

# **BART Property Development Unsolicited Proposal Procedure**

## **Article I. Introduction**

**Section 1.01** The San Francisco Bay Area Rapid Transit District (BART) is a steward of a large-scale public investment. This includes real estate assets essential to BART's transit operations, and real estate assets that can be used to catalyze transit-oriented development in furtherance of BART's purpose and goals. Unsolicited proposals can be a valuable means for BART to partner with local communities and/or the development community to produce innovative or unique developments that deliver community benefits in excess of what is typically provided by the market. An unsolicited proposal is a written proposal that is submitted to BART on the initiative of a prospective offeror (organizations or individuals) for the purpose of developing or improving property owned by BART and is not in response to a formal or informal request issued by BART.

**Section 1.02** As a public entity, BART has an obligation to act as a good steward of public funds. Laws and regulations require BART to seek full and open competition for most procurement opportunities, including land development. This procedure is intended to facilitate the proper receipt and evaluation of unsolicited proposals while preserving the integrity of the procurement process and conforming to applicable laws and regulations.

**Section 1.03** BART is under no obligation to accept an unsolicited proposal, or to enter into any agreements arising from an unsolicited proposal.

## **Article II. Definition of Unsolicited Proposal**

**Section 2.01** An unsolicited proposal is a proposal that is:

- (a) Innovative, unique, feasible
- (b) Independently originated and developed by the proposer.
- (c) Meets BART TOD Guidelines
- (d) Sufficiently detailed that its benefits in support of BART's goals and responsibilities are apparent
- (e) Not an advance proposal for property that BART plans/intends to acquire/develop through traditional competitive methods in the next 12 months
- (f) Not an offer responding to a currently or previously advertised (within the last 12 months) BART Request for Qualifications or Proposals.
- (g) Submitted by a well-capitalized development team with experience delivering on projects with similar scale and uses to those proposed

**Section 2.02** Unsolicited Proposals for Development Rights Review Process

**Section 2.03** This process would be used for those who wish to ultimately enter into an Exclusive Negotiation Agreement with BART in order to procure development rights to a parcel of land owned by BART in accordance with BART's TOD policy and guidelines.

## Article III. Step 1: Technical Review

**Section 3.01** Proposer will submit a written inquiry to BART's Real Estate Manager that will include the following information:

- (a) Written description of proposed project that includes uses, approximate density, planned improvements, and analysis of how the proposal meets BART's TOD guidelines, TOD performance targets, TOD workplan criteria, and current zoning.
- (b) Description of any partnerships, including any letters of support
- (c) Description of how proposal meets at least 4 of the Step 1 review criteria
- (d) Ridership projections, including ridership that would be considered "off-peak" or "reverse"
- (e) Concept plans and renderings if available
- (f) Description of current uses
- (g) Explanation of unique and/or innovative aspects of proposal
- (h) Anticipated impacts and benefits to BART
- (i) Map that includes subject property location, distance to nearest BART station, adjacent land ownership, current zoning
- (j) Development Team Description
  - (i) *Team members/roles and responsibilities*
  - (ii) *Relevant experience*
  - (iii) *Financial Capability*
- (k) Reimbursement Agreement and deposit (\$25,000)
  - (i) *All staff review time will charged towards the deposit.*
  - (ii) *All review costs, including any consultant costs, will be reimbursed by proposer regardless of outcome of Step 1 review*
  - (iii) *Step 1 review is estimated to be 30 to 40 hours of staff time but can vary depending on complexity of proposal*
  - (iv) *When the balance falls to \$5,000 or below, the proposer will be asked to deposit additional funds based on the current estimate needed to complete review.*
  - (v) *If funds remain after Step 1 review, they will either be returned to the proposer or the proposer can choose to have them apply to Step 2 review, if applicable.*

**Section 3.02** Review Criteria:

- (a) Meets unsolicited proposal definition
- (b) Staff capacity exists to continue evaluation
  - (i) *Applicant must address how proposal meets BART work plan priority criteria*
- (c) Determination made that there is not a transit operation need that precludes development of the site or would need to be incorporated into the project for it to be feasible
- (d) Proposal furthers BART's Performance Targets
- (e) Comparison of how proposal compares to planned uses and densities (including under AB2923 if applicable) by the following elements:
  - (i) *Number of housing units*
  - (ii) *Number of affordable housing units*
  - (iii) *Number of jobs*
  - (iv) *Ridership*

