Question 225.

There is limited space available within the ROW to layout bikeway/walkway ramps leading up to the pedestrian bridge in the LIE Interchange. There are pinch points where it will not be possible to satisfy both the 20 foot width and the 5% maximum grade requirements as described below.

**Bikeway/Walkway Ramp from 43rd Street to Pedestrian Bridge**

There is roughly 150ft from the 43rd St / LIE underpass to the proposed pedestrian bridge. The bikeway/walkway ramp must account for a 25 foot increase in elevation to accommodate the existing change in topography, pedestrian bridge vertical clearance requirement and pedestrian bridge superstructure depth. There is insufficient space between the existing roadways to layout 500 feet of 20 foot wide bikeway/walkway ramp in this location.

**Bikeway/Walkway Ramp from Laurel Hill Blvd to Pedestrian Bridge**

The area between Laurel Hill Blvd and the cemetery fence is roughly 40 feet wide and 320 feet long. There is insufficient space to accommodate a 20 foot wide bikeway/walkway ramp up from the proposed sidewalk along Laurel Hill Blvd, a 20 foot wide bikeway/walkway ramp down from the proposed pedestrian bridge and the at-grade sidewalk along Laurel Hill Blvd in the limited area available.

a. Given that the existing sidewalk at the 43rd St / LIE underpass is significantly less than 20 feet, does the bikeway/walkway need to be 20 feet wide at this location?

   **Answer:** The bikeway/walkway width shall meet the existing sidewalk width at the underpass location.

b. If the bikeway/walkway can be less than 20 feet at this location, at what point does the bikeway/walkway need to start being 20 feet wide?

   **Answer:** The bikeway/walkway shall be 20 feet wide west of 54th Avenue. The Design-Build shall refer to the NYSDOT Highway Design Manual and the AASHTO "Guide for the Development of Bicycle Facilities" for required width east of 54th Avenue. This will be clarified by Addendum.

c. What is the required width of the at-grade sidewalk along Laurel Hill Blvd?

   **Answer:** The Design-Build shall refer to the NYSDOT Highway Design Manual for required sidewalk width.
d. Due to the limited space available, is a bikeway/walkway grade steeper than 5% acceptable in this location?

Answer: The Bikeway/walkway must be ADA compliant.

e. If a bikeway/walkway can be steeper than 5% at this location, at what point does the bikeway/walkway need to start follow the 5% maximum grade requirement?

Answer: The Bikeway/Walkway must be ADA Compliant.

Question 226.

Regarding Section 14.5.1: What is the process for submitting aesthetic lighting fixtures for approval? Are there aesthetic lighting fixtures pre-approved by the Department?

Answer: The Department does not have pre-approved aesthetic lighting fixtures. The Design-Builder shall submit proposed aesthetic lighting fixtures to the Department for approval.
Question 227.
Please clarify where the points of connection for bridge power on the Queens and Brooklyn sides are.

Answer: The Department has submitted a request to Con Edison for power to be provided near the intersections of Gardner Avenue and Cherry Street in Brooklyn and 56th Road and Laurel Hill Blvd in Queens. This will be issued by Addendum.

Question 228.
Please clarify the existing available power for both sides.

Answer: The Department anticipates 480V a.c. power to be provided at the locations indicated in the response to Question 227.

Question 229. 

*Environmental Compliance Plan* – As follow-up to Final RFP Question 18, we seek further clarity on how we are to respond to ITP Appendix B, section B3.6, Environmental Compliance Plan.

To clarify, ITP section B3.6, which outlines how we are to respond to the Environmental Compliance Plan varies significantly from the requirements of the Initial Environmental Compliance Plan outlined in Part 3, Section 3.2.6.1. Provided the intent is as suggested in the response to question #18, ITP section B3.6 should be changed to match Part 3, Section 3.2.6.1.

Please confirm the requirements of ITP Appendix B, section B3.6 will be modified via addendum prior to our Proposal submission to match those of Part 3, Section 3.2.6.1.

