



**REQUEST FOR PROPOSAL**

**PORTABLE HYDRAULIC RERAILING EQUIPMENT**

**SOLICITATION NO. OP-EQ-20-001**

Sonoma-Marín Area Rail Transit District (SMART)  
5401 Old Redwood Hwy., Ste. 200  
Petaluma, CA 94954  
Tel: (707) 794-3330

Contact Person:

Ken Hendricks – Procurement Coordinator  
khendricks@sonomamarintrain.org  
(707) 285-8256

**REQUEST FOR PROPOSAL ISSUED: FEBRUARY 7, 2020**

**DEADLINE FOR PROPOSALS: FEBRUARY 28, 2020 BY 2:00 PM (LOCAL TIME)**

## TABLE OF CONTENTS

1. INTRODUCTION AND GENERAL INFORMATION .....	3
2. LEGAL, CONTRACTUAL AND FINANCIAL INFORMATION .....	6
3. INSTRUCTIONS TO PROPOSERS .....	10
PART A. LETTER OF TRANSMITTAL .....	10
PART B. TECHNICAL EXPERIENCE .....	11
PART C. CLIENT REFERENCES .....	11
PART D. EQUIPMENT PROPOSED .....	11
PART E. COST PROPOSAL .....	12
PART F. REQUIRED CERTIFICATES AND FORMS .....	13
4. EVALUATION & SELECTION PROCESS .....	14
5. PURCHASE ORDER .....	18
6. PURCHASE ORDER AWARD .....	18
7. THE DISTRICT'S RIGHTS AND DISCLAIMERS .....	21
ATTACHMENT A – RECEIPT OF ADDENDA .....	23
ATTACHMENT B – SMART'S DIESEL MULTIPLE UNIT (DMU) DIAGRAM .....	24

# 1. INTRODUCTION AND GENERAL INFORMATION

## 1.1 Overview

The Sonoma-Marín Area Rail Transit District (SMART) is a government agency that operates passenger rail service in Sonoma County and Marin County. SMART is seeking proposals from qualified Vendors to furnish *Portable Hydraulic Rerailing Equipment* that is capable of moving SMART's Diesel Multiple Units (DMUs) back onto the track after a derailment.

## 1.2 Portable Hydraulic Rerailing Equipment Specifications

Below are the minimum required specifications for the Portable Hydraulic Rerailing Equipment:

TYPE:	<ul style="list-style-type: none"><li>• Portable Hydraulic</li></ul>
LIFTING WEIGHT:	<ul style="list-style-type: none"><li>• Must Support SMART's Diesel Multiple Units (DMU) that way 150,000lbs each.</li></ul> <p>SMART typically operates with 2 or 3 car consists.</p>
MANUALS:	<p>Operations and Maintenance Manuals must be provided upon final equipment delivery to SMART.</p> <p>Manuals must be provided in both paper and electronic format and shall include:</p> <ul style="list-style-type: none"><li>• Description of system and components</li><li>• Applicable schematic diagrams</li><li>• Manufacturer's printed instructions</li><li>• Printed listing of periodic preventative maintenance requirements and recommended frequency to maintain warranties.</li></ul>

<p>DELIVERY:</p>	<p>The Equipment shall be delivered to SMART's Rail Operation Center located at:</p> <p><b>3748 Regional Parkway, Santa Rosa, CA 95403</b></p> <p>Vendor shall deliver the equipment using the manufacturer-approved method to ensure protection during shipment and storage in humid and dusty conditions.</p> <p>Vendor shall bear the cost and risk of loss of any equipment provided until all equipment and material is delivered, inspected, and accepted at the designated delivery site.</p>
<p>TRAINING (OPTIONAL):</p>	<p>1-Week of on-site and hands-on training at SMART's Rail Operation Center located at 3748 Regional Parkway, Santa Rosa, CA 95403.</p> <p style="text-align: center;">OR</p> <p>1-Week of hands-on training at Manufacturer's or Dealer's Facility (SMART Staff to travel)</p> <p>Vendor will be required to sign SMART's Standard Service Agreement if performing on-site training at SMART's Rail Operation Center.</p>
<p>VENDOR REQUIREMENTS:</p>	<p>Vendor must be the original manufacturer or a distributor/dealer authorized by the manufacturer to sell the proposed equipment.</p> <p>Vendor must have the authority to provide full support for all product warranties, including technical "trouble shooting" support, and the ability to provide on-site training services.</p>