(f) Meets four or more of the following:

- (i) *Offers benefit that has not been previously identified or had been identified but not budgeted for*
- (ii) *Provides a unique or significant active transportation access opportunity*
- (iii) *Significant partnership with City and/or other public or non-profit organization.*
- (iv) *Includes significant community benefit (as identified by previous plans)*
- (v) *Includes unique or innovative methods of development, approaches, or financing*
- (vi) *Existing zoning supports BART density guidelines*
- (vii) *Catalytic project as defined by BART's TOD policy*
- (viii) *Proposes a use that is desired by BART and difficult for the market to deliver (i.e integrated affordable housing in excess of 20%)*
- (ix) *Delivers a concentration of jobs with identified end user.*
- (x) *Delivers a regional use with substantial economic impact and ridership*
- (xi) *Adjacent land is integrated creating a more impactful project*
- (xii) *Demonstrates deep understanding of the community and city approval process*

### **Section 3.03 Review Process**

- (i) *BART Board notified that a proposal has been received*
- (ii) *Technical review may include a meeting between proposer and BART*
- (iii) *Technical review shall include soliciting input from applicable BART departments*
- (iv) *Technical review may also include soliciting input from the City where the project is located, or another public agency potentially impacted by the project*

### **Section 3.04 Step 1 review results:**

- (i) *BART Real Estate Manager determines proposal does not meet review criteria and will no longer be evaluated*
- (ii) *BART Real Estate Manager determines proposal meets technical review and can proceed to Step 2*
  - 1) BART Board Informed of Staff decision
  - 2) BART will provide developer any design criteria determined from Step 1 review

## **Article IV. Step 2: Substantive Review**

### **Section 4.01 Proposer will submit the following information:**

- (a) Concept Plan
  - (i) *Location and layout of proposed development*
  - (ii) *Building type, footprints, and planned use*
  - (iii) *Proposed lot lines, lot widths, and setbacks*
  - (iv) *Proposed parking (public and private identified)*
  - (v) *Building heights and stories*
  - (vi) *Proposed public spaces (if any)*
  - (vii) *Proposed access, including those required for ADA*
  - (viii) *Proposed EVA routes*
  - (ix) *Proposed BART maintenance and operations access/parking*
  - (x) *Proposed multimodal infrastructure*
  - (xi) *Existing station entrances and roads*
  - (xii) *Available architectural renderings or sketches*
- (b) Written Narrative

- (i) Highlights of proposal including innovative and unique aspects of proposal*
- (ii) Description of potential BART impacts and benefits*
- (iii) Ridership analysis that includes anticipated non-peak hours or direction trips*
- (iv) If applicable, affordable housing percentage of residential units, number of units, income level.*
- (v) Community benefits*
- (vi) BART TOD policy and guidelines analysis*
- (vii) Anticipated entitlement process*
- (viii) Proposed TDM and/or multimodal transportation improvements*
- (ix) Response to any operational impacts identified during the technical review process*
- (x) Community engagement process*
- (xi) Implementation/phasing plan*
- (xii) Addresses Step 2 review criteria*
- (xiii) Development Team description*
  - 1) Team members and relevant experience
- (c) Financial Plan
  - (i) Preliminary Pro Forma*
  - (ii) Development Financing Plan*
  - (iii) Market conditions summary*
  - (iv) BART Financial Offer*
- (d) Reimbursement Agreement and deposit (\$25,000)
  - (i) Proposer will be responsible for all BART costs related to proposal review including consultant/outside attorney costs.*
  - (ii) All review costs will be reimbursed by proposer regardless of outcome of Step 2 review*
  - (iii) When the balance falls to \$5,000 or below, the proposer will be asked to deposit additional funds based on the current estimate needed to complete review*
  - (iv) Any remaining funds after Step 2 review will be reimbursed to proposer*
- (e) Any other information determined by BART to be required during Step 1 review

#### **Section 4.02 Review Process**

- (a) Step 2 review will be conducted within 120 days of the proposal being deemed complete unless developer and BART agree to a longer timeline to accommodate required studies that may be necessary for BART's review
- (b) BART staff time is estimated at 150-250 hours but will depend on project complexity
- (c) BART may utilize outside consultants for other studies as appropriate including ridership analysis
- (d) Evaluation Committee will evaluate proposal and will consist of representatives from BART, including representation from various departments.
- (e) Evaluation Committee will make a recommendation on next step to the BART board.

