



## **San Francisco Bay Area Rapid Transit District**

# **Renewable Energy Request for Proposals**

Issuance Date: May 8, 2017

Response Deadline: June 9, 2017

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## **Purpose**

The San Francisco Bay Area Rapid Transit District (“BART”) is soliciting competitive proposals for the sale and purchase of renewable energy consistent with the terms and provisions in this Request for Proposals (“RFP”)<sup>1</sup>.

## **Background and Objectives**

BART is a regional rapid transit rail system with more than 100 route miles of electrified track and 46 passenger stations serving the counties of Alameda, Contra Costa, San Francisco, and San Mateo, with service expected to begin in Santa Clara County in 2018. BART trains are 100% electric and are currently powered primarily by low- and zero-carbon imports from the Pacific Northwest and British Columbia. BART uses approximately 400,000 MWh per year, making it one of the largest electricity users in Northern California. BART’s electricity demand profile follows its daily ridership patterns, with peak usage during morning and evening commutes, and during special events.

Currently, BART has contracts for electricity supplies from the Western Area Power Administration (“WAPA”), the 4.3 MW Lake Nacimiento Hydroelectric Project (owned and operated by the Monterey County Water Resources Agency (“MCWRA”)), the 2.5 MW Gridley 2 solar photovoltaic (“PV”) project (in partnership with City of Gridley and the Northern California Power Agency (“NCPA”)), behind-the-meter solar PV installations at four BART facilities, and a short-term, low- and zero-carbon Power Purchase Agreement (“PPA”) facilitated with the help of NCPA.

BART is permitted under Section 701.8 of the California Public Utilities Code (“PUC”) to purchase electric supply separately from electric transmission and distribution services. The most recent change to Section 701.8, made in 2015 through California Senate Bill 502, granted BART the ability to purchase electricity supplied from “eligible renewable energy resources” as defined in PUC §399.12.

Currently, BART purchases electric supplies from the sources identified above, and NCPA, acting as BART’s Scheduling Coordinator (“SC”), schedules the purchased energy into the California Independent System Operation (“CAISO”) system. The transmission services for delivery from the contracted delivery points to BART’s load (the PG&E Default Load Aggregation Point, or “DLAP”) is settled financially in the CAISO markets. As a Load Serving Entity in the CAISO, BART is also allocated Congestion Revenue Rights to offset some of the locational basis risk and cost between delivery points and the DLAP. PG&E then provides distribution delivery services from the DLAP to BART’s traction power distribution system and various other facilities.

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<sup>1</sup> As used in this RFP, the term “renewable energy” is intended to be synonymous with the “Product” described in the table below in the “Products Sought” section of this RFP.

Through this RFP, BART seeks to purchase renewable energy to meet a significant portion of its electric energy needs in 2019 and subsequent years, for terms of 10 to 30 years. BART is seeking to buy cost-effective, renewable energy pursuant to its Wholesale Electricity Portfolio Policy<sup>2</sup> and California’s energy and environmental objectives. BART’s goal is to purchase electricity from eligible renewable energy resources through this RFP starting as early as 2019 to:

1. Support long-term low and stable operating costs, and
2. Increase the renewable energy content of its wholesale electricity portfolio.

This RFP will only consider off-site renewable projects – i.e. projects not sited on BART property or assets, or otherwise located on the load side of a BART premise electric meter.

BART seeks proposals that best meet these objectives as well as the other criteria specified below.

**Evaluation/RFP Assistance**

BART has retained the services of 3Degrees, Inc. (“3Degrees”) to assist in the RFP process and potential contract negotiations with successful Bidders who respond to this RFP<sup>3</sup>. BART is also a participating member of NCPA. BART may at times authorize 3Degrees or NCPA to represent it during the RFP process. BART will notify Bidders in writing when such authorization has been granted or withdrawn.