### 1.3 Designated Points of Contact

All communication during the Proposal process with the District shall be with the District's Contact Person identified below. Proposers shall direct all questions,

correspondence, e-mails, or facsimile inquiries regarding RFP to:

Sonoma-Marín Area Rail Transit District (SMART)  
Attn: Ken Hendricks, Procurement Coordinator  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954  
Telephone: 707-285-8256 Fax: 707-794-3037  
Email: [khendricks@sonomamarintrain.org](mailto:khendricks@sonomamarintrain.org)

#### **1.4 Rules of Contact**

Proposers are advised that no correspondence or information from the District, or anyone representing the District or the proposal process regarding the RFP, shall have any effect unless it is officially issued as an addendum by the District's contact person. The following rules of contact shall apply during the RFP process:

- A. Proposers shall correspond or communicate with the District regarding this RFP only through the District's contact person and the Proposer's designated point of contact;
- B. Proposers shall not contact District employees or officials regarding the RFP, except through the process identified above;
- C. Proposers shall not contact any person serving on an evaluation team or selection committee regarding this RFP;
- D. Any communications from the Proposers determined to be improper, at the sole discretion of the District, may result in disqualification of the Proposer;
- E. The District will not be bound by any oral exchange or any other information or exchange that occurs outside the official process specified herein;
- F. Proposers are requested not to contact Stakeholders identified in this RFP

#### **1.5 Proposer Questions and Responses to Questions**

Proposers shall direct all comments, questions, inquiries, requests for information, requests for clarification and other communications regarding the RFP to the District's contact person.

- Questions must be submitted in writing
- Shall reference the exact section of the RFP or other documents when submitting request.
- All questions must be submitted no later than the date specified in the "Tentative Procurement Schedule" reference in Section 3 "Instructions to Proposers".

The District may, in its sole discretion, choose whether or not to respond to questions received. If the District chooses to respond, it may respond by a written response to the Proposer, or by a written Addendum to the RFP Documents.

Any response that the District may choose to make will not alter the RFP unless it is incorporated into an Addendum.

## **1.6 Addenda**

The District reserves the right to issue Addenda at any time during the period of the procurement. Any such Addenda will be bound into and included as part of the awarded Purchase Order, as appropriate. The District will post Addenda on its website. Proposers will be notified of Addenda by email as long as they are registered on SMART's website. Proposers shall be responsible for providing copies of any Addenda to their Subcontractors. Persons or firms that obtain the RFP from sources other than the District bear the sole responsibility for obtaining, from such sources any Addenda issued by the District for the RFP. The District will not be bound by any explanation, clarification, or interpretation, oral or written, regardless of who made it, that is not incorporated into the Request for Proposal by an Addendum.

## **2. LEGAL, CONTRACTUAL AND FINANCIAL INFORMATION**

### **2.1 Proposal and Accompanying Documents**

Signing of Proposal: The Proposal shall be signed by all parties making up the Proposer. If the Proposer is a corporation, the Proposer shall be signed by an authorized officer of the corporation; if the Proposer is a partnership, the Proposal shall be signed by a general partner having the power to bind the partnership contractually; if the Proposer is a Joint Venture, the Proposal shall be signed by all equity members of the Joint Venture; or if the Proposal is signed by an attorney in fact for a corporation or partnership, a power of attorney shall be submitted with the Proposal. A Proposal not properly signed may be rejected as irregular and unauthorized.

### **2.2 Conflict of Interest**

Depending on the nature of the services performed or equipment furnished, District Contractors and Subcontractors are subject to the same conflict of interest prohibitions that apply to District employees. These include, but are not limited to, the requirements of California Law (including Government Code Sections 1090 et seq., and 87100 et seq., and Title 2, Division 6 of the California Code of Regulations). The District reserves the right to disqualify any Proposer under the RFP if the District, in its sole discretion, deems that the potential conflicts of interest is likely to impair or restrict the Proposer's ability to furnish services contemplated within the Purchase Order.

