section 1770 *et seq.* and Labor Code Sections 1775 and 1777.7 outline the penalties for failure to pay prevailing wages and employ apprentices including forfeitures and debarment.

In accordance with Labor Code Section 1770 *et seq.*, the Project is a "public work". The successful DBE (Contractor) and any Subcontractors shall pay wages in accordance with the determination of the Director of the Department of Industrial Relations ("DIR") regarding the prevailing rate of per diem wages. Copies of those rates are on file with the Director of Public Works, and are available to

any interested party upon request. The Contractor shall post a copy of the DIR's determination of the prevailing rate of per diem wages at each job site. This Project is subject to compliance monitoring and enforcement by the DIR. The Awarded DBE shall maintain all records in accordance with Federal and State requirements and shall cooperate with MST's labor compliance monitoring consultant to the fullest extent possible.

A Contractor working on a Federally assisted project must be eligible to participate in the award of the contract.

4.2 APPRENTICESHIP PROGRAM

Attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Administrative Code, Section 200 *et seq.* to ensure compliance and complete understanding of the law regarding apprentices.

4.3 WORKER'S COMPENSATION

Section 1861 of the California Labor Code requires each contractor that is awarded a public works contract to sign and file with the awarding body the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

4.4 CONFLICT OF INTEREST

In the procurement of supplies, equipment, construction, and services by sub-recipients, the conflict of interest provisions in 24 CFR 85.36, OMB Circular A- 110, and 24 CFR 570.611, respectively, shall apply. No employee, officer, or agent of the sub-recipient shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

4.5 CEQA SUMMARY

MST will be responsible for the California Environmental Quality Act (CEQA) process, study, and determination. DBE shall coordinate with MST staff to ensure consistency between project plans and the CEQA project description, and also to ensure any project design features or mitigation measures (if needed) are feasible and incorporated into the design plans. At this time, MST anticipates the project will be categorically exempt from CEQA, but will make the final determination at the time design plans are prepared. Should the project not be categorically exempt, MST will prepare the CEQA documents.

4.6 PROPOSER ACKNOWLEDGEMENTS

Each proposer makes the following representations relative to its submission of its Proposal:

- **Compliance with RFP Documents.** Proposer represents that its Proposal is made in compliance with the RFP Documents.
- **Due Authorization.** Proposer represents that the signer(s) of the proposer's Proposal and any other documents submitted on behalf of the proposer to MST that are signed by proposer is/are authorized to do so on behalf of the proposer and that any proposer, and any Design-Build Entity Member, authorized to sign and signing on behalf of the proposer, that is a corporation, partnership, or limited liability company, is duly incorporated under applicable laws and is authorized to do business in, and is in good standing under, the laws of the State of California.
- **Review of Site and Site Information.** Proposer represents that it and each proposed member of its Design-Build Team have carefully and thoroughly inspected: (1) the Site and its surroundings, existing improvements and their existing uses by MST, routes of ingress and egress, and local conditions in the vicinity of the site (including, without limitation, sources and availability of labor, materials and equipment); (2) all Documents listed in the Appendix; and (3) all other reports, surveys, test data, as-built drawings and other information concerning visible and concealed conditions (including, without limitation, locations and capacities of utility sources and locations of utility lines) above and below the surface of the ground or in Existing Improvements that (a) proposer is informed are available to the proposer for review or (b) are disclosed by public records, in order to fully acquaint itself with all of the conditions, restrictions, obstructions, difficulties and other matters which might affect the proposer's ability to complete the design and construction of the Work in accordance with the requirements of the RFP Documents and its Proposal.
- **Design-Build Agreement for South County Operations and Maintenance Facility Project.** Proposer represents that it has carefully reviewed the terms and conditions of the Design-Build Agreement for South County Operations and Maintenance Facility Project and General Conditions attached hereto as Exhibit H, and that the terms and conditions thereof are satisfactory to proposer and represent in the opinion of the proposer a fair and reasonable allocation and sharing of risks and responsibilities as between MST and DBE.

DBE shall be responsible for providing a complete and operating South County Operations and Maintenance facility in accordance with the requirements of this RFP. It is DBE's responsibility to ensure MST receives all of the necessary components of the Project, although some components are not specifically referenced in the provided documents. The provided non-referenced items shall be of equal quality to all specified items in the RFP documents.

DBE shall visit the site and familiarize itself with existing site conditions. MST has provided a boundary and topographic survey (Exhibit I) and a geotechnical investigation report (Exhibit J). DBE may rely upon the technical data contained, but not upon non-technical data, interpretations, opinions or provisional statements contained therein. MST does not warrant the completeness or accuracy of the data so provided and MST assumes no liability for such data. Any additional testing, investigation or reports shall be performed by DBE, and may be performed by MST's geotechnical engineer under separate contract with DBE. DBE shall obtain advanced approval from MST when accessing the site for testing and investigation.

