



## TRANSBAY JOINT POWERS AUTHORITY

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### REQUEST FOR QUALIFICATIONS No. 23-04 Progressive Design-Build for Civil and Tunnel for The Portal

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#### QUESTIONS & ANSWERS

The following questions were received related to the above-referenced Request for Qualifications (RFQ). Some questions have been paraphrased to improve readability and/or to consolidate questions submitted by multiple respondents on the same topic:

- 1. Is RFQ No. 23-04 all-inclusive of all the building trades? Can individual contractors submit for all of their services on this package, or do they wait for the additional/ other packages to come out?*

Answer:

Request for Qualifications (RFQ) No. 23-04 is seeking to prequalify teams to compete for the civil and tunnel contract package (40-CT), which will be delivered using the progressive design-build (PDB) contract model. Respondents can read more about the scope of the 40-CT package in the RFQ at Section 2.

Small Business Enterprise (SBE) and Disadvantaged Business Enterprise (DBE) participation in the 40-CT contract is important to the TJPA. We encourage individual trade contractors to reach out to prime contractor teams. You can review the attendance list from the September 20 informational session and November 2 industry briefing on the TJPA's website: <https://www.tjpa.org/about-tjpa/doing-business/contract-opportunities/23-04-request-qualifications-rfq-progressive>. Information about future "meet the primes" events will be posted on the TJPA's website in the contract opportunities section.

- 2. Is the industry briefing meant to be an online meeting only or will it be in person?*

Answer:

As explained in the RFQ, the November 2 industry briefing was online only. The presentation, attendee list, and recording of the event are available on the TJPA's website: <https://www.tjpa.org/about-tjpa/doing-business/contract-opportunities/23-04-request-qualifications-rfq-progressive>

3. *We would like to get a clear understanding if we, [firm], are conflicted out from being a designer on a Progressive Design Build Team. Under Section 3.7 – Ineligible Parties, Parsons is listed as a firm that is ineligible. [Firm] is a subconsultant to Parsons.*

Answer:

TJPA Board Policy No. 022, Conflict of Interest Policy for Design-Build Procurements (<https://www.tjpa.org/media/39110/download?inline>), at Section 6, describes the process for Respondents to disclose to the TJPA a potential Organization Conflict of Interest and receive TJPA's determination if the Respondent is disqualified from participating in this procurement. Respondents seeking such a determination should submit their written request (including all of the information specified in the Policy at Section 6) via email to [RFP@tjpa.org](mailto:RFP@tjpa.org). Respondents are encouraged to submit their request as soon as possible.

4. *Several firms that could potentially participate as part of the Lead Designer for the RFQ No. 23-04, PDB for Civil and Tunnel for the Portal project are currently competing on TJPA's RFP No. 23-03, Program Management and Construction Management Services. Given TJPA has yet to select and award the RFP No. 23-03 contract, are firms currently competing for the RFP No. 23-03 contract permitted to also submit as part of a team on the RFQ No. 23-04 project? If such team member is ultimately conflicted due to being selected as part of the RFP No. 23-03 team, will the RFQ 23-04 Respondent be allowed to replace such team member?*

Answer:

For Request for Proposals (RFP) No. 23-03, Program Management/Construction Management (PMCM) Services, the TJPA has issued notices of firms advancing to the interview stage of the procurement and notices of TJPA's intent to negotiate with the highest-ranked firm. According to the current schedule, a PMCM services contract is expected to be recommended to the TJPA Board of Directors for approval on February 15, 2024.

RFQ No. 23-04 Sections 4.2 and 4.3 require Respondents to identify their proposed Team Members (Respondent, Lead Designer, Lead Contractor, and any Major Subcontractors) and Key Personnel. Firms that are concurrently competing for the PMCM services contract (RFP No. 23-03) are permitted to be identified among a Respondent's proposed Team Members and Key Personnel in their response to the RFQ.