**Products Sought**

BART is seeking proposals for the sale and purchase of renewable energy per the following terms:

Product	<p>The Product includes all of the following:</p> <ul style="list-style-type: none"> <li>• As-available electric energy delivered via CAISO Day-Ahead scheduling procedures,</li> <li>• Green attributes/Renewable Energy Credits (“RECs”),</li> <li>• Capacity attributes,</li> <li>• Ancillary services, and</li> <li>• Any other attributes similar to or associated with the foregoing that may be defined by the CAISO or other entities in the future.</li> </ul> <p>Note: Proposals where the Bidder retains some of the Product attributes described herein for multi-use service applications or other</p>
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<sup>2</sup> Available at <https://www.bart.gov/sustainability/policies>.

<sup>3</sup> As used in this RFP, “Bidder,” “Proposer” and “Respondent” are intended to be synonymous with each other, and are intended to be used interchangeably.

	uses will be considered if economically advantageous to BART. Bidders should clearly outline the value proposition to BART if an alternate Product definition is proposed.
Resource Location	<ul style="list-style-type: none"> <li>• In-state (California), or</li> <li>• Out-of-state (WECC)</li> </ul> <p>A project is considered “in-state” if it has its first point of interconnection within a California Balancing Authority (e.g. including CAISO, LADWP, BANC, IID, and TID). A project is considered “out-of-state” if it has its first point of interconnection within the WECC, but not within a California Balancing Authority.</p> <p>Note: This RFP is not open to projects sited on BART property or assets, or otherwise located on the load side of a BART premise electric meter.</p>
Eligible Renewable Energy Resource	<ul style="list-style-type: none"> <li>• Projects must meet the eligibility criteria for eligible renewable energy resources as defined in PUC §399.12 and implemented by the California Energy Commission (“CEC”) pursuant to its RPS Eligibility Guidebook.</li> <li>• Bidders must describe how the deliveries will meet the Portfolio Content Category One (“PCC1”) requirements.</li> <li>• Portfolio Content Category Two (“PCC2”) products may be proposed under the Additional Services Proposal.</li> </ul> <p>Note: Specifications for PCC1 and PCC2 are described in PUC §399.16, California Public Utilities Commission Decision 11-12-052, and other applicable statutes, regulations, and regulatory orders.</p>
Delivery Point (Settlement Point)	<p>Bidders must include at least two pricing options for each bid, with one pricing proposal for each of the following Delivery Points:</p> <ol style="list-style-type: none"> <li>1) Project Pnode, i.e. the CAISO pricing node assigned to the generator, and</li> <li>2) Trading Hub, i.e. one of the four following points: PG&amp;E DLAP, NP15, SP15, or COB.</li> </ol> <p>Bidders may also include pricing at other Delivery Points for BART’s consideration (in its discretion) but pricing options must include pricing for both of the foregoing Delivery Points.</p>
Installed Capacity	<ul style="list-style-type: none"> <li>• Minimum of five (5) MW.</li> </ul>

Annual Generation Offered Volume	<ul style="list-style-type: none"> <li>Between 15,000 - 350,000 MWh in the first contract year.</li> </ul> <p>Bidders are encouraged to submit offers for a range of capacities and generation volumes to support BART portfolio optimization.</p>
Delivery Start Date	<ul style="list-style-type: none"> <li>Between January 1, 2019 and December 31, 2024.</li> </ul>
Delivery Term	<ul style="list-style-type: none"> <li>Minimum of 10 years, up to 30 years.</li> </ul>

**Additional Services Proposals**

BART appreciates that Bidders may be able to offer alternate pricing, structures, products, complementary services, or terms that may increase the attractiveness of a Bidder’s proposal but differ from the terms described in the previous section of this RFP or in the Term Sheet in Exhibit C. In particular, BART is interested in proposals that address the following market risks:

1. Exposure to adverse market conditions (e.g. negative market prices, constrained market events caused by ramping, etc.)
2. Mismatch between the renewable generation’s delivery shape and BART’s load profile (representative load-shape data included as Exhibit E)
3. Uncertainty of intermittent product deliveries
4. Potential expansion of CAISO to a regional market

BART embraces creativity and encourages Bidders to present additional services or product offerings to mitigate these and any other risks to enhance the standard Product described above (including the potential ability for the project site to accommodate additional renewable capacity and/or co-located storage at a future date). Proposing unique contract provisions to address these risks is also welcome.

