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of Transportation

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**Federal Railroad
Administration**

Brian Kelly
Chief Executive Officer
California High-Speed Rail Authority
770 L Street, Suite 620
Sacramento, California 95814

December 9, 2019

Subject: FRA Review of Draft TS 01 Request for Proposal Terms and Conditions

Dear Mr. Kelly:

The Federal Railroad Administration (FRA) has received and reviewed the California High-Speed Rail Authority's (CHSRA) Draft Track and Systems (TS) 01 Terms and Conditions for its TS 01 Request for Proposals (RFP), described in Cooperative Agreement No. FR-HSR-0009-10-01-06 (Agreement) as Construction Package (CP) 5. After review, FRA does not approve the release of the CP5 RFP, as drafted. For the following reasons, the CP5 RFP is not ready for release and is inconsistent with the requirements set forth in the Agreement.

First, the Agreement requires FRA approval of a First Construction Segment (FCS) Contingency Plan that describes "alternatives for the utilization of the FCS." However, CHSRA has not obtained FRA's approval of such a plan. Despite this, CHSRA proposes in the draft RFP that the contractor first construct track for purposes of interim use "capable of operating one diesel train-per-hour, per-direction with an Operating Speed of 79 mph" to be "upgraded" later to accommodate high-speed operations.¹ FRA must first approve a complete and sufficient FCS Contingency Plan before CHSRA may procure anything short of full high-speed rail infrastructure as it has proposed to do in the CP5 RFP.

Second, the Agreement requires CHSRA provide a FCS Financial Plan to FRA for review and to gain FRA approval prior to the release of design and construction RFPs for the FCS. CHSRA has failed to do so. CHSRA must submit a financial plan demonstrating that it has secured firm

¹ Source: Function and Technical Requirements, Contractors Work, pg 16.

funding commitments to support this planned procurement and to complete construction of the FCS. The plan must also provide a detailed estimate against which CHSRA has budgeted and obligated sufficient funds and the necessary contingencies.

Third, it is premature for CHSRA to undertake another major design-build contract. The current CPs continue to face significant and continuing delays building the necessary civil construction. Furthermore, CHSRA has not resolved or established baseline schedules for all the ongoing construction. The lack of baseline schedules may prevent all contractors from proceeding in a calculated or logical manner, likely increasing project costs and further delays in delivering high-speed operations as CHSRA committed to in the Agreement.

Lastly, FRA identified a number of technical issues during its review that CHSRA should resolve before releasing the RFP. FRA's technical comments are included in the enclosed appendix.

Accordingly, for all of the foregoing reasons, FRA declines to approve CHSRA's CP5 RFP, unless and until CHSRA has corrected or addressed these deficiencies and issues.

If you have any questions, please feel free to contact me at juliana.barnes@dot.gov.

Sincerely,

**JULIANA SHU
BARNES**

Digitally signed by JULIANA SHU
BARNES
Date: 2019.12.09 15:57:41 -08'00'

Juliana S. Barnes
Project Manager

Encl: Review of Draft TS 01 (CP5) RFP Terms and Conditions

Cc: Thomas Fellenz, CHSRA
Jamie Rennert, FRA
Lynn Everett, FRA

FRA has received and reviewed CHSRA's Draft TS 01 Terms and Conditions documents (also known as Draft CP5 RFP). The documents reviewed are listed below:

Document Title	File Name
Term Sheet (4 pp)	TS-1-IR-Term Sheet for Boarddraft ada.docx
Draft Signature Document (10/11/19) (38 pp)	TS01 Draft RFP Signature Document.pdf
General Provisions (10/11/19) (224 pp)	TS01 Draft RFP General Provisions.pdf
Schedules to General Provisions (10/11/19) (138 pp)	TS01 Draft RFP GP Schedules.pdf
Functional and Technical Requirements (10/11/19) (137 pp)	TS01 Draft RFP Functional and Technical Requirements.pdf
Design Criteria Manual Revision 4.4.1 (9/13/19) (1292 pp)	TS01 Design Criteria Manual v4.4.1.pdf
Matrix of Contractor's Presently-Known Environmental Obligations (281 pp)	TS01 Draft RFP C.1 Matrix of Contractors Presently-Known Environmental Obligations.pdf

After review of the documents, FRA is including the following comments below:

1. TS 01 Scope – Segment 1 – “Plain Line Segment”

- a. Functional and Technical Requirements Section 2 (PDF page 16) describes the Plain Line as “capable of operating one diesel train-per-hour, per-direction with an Operating Speed of 79 mph.” This is to be “upgraded” at a later time to “form the final, fully electrified, 12 trains-per-hour, per-direction, 250mph design speed.” However, it appears the Plain Line is not being designed and constructed for full high-speed intercity passenger rail, but rather for conventional rail operations. This is not appropriate unless and until FRA receives and approves a FCS Contingency Plan.

