Question 271.
Reference is made to the Kosciuszko Bridge Project Final RFP Question 154. We request clarification to the answer.

a. In the answer to question #169, it was noted that Traffic Enforcement Agents (TEAs) would be required for ramp and lane closures. Will the DOT reimburse the DB Team for the cost of the TEA’s?

Answer: The DB team shall include the cost of TEAs in their bid price. The number of TEAs required per closure is included in Addendum #5.

b. If the DOT does not reimburse the DB Team for the cost of the TEA’s, what are the TEA labor rates?

Answer: The DB team shall assume a rate of $31 per hour for each TEA required.

c. Besides the cost for the actual TEA, are there any other fees associated with providing their service?

Answer: All costs associated with the TEAs are included in the hourly rate provided above.

Question 272.
Please refer to Addendum #5, page 126 section 16.3.2 Draft Lane Closure Stipulations. Language has been added that “The Design-Builder shall assume seven (7) Traffic Enforcement Agents for each ramp closure and four (4) Traffic Enforcement Agents for each local street closure.” Please clarify if this cost will be the responsibility of the Bidder to carry this cost or will this cost be paid for under an account by the Department? If it is the responsibility of the Bidders to carry this cost, could the Department provide us with the hourly/ daily cost for the Traffic Agents or a point of contact so we can properly figure this cost?

Answer: See response to Question #271.

Question 273.
Q&A 189 Answer: The Design-Builder shall pave all disturbed areas with 3 inches of Asphalt Top and Binder Course on 3 inches of Asphalt Base Course with 12” of sub-base. What is to be considered a disturbed area?

Answer: All lots that have been acquired in Fee by the Department shall be paved as well as all vacant areas under the new Eastbound Approaches, Eastbound Main Span and Queens Connector. For the Base Project Plus the Option, the area under the new Westbound Main
Span shall also be paved. The area under the future Westbound Approach spans shall not be paved. This will be clarified by Addendum.

Question 274.
Can limits of Commercial General Liability Insurance of $2 million per occurrence / $5 million aggregate be provided, with an Umbrella or Excess type policy, dedicated to the contract, used to meet additional limits?

Answer: No. However, Article 17(B)(2) allows for a combination of primary policies totaling $5,000,000 per occurrence/$10,000,000 aggregate.

Question 275.
**Pavement of Disturbed Areas** – Question 189 and Addendum #2, Part 3, Section 4.3 – please confirm it is the Department’s intent Design-Builders grade and pave all “disturbed” areas to match the existing surrounding elevation with 3 inches Asphalt Top and Binder Course on top of 3 inches of Asphalt Base Course (6 inches of Asphalt) with 12 inches of Sub-base (18 inches total). We note this is a substantial pavement section and base on an estimated 14 Acres adding significant project cost unless clarified further.

a. Please clarify and define “disturbed” and the extent of areas to be paved in sufficient detail so all Proposers are clear on the Department’s expectations for paving these areas and price accordingly.

b. It would seem inefficient the Phase 1 Design-Builder pave these areas only to have the Phase 2 Contract disturb these same areas to construct WB. Please consider the drainage and environmental impacts paving such a massive area would have on the Project. Please also consider the phrase, “...match the existing surrounding elevation...” would suggest the Design-Builder is to remove 18 inches of potentially contaminated or hazardous material prior to restoring the disturbed areas with 18” of base and pavement. Please clarify the intent.

Answer: See response to Question #273.
Question 276.

**Traffic Enforcement Agents** – Addendum #5 Part 3 Section 16.3.2 – Draft Lane Closure Stipulations. “The Design Builder shall assume seven (7) Traffic Enforcement Agents for each ramp closure and four (4) Traffic Enforcement Agents for each local street closure.”

a. Will the cost for the Traffic Enforcement Agents be reimbursed via Item 800.04000015 Design Build – Force Account Work or is the Proposer required to include this cost in their lump sum Proposal Price?

b. If the Proposer is to price this work in the lump sum price, please provide hourly rates for the Traffic Enforcement Agents including yearly escalations.

**Answer:** See response to Question #271.

Question 277.