**Notice of Intent to Bid**

By May 15, 2017 at 5:00 PM Pacific Prevailing Time (“PPT”), Bidders shall return a completed Notice of Intent to Bid Form (“NOI”), as found in Exhibit A, via email to RenewableRFP@bart.gov. The subject line of the email shall be: “BART Renewable Energy RFP NOI.”

**Webinar**

BART and 3Degrees will conduct a webinar to present the RFP protocol as well as answer some or all of Bidder questions, at BART’s discretion. Instructions for joining the Webinar will be provided to all Bidders who submit the NOI by the NOI deadline. Webinar attendance is encouraged but not required. The Webinar is scheduled for May 18, 2017 at 1:00 PM PPT.

### **Bidder Questions**

To promote accuracy and consistency of information provided to all participants, Bidders are encouraged to submit questions. Questions will only be accepted via email to [RenewableRFP@bart.gov](mailto:RenewableRFP@bart.gov) and the subject line of the email shall be "BART Renewable Energy RFP Question." The deadline for submitting questions is May 24, 2017 at 5:00 PM PPT. Bidders are encouraged to submit questions as soon as possible, including with their NOI so that some or all of the questions may be addressed during the Webinar.

Answers to Bidders' questions will be provided in writing via email by June 1, 2017, to all Bidders who provided a complete NOI. BART reserves the right to combine similar questions, rephrase questions or decline to answer questions, at its sole discretion.

### **RFP Schedule**

The table below summarizes the RFP schedule, with details of each event provided further below. The RFP schedule is subject to change at BART's discretion, and such change(s) will be announced by email to all Bidders who provide a complete NOI by the NOI deadline.

Event	Date
Issuance of RFP	May 8, 2017
Deadline to submit Notice of Intent to Bid Form	May 15, 2017, by 5:00 PM PPT
Bidder Webinar	May 18, 2017, at 1:00 PM PPT
Deadline to submit questions	May 24, 2017, by 5:00 PM PPT
Responses to questions provided	June 1, 2017
Deadline to submit proposals	June 9, 2017, by 5:00 PM PPT
Notification of initial shortlisted Bidders	July 13, 2017
Notification of final shortlisted Bidders	August 4, 2017
PPA negotiations	August- November 2017 (estimated)
Final contract approval	November 2017 (estimated)
Execution of PPA	December 2017 (estimated)

### **Issuance of RFP**

BART posted this RFP at [www.bart.gov/sustainability/renewable-RFP/2017](http://www.bart.gov/sustainability/renewable-RFP/2017) and is issuing this RFP to potential Bidders by email. BART reserves the right to distribute this RFP to additional prospective Bidders after the Issuance Date at its sole discretion. Such late distribution will not affect the remainder of the RFP schedule outlined herein.

### **Proposal Submittal**

Bidders must deliver their RFP response via email to [RenewableRFP@bart.gov](mailto:RenewableRFP@bart.gov) by the deadline listed above. The subject line of the email shall be: "BART Renewable Energy RFP Response." Proposals must provide all of the information requested in this RFP. In addition, each proposal must include a signed attestation by an authorized signatory of the Bidder that the Bidder has not and will not engage in collusion with other Bidders or other unlawful or unfair business practices in connection with this RFP. BART reserves the right to contact any Bidders to clarify submitted proposals. BART will consider all complete proposals submitted by the deadline listed above. Incomplete proposals may be accepted, supplemented, or disqualified at BART's discretion. Bidder will promptly notify BART of any material change in circumstances that may affect the Bidder's ability to fulfill the terms of its proposal, at any time from proposal submission until the earliest of execution of a definitive agreement, BART's rejection of the proposal, or Bidder's withdrawal of the proposal.