Please also confirm our proposals will be scored against the requirements of Part 3, Section 3.2.6.1 and not that in ITP Appendix B3.6

Answer: ITP Appendix B3.6 will be revised by Addendum to include the following statement:

“The Initial Environmental compliance Plan shall follow the format for the Environmental Compliance Plan given in Part 3 – Project Requirements, Section 3.2.6.1.”

Part 3 – Project Requirements, Section 3.2.6.1 will be revised by Addendum to include the following:
“D) Mitigation and Monitoring

1) Explain how the Proposer will integrate environmental compliance into the construction activities in the Creek and manage their mitigation and monitoring.

2) Identify the mitigation plans that the Proposer will implement for environmentally sensitive aspects of the Work.”

Question 230.

A. It is our understanding that the Department opened a Case Number with Con Edison for the initial application for electrical service for the Bridge. Please confirm the service requested is 460VAC from the 27kV network on the Queens side and 460VAC from 4.16kV network on the Brooklyn side. Please indicate size of service requested and anticipate load profile submitted.

Answer: Two Con Edison Case Numbers have been assigned to this project. The Case Number for Brooklyn is #1584213, with proposed electrical service at Cherry Street. The second Case Number is #1584268 with proposed electrical service from 56th Road in Queens. The Department anticipates 480V a.c. power to be provided from both the Queens and Brooklyn sides.

B. Please confirm that Con Edison and National Grid will be responsible for any removal and disposal of asbestos or other hazardous material (3M Joints) encountered in service relocations.

Answer:

Con Edison

Through discussions with Con Edison, their records indicated there are no anticipated ACM materials within the project limits. On 10/16/2013, CE noted that they cannot tell if there are any 3M Joints at this time. CE stated the only way to identify those items is at the time of the inspections of the structures in the field. If 3M joints are encountered, Con Edison will be responsible for the abatement/removal of these items.

National Grid

National Grid will be responsible for any removal of ACM’s or coal tar wrap encountered during the reconstruction of the proposed gas main services.

C. Please confirm that Con Edison will provide all cable and splices as required for service relocations.
Answer: According to the “Kosciuszko Bridge Project ConEd Guidelines, provided by Con Edison, specifically note 5, Con Edison Company will perform all cable pulling, splicing, and cable removals.

D. Please indicate how secondary feeders to NYCDOT street lighting and signals are to be coordinated and approved for Con Edison to maintain, relocate or reenergize.
Answer: This shall be coordinated by the Design-Builder during design.

E. Please confirm that the cost with the required work and/or modification (OH to UG, SEB’s, PLB’s, etc.) on the customer side of the Con Edison service laterals will be paid for by NYSDOT as part of the relocations and service upgrades.
Answer: Any required Con Edison customer service upgrades shall be paid for by the Department.

F. Please confirm there will be no additional Con Edison Transmission or Distribution lines/conduit (MV or HV) to be added to the structure at this time.
Answer: Under the Con Edison 40% utility design developed for this project, there are no anticipated Con Edison Transmission or Distribution lines/conduits (MV or HV) to be placed on the proposed bridge structure anticipated at this time.

Question 231.
Part 3, section 2.2 prescribes minimum requirements for said position as follows: “Shall be licensed as a Professional Engineer in the State of New York and shall have demonstrated at least 15 years’ experience in the development and execution of demolition plans. Experience related to sequenced unloading of bridges is particularly valuable.”

Considering these positions are relatively new to the Design-Build industry (really only being prescribed by Owner’s in roughly the last 5 years), and that we have investigated numerous options to best-fill this position and find the, “...15 year’s experience in the development and execution...” beyond the experience of some of the profession’s most seasoned Demolition Engineers and for all practical purposes a nearly impossible position to fill. We suggest revising the criteria as follows,

“Shall be licensed as a Professional Engineer in the State of New York and shall have demonstrated at least 8 years’ experience in the development and execution of demolition plans. Experience related to sequenced unloading of bridges is particularly valuable.” These revised criteria will undoubtedly provide the Department with a highly-qualified and
experienced demolition engineer in this relatively new profession, without narrowing requirements to the point of which they are not attainable by otherwise proven and well-qualified Demolition Engineers.