DBE, if required by site conditions or design requirements, shall be responsible for importing engineered soil or preparing a design adequate for non-engineered fill, at DBE's option. DBE will be responsible for bringing the site to finish grade as required for its design. If import material is required, any imported soil

shall meet environmental standards in alignment with Department of Toxic Substances Control (DTSC's) October 2001 Information Advisory for Clean Imported Fill Material.

After award, DBE will be expected to meet with MST on Tuesday afternoons, at a minimum of once every two weeks, throughout the design process until the completion of the Design Phase for each permit package.

DBE is responsible for obtaining all required agency approvals including MST, County, State, Federal, and all other Utilities and Agencies having jurisdiction over the Project. The Design-Build Contractor shall be responsible for the construction of the Project in accordance with the approved construction documents and applicable codes. Deviation from the level of quality and intent of the RFP and criteria documents will only be allowed if approved by MST in writing.

4.7 NO WARRANTY BY MST

Proposers are solely responsible to satisfy themselves as to the suitability of any estimates, projections, budgets, design concepts, technical criteria, reports, surveys, test data and other information provided to, or reviewed by, them relating to the Project, Site or Existing Improvements and nothing stated therein, in the RFP Documents or in any other information provided by MST shall be construed as implying the creation or existence of any warranty, express or implied, on the part of MST with respect to the completeness, accuracy or sufficiency thereof.

4.8 CONFIDENTIALITY OF DESIGN AND PRICING INFORMATION PRIOR TO AWARD

It is understood that all responses sent to MST are sent as confidential documents. MST shall make reasonable efforts, consistent with applicable laws, to refrain from disclosing to competing proposers prior to Award, the content of any information on design, prices or pricing that is contained in another proposer's Proposal. No part of the responses will be made public or shown to any persons outside of MST and its Review Committee until after a decision has been made by MST staff on who to recommend for award to MST Council and a contract has been executed by the proposer, at which time all documents will be public record, per applicable law.

4.9 PROPOSAL VALIDITY

The offer represented by each proposer's Proposal will remain in full force and effect for ninety (90) days after the Proposal Due Date. If award has not been made within ninety (90) days after the Proposal Due Date, each proposer that has not previously agreed to an extension of such deadline shall have the right to withdraw its Proposal.

4.10 OWNERSHIP, COPYRIGHT

Drawings, renderings, models, building designs, design approaches, design details, construction techniques, procedures, means and methods and other technical design and construction information contained within a Design-Build Proposal, or any other documents submitted by proposer to MST, shall be deemed the sole and exclusive property of MST, all copyrights thereto shall be deemed assigned to and held by MST, and the proposer shall retain no property, copyright or other proprietary rights with respect thereto; provided, however, that: (1) nothing herein shall be interpreted as prohibiting or limiting the right of any proposer that does not receive Award of the Design-Build Agreement for South County

Operations and Maintenance Facility Project to copy, use or incorporate such technical design information contained within its own Design-Build Proposal for its own use in the conduct of its business trade or profession; and (2) with respect to the proposer who receives Award of the Design-Build Agreement for South County Operations and Maintenance Facility Project, such proposer's rights and obligations with respect to copying, use or incorporation of such technical design information in any projects or work other than the Project shall be governed by the terms of the Design-Build Agreement and Design-Build General Conditions.

4.11 MST RIGHTS

MST reserves the right to waive minor irregularities and omissions in the information contained in the Proposal submitted, and to make all final determinations. MST reserves the right to decide not to award an agreement as a result of the RFP or cancel the RFP process. MST shall not be obligated to respond to any Proposal submitted, nor be legally bound in any manner by the submission of the Proposal. MST reserves the right to negotiate Project deliverables and associated costs.

MST reserves the right to request Proposal revisions.

The issuance of an RFP constitutes only an invitation for DBE's to present their competitive Proposals. MST reserves the right to determine, in its sole discretion, whether any aspect of the Proposal satisfactorily meets the criteria established in the RFP and the right to seek clarification from any proposer submitting Proposals. MST also reserves the right to reject any or all Proposals received as a result of this solicitation; to extend the Proposal due date for RFP's; to modify, amend, reissue or rewrite this RFP document; and to procure Design-Build services by other means. In the event the RFP is withdrawn by MST prior to the receipt of RFP Proposals, or if MST does not proceed for any reason, MST shall have no liability to any proposer for any costs or expenses incurred, in connection with the preparation and submittal of a response to this RFP

4.12 REGULATORY COMPLIANCE

The design and construction must comply with the requirements of all applicable local, State and Federal agencies. Each portion of the work shall be performed by a person licensed, equipped and experienced to do work in the particular field. Please review Public Contract Code and Public Law, which include requirements for performance of the work by Contractors and Subcontractors. Both shall furnish certified payroll records and participate in an approved apprenticeship program as required by Federal and State requirements. The labor compliance and apprenticeship requirements will be monitored throughout the construction process. Any DBE found not in compliance shall be in default of its contract.