BART shall not be responsible for any costs incurred by Bidder to prepare, submit, negotiate, contract, or participate in this RFP process.

### **Bidder Shortlist**

BART intends to select an initial shortlist of proposals for further due diligence and potential Bidder interviews. After such due diligence and evaluation, a final shortlist of Bidder(s) will be determined with which to enter into contract negotiations.

### **Contract Negotiation and Execution**

A bidder that successfully moves through the due diligence process will enter PPA negotiations with BART. BART may seek commercial advice from 3Degrees, NCPA or another party during this RFP process. Additionally, BART may at times authorize 3Degrees or another party to represent it in due diligence activities or during negotiations and will notify Bidders when such authority has been granted or withdrawn.

BART may be required to obtain approval of the BART Board of Directors prior to execution of a negotiated PPA. Until a definitive agreement is negotiated, approved by BART, and signed and delivered, no party shall have any legal obligations, expressed or implied, or arising in any other



manner, as a result of this RFP, any shortlisting status, or the course of negotiations. BART will discuss approval requirements with shortlisted Bidders.

BART reserves the right to begin, terminate, or restart discussions with any successful Bidder at any time or to execute one, more than one or no contracts as part of this RFP.

### **Proposal Requirements**

All proposals must be submitted by the deadline included in the RFP schedule included herein.

BART desires to contract with renewable energy projects that can most economically and reliably serve its energy *needs*. All proposals must include the following sections:

1. Executive Summary
2. Developer Background
3. Proposed Transaction
4. Pricing
5. Project Overview
  - i. Site Control
  - ii. Energy Resource
  - iii. Development Plan
  - iv. Interconnection Status
  - v. Permitting Status
  - vi. Financing
  - vii. Construction & Equipment
  - viii. Operation

Each of these sections and the content sought is described below.

1. Executive Summary

Bidder shall (i) provide a high-level overview of each proposal (no longer than one page), and (ii) populate the “Bidder Information Template,” included as Exhibit B.

2. Developer Background

Bidder shall describe its experience developing, building, financing, and operating renewable energy projects of similar size and technology to that being proposed. Please summarize the Bidder’s portfolio of projects in operation, under contract, under construction and in late stage development, highlighting those facilities located in the

state hosting the proposed project. Additionally, Bidder shall detail its corporate finance structure, credit rating and access to capital.

3. Proposed Transaction

The Bidder shall describe the proposed transaction. At a minimum, Bidder must provide a base offer that conforms to the terms and conditions specified in the Term Sheet included with this RFP as Exhibit C. Bidder may also propose alternative terms that result in a more attractive opportunity to BART. Bidder should clearly identify any elements of bid variants that are mutually exclusive.

4. Pricing

Prices and costs must be “all in” and include (i) all costs to deliver energy to the specified Delivery Point and RECs via the Western Renewable Energy Generation Information System (“WREGIS”) (or any successor system) during the entire contract term, and (ii) all costs required by law and any relevant CAISO market rules and other regulations. BART shall not be responsible for any costs or fees associated with the delivery of the product other than the specified power purchase price.

All Bidders *must* provide, for each project, two pricing options as part of a successful Bid. The two pricing options are: i) Delivery Point at the project Pnode (i.e. the CAISO pricing node assigned to the generator), and ii) Delivery Point at a trading hub (i.e. one of the following four points: PG&E DLAP, NP15, SP15, or COB). Bidder may optionally include pricing for other, additional, Delivery Point locations for BART’s consideration (in its discretion) but pricing must include a separate price for both of the foregoing Delivery Points.

If the proposal involves a price that escalates or de-escalates over time, the escalation or de-escalation rate must be explicitly stated. BART prefers certain pricing (i.e. non-index based) though not necessarily flat pricing, and encourages Bidders to provide a price schedule for the duration of the PPA term to clearly define the annual contract price.

Bidders are encouraged to optionally include a pre-payment pricing structure but in all cases, must also provide pricing without a pre-payment pricing structure.