**Answer:** The requirements will be modified by Addendum to state the following

> “Shall be licensed as a Professional Engineer in the State of New York and should have demonstrated at least 15 years experience in the development and execution of erection and demolition plans. Experience related to sequenced unloading of bridges is particularly valuable.”

**Question 232.**

Part 3, section 2.2 prescribes minimum requirements for said position as follows, “Should have demonstrated experience in bridge design and major infrastructure construction with at least 10 years experience in risk management activities, including preparation and implementation of Risk Management Plans, Risk Registers, and procedures for managing, mitigating and avoiding risks. The Risk manager should hold only this Key Personnel position. The Risk Manager preferably should have a certificate of completion of training in Risk Management from an accredited educational institution, or membership in the Institute of Risk Management or similar professional risk management organization.

This position is typically a 10-year Cost or Project Controls Engineer working as an integral part of the construction team with the aforementioned Risk Management experience. The prescribed requirement of bridge design is typically not prerequisite of this position; rather the design team is tasked with tracking design risks and reporting them to the construction team’s Risk Manager. Furthermore, and in effort to provide the Department and stakeholders with the best value, it is not reasonable the Risk Manager serve only in this capacity on the Project as he or she will have additional capacity to fulfill other responsibilities on the Project. Please consider revising requirements as noted.

**Answer:** The Risk Manager requirements will be modified as indicated below.

> “Should have demonstrated experience in bridge design and major infrastructure construction with at least 10 years experience in risk management activities, including preparation and implementation of Risk Management Plans, Risk Registers, and procedures for managing, mitigating and avoiding risks. The Risk manager should hold only this Key Personnel position. The Risk Manager preferably should have a certificate of completion of training in Risk Management from an accredited educational institution, or membership in the Institute of Risk Management or similar professional risk management organization.”

This change will be issued by Addendum.
Kosciuszko Bridge Replacement project – Phase 1  
Contract D900011  
Final RFP Questions and Answers 225 thru 245

Question 233.

Part 2, DB Section 104-15.1 states:
“The Design-Builder warrants as follows:
A) That all design Work performed pursuant to the Contract Documents, including that done by its Subcontractors and manufacturers, shall conform to all professional engineering principles generally accepted as the standards of the industry;
B) That the Project shall be free of defects including design defects, errors, and omissions and shall be fit for use for the intended function; and
C) That all materials and equipment furnished under the Contract Documents shall be of good quality and new.”

We understand the Department’s answer to public question #51 on the Draft FRP but note that A) and B) cannot be stated together. Part A) is a Standard of Care Provision and B) goes further to state the Project shall be free of defects including design defects, errors, and omissions which are beyond the standard of care. It is not reasonable to require the Design be warranted against defects as claims under such warranty will not be covered by Professional Liability Insurance. To mitigate this uninsurable risk and as offered in our September 4, 2013, Skanska-Kiewit ECCO JV has provided two examples where the Standard of Care for Design is outlined separate from Construction Warranties.

Answer: The Department has amended Section 104-15.1 to read as set forth below. This amendment will be included in an upcoming Addendum.

“The Design-Builder warrants as follows:
A) That all design Work performed pursuant to the Contract Documents, including that done by its Subcontractors and manufacturers, shall conform to all professional engineering principles generally accepted as standards of the industry;
B) That all non-design Work shall be free of defects and that the Project shall be fit for use for the intended function; and
C) That all materials and equipment furnished under the Contract Documents shall be of good quality and new.”

Question 234.

Regarding use of NYSDOT Form AAP-10, D/M/WDBE Solicitation Log, only allows three (3) lines for entering contact information; however, a DBE firm can be contacted numerous times as many as eighteen times through a combination of email, mail, fax and phone. Can the form be edited to accommodate all the various contact methods?