As explained in the RFQ at Section 3.6 and 3.7 and in TJPA Board Policy No. 22 (<https://www.tjpa.org/media/39110/download?inline>), however, if a proposed Team Member is engaged as a contractor under the PMCM services contract (RFP No. 23-03), that entity may become ineligible to continue as a proposed Team Member for the 40-CT contract. In such case, consistent with the RFQ at Section 6.3, the TJPA will exercise its discretion to allow that Respondent to promptly propose a substitution of the affected Team Member and any affected Key Personnel. The TJPA exercises sole discretion to evaluate such substituted Team Member and Key Personnel using the scoring described in the RFQ at Section 5.2.

Respondents to RFQ No. 23-04 should indicate in their Statement of Qualifications (SOQ) if a proposed Team Member and any Key Personnel are concurrently competing for the PMCM contract in response to RFP No. 23-03.

5. *Given TJPA has yet to select its team for RFP No. 23-03, Program Management and Construction Management Services, please extend the submission date for the RFQ No. 23-04 project until 2 months after the date TJPA publicly announces selection of its RFP No. 23-03 team.*

Answer:

Per Addendum No. 1, posted on December 8, 2023, the SOQ due date has been extended to January 31, 2024. See also the response to question 4 above.

6. *For Joint Ventures acting as Respondent or Lead Contractor, are all individual equity members of the Joint Venture required to possess a Class A (General Engineering Contractor) License, or just the Joint Venture?*

Answer:

Only the Joint Venture is required to possess a Class A (General Engineering Contractor) License.

7. *What is the estimated cost of this project?*

Answer:

The Portal budget is in RFQ Section 1.3.4, Table 2.

8. *Are union bids required for this project?*

Answer:

As explained in this RFQ at Exhibit C, page C-3, the 40-CT contract is subject to a Project Labor Agreement (PLA). The PLA is a pact that all construction and trade workers, both union and non-union, must abide by while working on the Transbay site. The selected contractor must adhere to the PLA. The TJPA allows and encourages all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are parties to collective bargaining agreements.

9. *In our endeavor to join a contractor team for TJPA's RFQ No. 23-04, which pertains to the Progressive Design-Build for Civil and Tunnel work, we kindly request a formal assessment of any potential conflicts of interest related to [firm's] ongoing activities at the Caltrain 4th and King Site.*

Answer:

TJPA Board Policy No. 022, Conflict of Interest Policy for Design-Build Procurements (<https://www.tjpa.org/media/39110/download?inline>), at Section 6, describes the process for Respondents to disclose to the TJPA a potential Organization Conflict of Interest and

receive TJPA's determination if the Respondent is disqualified from participating in this procurement. Respondents seeking such a determination should submit their written request (including all of the information specified in the Policy at Section 6) via email to [RFP@tjpa.org](mailto:RFP@tjpa.org). Respondents are encouraged to submit their request as soon as possible.

10. *[Firm] is currently providing structural consultation services for PG&E related to their existing underground utility vaults that are located within the footprint of the proposed Downtown Rail Extension (DTX) project in San Francisco. PG&E has requested that [firm] engineers visually evaluate these vaults and provide an opinion on the feasibility of supporting existing vaults during construction. [Please advise if this is a conflict of interest.]*

Answer:

TJPA Board Policy No. 022, Conflict of Interest Policy for Design-Build Procurements (<https://www.tjpa.org/media/39110/download?inline>), at Section 6, describes the process for Respondents to disclose to the TJPA a potential Organization Conflict of Interest and receive TJPA's determination if the Respondent is disqualified from participating in this procurement. Respondents seeking such a determination should submit their written request (including all of the information specified in the Policy at Section 6) via email to [RFP@tjpa.org](mailto:RFP@tjpa.org). Respondents are encouraged to submit their request as soon as possible.

