

Attachment I – VTA Unsolicited Proposal Procedure

1.0 General

- (a) VTA welcomes Unsolicited Proposals from the private sector, non-governmental organizations, or academic institutions. This Unsolicited Proposal Procedure applies to any entity submitting an Unsolicited Proposal to VTA.
- (b) An "**Unsolicited Proposal**" is a written proposal that is submitted to VTA on the initiative of the submitter for the purpose of developing a partnership that is not in response to a formal or informal request issued by VTA.
- (c) An Unsolicited Proposal should be (1) innovative and pragmatic; (2) independently originated and developed by the proposer; (3) prepared without VTA's supervision, endorsement, direction, or direct involvement; and (4) sufficiently detailed that its benefits in support of VTA's mission and responsibilities are readily apparent.
- (d) An Unsolicited Proposal is distinguishable from a project already part of VTA's long-term budget planning process and plan if it uses innovative but pragmatic solutions that offer added value, such as enhanced financing options, improved customer service outcomes or advanced delivery dates. Sales tax bonds and certificates of participation are not unique and innovative financing tools. An Unsolicited Proposal is not (1) an offer responding to VTA's previously published expression of need or request for proposals; (2) an advance proposal for property or services that VTA could acquire through competitive methods (submitted within the budget year before release of a published request for proposal); (3) a replacement for an existing Contract that is already in effect; or (4) an opportunity to stipulate the means and methods of an existing contractual relationship.
- (e) All Unsolicited Proposals will be submitted to the Procurement and Contracts Department by email sent to procurement@vta.org, with "Unsolicited Proposal" as the subject line.
- (f) VTA receives and evaluates Unsolicited Proposals using a two-phased approach, as described below. In Phase One, VTA evaluates conceptual proposals. If there is interest in a conceptual proposal, the proposer may be asked to submit a detailed proposal for evaluation in phase two.
- (g) VTA may, at any time, choose not to proceed further with any Unsolicited Proposal.

2.0 Phase One – Conceptual Proposal

- (a) The purpose of Phase One is for VTA to receive a written, concept-level proposal and to screen the proposal to determine whether to request additional and detailed information in phase two.

- (b) Following evaluation of the conceptual proposal, VTA will notify the proposer of VTA's decision whether to discontinue the process, proceed to phase two, or pursue a competitive Procurement.

3.0 Phase Two – Detailed Proposal

- (a) The purpose of phase two is for VTA to receive more detailed technical and financial information to fully understand and evaluate the proposal. At the conclusion of Phase 2, VTA will decide whether to forego the proposal, to proceed to a sole source agreement, or to pursue a competitive Solicitation.
- (b) If VTA determines to proceed to phase two, VTA will issue a request for a detailed proposal, which will include evaluation criteria and requirements to be included in the detailed proposal, such as scope, proposed pricing, and schedule.
- (c) VTA may, at its sole discretion, invite the proposer to present to and discuss the proposal and context with the evaluation team.

4.0 Proof of Concept

VTA may, at its sole discretion, choose to work with an outside party to prove a concept as a means of better understanding an Unsolicited Proposal and its application and value to VTA.

5.0 Prohibition of Use of Confidential Information

If VTA decides to pursue a competitive Procurement, VTA personnel will not use any data, any confidential patented, trademarked, or copyrighted part of an Unsolicited Proposal, or confidential technical or financial proprietary information as the basis, or part of the basis, for a Solicitation or in negotiations with any other firm unless the proposer is notified of and agrees to the intended use. Concepts or ideas are not considered proprietary by VTA, but specific implementing methodologies that are unique to the proposer will be recognized.

6.0 Public Records Act

- (a) All requests for information related to an Unsolicited Proposal will be handled and managed by VTA in accordance with the California Public Records Act.
- (b) Information related to an Unsolicited Proposal that is not otherwise a public record pursuant to the California Public Records Act will be confidential and will not be open to public inspection or disclosed as public information.
- (c) Records may only be withheld pursuant to a qualifying exemption as specified in the California Public Records Act. As required by the California Public Records Act, VTA, at its discretion, will make the ultimate decision as to whether or not any records qualify for an exemption from release pursuant to the California Public Records Act.

- (d) Proposers submitting an Unsolicited Proposal may conspicuously and clearly mark the relevant portions of their Unsolicited Proposal as "Trade Secret," "Confidential," or "Proprietary." A proposer shall not be permitted to designate as a "Trade Secret," "Confidential," or "Proprietary," the name of the proposer, the Unsolicited Proposal price, or any other information that is not actually a "Trade Secret," "Confidential," or "Proprietary." Further, a proposer shall not be permitted to make blanket designations that do not identify the specific information or materials the proposer believes is a "Trade Secret," "Confidential," or "Proprietary." Any such blanket designation may be cause for VTA to treat the entire Unsolicited Proposal or other submitted information as public information that does not include a "Trade Secret," "Confidential," or "Proprietary" information.
- (e) No designation by a proposer of information or materials as "Trade Secret," "Confidential," or "Proprietary" will be binding on VTA or determinative of any issue relating to the application of, or treatment of such information or materials under, the California Public Records Act or any other Applicable Law. VTA will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.
- (f) VTA will use its reasonable efforts to inform a proposer of any request for any financial records or documents marked "Trade Secret," "Confidential," or "Proprietary" provided by that proposer to VTA. In the event the proposer wishes to prevent disclosure of the requested records, the proposer's sole recourse will be to independently pursue legal action to obtain a court order enjoining the disclosure of the requested records.
- (g) In the event of litigation concerning the disclosure of any records, VTA's sole involvement will be as a stakeholder, retaining the records until otherwise ordered by a court. The proposer, at its sole expense and risk, will be fully responsible for any and all fees for prosecuting or defending any action concerning the records and will indemnify and hold VTA harmless from all costs and expenses, including attorney's fees in connection with any such action.