Answer: The Department will issue Form AAP-10 in an editable format so that the Proposers may add lines for entering contact information as necessary.
Question 235.
Regarding form AAP-10, as part of our outreach to DBE firms, some firms respond to our attempts as “not bidding” without an explanation as to why they are “not bidding”. Our attempts to clarify go unanswered in most cases. There is no code for this reason, which leaves us to use “code 26” for firms not bidding. There is also no space provided to hand write in this description. Is the Owner aware of this situation? If so, will the form AAP-10 be amended? Or will the Owner accept code 26 for this purpose?
Answer: Yes the form will be amended and supplied via an Addendum.

Question 236.
While it is understood that according to NYSDOT Std. Drawing #BD-EE13E, which prohibits utility placement of any kind within the reinforced backfill material behind the MSE wall, we would like clarification if drainage catch basins and pipe is also considered a utility in this context. The elevated roadway needs to be drained, and we would like clarification as to how this can be accomplished without drainage structures in the fill. In addition, expect this restriction is likely put into place for ease of maintenance should a utility failure occur behind the wall and under the roadway.

a. Would it be permissible to place utilities within the roadway backfill below the pavement while still above the top reinforcing ties of the wall?

Answer: Utilities can be placed in the roadway backfill provided that they are above the MSE reinforcing straps. Straps shall not be bent around utilities.

b. Also, can conduits be embedded in the concrete of the roadway/bridge deck to accommodate some of the utilities?

Answer: Conduits cannot be embedded in the roadway pavement.

Question 237.
We have spoken with MSE manufacturers and they do permit the utilities to be constructed behind the wall, and that the restraining straps can be “bent” around utilities, if required. While this restriction (no utilities in the MSE wall backfill), could possibly be accommodated more easily in other parts of the state, in New York City, it can understandably be problematic by restricting construction of all utilities to outside and below the walls, and within the limited
ROW. Please clarify if there is some relaxation to these requirements, or if we need to rigidly adhere to this for all utilities including drainage structures.

Answer: Utilities can be placed in the roadway backfill provided that they are above the MSE reinforcing straps. Straps shall not be bent around utilities.

Question 238.

CERCLA Agreement – Part 2, DB 107-27.2, Design-Builder requests that a reciprocal indemnity be inserted running from NYSDOT to Design-Builder to protect Design-Builder from third-party claims arising from hazardous materials on or from the area within the project site where Design-Builder has not acted in a negligent manner. Pursuant to the current contract language, Design-Builder is potentially liable for hazardous materials releases arising from its proper (i.e. non-negligent) performance of the work due to the presence of such materials in or about the site. This is contrary to recent major procurements (Tappan Zee). Note that NYSDOT is an additional insured under the pollution policy being taken out by Design-Builder for the project. As such, NYSDOT will share in the coverage that is available under the policy to Design-Builder for its non-negligent performance of the work. Failing to provide the requested indemnity will result in Design-Builder unnecessarily burdening its bid to cover potential uninsured portions of claims that result through no fault or negligence of Design-Builder. This is not quantifiable and inequitable in general. Design-Builder suggests inclusion of a provision that will not require Design-Builder to be responsible for such claims where it did not act in a negligent manner (substantively the same provision included in the recent Tappan Zee Bridge solicitation) as follows:

**DB 107-27.2 Indemnifications by the Department**

It is not the intention of the parties that the Design-Builder be exposed to any liability under Governmental Rules concerning liability for Hazardous Materials arising solely out of the non-negligent performance by the Design-Builder and Subcontractors in management of pre-existing contamination, whether known or unknown, within the Project Limits. Accordingly, the Department shall indemnify, save harmless and release the Design-Builder from any and all third party claims (including claims for response and remediation costs, administrative costs, fines, charges, penalties, attorneys’ fees and cost recovery or similar actions) arising out of the presence, release, or threatened release of Hazardous Materials on or from the area within the Project Limits, but specifically excluding those conditions for which the Design-Builder has agreed to be responsible as described DB §§ 104-4.3.