11. *Form E for the Key Personnel is limited to those that commenced with in the past 15 years. As opposed to Form C for Respondent Experience which is limited to those that commenced with in the past 20 years.*

*Would the TJPA consider aligning the timeframes for the forms to both be 20 years?*

Answer:

The TJPA will not be changing the required timeframes.

12. *If a Team Member is a Joint Venture, should separate Form I, Form J, and Form Ks be submitted for each entity comprising the Joint Venture?*

Answer:

For a joint venture, submit a Form F, Form J, and Form K for each entity.

13. *If the same entity holds two Team Member roles, will a single submission of Form F, Form I, Form J, and Form K for that entity (or for each member of an entity in the case of a Joint Venture) be acceptable, or do you wish to see a repeat of those forms for each Team Member role?*

Answer:

Submit only one Form F, Form I, Form J, and Form K for each Team Member, even if the Team Member has multiple roles.

14. *If references are provided for every project, are two additional, separate references required or can previous references be repeated at the end of the form?*

Answer:

On Form E, references can be repeated. The section titled Additional Reference Information at the end of Form E is an opportunity to provide references that are not associated with the projects described.

15. *To demonstrate total years of experience to meet the minimum requirement, do all project start/end dates need to equate to the minimum necessary years or will a statement demonstrating total years of experience in the “summary of experience” suffice as proof?*

Answer:

On Form E, describe the Key Personnel’s total experience in the Summary of Experience field. The total years from the projects chosen do not need to cover all of the minimum required experience.

16. *Form K – Certifications and Questionnaire requests Team Member’s safety record data for the last three years. Please confirm that the Lost Time Incident Rate (LTIR) should be reported rather than the lost workday incident rate (LWDR). The standard industry rates reported to OSHA are TRIR and LTIR.*

Answer:

Form K was revised in Addendum 3 to replace “lost workday incident rate (LWDR)” with “lost time incident rate (LTIR).”

17. *For procurements of this size and scope, proposers often form special purpose entities (“SPE”) to perform the work following award of the Project, and such SPEs may be comprised of joint venturers or single bidders. Proposers do not usually form a special purpose entity prior to award, however, given the uncertainty of the bid process. Consequently, we respectfully ask that the TJPA adjust the requirements of the RFQ as follows:*

- a. *In Section 4.2.1, define Respondents and Proposers as entities who may also form a special purpose entity to enter into contract with the TJPA as the Contractor.*
- b. *In Section 6.2, please make the following changes: “In accordance with Public Contract Code Section 3300, the TJPA has determined that the Respondent must possess, at the time of contract award, a valid State of California Class A (General Engineering Contractor) License and other applicable specialty licenses that will be identified in the RFP for portions of the Project. The Respondent entity must possess a Class A license in its own name and cannot fulfill this requirement through an affiliate or member entity (such as a member of a joint venture) or through a subcontractor. [If*

*Respondent intends to form a special purpose entity to enter into contract with the TJPA as the Contractor, it may fulfill this requirement so long as an affiliate or member entity (such as a member of a joint venture) possesses a Class A license at the time of contract award.]*

Answer:

Please resubmit this question identifying the type of entity proposed and the jurisdiction of its formation.

18. *On Form G SURETY LETTER, the required amount of the Performance and Payment Bonds are not identified.*

*We can understand that there is an equal required amount for each Performance and Payment Bond. However, on Exhibit C AGREEMENT TERMS, Price, Bonds, different percentages for each Performance and Payment Bond are established.*

*Please clarify the required amount for each Performance and Payment Bond. Taking into account the size, nature and complexity of this project, we propose a \$500,000,000 Performance and Payment Bond.*

Answer:

Form G was revised in Addendum 3.