**Cable-Stayed Directive Drawings** – DP-03, DP-08, and DP-09 – These Directive Drawings schematically suggest EB and WB main span cable-stayed bridges of the same proportions and dimensions. More specifically, they suggest the pylon/tower heights, spans over Newtown creek and adjoining cable-stayed side spans to be of the equal dimensions between EB and WB main spans.

a. Considering foundations are explicitly not allowed in the Phelps Dodge Laurel Hill Site per DP-09, it would appear the span length for the WB span over Newtown Creek may be required to be the same length as the EB span over Newtown Creek, approximately 640’ ±. Please confirm and modify Directive Drawing DP-03 accordingly including the extent of the ±. Please also modify Directive Drawings DP-08 & 09 to match those prescriptions (if any) on DP-03.

**Answer:** The Directive Drawings clearly depict that the Eastbound and Westbound spans be of substantially equal length. No modifications are necessary.

b. DPE-03 suggests Eastbound Tower and Westbound Tower to be of the same heights and elevations; please confirm whether or not this as a Contract Requirement and modify the RFP accordingly.

**Answer:** The Directive Drawings clearly depict that the towers are to be of substantially equal height. No modifications are necessary.
c. DPE-03 illustrates a number of stays for EB and WB main spans; please confirm whether or not this as a Contract Requirement and the RFP accordingly.

   **Answer:** The directive drawings clearly depict that the number of cable stays, in the back span of the Eastbound structure be equal to the number of cable stays in the back span of the Westbound structure. Likewise the number of stays in the main (fore) span of the Eastbound and Westbound structures be equal.

   d. In general, please clarify the extent to which Drawing DP-03 is directive in terms of Pylon, spans, tower heights, and aesthetic concepts so it is clear to all Proposers the Department’s expectations.

   **Answer:** The Directive Drawings clearly depict that the Eastbound and Westbound spans be of substantially equal length and that the towers be of substantially equal height and elevation. No modifications are necessary. Any deviation from the directive drawings would have required an ATC submittal and approval of the ATC from the Department.

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**Question 278.**

Addendum #5 revised Section 16.3.2 to include specific Traffic Enforcement Agents requirements. Typical on design-bid-build projects include an allowance item for Traffic Enforcement Agents. Very often the requirement of the agents is a function not controlled by the general contractor. We request an allowance item be included in this contract similar to design-bid-build projects.

**Answer:** See response to Question #271.

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**Question 279.**

Q&A #189 states that all disturbed areas shall be paved with 3” top, 3” binder and 12” subbase. Is this applicable to the area under the existing bridge that may be disturbed by staging or demo of the existing structure. Is the intent to remove the existing asphalt under the existing bridge and pave as required at the end of our project or does this apply to areas that specifically require asphalt to be replaced (ie removal of existing footer in an already paved location under the existing bridge.)

**Answer:** See response to Question #273.
Question 280.
Regarding Pollution Legal Liability insurance, Addenda # 3, pages 8 thru 11A made several modifications/additions to the insurance requirements for the Project. One of which was the addition of “Pollution Legal Liability” (PLL) of $25,000,000 and adding as an additional insured under the Policy Phelps Dodge and Sagres. This addition (PLL coverage) to the contract in combination with the requirements of paragraph # 4 “Additional Insured”, specifically Endorsement CG 20 37 07 04 imposes upon the Design Builder (DB) and their insurance provider to be responsible not only for claims arising out of the negligence of the DB but also including those arising out of the negligence of the Additional Insured. We request the DOT to reconsider the present language incorporated by Addenda # 3 and make the following two modifications:

a. Amend Section 17.A.4 to exclude the newly added Pollution Liability requirement

b. Amend Section 17.A.11 to only claims arising from the negligence of the Design-Builder in the performance of the Design-Builders Work under this contract or as a result of the Design-Builders activities.

Answer: The requirement for Pollution Legal Liability coverage will remain as set forth in Addendum #3. Endorsement CG 20 37 07 04 covers liability arising from “your work” and does not require the Design Builder assuming responsibility for the negligence of the additional insured. Additionally, as stated in the response to Question 186. “The Department will not bring a direct cause of action against the Design-Builder concerning liability arising solely out of changed ground water conditions that occur as the result of capping or loads on the Laurel Hill Site, provided the Design-Builder complies with the contract documents regarding capping requirements and load restrictions, unless the changed ground water conditions are the result of negligence or an intentional act on the part of the Design-Builder. This will be clarified in an addendum.”