At the time of submitting a Proposal, Proposers shall disclose to SMART any and all potential organizational conflicts of interest. SMART will evaluate potential conflicts on a case-by-case basis. By responding to this Proposal, Proposer agrees to facilitate SMART's efforts to share information, and agrees to comply with any other measures required by SMART to mitigate or eliminate conflicts of interest.

### **2.3 Confidentiality**

The issue of confidentiality will be stressed during the entire evaluation and selection process. The District recognizes that the integrity of any contracting process is critical to the fairness and the confidence that Proposers and the public have in a public agency. Therefore, to the extent consistent with the requirements of applicable law, the deliberations of the evaluation committee will be held in the strictest confidence, and all information provided by Proposers or generated by the evaluation will be safeguarded until the Notice of Intent to Award has been issued.

### **2.4 Public Disclosure**

All written correspondence, exhibits, photographs, reports, printed material photographs, tapes, electronic disks, and other graphic and visual aids submitted to the District during this procurement process, including as part of the response to this RFP, are, upon their receipt by District, the property of the District and are subject to the California Public Records Act (Chapter 3.5, commencing with Section 6250, of Division 7 of Title I of the Government Code) (the "Act"). None of the aforementioned materials will be returned to the submitting parties. Respondents should familiarize themselves with the provisions of the Act. In no event shall District, or any of its agents, representatives, Contractors, directors, officers, or employees be liable to any Proposer for the disclosure of all or a portion of a Proposal submitted under this RFP.

### **2.5 Protest Procedure**

#### Content-Based Protest

Protests based on the content of the request for proposal shall be filed with the district within 10 calendar days after the request for proposal is first advertised. The District shall issue a written decision on the protest prior to the opening of proposals. A protest may be renewed by refiling the protest with the District within 15 calendar days after the mailing of the notice of the recommended award. Failure to file a timely protest based upon the content of the RFP constitutes a waiver of such right.

#### Non-Content-Based Protest

Any proposer may protest the recommended award on the grounds they are an adversely affected party not based upon the content of the request for proposals by filing a protest with the District within 15 calendar days after the mailing of the notice of the recommended award. To be considered adversely-affected, the Proposer

must demonstrate that the District's determination (a) was arbitrary or capricious or (b) involved substantial violation of a provision in the RFP or applicable procurement statute. Failure to file a timely protest based upon any grounds other than the content of the RFP constitutes a waiver of such right.

### Protest Requirements

All protests shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest. The burden of proof shall be on the Proposer to clearly and completely demonstrate the facts supporting the protest.

## **2.6 Advance or Down Payments**

SMART will not provide advance or down payments for this equipment. Materials and/services must be received and accepted prior to payment.

## **2.7 Proposer's Terms and Conditions**

Proposer imposed terms and conditions, which conflict with this Request for Proposal, are considered counter offers and, as such, may cause the Proposal to be considered non-responsive.

**If a Proposer attaches additional terms and conditions to their Proposal, such attachments must be accompanied by a disclaimer stating that in the event of conflict between terms and conditions of this Request for Proposal and conditions of the Proposer, the terms and conditions of the Request for Proposal shall prevail.**

## **2.8 Cancellation/Termination**

Termination Without Cause: SMART shall have the right, at their sole discretion, to terminate the Purchase Order by giving 30 days written notice to the other party.

Termination for Cause: Should Vendor fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of the Purchase Order, SMART may immediately terminate the Purchase Order by giving Vendor written notice of such termination, stating the reason for termination

Upon termination of the Purchase Order by SMART, Vendor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total payment specified in the Purchase Order as the services satisfactorily rendered hereunder by Vendor bear to the total services otherwise required to be performed for such total payment provided; however, provided further that if SMART terminates the Purchase Order for cause, SMART shall deduct from such amount the amount of



damage, if any, sustained by SMART by virtue of the breach of the Purchase Order by Vendor.