19. *Each Team Member shall provide financial statements prepared by a Certified Public Accountant, including all exhibits and notes, for the three most recently completed fiscal years.*

*We are an international construction company, and we will participate through our subsidiary local brand as a Team Member. This local brand does not have financial statements prepared by a Certified Public Accountant. Please clarify the following points:*

*Could we provide the financial statements prepared by a Certified Public Accountant of our international Parent Company (owner 100% of the subsidiary local brand)?*

*Could you please clarify that the Certified Public Accountant shall be in accordance with generally accepted accounting principles in the United States ("US GAAP") or International Financial Reporting Standards ("IFRS")?*

Answer:

The TJPA will consider (i) parent company financial statements supporting a parent company guarantee and (ii) the financial strength of the parent company's subsidiary proposed for contracting. The TJPA will consider financial statements prepared under IFRS standards.

20. *Respondent has reviewed the requirement for Form G Surety Letter from a licensed surety and respectfully request the Owner modify Form G to allow the surety letter to contain certain conditions as is common practice in the industry when such letters are required.*

*We propose adding the following language to the Surety Letter stating “The surety will consider the required bonds, subject to its usual underwriting criteria including, but not limited to, the review of contract documents, financing, and bond forms. This letter is not an assumption of liability nor is it a bid bond.”*

*This is customary language used for pre-qualification purposes on projects of this size and complexity, and where the full terms of the underlying agreement and surety bonds, a critical component of the surety’s underwriting of the final bonds for a project, are not contained in the documents released thus far. For these reasons, we request the Owner modify the requirement for the use of Form G, as provided, or at a minimum, allow the sureties to provide certain conditions to its/their commitment.*

Answer:

Form G was revised in Addendum 3.

21. *We request adding the following language to the Form G- Surety Letter, stating “The surety will consider the required bonds, subject to its usual underwriting criteria including, but not limited to, the review of contract documents, financing, and bond forms. This letter is not an assumption of liability nor is it a bid bond.” If this language is not acceptable, at a minimum, we request allowing sureties to include similar language within their commitment.*

Answer:

Form G was revised in Addendum 3.

22. *If individual entities comprising a Joint Venture are part of the same parent company, with the same Financial Statements prepared by a Certified Public Accountant, will a single instance of the financial statements for the parent company be acceptable?*

Answer:

A single financial statement for the parent company is acceptable.

23. *We seek clarification that a Team Member’s response to Form K with regard to legal issues be governed by litigation occurring within the United States. Please confirm.*

Answer:

Team Members may limit litigation disclosure to litigation in the United States and Canada.

24. *As part of the proposal, Respondent is required to provide a surety letter as per the language found in Exhibit B – Administrative and Legal Forms, Form G. Given the very preliminary stage of this progressive design build procurement with only a 7-page term sheet, sureties are unable to provide this letter without their standard out-language in case the final contract terms and conditions are not bondable. Please amend Form G to include the following language at the end of the letter, “This commitment is subject to standard underwriting at the time of the bond request, including a review of acceptable bond forms, contract financing and our standard underwriting considerations.”*

Answer:

Form G was revised in Addendum 3.

25. *As part of the proposal, Respondent is required to provide an insurance letter as per the language found in Exhibit B – Administrative and Legal Forms, Form H. The letter includes a statement that, “Respondent will be able to fully comply with all insurance requirements as presented in this RFQ for itself as well as for all of its subcontractors, for both onsite and offsite work.” Given that there are 1) no specific insurance requirements, 2) some of the insurance requirements are not commercially reasonable (i.e. procuring both an OCIP and a CCIP), 3) Contractors cannot procure certain coverages for subcontractors such as auto liability and off-site insurance, and 4) construction would not start until at least 2025, Respondent cannot execute the insurance letter as currently drafted. Please remove the “Respondent will be able to fully comply with all insurance requirements as presented in this RFQ for itself as well as for all of its subcontractors, for both onsite and offsite work” language and include language to reflect the collaborative nature of a progressive design build procurement, such as, “The successful proposer shall assist the TJPA in developing appropriate coverage amounts subject to insurance market conditions at the time insurance is procured.”*

Answer:

The TJPA will address insurance in a future addendum.