Question 281.
Incorporating the “Legal Entities of Phelps Dodge and Sagres” under 17.A.4 is a requirement which is not found in the commercial construction market and which they will not support. The Legal Entities of Phelps Dodge are most likely the former owners of Phelps Dodge Refining Company and Sagres is a firm engaged in environmental remediation. We ask that these two entities be removed from the requirements of Section 17.A.4.

Answer: The referenced entities of Phelps Dodge and Sagres are the fee owners of lands over which the Department holds a permanent easement and which lands will be encumbered by
the Project. The requirement to name these fee owners as additional insured will remain a requirement.

**Question 282.**
Regarding Professional Liability insurance, Addenda # 3 page 11 – Section 7. States - The Design-Builder’s designer shall maintain Professional Liability limits of $10,000,000 per claim and $10,000,000 in the aggregate. We ask the following two questions concerning the provider of this coverage:

- c. Will it be acceptable for the Design Builder to provide the Professional Liability coverage’s for the project, rather than the DB Designer
- d. Whether the Design Builder provides the Professional Liability Insurance for the project or the Lead Designer of record for the project, will it be acceptable for either the Design Build or the Lead Designer of record to set lower limits for any sub consultants working on the project.

**Answer:** Provided the Professional Liability insurance meets all requirements set forth in the Contract documents, it is acceptable to the Department that the Design Builder procure the coverage. With regard to insurance requirements for subconsultants, the Department does not dictate the substance or scope of individual contracts between the Design-Builder and subconsultants, and thus defers to the Design-Builder’s judgment in determining the amount of insurance coverage that is appropriate and commensurate with the subconsultant’s risk exposure. The Department reiterates that insurance arrangements between the Design-Builder and its subconsultants do not alleviate or lessen the Design-Builder’s insurance or indemnification obligations to the Department.

**Question 283.**
The Draft Contaminated Materials Investigations Findings Report identified soil samples with elevated concentrations of chlorinated solvents (i.e., PCE and TCE which are US EPA F Listed Wastes) in the vicinity of proposed excavations/buildings. Some of these buildings are also identified as potential source areas for TCE and PCE. For the purpose of the base bid, should the design builder assume soil in these locations to be hazardous, or would the transportation and disposal cost associated with the removal of this soil be considered a “Hazardous Materials Order on Contract” should future testing confirm this material to be hazardous?

**Answer:** The bidders shall assume for their bids that the transportation and disposal cost associated with the removal of this soil be considered a “Hazardous Materials Order on Contract” should future testing confirm this material to be hazardous.
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Question 284.
The draft Contaminant Management Plan states that “the Design/Build Contractor will develop detailed building demolition plans that will include specific procedures for abatement of the asbestos materials and any other hazardous materials contained in the buildings such as tanks, drums, and universal wastes.” Is PCB-containing caulk considered to be a Universal Waste? If so, should the costs for testing of this material be included in the base bid? Since no information regarding the presence of PCB-containing caulk was provided to bidders, would sampling, abatement and disposal costs associated with this material be considered a Hazardous Materials Order on Contract since this would be considered to be a “pre-existing Hazardous Materials... of a type, quantity or location that differs materially from the types, quantities or locations of Hazardous Materials identified in the RFP or the Contract Documents”.

The Part 3 of the RFP Document states The Design-Builder shall relocate the unused stockpiled soil from Parcel 1A to Parcels 2 and 1C as indicated in the Capping Plans; however, the RFP further states that the Design builder is only responsible for the capping of Parcels 1A, 9A and 2. Please confirm that the design builder is not responsible for providing a cap or any other services on Parcel 1C.

Answer: PCB-containing caulk is not considered a Universal Waste. The bidders should include the sampling, abatement and disposal costs for the caulk in their base bids.

The Design-Builder is only responsible for capping Parcels 1A, 9A and 2 per the Contract Documents.

Question 285.
Appendix D – Form AAP-10 when inserting all of the required information for each Company the information contained as the heading sometimes falls in the middle of a page if we insert information for 10 companies as stated on the original. Does the Department require the heading to be at the top of all pages? If so, then the number of companies on a page will differ depending on the information inserted. Please clarify whether the heading should always be at the top of the page, and can the number of companies per page be reduced. If the Department would make the heading a default we would not have this problem.

