

**Presidio Parkway Project**  
**Further Clarifications to Proposer Questions**  
**Number 04-1637U4**

**Alternative Financial Proposal**

The Sponsors have carefully considered all of the comments received from the Proposers and have determined that the alternative financial proposal concept introduced in Addendum No. 1 will be deleted. Proposers will only be permitted to submit one financial proposal. However, the financial proposal submitted by a Proposer may be based on committed financing, but such proposals must conform to the same requirements for proposals with uncommitted financing and will be evaluated against proposals with uncommitted financing. The Sponsors are deleting the provisions in Addendum No. 1 and 2 which evaluate financial proposals with committed financing separately provided that two Proposers submit financial proposals with committed financing.

The Sponsors modified the Final RFP to include an alternative financial proposal as a result of the revised Phase II schedule which made it reasonable for the Proposers to obtain financial close based on a committed financing proposal within a reasonable time frame relative to the start of construction activities. The Sponsors' decision to eliminate this provision was made after careful consideration regarding whether committed financing could be obtained without reservations in regards to the possibility of litigation involving Section 143. The Sponsors have determined that such reservations, if included in a committed financial proposal, would not constitute a committed financial proposal.

**Contract Validity**

The Sponsors have determined not to require as a condition for financial close that the Department successfully pursue a Code of Civil Procedure section 860 validation action pertaining to the validity of Streets and Highways section 143 as it applies to the Presidio Parkway Project. The Sponsors will not require the Developer to waive any right the Developer may have to pursue a Code of Civil Procedure section 863 validation action pertaining to the validity of Streets and Highways section 143 as it applies to the Presidio Parkway Project.

The Department will add a provision under which the Developer is excused from obtaining financial close and entitled to the return of the Financial Close Security upon termination if either the potential Lender or the TIFIA JPO is not prepared to provide and close the necessary financing due to the risk of Section 143 litigation, even though none may be filed before the Financial Close Deadline. The Department understands that the availability of a legal opinion and the source and content of such an opinion on the issue of validity and enforceability may influence Lender assessment of this risk.

The Sponsors have agreed to modify the RFP to provide the Developer with the right to suspend work upon the filing of litigation challenging the validity of Streets and Highways section 143 as it applies to the Presidio Parkway Project, without regard to whether the plaintiff has standing.

**Appropriations**

The Sponsors anticipate updating the White Paper and issuing it by September 7, 2010. The Sponsors will also issue on September 7, 2010, details regarding the sources and uses of the Milestone Payment. The P3 Agreement, section 11.5, will be modified to provide a representation as to the currently anticipated sources and uses of funds for the Presidio Parkway Project and a commitment that the Department will use reasonable efforts to obtain the Federal and local funds referred to therein.

The P3 Agreement, section 11.5, will be modified to reflect that the provisions of section 11.5 are not intended to eliminate any exception to the appropriation limitations which may be applicable pursuant to Streets and Highways section 183.

### **Project Funding Arrangements and Financing Clarifications**

The P3 Agreement, section 15.2.8.2, will be modified to reflect that, for the purpose of this section, the financial terms shall consist of and be limited to: ratio of Project Debt to Committed Investment (subject to the provisions of section 15.2.9.2), base case Annual Debt Service Coverage Ratio (ADSCR), Loan Life Coverage Ratio (LLCR), senior debt margins, interest on reserves, reserve requirements, swap credit spreads, bond spreads, underwriting fees, conduit fees, bank commitment fees, bank draw fees, and TIFIA Assumptions as provided in the ITP (subject to the provisions of section 15.2.8.XX).

The Sponsors expect the Proposers to make assumptions that are consistent with existing TIFIA program standards and guidelines. Therefore, the Sponsors will modify the P3 Agreement, as deemed appropriate, to indicate that the bidders accept the risk of any changes from TIFIA assumptions used in their proposals which are not covered by sections 15.2.8 and 15.2.9.

### **Delay/Termination Costs**

The Sponsors have determined not to provide the Developer with a right to terminate if the result of the IPDC is a MAP above the Affordability Limit.

The Sponsors have determined that the Developer will be compensated by the payment of profit of 5% as currently specified in the RFP for termination due to extended relief events consisting of lack of access to Project ROW as well as Termination by Court Ruling.

The Sponsors have determined not to compensate the Developer for construction cost escalation if NTP 3 is delayed due to Department-Caused Delay.

### **Insurance/Bonding**

The Sponsors have determined that Performance and Payment Security will be required for both D&C Work and O&M During Construction, but that the Developer can obtain separate bonds for D&C Work and O&M During Construction. If separate bonds are obtained, the Performance and Payment Bonds for D&C Work is not required until NTP 3.

### **Proposal Security**

The Proposal Security Bond is required to be submitted with the financial proposal.

### **Lease**

The Sponsors will require the Developer to execute a lease as currently contemplated in the RFP. However, the lease will be modified to provide de minimis rent (\$1/year) such that little or no value is allocable to a real property interest and instead is allocable to intangible property (i.e., contract and access rights). This modification is intended to reflect the intentions of the Department and Developer in entering into the lease.

### **Technical Questions**

The Sponsors have determined that it is not necessary for the Developer to install reinforced concrete pavement at the ends of the project and on all ramps instead of asphalt concrete. The Sponsors will modify the limits of reinforced concrete pavement and asphalt concrete for the areas at the two ends of the project and the ramps. Reference "Presidio Parkway PCC-AC Limits" document which will be posted to the Data Room.

The costume design lighting requirements have been finalized as part of Doyle Drive Contract 3. Reference the "Lighting Requirements" document which will be posted to the Data Room.

### **Sole Discretion of Approvals**

Previously approved design exceptions are not subject to resubmission.

The Sponsors have determined that the Department will have sole discretion regarding the approval of the general design layout for the tunnel portal aesthetics. However, the RFP will be modified to reflect that the Department will have 30 days from submission of the required documents to either approve or reject the design layout.

### **Hazardous Materials**

The P3 Agreement, section 4.10.2.2, will be modified to indicate that the extra work costs for off-site disposal of Pre-existing hazardous materials will begin after issuance of NTP 2 instead of NTP 3.

### **Landscaping**

The Landscaping specifications are being revised to reflect an amount which the Proposers are to include in their proposal for the cost of landscaping. Once the final landscaping design is approved, the landscaping design will be bid under competitive procedures reasonably acceptable to the Department. The Department and the Developer will share in any savings and the Department will be responsible for any additional costs.

### **O&M**

The Developer is required to provide 24/7 monitoring at the Temporary Operation and Maintenance Center at the site during O&M During Construction pursuant to State Fire Marshall requirements. The Developer is not required to provide staff for monitoring purposes in the State facilities during O&M. There are no requirements regarding the physical location of the monitoring staff during O&M After Construction provided that the Developer can comply with the contractual O&M response times.

The feeds to the Temporary Operation and Maintenance Center (TOMC) will not be required to be refreshed as part of Handback. The TOMC will not be delivered to the Department at the expiration of the Term.

The Doyle Drive Contract 4 contractor will lease and install the initial movable barrier system. The lease will identify the Department as the lessee. The Developer will be trained in the operation of the movable barrier system and will assume the lease obligation of the movable barrier system from the Department. Reference the "Quick Change movable Barrier" document which will be posted to the Data Room.

### **Forms**

Form D-2, Form of Proposal Letter of Credit, will be modified to provide that in the event of conflict between California law and ISP 98, ISP 98 shall prevail.

The various forms will be clarified to indicate which entities are required to execute each particular form. Reference the "Form Submittals" document which will be posted to the Data Room.