Question 202.

Changes in Character of Work – Part 2, DB 104-3.2 – Significant Changes in Character of Work – Third paragraph states, “Alterations in the scope of the Work that are specifically contemplated by the Contract shall not be considered significant changes in the character of the Work”. Please provide an example of scope which is “specifically contemplated by the Contract…..”

Answer: The Department will remove the statement and this change will be reflected in an Addendum.

Question 203.

Regarding Section 14.3.5: Please confirm which agency is responsible for maintaining the aesthetic lighting fixtures? What maintenance equipment does this agency currently have?

Answer: The Department will be responsible for maintaining aesthetic lighting, which will likely be done under the NYSDOT Where and When Contract.

Question 204.

Who will be responsible for controlling the color changing lighting equipment over the life of the bridge? Do they want to be able to access the aesthetic lighting controls remotely? If so what communication network will the computer be connected to and what is the computer’s physical location?

Answer: The Department will be responsible for controlling the color changing lighting equipment over the life of the bridge. Remote access of the lighting controls from the traffic control center should be provided using the ITS network. This will be issued by Addendum.

Question 205.

ITP Appendix B Section B4.6 Initial Quality Control Plan page B-12 requires us to follow the Quality Plan outline described in RFP Contract Requirements Part 2 DB Section 100 Appendix 113A Design and Construction Quality Control Plan Template. In Appendix 113A QP 101, Sections 4.2 and 4.3 have been retitled from Design Quality Control Manager to Design Quality Control Engineer and from Construction Quality Control Manager to Construction Quality Control Engineer, respectively. However, Section 4.4 is titled Design and Construction Quality
Control Engineers and remains unchanged. Is Section 4.4 referring to the same positions as Sections 4.2 and 4.3, or is Section 4.4 referring to quality control staff who will support and report to the staff in Sections 4.2 and 4.3? If so the title of Section 4.4 should be changed to, say Design and Construction Quality Control Support Staff.

Answer: Section 4.4 is referring to the same positions as Sections 4.2 and 4.3. These sections will be clarified by Addendum.

Question 206.

Please provide clarification as to where the distribution equipment is to be mounted and any throw over schemes.

Answer: The power distribution equipment including provisions for throw over should be located on the bridge in a location that can be accessed by maintenance forces on the deck. This will be issued by Addendum.

Question 207.

The specifications have no provisions for Emergency Power or UPS back up. Please clarify if either of these will be required.

Answer: There is no need for Emergency Power or UPS backup except for the aerial beacons, which will require a battery backup. This will be clarified by Addendum.

Question 208.

Insurance – Part 1, Article 17.B.2.: The Commercial General Liability Insurance limits have been increased from $1,000,000 per occurrence/$2,000,000 aggregate to $25,000,000 per occurrence/$50,000,000 aggregate. These high limits are likely not available on a general liability policy. The required limits should be reduced to an amount not to exceed $5,000,000 per occurrence/$10,000,000 aggregate.

Answer: The required limits for Commercial General Liability Insurance will be reduced to $5,000,000 per occurrence/$10,000,000 aggregate. This will be covered in an upcoming Addendum.
Question 209.

Part 1, Article 17.B.4: The minimum required limit has been increased to provide a total of $100,000,000 per occurrence/aggregate. Is it NYSDOT’s intent between Articles 17.B.2 and 17.B.4 to require that there be limits of $150,000,000 per occurrence/aggregate in place? If “yes”, then the limit required in 17.B.4 should be increased to $150,000,000 to coincide with the decrease in the limits required in 17.B.2 as suggested above.

Answer: The Department intends that the combined minimum coverage between the primary policy and the umbrella or excess liability insurance be $100,000,000 per occurrence/aggregate. This will be covered in an upcoming Addendum.

Question 210.

Part 1, Article 17.B.7: “or self-insured retention level” has been crossed out, but should remain in. Deductibles are typically not available on Professional Liability/Errors and Omissions policies, so a self-insured retention needs to be an option.

Answer: The Department has determined that the self-insured retention level should be an option. This will be covered in an upcoming Addendum.

Question 211.