Answer: The Department cannot indemnify the Design-Builder. However, the Department will affirmative state that it will not rely on the Design-Builder's indemnification as the sole basis for a direct cause of action against the Design-Builder concerning liability arising solely
out of pre-existing Hazardous Materials, provided the Design-Builder complies with the Contract Documents.

Question 239.

**Consequential Damages** – Part 2, DB 105-7.10 – While Design-Builder acknowledges NYSDOT’s revision to the terms to include a mutual waiver of damages, as per Question 89, the exclusion from this waiver of any consequential damages arising from the Design-Builder’s default or termination for cause negates the waiver as a practical matter. Design-Builder requests the following modifications to the Department’s Proposed DB 105-7.10 per response to question 89 to bring this clause in line with an industry standard waiver of consequential damages clause and in fact afford the waiver to Design-Builder:

**DB 105-7.10**

*As set forth herein, the Department waives claims for consequential damages against the Design-Builder arising out of or resulting from the Work under this Contract in the following instances: consequential damages incurred by the Owner for rental expenses, for loss of use, income, profit, or reputation, for business interruption, for interest and financing charges, for depreciation, and for loss of management or employee productivity.*

*The waiver of consequential damages does not include any damages other than those set forth above, or any damage or assessment provisions expressly set forth elsewhere in this Contract, including but not limited to: consequential and other damages in the event of default by the Design-Builder or termination of the Design-Builder for cause; liquidated damages; engineering charges; lane rental charges; incentive or disincentive payments; or third-party claims for consequential damages. [For the purposes of clarity, the waiver of claims set forth herein shall not limit the Indemnification requirements set forth in this Contract, and thus the requirement to indemnify against “damages . . . of every name and description,” including consequential damages, remains undisturbed.]*

Note: The bracketed language is acceptable provided the modifications to the indemnification clauses (Part 1, DBA, Art. 18 & Part 2 DB 107-27.1) are made to properly limit Design-Builder’s indemnification obligations to loss or injury to persons or property arising from its negligent or otherwise tortious act (i.e. insured claims). If the changes to the indemnification clauses are not made, then the indemnification includes contractual/uninsured exposure and the above bracketed language will apply consequential damage exposure together with same which present an unquantifiable or insurable risk and will result in Design-Builder unnecessarily burdening its bid.

**Answer:** While the Department understands the Proposers concerns regarding consequential damages, the Department will not be substantively revising the previously amended
consequential damages provisions. Minor clarifications of the consequential damages provisions will be included in an upcoming Addendum.

Question 240.

Liquidated Damages – Part 5, SP 18.1, Design-Builder proposes a reasonable cap on liquidated damages recoverable from it by NYSDOT in the event of an unexcused delay at Project Completion in the amount of $27,000,000. Based on the daily liquidated damages amount included in the agreement, this represents a 6 month duration of potential delay which affords NYSDOT ample protection as a practical matter and avoids Design-Builder from unnecessarily having to burden its bid to absorb the risk of uncapped liquidated damages.

Answer: The Department will limit the amount of liquidated damages, lane rental charges, or engineering charges recoverable by the Department from the Design-Builder to $60,000,000. This will be covered in an upcoming Addendum.

Question 241.

Warranties – Part 2, DB 104-15.1, Design-Builder reiterates its prior comment in regard to the fact that professional services are not necessarily warranted in this industry and that requiring same results in an uninsurable obligation on the part of Design-Builder. This presents unnecessary risk to both NYSDOT and Design-Builder in creating a risk for which professional errors and omissions insurance will not afford coverage. It is Design-Builder’s presumption that in the off-chance an error or omission were to occur, both parties would want the available professional liability insurance to respond. This clause will in the very least result in the Design-Builder unnecessarily burdening its bid or at worst, possibly preclude Design-Builder’s ability to submit a proposal. Design-Builder refers NYSDOT back to the two examples of recent major public procurements in which there was no warranty against design defects but rather, a stated standard of care against which the professional services would be measured and a warranty applicable to the performance of the work itself. That approach adequately protects NYDOT from design errors and construction defects while affording both NYSDOT and Design-Builder access to available professional liability insurance.