## **2.9 Assignment and Delegation**

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Request for Proposal without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

## **2.10 Taxes**

Vendor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to the Purchase Order and shall be solely liable and responsible to pay such taxes and other obligations, including but not limited to state and federal income and FICA taxes. Vendor agrees to indemnify and hold SMART harmless from any liability which it may incur to the United States or to the State of California as a consequence of Vendor's failure to pay, when due, all such taxes and obligations. In case SMART is audited for compliance regarding any withholding or other applicable taxes, Vendor agrees to furnish SMART with proof of payment of taxes on these earnings.

## **2.11 Warranty**

Vendor warrants that the equipment, goods, materials or other supplies sold to SMART under this Request for Proposal: (a) shall be of good quality and free from all defects and deficiencies in workmanship, material, and design; (b) shall be fit, suitable and operate successfully for their intended purpose; (c) shall be new; (d) shall be free from all liens, claims, demands, encumbrances and other defects in title; and (e) shall conform to the specifications stated in this Request for Proposal. Vendor shall honor all guarantees and warranties offered by the manufacturer of the equipment, goods, materials, or other supplies provided under this Request for Proposals.

## **2.12 Applicable Law and Forum**

The final Purchase Order issued shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of the Purchase Order or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

## **2.13 Compliance with Laws and Regulations**

SMART has relied upon the professional ability and training of Seller as a material inducement to award a Purchase Order to. Seller hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with

generally accepted and applicable professional practices and standards, as well as, the requirements of applicable federal, state and local laws, it being understood that acceptance of Seller's work by SMART shall not operate as a waiver or release.

### 3. INSTRUCTIONS TO PROPOSERS

#### 3.1 Proposal Submission Process

The **Due Date** for Proposals is **February 28, 2020 - 2:00 p.m. (Local Time)**. Local time is defined as the time on the clock at SMART's Reception Desk. The Proposal due date is subject to change. If the Proposal Due Date is changed, an addendum will be issued and posted on SMART's website. **Proposals received after 2:00 p.m. will be rejected and disallowed.**

**Proposals submitted via FAX or EMAIL will be rejected and disallowed. Proposals shall be hand-delivered or mailed and received prior to the deadline.**

**Proposals shall be prepared using the following format:**

Part	Contents
A	Letter of Transmittal
B	Technical Experience
C	Client References
D	Equipment Proposed
E	Cost Proposal
F	Required Certificates and Forms

- **Proposal must contain: (1) Original, (3) Hard Copies, and (1) Electronic Copy on a USB stick in PDF format.**
  - Proposals must be enclosed in a sealed envelope, box, or package, and clearly marked on the outside with the following:  
**“RFP – Portable Hydraulic Rerailing Equipment, Solicitation # OP-EQ-20-001”**

#### **PART A. LETTER OF TRANSMITTAL**

The letter of transmittal, not exceeding two pages, shall be addressed to SMART's contact person, Ken Hendricks, Procurement Coordinator, at the address on the cover of this RFP, and should include:

- Designate a single Point-of-Contact for the Proposer. Include a telephone number, e-mail and mailing addresses.

- **A statement that, if selected, the Proposer accepts all terms and conditions included in this RFP.**
- Be signed by an officer who is duly authorized to obligate the firm to furnish the equipment and services.

## **PART B. TECHNICAL EXPERIENCE**

Proposer shall describe the following:

- Describe your company's history and technical experience in manufacturing and delivering the proposed Portable Hydraulic Rerailing Equipment.
  - Include the number of years the company has been providing and supporting this type of equipment.

## **PART C. CLIENT REFERENCES**

- Proposer shall provide (5) Customer References for (5) orders fulfilled in the past 5 years which demonstrate experience in successfully providing similar equipment and performing similar work. Orders must be from different customers.
  - Customer Reference must include: Current contact information:
    - (Name, Title, Phone number, and Email address)
  - Include a brief description of the equipment supplied

## **PART D. EQUIPMENT PROPOSED**

Proposer shall provide full technical specifications and the requested information identified below for the proposed Portable Hydraulic Rerailing Equipment:

- Provide Brand, Model, Dimensions, and complete technical specifications for the equipment proposed.
  - **Technical specifications must show compliance with all of SMART's minimum specification requirements.**
  - Must include equipment weight
  - Must include the distance the equipment can reach when fully extended.
  - How the unit is powered? (Diesel, Electric, Battery, etc.)
    - If Battery or Electric, how long is the run time?
    - How long does it take to charge?
    - If Diesel, what is the fuel capacity of the tank?
- List all Safety Features in detail.
- Provide delivery lead time from the time the purchase order is issued.
- Provide manufacturer's recommended maintenance schedule.
- Provide manufacturer's standard warranty information (Term, Coverage, etc.)
- Pictures of the Proposed Portable Hydraulic Rerailing Equipment
- Operations Manual that describes how the Portable Hydraulic Rerailing

Equipment functions.

