



TRINITY METROSM

23-T033

Positive Train Control Hosting Services

May 23, 2023

ADDENDUM #1

Purpose: This Addendum Is Issued to Modify the Due Date and Answer questions received

- **Proposal Due Date Modified to: June 2, 2023 at 2:00 p.m.**

1. **Requesting clarification around how forms F2-F5 are to be completed if the DBE goal for this solicitation is 0% per section 7 of the IFB. Is it acceptable to state at the top of each form the 0% goal and sign? Or is further information needed? If so, please let us know what is requested.**

Answer: No forms are required to be submitted with your bid pertaining to DBE unless you are using DBE subcontractors, in which case you would list them on form F3.

2. **F13, Bid Form, currently shows years 3, 4, and 5 as escalation percentage while years 1 & 2 are exact fees. Please confirm this is accurate. With this being a 3 year agreement with (2) 1 year options we would assume the percentage amounts would be for only the option years.**

Answer: The percentage increase will be for years 3 to 5.

3. **Section 5 - Special Provisions 5.28 (p. 24): Would Trinity Metro agree to revise the Standard of Care to the ordinary standard of care customary for**

contracts of these nature. The recommended edit would be to replace the first sentence as follows: “Contractor shall perform all services under this Contract in a skillful and competent manner using the ordinary and reasonable care usually exercised by one in that profession, on the same type of project, at the same time and in the same place, under similar circumstances and conditions.”

Answer: Please submit the following as an exception with your bid per Section 3.3 of the Invitation to bid.

- 4. Section 5 - Special Provision 5.35: Indemnification (p. 26): The indemnification language as specified in the IFB presents too large a risk for Proposer for these types of services. Will Trinity Metro agree to negotiate this language post-award? Proposer requests Section 5.35 be stricken in its entirety and replaced with the following: “A. Subject to the terms of the Contract, Contractor hereby agrees to indemnify and defend Trinity Metro from and against liabilities asserted against Trinity Metro by a third party to the extent such liabilities result from an IP Claim, provided that Trinity Metro: (i) promptly notifies Contractor of any Intellectual Property claim (“IP Claim”) subject to indemnification hereunder, (ii) gives Contractor the right to control and direct the preparation of the defense and any settlement of any such IP Claim, (iii) gives full cooperation to Contractor for the defense of the IP Claim, and (iv) complies with Contractor’s direction to cease any use of a deliverable which, in Contractor’s sole judgment, is likely to be ruled an infringement of a third Party’s Intellectual Property. B. The foregoing indemnity in this Section shall not apply to any infringement of a deliverable, arising out of: (i) use of the deliverable other than in accordance with applicable documentation or instructions supplied by Contractor or for other than Trinity Metro’s internal purposes; (ii) any alteration, modification or revision of the deliverable; (iii) Trinity Metro’s failure to use or implement corrections or enhancements to the deliverable made available by Contractor; (iv) Trinity Metro’s distribution, marketing or use of the deliverable for the benefit of third parties; (v) the combination of the deliverable with materials or other Intellectual Property not supplied by Contractor; or (vi) information, materials or specifications provided by or on behalf of Trinity Metro or by a third party. C. If a deliverable or any portion is held, or in Contractor’s reasonable opinion, is likely to be held, in any such suit to constitute infringement, Contractor may within a reasonable time, at its option, either: (i) secure for Trinity Metro the right to continue the use of the deliverable or portion (ii) replace, at Contractor’s**

sole expense, such item with substantially equivalent non-infringing deliverable or portion (iii) modify the infringing deliverable or portion so that it becomes non-infringing or (iv) terminate the Contract. In the event Contractor is, in Contractor's reasonable discretion, unable to either procure the right to continued use of the allegedly infringing deliverable or portion or replace or modify the allegedly infringing deliverable or portion as provided in clauses (i), (ii) and (iii) or if Contractor terminates the Contract, then Trinity Metro shall return the allegedly infringing deliverable or portion for a refund of the amount paid to Contractor for such deliverable or portion during the month preceding such event. The provisions of this Section state Contractor's entire maximum liability and Trinity Metro's sole and exclusive remedies with respect to any IP Claims. Contractor will not have any liability for infringement of the Intellectual Property rights of a third party except as expressly provided in the Contract.D. Except as otherwise provided in Sections 5.35.A., B. and C., Trinity Metro agrees to indemnify and hold harmless Contractor, its subsidiaries, their affiliates and each of their respective directors, officers, employees, shareholders and agents (each an "Indemnified Party") against any losses, claims, damages, liabilities, penalties, actions, proceedings, judgments, and any and all costs thereof (collectively, "Losses") to which an Indemnified Party may become subject and which Losses arise out of, or relate to the Contract, Trinity Metro's use of the products and Services, breach of any confidentiality obligation or any alleged infringement of any trademark, copyright, patent or other intellectual property right, in each case, whether or not caused by the negligence of Contractor or any other Indemnified Party, and will reimburse an Indemnified Party for all legal and other expenses, including reasonable attorney's fees incurred by such Indemnified Party, in connection with investigating, defending, or settling any Loss, whether or not in connection with pending or threatened litigation in which such Indemnified Party is a party."E. Notification Required. Notwithstanding anything else contained herein to the contrary, in order for Trinity Metro to qualify for a Service Credit, Trinity Metro must (i) have purchased and paid for services and products and (ii) submit a request for a Service Credit, as applicable, in writing no later than three (3) days from the date of the event giving rise to the requested Service Credit and in accordance with the terms of this IFB and the Contract. Failure to request a Service Credit in accordance with the terms of this IFB and the Contract will result in an automatic waiver of any rights to such Service Credit under this IFB or the Contract in respect of the event giving rise to such Service Credit.F. Limitations. Service Credits do not constitute a refund in respect of any product or service and may not be paid for or

exchanged for cash or other monetary consideration or value. Valid approved Service Credits will appear as a credit for products and services and will be applied against the charges owing in respect of such products and services on the next billable term following the month in which the Qualified Downtime Event giving rise to such Service Credit occurred.”

Answer: Please submit the following as an exception with your bid per Section 3.3 of the Invitation to bid.

5. Section 6 – 6.5(c) (p. 30): Some cures may not be entirely curable within ten days. Would Trinity Metro allow for Contractor to “commence” a cure within the cure period. Suggested edit to the second sentence as follows: “If Contractor fails to commence to remedy to the Fort Worth Transportation Authority’s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days...”

Answer: Please submit the following as an exception with your bid per Section 3.3 of the Invitation to bid.

6. Request was submitted to request a 4 week extension (6-23-2023) to the response to IFB #23-T033 POSITIVE TRAIN CONTROL (PTC) HOSTING SERVICES.

Answer: Trinity Metro’s goal is to seek Board approval on June 20, 2023 for this contract and will only extend the deadline to June 2, 2023 in order to meet the deadline.

ALL TERMS OF THE REQUEST FOR PROPOSAL REMAIN THE SAME UNLESS CHANGED THROUGH A WRITTEN AMENDMENT TO THE REQUEST FOR PROPOSAL. NO ORAL CHANGES ARE BINDING. CHANGE REQUESTS MUST BE IN THE FORM OF A WRITTEN REQUEST TO BE ANSWERED IN A WRITTEN ADDENDUM.

RESPONDANTS MUST ACKNOWLEDGE RECEIPT OF THIS ADDENDUM IN THE FORM 1 IN THEIR PROPOSAL. FAILURE TO DO SO MAY INVALIDATE THE PROPOSAL.

End of Addendum # 23-T033