Part 1, Article 17.B.8: There is still the requirement for a “deductible not to exceed the amount of the bid deposit or $100,000, whichever is less...”. A deductible of $100,000 will likely be impossible to obtain. The deductible should be changed to an amount not to exceed $1,000,000. The requirement that the Builder’s Risk policy provide coverage for “loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of their agents and employees, staging towers and forms,” should be removed since this risk is more properly insured under a Contractor’s Equipment Floater. We would propose replacing the existing Article 17.B.8. with the following:

“8. Builder’s Risk Policy. The Design-Builder shall procure and maintain a Builder’s Risk policy written on an “all risks” completed value form including coverage for perils of Flood, Earthquake, Named Windstorm, collapse, water damage and theft with deductible not to exceed $1,000,000 with limits of coverage in an amount not less than $100,000,000 except $25,000,000 for Flood, Earthquake and Named Windstorm, covering the total value of work performed at the location of the Work. Policy shall cover property in-transit or at any off-site storage locations with sublimits sufficient to
Kosciuszko Bridge Replacement project – Phase 1
Contract D900011
Final RFP Questions and Answers 202 thru 224

cover such exposures. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation, with sublimits sufficient to cover such exposures. Coverage shall include property of Department held in their care, custody and/or control to the extent loss arises out of the Design-Builders’ activities or operations in connection with the Project with a sublimit not less than $2,500,000. Such policy shall name as insured, The People of the State of New York, Design-Builders and all subcontractors of any tier, except independent engineers, architects, vendors and manufacturers are covered for their on-site activities only.

Answer: The Department will increase the deductible for Builders’ Risk Insurance to $1,000,000. The Department will also eliminate the requirement that the policy cover equipment, tools, towers, and forms. This will be covered in an upcoming Addendum.

Question 212.

Part 1, Article 17.B.11: A requirement for a “Pollution Legal Liability” policy has been added. We believe that the terminology is incorrect and that NYSDOT really wants a “Contractor’s Pollution Liability” policy. The requirement should be changed accordingly.

Answer: The Department will continue to require Pollution Legal Liability coverage.

Question 213.

Please clarify who will provide maintenance and responsibility of the aesthetic lighting system after the bridge is constructed? Will this be the NYSDOT or City DOT? Also, please clarify if general power to the new bridge, other than street lighting, is to be metered, and if other power requirements (aesthetic lighting, elevators, navigation and obstruction lighting, etc.) are also to be powered and metered by Con Edison separately, from any City DOT street lighting.

Answer: The Department will be responsible for maintaining the aesthetic lighting, which will likely be done under their Where and When Contract. Power requirements other than street lighting such as aesthetic lighting, elevators, navigation and obstruction lighting, etc. shall be powered and metered by a Con Edison feed separate from the feed for the NYCDOT street lighting. This will be issued by Addendum.
Question 214.
The RFP Part 3 Project Requirements Section 2.2 references a key personnel position of “Resident Engineer”. RFP Part 2 DB Section 100 Appendix 113A references a Construction Quality Control Engineer. Are these two titles referring to the same position or are they two separate positions?

Answer: The Resident Engineer and the Construction Quality Control Engineer are two separate positions but they may be filled by the same person.

Please refer to DB 112-5.2 which states in part:

The Design-Build shall assign a full time on-site Construction QC Engineer, who may be the Resident Engineer working for the Independent Construction Inspection Professional Engineering Firm as described in DB §112-2.2.

Question 215.

Obligation to Indemnify – Part 1, DBA Art. 18 & Part 2, DB 107-27.1, It would seem that the indemnification clause is intended to obligate the Design-Build to indemnify, hold harmless and release the Owner and other identified parties from loss to life and property due to the negligent or tortious acts of the Design-Build, as noted in the initial sentence of these provisions. However, as drafted, item (a) is not stated in a manner consistent with that intent and present an indemnity unrelated to any fault or cause attributable to Design-Build.

Therefore, we suggest the following modification to item (a) in both of these clauses to clarify the apparent intent of these provisions:

“The Design-Build shall indemnify, hold harmless and release the Department and/or the State of New York, any municipality in which the Work is being performed, and/or any public benefit corporation, railroad or public utility whose property or facilities are affected by the Work from suits, claims, actions, damages, and costs of every name and description resulting from Design-Build’s negligent or otherwise tortious act, error or omission in connection with the performance of its Services under the Contract Documents until the Final Acceptance of the Work.”

Answer: The Department will amend the indemnification requirements to clarify that the indemnification requirement relates to acts or omissions of the Design-Build.

This will be covered in an upcoming Addendum.
Question 216.