## **PART E. COST PROPOSAL**

Proposer shall provide a complete cost proposal for the proposed Portable Hydraulic Rerailing Equipment. The cost proposal must include the following information.

- Equipment Cost
- Delivery Cost
- Optional Training: Provide a cost to provide:
  - 1 Week of on-site and Hands-On Training at SMART's Facility
  - 1 Week of hands-on training at Manufacturer/Vendor Facility (SMART staff to travel)
- Optional Equipment Upgrade List (If Applicable)
  - Must Include:
    - Description of Upgrade
    - Description of the added benefit SMART would receive
    - Price for the upgrade
- Optional Extended Warranties
  - Must include:
    - Term,
    - Coverage Information
    - Price
- Estimated Annual Maintenance Cost based on the manufacturer's recommended maintenance schedule listed in PART D.
- Optional Service Plans for Seller to provide Manufacturer recommended maintenance.
  - *If SMART elects this option, the Proposer will be required to sign SMART's Standard Service Agreement.*
- Prompt Payment Option: If your company offers a prompt payment discount, please include this in your cost proposal as an option. (Ex. 10% Discount off the total price if paid within 15 Days of receipt of Invoice and Product Acceptance)

**All costs must include applicable sales taxes (currently 8.25% at final delivery destination).**

**All prices quoted must be in U.S. Dollars.**

*SMART is authorized to receive California State Contract pricing as a Political Subdivision. Dealers offering pricing under a California State Contract must indicate the Contract # on their cost proposal.*

## **PART F. REQUIRED CERTIFICATES AND FORMS**

- SMART Receipt of Addenda Form (Attachment A to this RFP)
- W-9 (Business must be in good standing)
- Material Safety Data Sheets (MSDS) for any item or product called for under this proposal, or required for use on SMART property as a result of this proposal.

### **3.2 Procurement Schedule**

The District's procurement schedule is subject to change at the sole discretion of the District and currently is as follows:

<b>Date</b>	<b>Event</b>
February 7, 2020	Issue Request for Proposals
February 19, 2020	Deadline for Proposer's Questions
February 21, 2020	Final Addendum Issued by SMART
February 28, 2020	Proposals Due to SMART, 2:00 PM (Local Time)
February 28, 2020 – March 10, 2020	Evaluation of Proposals
March 10, 2020	Announcement of Intent to Award Purchase Order
April 1, 2020	Review by SMART Board of Directors
April 2, 2020	Award Purchase Order

### **3.3 Conditions of Proposal**

By submitting a Proposal, the Proposer is agreeing to all terms and conditions of this RFP and is verifying that it has undertaken all necessary due diligence and is aware of and will comply with all Request for Proposal requirements. The Proposer shall be responsible for obtaining all necessary licenses, permits, qualifications, and other statutory and legal approvals for the performance of the Work.

### **3.4 Modifications to a Proposal prior to Due Date**

If a Proposer submitted a Proposal in advance of the Proposal Due Date, it may modify its Proposal in writing prior to the Proposal Due Date and time. The modification shall conform in all respects to the requirements for submittal of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be subsequently numbered so the District can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages, or complete forms. Line item changes will not be accepted. No telegraphic facsimile, email or other electronically transmitted modifications will be permitted.

### **3.5 Withdrawal of a Proposal**

A Proposer may withdraw its Proposal only by a written and signed request that is received by the District prior to the Proposal Due Date and time. Following withdrawal of its Proposal, the Proposer may submit a new Proposal, provided that it is received prior to the Proposal Due Date.

### **3.6 No Public Opening of Proposals**

Proposals will not be publicly opened. All Proposals and evaluations will be kept confidential throughout the evaluation, discussion and selection process by the District to the extent permitted by law. Only those persons authorized by the District, and its officials, employees and agents, having a legitimate interest will be provided access to the Proposals and evaluation results during this period.