All subcontracts that are not listed by DBE in the Proposal shall be awarded by DBE in accordance with state and federal code. Specifically, DBE shall procure all subcontracts in accordance with California Public Contract Code 22166.

4.13 CONTRACTING WITH SMALL AND MINORITY OWNED FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

It is policy to award a fair share of contracts to Small Business and Minority Firms. Accordingly, affirmative steps must be taken to assure that Small Business and Minority Owned Firms are utilized, when possible, as sources of supplies, equipment, construction and services.

4.14 CLEAN AIR AND WATER ACTS

Contractors with Federally-assisted construction contracts of \$100,000 or more must comply, and ensure all sub-contractors comply, with the requirements regulated by the Environmental Protection Agency.

4.15 INACCURACIES OR MISREPRESENTATIONS

If in the course of the RFP process or in the administration of a resulting Contract, MST determines that DBE has made a material misstatement or misrepresentation or that materially inaccurate or misleading information has been provided to MST, DBE may be terminated from the RFP process or in the event a Contract has been awarded, the Contract may be immediately terminated.

In the event of a termination under this provision, MST is entitled to pursue any available legal remedies.

4.16 CHANGING TEAM MEMBER

No changes to the members of DBE, including the firms and listed personnel, shall be permitted after the deadline for submission of the RFPs, except with the prior written authorization of MST, which authorization may be granted or withheld in MST's sole discretion. This requirement shall be in effect through completion of the Project.

4.17 PROPOSAL EXPENSES

Each proposer shall bear, at its own expense, without reimbursement by MST, all costs and expenses associated with the preparation of its Design-Build Proposal and its participation in the Request for Proposal process.

4.18 MST SUPPLIED INSPECTIONS

The following inspections will be performed and paid by MST:

- MST department inspections
- Special inspections and material testing
- Geotechnical testing and inspection

Repeat inspections, due to failure of the original inspection, shall be at the expense of DBE and back charged by MST. Late cancellations of inspections, due to schedule changes or DBE's failure to be prepared for inspection(s), shall be at the expense of DBE and back charged by MST. MST shall maintain hourly logs relating to any such repeat inspections or late cancellations.

4.19 DBE SUPPLIED INSPECTIONS

The remaining inspections, including but not limited to the following, will be performed and paid by DBE:

- Window and curtain wall flood testing
- Waterproofing flood testing
- Roofing
- Sealant compatibility and adhesion testing
- HVAC testing, adjustment, and balancing
- Duct pressure testing
- Duct detector differential testing and verification
- Security system performance testing
- Equipment performance testing
- Mock-ups (exterior materials, flashing assemblies, MEP systems, and others as noted or appropriate)
- Electrical testing
- Fire alarm and sprinkler testing
- Life safety testing (smoke doors, closers, exit signs, etc.)
- Telecom, wireless, and data systems
- Site utility flushing, disinfection, testing, and reporting
- Sampling, testing, and certification of imported fill material or exported material
- Any costs associated with set up and performance of MST observed testing

4.20 LIQUIDATED DAMAGES

- The Design-Build Agreement for South County Operations and Maintenance Facility Project includes provisions for payment of liquidated damages by DBE to MST of \$1,500.00 per day if DBE fails to Substantially Complete the Work within the Contract Time for Substantial Completion as adjusted for Contract Adjustments permitted under the terms of the Design-Build Agreement for South County Operations and Maintenance Facility Project and General Conditions.
- The Design-Build Agreement for South County Operations and Maintenance Facility Project includes provisions for payment of liquidated damages by DBE to MST of \$1,500.00 per day if DBE fails to obtain Final Completion of the Work within the Contract Time for Final Completion as adjusted for Contract Adjustments permitted under the terms of the Design-Build Agreement for South County Operations and Maintenance Facility Project and General Conditions.
- Proposers shall include in their Proposal a proposed daily amount for damages payable by MST to DBE for Compensable Delay. MST reserves the right to negotiate this amount with DBE. In accordance with the terms of the Design-Build Agreement for South County Operations and Maintenance Facility Project and General Conditions, such damages shall constitute the Design Builder's exclusive compensation covering actual costs due to Compensable Delay that are incurred by DBE and its Subcontractors and Sub-consultants of every tier. No other compensation to DBE for Loss associated with Delay is permitted.