**Waiver of Indemnities** – Part 1, DB 17.A.9, Design-Builder requests clarification as to what NYSDOT’s intent is in regard to the newly proposed language for this section in response to Design-Builder’s Question 151. Design-Builder reads this provision as requiring Design-Builder and its insurance carrier to waive any right of indemnity either might otherwise have against NYSDOT for both insured and uninsured claims. While Design-Builder recognizes that the waiver in regard to insured matters is fairly customary, it does not believe that it should be obligated to waive any indemnity with respect to uninsured claims. To the extent NYSDOT owes an indemnity to Design-Builder (contractual or at law), the lack of insurance coverage for same should not generally impair Design-Builder’s rights in that regard. Therefore, Design-Builder requests that the waiver of uninsured claims be deleted.

**Answer:** The Department cannot indemnify the Design-Builder. The intention of Part 1, DB 17.A.9 is to ensure that the Design-Builder does not mistakenly rely on any perceived implication of indemnification coming from the Department, regardless of the source of that implied indemnification.

Question 217.

**Ownership of Errors & Omissions in Contract Docs** – Part 2 DB 104-4.1 et seq. & DB 101-3 (Definition of “Necessary Basic Project Configuration Change”) – Design-Builder agrees with the changes suggested by NYSDOT made in response to its prior question 179 in regard to changes to the Basic Project Configuration but believes that one additional change is necessary to properly clarify the concept of Design-Builder’s right to additional compensation or time arising from errors, omissions or defects in the Basic Project Configuration provided by NYSDOT. At present, the definition of “Necessary Basic Project Configuration Change” sets forth Design-Builder’s entitlement to same and states that such a change will issue when the change is “necessary” and defines “necessary” as instances where the error, omission or defect at issue creates a conflict that “cannot reasonably be corrected without a material change in the Basic Project Configuration.” Note that whether an issue that is the responsibility of NYSDOT creates a material change in the Basic Project Configuration should not be sole determinative factor as to whether or not a change should issue to Design-Builder. Rather, the determinative bases in a fixed price and time contract such as this should be whether the error, omission or defect creates a conflict that cannot reasonably be corrected without a material change to the Basic Project Configuration or to Design-Builder’s cost or time of performance. (Note that the remedy for an error, omission or defect in the NYSDOT supplied Basic Project Configuration could result in a materially adverse monetary or time impact to Design-Builder without necessarily involving a material change to the Basic Project Configuration.) Accordingly, Design-Builder suggests the following revised definition of “Necessary Basic Project Configuration Change”:
Changes in the Basic Project Configuration that are necessary to correct an error, omission, or defect in the Basic Project Configuration (with the understanding that a change shall be deemed “necessary” only if the error, omission, or defect creates a conflict with the other Contract requirements or another problem which cannot reasonably be corrected without a material change in the Basic Project Configuration or a material change in Design-Builder’s cost or time of performance).

Answer: The Department has reviewed the referenced sections and does not intend to amend them at this time.

Question 218.

*Contaminated and Hazardous Material* – Numerous questions posed by Proposers and answered by the Department throughout the RFQ and RFP stages have supported the conclusion it is the Department’s intent the Design-Builder be responsible for lump-sum pricing for all management and disposal of Contaminated and Hazardous Material. As we have pursued our classification and material management studies further, we are concerned that a prudent Design-Builder who has fully investigated the Draft Contaminant Management Plan and the site will be penalized for its effort and understanding of the Contaminant and Hazardous Materials management and disposal by properly and responsibly pricing all aspects of the Work including treatment of water from any foundations or excavations. To avoid this phenomenon and ensure a level playing field we propose the Department pay all Work associated with the management, handling, storage, and disposal of Non-Hazardous Contaminated, Hazardous, and Groundwater on a unit price basis per NYSDOT Standard Specification and that this provision of unit pricing only apply up to 75% of the quantities shown in Appendix C of the Structural Justification Report. Any Design-Builder quantities over this amount would be included in the Design-Builder’s Lump Sum Proposal Price. This approach will mitigate the above concerns while providing benefits to the Department and Stakeholders as follows:

a. Will encourage innovate methods and provide an incentive to Design-Builders to minimize their disposal quantities and associated environmental impacts including truck and/or Newtown creek traffic;

b. The proposed incentive and corresponding reduction in disposal quantities will reduce the Department’s liability by reducing its exposure as Generator of said disposed material; and

c. Will reduce Proposal Prices by equitably balancing risk between Design-Builder and the Department
Kosciuszko Bridge Replacement project – Phase 1
Contract D900011
Final RFP Questions and Answers 202 thru 224

Please consider this above approach.