### **3.7 Cost of Proposing**

The Proposer shall bear all costs and expenses whatsoever for the preparation, submittal, discussions, interviews, and negotiations related to the Proposal.

### **3.8 Multiple Proposals**

More than one Proposal from a Proposer will not be considered.

## **4. EVALUATION & SELECTION PROCESS**

### **4.1 Selection Committee**

- A. The District will appoint a Selection Committee to evaluate Proposals
- B. The Selection Committee will be composed of District staff and other experts, as deemed necessary and appropriate by SMART. Members of the Selection Committee will not be disclosed to Proposers.

### **4.2 Evaluation of Proposals**

- A. All Proposals received by the deadline will be reviewed by the SMART Evaluation Committee for content.
- B. The Selection Committee will evaluate and rank Proposals using only the evaluation criteria, factors and subfactors set forth in this RFP.

The Selection Committee will review the content of the Proposals submitted. The Selection Committee shall evaluate the Proposals based on the following criteria and weighting scale:

No.	Criteria Description	Weight
1	TECHNICAL & OPERATIONAL FEATURES	30
2	SAFETY FEATURES	30
3	COST	20
4	CLIENT REFERENCES	10
5	LEAD TIME	10
<b>TOTAL</b>		<b>100</b>

- C. The District may request clarifications or additional information, including conducting interviews, as part of the evaluation process. The Selection Committee reserves the right to communicate with any Proposer for the purpose of eliminating minor irregularities, informalities, or apparent mistakes in a Proposal, or for clarification of submitted information.
- D. SMART reserves the right to select the equipment, which in its sole judgment best meet the needs of SMART. All Proposers responding to this RFP will be notified of their selection or non-selection in writing after the Selection Committee has completed the selection process.
- E. Recommendation to General Manager: Following evaluation, the Selection Committee will submit a recommendation to the General Manager. Following receipt of the recommendation, the District's General Manager may either endorse the recommendation or remand the recommendation back to the Selection Committee for further consideration and then endorse the Selection Committee's further considered recommendation.
- F. As required, the General Manager or designated staff will then bring the endorsed purchase recommendation to SMART's Board of Directors for approval to award.

### 4.3 Rating of Proposals

The Proposals will be rated by a qualitative/descriptive (adjectival) method. The following qualitative/descriptive ratings will be used in evaluation of each quality factor, and the rating of the overall Proposal:

Point Value	Rating	Rating Description
0	Not Acceptable	Non-responsive, fails to meet RFP specifications. The approach has no probability of success.
1	Poor	Below average, falls short of expectations, is substandard to that which is the average or expected norm, has a low probability of success in achieving project objectives per RFP.
2	Fair	Has a reasonable probability of success; however, some objectives may not be met.
3	Average	Acceptable, achieves all objectives in a reasonable fashion per RFP specification. This will be the baseline score for each item with adjustments based on interpretation of proposal by Selection Committee members.
4	Above Average/Good	Very good probability of success, better than that which is average or expected as the norm. Achieves all objectives per RFP requirements and expectations.
5	Excellent/ Exceptional	Exceeds expectations, very innovative, clearly superior to that which is average or expected as the norm. Excellent probability of success and in achieving all objectives and meeting RFP specification.

The Selection Committee Members shall use the adjectival ratings listed in the above table for each of the criteria. The adjectival ratings will be converted to the associated point value ("0-5") and multiplied by the weighting. A proposal with a higher-weighted total will be deemed of higher quality than a proposal with a lesser-weighted total.



#### **4.4 Proposal Responsiveness and Responsibility**

The Proposer shall submit a Proposal that provides all of the information required by the RFP. The District will reject any Proposal that is late, that contains a provision reserving the right to accept or reject an award or to refuse to enter into a Purchase Order following award or that is submitted by a Proposer without a valid Contractor's license. The District will evaluate each Proposal with respect to the Proposal's degree of responsiveness to the requirements of the RFP.