2. TS 01 Schedule

- a. NTP is assumed to be 9/2020 as stated in the TS1 Industry Draft RFP Addendum 5 dated 10/7/19.
- b. The schedule shows the Plain Line Track completion as 9/2022¹. However, the schedule is extremely compressed and is missing key steps and therefore, as drafted, is unrealistic. For instance:
 - i. Track design is to be completed by 9/2021², which is 1 year after NTP. There appears to be insufficient time for submittal reviews, approvals, permits, ordering of materials, testing, etc.
 - ii. Plain Line construction is to be completed by 9/2022, 1 year after final design. Due to persistent delay in the necessary civil construction, it is highly unlikely that the underlying infrastructure would be ready to complete track laying by 9/2022.
 - iii. Coordination with the Construction Package (CP) 1-4 contractors will also pose challenges. The Draft RFP suggests that the contractor can share use of the

¹ Source: Schedule 3, Milestone 5-04; 24 months after NTP

² Source: Schedule 3, Milestone 4-01; 12 months after NTP

construction sites with the CP1-4 contractors, but the CP1-4 contracts do not require this and FRA is not aware of any agreement by the CP1-4 contractors to permit such shared use. The current contractors would have little incentive to accommodate the concurrent work by others without any obligation to do so in their contracts. This needs to be addressed before release of the RFP in order to get fully informed and priced bids.

3. Other Observations

Other key observations from our review of the Draft TS 01 RFP documents include the following.

- a. **Plans:** No plans, drawings, or maps were provided. The Functional and Technical Requirements references “Indicative Drawings”, but none were provided. The absence of drawings to review prevents FRA from fully reviewing the proposed scope of the work.
- b. **“Authority-Provided Access” (GP Schedules – Schedule 15):** CHSRA will provide the contractor primary access to the Segment 1 guideway in 5-mile segments, which may not be continuous with other 5-mile segments and in a similar approach for the remaining CPs. The specific locations are to be determined. This adds further complexity to CHSRA’s construction approach in an already compressed construction timeframe and will likely hinder the contractor from proceeding in a calculated or logical progression
- c. **FRA Safety Certification:** There was no mention of FRA safety certification processes and requirements. The topic of safety was not highlighted to the extent appropriate for a track and signal procurement.
- d. **Environmental Matrix:** Matrix of Contractor’s Presently-Known Environmental Obligations omits the Bakersfield LGA (part of Segment 2) and Central Valley Wye (part of Segment 3).
- e. **Contractor’s Responsibility:** The terms and conditions reflects—or perhaps even expands upon—the same past approach of attempting to push all risk to the contractor, in an effort to shift responsibility for delivery from CHSRA. This has not worked in the past CPs. The TS 01 contractor becomes responsible for previous CPs in an integration mode. Various contract responsibilities assigned to the TS 01 contractor seem clearly to belong as owner responsibilities, yet the language attempts to delegate those away from CHSRA.
- f. CHSRA must ensure that all applicable Federal requirements are incorporated into the RFP, especially if this contract is funded as State-match to the Agreement. Such requirements include, but are not limited to:
 - a. **Buy America:** Page 132 of the General Provisions describes imported materials and customs duties. This appears to be inconsistent with Buy America requirements that are also communicated in the documents. The FRA scope of work, including the trackwork over the FCS, is subject to the requirements of Buy America.
 - b. **Whistleblower Protection:** Page 220 of the General Provisions describes Whistleblower Protection with regards to the misuse of ARRA funds. However, the Agreement’s terms apply to the entire scope of work, including where it is funded as state contribution to Federal funds.

- g. **Term Sheet Inconsistencies:** Some items on the Term Sheet are inconsistent with the referenced RFP documents. For instance:
- i. Page 9 of the Term Sheet states, “Certificate of Provisional Acceptance for Plain Line... by July 31, 2022.” However, the referenced Signature Document states June 30, 2022.
 - ii. Page 8 of the Term Sheet states, “Authority intends to issue NTP 1 [for] Segment 1... may issue NTP 2 [for] Segment 2... may issue NTP 3 [for] Segment 3... may issue additional NTPs [for] additional Segments...” However, the referenced General Provisions Section 5 does not convey that NTPs beyond Segment 2 are indeterminate.