### **Section 4.03 Review Criteria**

- (a) Provides an opportunity that is not readily available through the open market including the incorporation of adjacent parcels
- (b) Includes unique or innovative methods of development, approaches, or financing
- (c) Integration with transit facilities
- (d) Transit benefits
- (e) Community benefits
- (f) Depth and breadth of Community Engagement Plan
- (g) Significance of partnerships
- (h) Significance of active transportation infrastructure (as determined by need, cost, or amount)
- (i) Economic and regulatory feasibility/certainty
- (j) Qualifications of development team and Proposer
- (k) Quality of design
- (l) Small business participation
- (m) Financial return to BART
- (n) Feasibility and timeliness of implementation/phasing plan
- (o) Significant ridership increase
- (p) Any other factors deemed appropriate for the proposal

### **Section 4.04 Results of Step 2 review (Board action required)**

- (a) No further action, proposal is rejected
- (b) Competitive RFP/RFQ process initiated
- (c) Determination made that proposal qualifies for sole source
  - (i) *Refer to section 5.07*

## **Article V. Competitive RFP/RFQ process**

**Section 5.01** Purpose: Ascertain whether other parties may desire and be able to offer a project within a similar scope to that contemplated within the original Unsolicited Proposal or could provide transit and/or community benefits of a similar magnitude.

**Section 5.02** Notification of BART's interest in development on site of received unsolicited proposal:

- (a) BART will open a competitive process that will include the following:
  - (i) *Basic elements of the original Unsolicited Proposal*
  - (ii) *Include specific development goals/criteria by which proposals would be evaluated*
  - (iii) *Include submittal requirements*
  - (iv) *Give adequate opportunity to compete (30 – 90 days depending on complexity of project)*

### **Section 5.03** Process:

- (a) Evaluation Committee formed in anticipation of multiple proposals
- (b) Proposer of original unsolicited proposal may choose to submit a new proposal or additional information
- (c) If no additional proposals are received:
  - (i) *BART board can approve the developer selection resulting from the original Unsolicited Proposal evaluation and a non-binding term sheet allowing sufficient time for the developer and BART staff to complete due diligence and negotiate final terms (typically, the exclusive negotiating agreement) based on a staff recommendation*
- (d) If additional proposals are received:
  - (i) *Evaluation Committee engaged*
  - (ii) *Written proposals are evaluated*
  - (iii) *Interviews conducted with teams of the top-ranking proposals*

### **Section 5.04** Review Criteria:

- (a) BART TOD guidelines
- (b) All review criteria used to evaluate original Unsolicited Proposal
- (c) Any additional criteria/goals included in the competitive solicitation

### **Section 5.05** Results:

- (i) *Reject all proposals*
- (ii) *BART board to approve the developer selection resulting from the Competitive RFP evaluation and a non-binding term sheet allowing sufficient time for the developer and BART staff to complete due diligence and negotiate final terms (typically, the exclusive negotiating agreement) based on a staff recommendation*

### **Section 5.06** Possible exceptions to Competitive RFP Process

- (a) There are conditions by which BART may choose not to publicly notice an unsolicited proposal and move forward with a sole source negotiation.
  - (i) *If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, as determined by BART*
  - (ii) *If the offeror is the City in which the property is located, or offeror has partnered with the City in a significant way.*
  - (iii) *If the offeror is an adjacent landowner and the combination of the parcels results in the entire project maximizing allowed densities.*
  - (iv) *BART Board of Directors finds that the proposal has unique and beneficial attributes that have not been provided in previous competitive Request for Qualifications or Proposal processes.*
- (b) If development of the land is subject to FTA then an exception to the competitive RFP process may not be possible.