##### **Responsiveness Determination**

The District reserves the right, in its sole discretion, to determine that a Proposal is non-responsive based upon any of the following:

- A. The Proposal is not properly signed by an authorized party
- B. Failure to provide all required parts of the Proposal
- C. The Proposal is illegible or contains any omission, erasure, alteration, or item not called for in the RFP or contains unauthorized conditions or other irregularities of any kind, if the District determines that such conditions or irregularities make the Proposal incomplete, indefinite, or ambiguous as to its meaning.
- D. Requested information deemed material by the District is not provided.
- E. Failure to acknowledge and submit the Receipt of Addenda Form (Attachment A). Attachment A should be submitted even if there have been zero Addenda issued.
- F. More than one Proposal is received from a Proposer
- G. The Selection Committee is not able to confirm the accuracy of all technical data or other information provided in the Proposal.
- H. Due to an organizational conflict of interest, the Proposer has an unfair advantage, in the option of the District.
- I. Any other reason for which the District determines that the Proposal is non-responsive.

## **5. PURCHASE ORDER**

SMART intends to issue a Purchase Order to the winning Proposer. By submitting a Proposal, Proposers agrees to abide by all requirements and conditions set forth in this RFP.

## **6. PURCHASE ORDER AWARD**

### **6.1 No Obligation to Award**

The District shall be under no obligation to award a Purchase Order should the District decide, in its sole discretion, that it is in its best interests not to award the Purchase Order. At its discretion, the District may cancel the procurement in its entirety, and re-procure by any method at a later date.

### **6.2 Award of Purchase Order**

The District intends to award the Purchase Order to the responsible Proposer offering a responsive Proposal that provides the Best Value to the District. Any such award will be made pursuant to a Notice of Award issued by the District issued within 90 calendar days after the Proposal Due Date.

### **6.3 Training and/or Maintenance Agreement**

In the event that SMART includes training and/or maintenance services as part of the final Purchase Order, the seller shall agree to the following conditions:

#### **Indemnification**

Seller agrees to accept all responsibility for loss or damage to any person or entity, including SMART, and to indemnify, hold harmless, and release SMART, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Seller, to the extent caused by the Seller's negligence, recklessness or willful misconduct in its performance or obligations under the Final Purchase Order. Seller agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Seller's performance or obligations under the Purchase Order. Seller's obligations apply whether or not there is concurrent negligence on SMART's part, but to the extent required by law, excluding liability due to SMART's conduct. SMART shall have the right to select its legal counsel at Seller's expense, subject to Seller's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Seller or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

## Insurance

Proposers will be required to maintain insurance, as described below, if SMART selects to include hands-on onsite training in the final Purchase Order:

### Workers' Compensation Insurance

Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

### General Liability Insurance

Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$1,000,000 per occurrence, and \$2,000,000 aggregate.

### Auto Liability Insurance

Automobile liability insurance covering bodily injury and property damage in an amount no less than Two Million Dollars (\$2,000,000) combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

### Endorsements Required

Prior to commencing any training, Vendor shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- SMART, its officers, and employees shall be named as additional insured on all policies listed above.
- That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Vendor is liable, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be affected by the Insureds.
- Inclusion of the Insureds as additional insureds shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Vendor. Said policy shall protect Vendor and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

- Vendor hereby grants to SMART a waiver of any right to subrogation which any insurer of said Vendor may acquire against SMART by virtue of the payment of any loss under such insurance. Vendor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.
- The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. Such insurance company shall be authorized to transact business in the state of California.

SMART reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

#### Deductibles and Retentions

Vendor shall be responsible for payment of any deductible or retention on Vendor's policies without right of contribution from SMART. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the name insured is not acceptable.