5. Project Overview

- *Site Control*

Bidder shall detail the type of site control (i.e. option to lease, lease, option to purchase, ownership) and the current status of such site control (i.e. complete or the percentage of needed land currently contracted and expected timing for full site control). If the site is leased, describe the remaining term of the lease and any material conditions related to the lease. Additionally, please comment on the status of site control for the interconnection path.

Minimum Requirement: 100% site control for project site and interconnection path 18 months prior to the proposed commercial operation date (“COD”) of the project.

- *Energy Resource*

Provide a fully completed 8,760 Generation Profile Template as an Excel file (included with this RFP as Exhibit D), as well a description of how such profile was generated and the data that was used to generate the profile.

- *Development Plan*

Bidder shall detail a credible plan to achieve the proposed COD. Please provide a schedule of key milestones and their expected achievement date, including a guaranteed COD.

- *Interconnection Status*

Each proposal must describe the interconnection status of the project, including, for projects interconnecting within the CAISO, whether the project requested Full Capacity Deliverability Status, the status of any deliverability allocation to the project, and identification of the Local Capacity Area applicable to the project (if any). No studies or interconnection agreements need to be submitted with the proposal, but this section should describe (as applicable): (i) the project’s status in the interconnection process, (ii) the results of any studies performed during the interconnection process (or applicable studies conducted by consultants), including the expected timing and costs of interconnection for the project if no interconnection agreement has been executed, and, if applicable, (iii) the terms of any interconnection agreements, including timing and costs of interconnection for the project. Preference will be given to projects with more certain paths to interconnection with regard to timing and costs. In addition, the project’s progress in the interconnection process must support the proposed COD. If a Bidder is shortlisted, additional documentation may be required. Bidders are encouraged to include third-party congestion and curtailment analysis as well.

Minimum Requirement: Must have submitted an application with the applicable entity for the interconnection agreement for the specific project.

- *Permitting Status*

Bidder shall describe all of the studies and permits required for construction and operation (e.g. Conditional Use Permit, Notice of Determination, Environmental Impact Report, etc.), the status of each and the expected timing for obtaining any outstanding permits. Preference will be given to projects with more certain paths to final permitting with regard to timing. In addition, the project’s progress in the permitting process must support the proposed COD.

Minimum Requirement: Must have commenced the process of obtaining the applicable key discretionary permit for the project.

- *Financing*

Detail the financial capability of the company to meet its obligations under the proposed PPA, including the planned approach for financing project development and construction. Identify the entity that will be the project's long-term controlling owner.

- *Construction & Equipment*

Describe and confirm the Bidder's ability to procure Engineering, Procurement, & Construction services to support its proposal. For a Bidder proposing wind energy projects, please comment on your ability to qualify the project for the federal Production Tax Credit.

- *Operation*

Bidder shall describe plans for long-term ownership and operation of the project, including how Bidder plans to schedule energy deliveries under the proposed PPA. Bidder shall state whether the proposal assumes that BART will provide SC Services (per the Term Sheet) or that they, or a third-party, shall provide such SC Services. If the Bidder's proposal includes a unique scheduling arrangement in order to provide an economically advantageous deal structure to BART, then the Bidder shall clearly outline the roles and responsibilities of the Bidder and BART.

### **Evaluation of Proposals**

BART may procure renewable energy and additional services from those Bidders whose proposals, in BART's sole judgement, represent the greatest value to BART when compared with other available options.

BART will, in its sole discretion, evaluate each complete proposal submitted by the RFP deadline to determine which proposals are likely to provide the greatest overall value to BART. BART will perform an initial screening to identify and eliminate any proposal that is nonresponsive to this RFP, does not meet the minimum requirements set forth in this RFP, is clearly not economically competitive with other proposals, or is submitted by a Respondent that lacks appropriate creditworthiness, sufficient financial resources, or qualifications to provide dependable and reliable service.