Answer: The Design-Builder shall include the cost for handling and disposal of all known Contaminated and Hazardous Materials in their lump sum bid.

Question 219.

**Metalizing Structural Steel** – Part 3, 11.3.1.4, With the exception of a few exclusions via recent addenda, the referenced section of the RFP clearly prescribes hot-dip galvanizing or metalizing on structural steelwork. It is our understanding after an exhausting effort of life cycle analysis and coating systems, including metalizing of splash zones, the New York State Thruway and their Design-Builder jointly concluded a painting system would be more cost-effective through the life of the bridge considering metalizing has a limited life in the splash zones near expansion joints etc. We also understand the Department has been involved with technical aspects of the referenced Tappan Zee Project. In light of this recent conclusion on the Tappan Zee Bridge Project, we suggest the Department allow painting systems in lieu of metalizing on the large structural steelwork components too large to hot-dip galvanizing. This ensures the Department and Stakeholders are getting the best-value as metalizing itself is costly and performed by very limited fabrication shops with limited metalizing experience. Please consider this approach.

Answer: Per the Contract Documents, all structural steel shall be galvanized or metalized except for the structural steel at the Meeker Avenue Viaduct which may be painted. Anchor Box Steel not exposed to the elements may also be painted.

Question 220.

**General Liability Insurance** – Part 1, Article 17, Article 17.B.2 per Addenda 3, Commercial General Liability Insurance requires limits not less than $25,000,000 per occurrence and $50,000,000 aggregate as of Addendum 3. These limits are likely not available solely on a Commercial General Liability policy. Please extend Article 17.B.2 to state “The required limits may be written by a combination of Commercial General Liability and Umbrella/Excess policies.”

Answer: Please see the responses to Questions 208 and 209

Question 221.
Directive Drawing No. DP-11 does not appear to permit substructure on the east side of 54th Avenue in line with the future eastbound structure. If so, then it is not possible to carry the eastbound Queens Connector over 54th Avenue to join the eastbound approach roadway on embankment, since there is no permitted location for an abutment. Is this an error?

**Answer:** Yes, substructures are permitted on the east side of 54th Avenue in line with the future eastbound structure. This clarification will be issued by Addendum.

**Question 222.**

P6-Schedule

a) Please confirm that NYSDOT will provide a Project Must Finish By Date for each Team, if requested, and please provide a date by which this request must be made.

**Answer:** Regarding the Must Finish by Dates, the date field has been removed from all Proposers’ schedules by the Department. If the Proposer wishes to create an Activity that is constrained to calculate dates, float, etc., they have the ability to do such. Such an activity, appropriately named, could serve as an equivalent to the Must Finish activity but be within a Proposer’s control. As an alternative, if Proposers wish to have NYSDOT add a date to the currently cleared Must Finish date field, then they should submit this date with a request to Peter Russell no later than November 25, 2013.

b) In addition to the Project Must Finish By Date, no other Schedule Dates can be changed/entered by Proposers. Please confirm that the winning Proposer will be allowed to modify any/all of the Project Schedule Dates, as required.

**Answer:** At the Project Level, Proposers cannot alter dates other than the Data Date. However, activity dates are within the full control of the Proposer. Post Award, any necessary Project Level dates will be modified by the Department as necessary for the Baseline schedule.

c) Proposers cannot change Calendar default from NYSDOT calendar to a Project Calendar. If requested, will NYSDOT make this change for Proposers similar to the Project Must Finish By Date discussed above in item “a.“? If changing the Calendar default is not allowed pre-bid, will the successful Proposer be able to modify the Calendar default without NYSDOT assistance upon award of this Contract?
Answer: In the event that a Proposer does not wish to use the existing Default Project Calendar, they can create and uniquely name a set of Proposer calendars and simply change the calendar assignment on any Proposer added activities entered into the schedule.

d) Proposers cannot change Auto Numbering Defaults. If requested, will NYSDOT make this change for Proposers similar to the Project Must Finish By Date discussed above in item “a.”?

Answer: The Department prefers to have the Proposers manage the Activity ID numbering assignments without Department involvement.

Question 223.

Four Project-specific Calendars have been provided by NYSDOT. Do these calendars need to be assigned to Specific NYSDOT provided activities? If so please provide calendar designations for provided activities. Please confirm that we can add / use our own Project-specific calendars.