Answer: See response to Question 233.

Question 242.

Hazardous Materials Order on Contract – Part 2, DB 104-4.3, we note this article in its definition within the Contract restricts relief to Hazardous Materials only. We also note after a
thorough review of the Draft Contaminant Management Plan, a large quantity of material on site is likely Non-Hazardous Contaminated. By the terms of DB 104-4.3, it would appear there is no mechanism for the Design-Builder to be compensated for material differences in the management and disposal of Non-Hazardous Contaminated Materials if they are of a type, quantity or location that differs materially from the types, quantities or locations identified in Contract Documents.

Please confirm it is not the intent of the Department to limit this Order on Contract to only Hazardous Materials and accordingly modify this section of the Contract to include both Non-Hazardous Contaminated Material and Contaminated Material including dewatering. We note the implications of contaminants, for example petroleum products, can have significant impacts on the management and disposal costs of Non-Hazardous Contaminated Materials and that limiting the material differences to just Hazardous Materials would be punitive to Design-Builder. We further note the article in its current state would not appear to provide a mechanism for Orders on Contract for the condition where a Non-Hazardous Contaminated Material was found to be Hazardous. Again, please revise article DB 104-4.3 to include Non-Hazardous Contaminated material and water to fairly balance risk between Design-Builder and the Department.


Additionally, “Hazardous Materials” are defined to include any “substance, product, waste, pollutant, contaminant or other material of any nature whatsoever” that fulfills the definitions set forth in the definition. Thus, DB 104-4.3 applies to contaminated materials of all sorts, including water.

Question 243.
Can we submit a cover letter with our proposal?

Answer: A cover letter shall not be submitted with the Proposal. However, the Proposal shall include two separate Executive Summaries – one for the Base Project and one for the Base Project Plus the Option. Each Executive Summary shall be limited to two pages in length. This will be issued by Addendum.

Question 244.
a) For the Base Project and Base Project + Option technical proposals please confirm that there is no limit to the # of pages which can be included in Volume 2 Section 4 – Schedule. If
there is a maximum # of pages would the maximum include the executive summary and bar charts?

Answer: The pages are limited to 50 and that includes the executive summary and bar charts.

Part B. In addition to the above in Part A, since Proposers are providing the data file for the Project Schedule do Proposers need to provide a bar chart in the technical submission that includes all of the activities in the schedule or does NYSDOT require only a summarized presentation of the entire schedule on several pages?

Answer: Proposers should determine the format, content and level of detail they wish to submit and not rely upon the Department’s evaluators’ discretion to generate reports/printouts, etc. to demonstrate the Proposer’s plan and scheduling.

Question 245 (Revised Response to Final RFP Question 19).

Will the NYC be responsible for snow plowing on both the existing and new Kosciuszko Bridges during the term of our contract?

Revised Answer: Per Addendum #2, Part 3 of the RFP – Section 16.3.1 states the following:

“The Department will retain responsibility of maintenance of the existing bridge (including snow removal) for as long as it remains in service for general public use. The Design-Builder shall be responsible for maintenance of all new Construction in accordance with DB §105-12 until Final Acceptance. The Design-Builder shall be responsible for snow removal only within single lane cattle chutes or other areas not accessible to the Department of Sanitation. The Department shall be responsible for snow removal on all other areas of the new and temporary structures when open to traffic. Where the existing bridge and the new bridge are both in operation, the Design-Builder shall be responsible for the new Crossing structure, until Final Acceptance, and shall be responsible for liaising with the Department in relation to operational arrangements.”