Once it is determined that a proposal has met the requirements of the RFP, it will be evaluated based on (i) how closely the proposed transaction meets BART's goals and requirements described in the "Background and Objectives" section of this RFP, (ii) the economics and potential risks of the transaction, and (iii) the reasonableness and credibility of the proposals with regard to project development and the proposed transaction.

As part of this review process, BART shall perform quantitative assessments of each proposal and subsequently rank them based on the costs and benefits to BART, and the certainty of such costs and benefits. BART shall also evaluate each proposal qualitatively. All proposals will be evaluated based on factors that include, but are not limited to: proposal term, technology, energy source, location, delivery point, timeline, environmental benefits as well as the Bidder's experience, public credit rating, financial stability, extent of off-balance sheet financing, product price and terms, delivery, service levels, and other relevant criteria. Evaluations will be based on information provided during the RFP process, possible oral interviews with the Bidder, email requests, information already known by BART or its advisors, and other publicly available information.

BART retains the right at any time, at its sole discretion, to reject any proposal for any reason at any time, and reserves the right to request information from any Bidder regarding their proposal at any time during the process. BART also retains the right at any time, at its sole discretion, to: (a) change the evaluation criteria for any reason; (b) terminate further participation in this process by any Bidder; (c) negotiate with any Bidder to maximize BART value and accept or reject any definitive agreement; and/or (d) modify, suspend or terminate this RFP as it deems appropriate in its sole discretion at any time. BART has the right to take the above-stated actions with respect to any or all proposals, all without notice and without assigning any reasons and without liability to BART or anyone acting on BART's behalf. BART will not be liable in any way, by reason of such withdrawal, rejection, suspension, termination or any other action described in this paragraph to any Bidder, whether the Bidder submits a bid or not.

All determinations made by BART with respect to any Bidder or its proposal(s), including the determinations described in this RFP, shall be made by BART in its sole discretion and without liability. These determinations will be final and are not subject to review. 3Degrees and NCPA may assist BART in the evaluation of Bidders' proposals.

### **No Guarantee of Offer or Agreement**

This RFP does not constitute an offer from BART to buy and creates no obligation to execute any agreement as a consequence of this RFP. Under no circumstances shall BART be bound by the terms of any Bidder's proposal nor any subsequent agreement until BART has obtained all necessary approvals of its management and the BART Board of Directors and all the conditions precedent, if any, set forth in a fully executed agreement have been satisfied or waived.

BART reserves the right in its sole discretion to: (i) select multiple Bidders or no Bidders at all, or (ii) negotiate one or more agreements on a bilateral basis outside the terms of this RFP. BART shall not be liable to any Bidder submitting a proposal in response to this RFP.

Each Bidder's costs for developing its proposals, including all RFP review, bid preparation and submittal costs, are entirely the responsibility of the applicable Bidder, and BART shall not have any responsibility or liability for such costs. BART is not responsible for returning any materials

submitted by a Bidder as part of its proposal.

### **No Conflicts**

Bidder agrees that to its knowledge no Board member, officer, or employee of BART has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of Bidder, and that if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other party or parties, even if such interest would not be considered a conflict of interest under Article 4 of prohibition applicable to specified officer, Chapter 1 of Division 4 of Title 1 (commencing with Section 1090) of the Government Code of the State of California.

### **Prevailing Wages**

It is BART's intent that wages paid for all work performed as a result of any and all contracts executed as part of this RFP meet or exceed prevailing wages as described in this section. Therefore, all executed contracts resulting from this RFP shall include prevailing wage provisions mandating that all workers employed on or in support of the project(s) by the Bidder or through subcontractors as a result of the contract execution be paid not less than the prevailing rate of wages for the appropriate craft, classification, type of worker and locality as determined by the Director of the State Department of Industrial Relations in accordance with Division 2, Part 7, Chapter 1 of the California Labor Code, or as set out in the wage determination of the U.S. Secretary of Labor, whichever is higher. Nothing herein shall require BART, the Bidder, the Bidders' contractors, or subcontractors to comply with, or assume liability or obligations created by other inapplicable provisions of the California Labor Code.