#### Claims Made Coverage

If any insurance specified above is written on a claims-made coverage form, Vendor shall:

- Ensure that the retroactive date is shown on the policy, and such date must be before beginning of any onsite training;
- Maintain and provide evidence of similar insurance for at least three (3) years following Service completion, including the requirement of adding all additional insureds; and
- If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the onsite training effective date, Vendor shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

#### Policy Obligations

Vendor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

## **7. THE DISTRICT'S RIGHTS AND DISCLAIMERS**

### **7.1 District's Reservation of Rights**

In connection with this procurement, the District reserves to itself all rights (which rights shall be exercisable by the District in its sole discretion) available to it under the Public Contract Code and applicable law, including without limitation, the following, with or without cause and with or without notice:

- A. Reject any or all Proposals, or information submitted related to a Proposal;
- B. Issue a new RFP, or modify dates set or projected in the RFP;
- C. Cancel, modify, or withdraw the RFP, in whole or in part at any time prior to the issuance of a Purchase Order without incurring any cost obligations or liabilities;
- D. Issue Addenda, supplements and modifications to the RFP;
- E. Modify the RFP process;
- F. Appoint a Selection Committee and evaluation teams to review Proposals and to consider the advice and assistance of non-District experts in any subject matter in Proposal evaluation;
- G. Approve or disapprove the use of particular Subcontractors, substitutions of Subcontractors, and Key Personnel, and any other changes in Proposer's Qualifications Statement;
- H. Revise or modify, at any time before the Proposal Due Date, the evaluation criteria, factors, subfactors, weighting and/or guidelines that it will consider in evaluating Proposals and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, the District shall issue an Addendum to the Proposer's setting forth the changes to the evaluation criteria or methodology. The District may extend the Proposal Due Date if such changes are deemed by the District, in its sole discretion, to be material and substantive;
- I. Hold meetings and conduct discussions and correspondence with a Proposer to seek an improved understanding and evaluation of the Proposal.
- J. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Proposals;
- K. Waive weaknesses, informalities, and minor irregularities in Proposals;
- L. Disqualify any Proposer that changes its organization (as represented in its Qualifications Statement) without District written approval;

- M. Hold the Total Price Proposals under consideration for up to 90 calendar days after the Proposal Due Date until the Award is made unless there is a mutual agreement to extend the 90-day time limit as provided in the RFP;
- N. Disclose information contained in the Proposals to the public as described herein;
- O. Not issue a Purchase Order after receiving Board Approval;
- P. Refuse to consider a Proposal, once submitted, or reject a Proposal if such refusal or rejection is based upon, but not limited to, the following:
  - i. Failure on the part of a Principal Participant to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing contracts;
  - ii. Submitted by the Proposer of more than one Proposal for the same work under the Proposer's own name or under a different name;
  - iii. Evidence of collusion between a prospective Proposer (or any Principal Participant or Designer) and other Proposers (or Principal Participants or Designers).
  - iv. Uncompleted work or default in another jurisdiction for which the prospective Proposer or a Principal Participant is responsible which, in the judgement of the District, might reasonably be expected to hinder or prevent the prompt completion of additional work if awarded;
  - v. Existence of a notice of debarment or suspension in any jurisdiction;
  - vi. Failure to obtain required bonds or insurance;
- Q. Further negotiate pricing, or terms and conditions, in advance of issuance of the Purchase Order;
- R. Exercise any other right reserved or afforded to the District under this RFP or under the Public Contract Code and applicable law; and/or
- S. Issue a single Notice to Proceed or multiple Notices to Proceed as specified in the Purchase Order;
- T. The Proposer acknowledges that, by submitting a Proposal in response to this RFP, it agrees with these disclaimers and waives any right to legally challenge or protest any District's actions that exercise these disclaimers.

**ATTACHMENT A  
RECEIPT OF ADDENDA**

**PORTABLE HYDRAULIC RERAILING EQUIPMENT**

**Request for Proposal (RFP)**

**SOLICITATION NO. OP-EQ-20-001**

**Please submit this Receipt of Addenda when submitting your Proposal.**

I acknowledge receipt of the following Addenda to the "Portable Hydraulic Rerailing Equipment" Request for Proposals (RFP), initially issued on February 7, 2020.

Addendum \_\_, dated \_\_\_\_\_, 2020  
Addendum \_\_, dated \_\_\_\_\_, 2020  
Addendum \_\_, dated \_\_\_\_\_, 2020  
Addendum \_\_, dated \_\_\_\_\_, 2020  
Addendum \_\_, dated \_\_\_\_\_, 2020

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020

By:

\_\_\_\_\_

Title: \_\_\_\_\_

# ATTACHMENT B SMART'S DIESEL MULTIPLE UNIT (DMU) DIAGRAM