Answer: The Contract Documents outline the requirements for assigning Global Level and Project Level calendars. Proposers are not allowed to change or alter Global calendars. Proposers are permitted to create their own Project Level calendars for appropriate activity assignments as permitted by the CPM specifications included within the Contract Documents.

Question 224.

In reference to the Contaminated Soils Re-Use On-Site versus Offsite Disposal, we find the following contradictions within the specs and the reference reports:

a. Spec Part 3, Section 3.2.5I
At no time may excavated soil be reused as backfill at the project site or at other locations without explicit written permission from NYSDEC.

Answer: This statement is accurate with the following exception as stated in the Draft CMP: except for soil that is excavated for installation of utilities outside of the limits of Phelps Dodge, which may be returned to the original utility excavation as backfill without the need for characterization, assuming the material is structurally suitable for such use.

b. Final Contaminated Material Investigation Findings Report, Page ii
Soil impacted above Unrestricted SCO’s should be considered potentially contaminated when estimating handling and disposal options for soil that requires removal from the site for any reason. Soil impacted above Commercial SCO’s could be considered environmentally unsuitable for reuse as backfill within
the project limits depending on the degree of impact and the final use of the backfilled area.

**Answer:** These statements regarding soil reuse in the Final Contaminated Material Investigation Findings Report are general statements describing how the guidance values are typically applied to similar projects, and are not discussing the project specific data.

c. **Final Contaminated Material Investigation Findings Report, Page xi**
The majority of soil samples collected from public right-of-ways and private parcels in Queens and Brooklyn contained contaminants above unrestricted SCO’s; therefore, any soil requiring removal from the site based on engineering considerations should be considered potentially contaminated when evaluating offsite disposal options. Although most of the soil samples in Brooklyn, and several in Queens, contained contaminants above Commercial SCO’s, it is likely that the majority of these soils would be considered environmentally suitable for beneficial reuse within the limits of the project site or at similar NYSDOT projects as long as they are not used for final grading material.

**Answer:** These statements regarding soil reuse in the Final Contaminated Material Investigation Findings Report are general statements for initial planning. The reuse requirements in the Draft CMP supersede the Final Contaminated Material Investigation Findings Report.

d. **Final Contaminated Material Investigation Findings Report, Page 1-8**
Heavy metals and SVOC’s were detected in the majority of soil samples collected in 2005 at concentrations that would likely classify the material as contaminated for offsite disposal purposes. However, the contaminants were found in most cases at levels that would not prohibit onsite reuse of the material during construction assuming the soil is not used as final cover.

**Answer:** These statements regarding soil reuse in the Final Contaminated Material Investigation Findings Report are general statements for initial planning. The reuse requirements in the Draft CMP supersede the Final Contaminated Material Investigation Findings Report.

e. **Draft Contaminant Management Plan, Page 13**
No soil excavated from the project site, including soil excavated from the Phelps Dodge parcels, may be reused at the project site for any reason without the explicit written permission from the NYSDEC’s Division of Material’s Management in the form of a Case Specific Beneficial Use Determination (BUD), with the following exception: soil that is excavated for installation of new
utilities outside of the limits of Phelps Dodge may be returned to the original utility excavation as backfill without the need for characterization, assuming the material is structurally suitable for such use.

Answer: This statement is accurate.

SUMMARY

I. Items a and e state that excavated soil May Not be used on-site without permission of NYSDEC.
   Answer: Item a is accurate as revised. Item e is accurate.

II. Item b states that excavated soil May Not be used on-site.
    Answer: Item b does not state that excavated soil may not be reused onsite.

III. Item c states both, excavated soil May Not (first sentence) and May (second sentence) be used on-site.
     Answer: The first sentence in Item 3 does not state that excavated soil “may not” be reused onsite. This paragraph states that if the soil requires offsite disposal to assume it would require handling as contaminated, and that some of the soil would likely be considered reusable by NYSDEC. As noted, any statements regarding soil reuse in the Final Contaminated Materials Investigation Findings Report are superseded by the reuse requirements in the Draft CMP.

IV. Item d states that excavated soil May be used on-site.
    Answer: To clarify: Item d states that if soil requires offsite disposal for engineering purposes to assume such soil would classify as contaminated material for disposal purposes. This paragraph also states that based on the data, much of the soil could be considered reusable onsite by NYSDEC.

V. Item e states that excavated soil for Utilities (outside Phelps Dodge) May be used on-site.
   Answer: Item e states that the soil excavated for utilities may be reused within the same utility excavation.