### **Non-Discrimination**

It is the policy of BART to ensure that Bidders who contract with the District do not discriminate or give a preference in the award of subcontracts on the basis of race, national origin, color, ethnicity, or gender.

### **Small Business Participation**

Although there are no small business goals related to this RFP, it is the policy of BART to encourage Bidders to utilize small businesses to the maximum extent possible and ensure adherence to BART's non-discrimination policy for subcontracting described above. Bidder shall, as part of its Proposal(s) in the Bidder Information Worksheet for each Project, describe the subcontracting activity to small businesses, including subcontracting activity to disabled-veteran-owned, minority-owned and women-owned businesses, and may optionally describe Bidder's subcontracting programs or activity in separate additional documentation included with the

Proposal. Contracts executed as a result of this RFP will include a reporting requirement on the percentage of procurement spend with small businesses for subcontracted work during the project construction phase, if applicable.

### **Confidentiality**

Bidder acknowledges that BART is a public agency subject to the disclosure requirements of the California Public Records Act, Cal. Gov. Code § 6250 et seq. (“CPRA”). If documents or information submitted to BART contain Bidder’s proprietary and confidential information and Bidder claims that such information falls within one or more CPRA exemptions, Bidder must clearly mark such information “CONFIDENTIAL AND PROPRIETARY” and identify the specific lines containing such information (the “Confidential Information”) and the CPRA exemption applicable to such information. Except for disclosures to BART’s directors, officers, employees, agents, representatives or advisors (including financial advisors, attorneys and accountants), BART shall disclose such Confidential Information to third parties only to the extent that such disclosure is required by California law (including, without limitation, the California Constitution, the CPRA and the Brown Act) as set forth in this Section.

In the event of a third party request for BART to disclose such Confidential Information, BART shall make reasonable efforts to provide notice to Bidder prior to disclosure. If Bidder contends that any Confidential Information is exempt from the CPRA and wishes to prevent disclosure, Bidder shall obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Alameda County, California, before BART’s deadline for responding to the CPRA request. If Bidder fails to obtain such remedy prior to BART’s deadline for responding to the CPRA request, Bidder agrees that BART may disclose the requested Confidential Information. Bidder further agrees that BART shall have no liability to Bidder arising out of any disclosure by BART of any Confidential Information before Bidder has timely obtained an order, injunctive relief or other appropriate remedy to prevent BART from making the requested third party disclosure.

### **Governing Law**

This RFP shall be governed by and construed in accordance with the laws of the State of California.

### **General Provisions**

BART will not be liable for any technical malfunction during communication transit. BART will only consider questions, Notices of Intent to Bid Forms, proposals, or other communications to be timely and complete if they are received electronically at [RenewableRFP@bart.gov](mailto:RenewableRFP@bart.gov) not later than the relevant deadline. Bidders may request confirmation of receipt of communications and materials, and BART will attempt to accommodate reasonable requests, but assumes no

obligation or associated liability related to such accommodation.

Those Bidders who submit proposals agree to do so without legal recourse against BART, its Board, managers, agents, or contractors for rejection of their proposal(s) or for failure to execute an agreement for any reason. BART shall not be liable to any Bidder or party at law or in equity for any reason whatsoever for any acts or omissions arising out of or in connection with this RFP. By submitting its proposal(s), each Bidder waives any right to challenge any valuation by BART of any proposal of any Bidder or any determination of BART to select or reject any proposal of any Bidder or take any action contemplated by this RFP, any other decision of BART contemplated by this RFP or any resulting agreement related to a selected proposal. Each Bidder, in submitting its proposal(s), irrevocably agrees and acknowledges that it is making its proposal(s) subject to and in agreement with the terms of this RFP.

### **Exhibits**

- A. Notice of Intent to Bid Form
- B. Bidder Information Template
- C. Term Sheet
- D. Generation Profile Template
- E. BART Representative Load Shape Data