Answer: Using the new editable form now found on the Department’s web page for this project, the Design-Builder in their proposal should be able to use the form to meet their needs. As long as the columns and their headings remain aligned, the Design-Builder should be able to meet the requirements of the RFP.
Question 286.

The answer provided for Question 208 states “The required limits for Commercial General Liability Insurance will be reduced to $5,000,000 per occurrence/ $10,000,000 aggregate.” We have contacted several insurance companies requesting a primary Commercial General Liability Insurance policy for the Project with the amounts of $5,000,000 per occurrence/ $10,000,000 aggregate. There are very few insurance companies who would consider insuring a bridge project in the State of New York and none are willing to commit to a primary Commercial General Liability policy with the limits requested.

To achieve the same coverage (results), through the combination of primary and excess liability insurance, the insurance companies recommend either a policy with limits of $2,000,000 per occurrence / $4,000,000 aggregate or $3,000,000 per occurrence / $6,000,000 aggregate. In turn the insurance cost for these limits will be achievable and will benefit the NYS DOT financially and be in line with the standard approach in the State of New York.

We respectfully submit the following questions:

a. Can Commercial General Liability Insurance with the limits of $2,000,000 per occurrence / $4,000,000 aggregate be considered?

b. Can Commercial General Liability Insurance with the limits of $3,000,000 per occurrence / $6,000,000 aggregate be considered?

c. As an alternative can the language read - Commercial General Liability Insurance program of $5,000,000 per occurrence/$10,000,000 aggregate, managed through the combination of both primary and excess programs.

Answer: Article 17(B)(2) allows for a combination of primary policies totaling $5,000,000 per occurrence/$10,000,000 aggregate.

Question 287.

In reference to obtaining permits for Building Demolition, which agency has the controlling jurisdiction of the state property?

Answer: The Design-Build is responsible for obtaining building demolition permits from the New York City Department of Buildings.
Question 288.

Does the Public Design Commission (PDC) of the City of New York have jurisdiction and need to approve the design and aesthetic elements for the main span, the bikeway, distinct elements such as fences and lampposts and any local street streetscape our design may introduce?

Answer: The Public Design Commission does not have jurisdiction over the new structure including the Main Span and bikeway. However, the Design-Builder is responsible for obtaining approval from the Public Design Commission for any local street work including streetscape.

Question 289.

Who pays for the new Con Ed service feeds?

Answer: The Department will reimburse Con Edison for the service feeds.

Question 290.

*Force Account Work* – DB 109-9.2 – We note the Contract is silent as to how design/professional services will be paid for under Section DB 109-9.2 (Force Account Work). In the event Force Account Work required design/professional services please clarify how those services would be paid.

A. Would they be paid lump sum? or

B. Would they be based contracted billing rates set forth in the Escrowed Bid Documents?

Answer: It could be based on an agreed upon Lump Sum price for the work or on a time and material method of determining the cost of the design portion of the design/professional services.
Question 291.

Changes in the Basic Project Configuration – DB 104-4.1, Addendum 6 – The last sentence of DB-104-4.1 states, “Department-Directed changes may be ordered without any change in Contract Price or extension of the Contract Time, provided the change is ordered prior to completion of the Definitive Design Review for the affected Design Unit(s).”

This requirement is overly broad and onerous in its current state. As it reads now, Design-Builder could be exposed to any Department-Directed changes, with no relief on Proposal Price or Contract Time, material or not, with no upper bounds, provided Department-Directed changes are directed prior to Definitive Design Review.

Considering the Liquidated Damages provisions in the Contract and that Proposers are establishing their Proposal Price based on a configuration outlined in the Technical Proposal (first sentence of DB 104-4.1), it would seem appropriate any Department-Directed changes resulting in a material change to Proposer’s Proposal Price and Schedule would be covered by an Order on Contract, irrespective of the design review stage.

Please revise this article accordingly or delete the last sentence of DB 104-4.1 per Addendum 6 in its entirety.

Answer: The last sentence of DB 104-4.1, as amended in Addendum 6, will be further amended to read: “Non-material Department-Directed Changes may be ordered without any change in the Contract Price or extension of the Contract Time, provided the change is ordered prior to completion of the Definitive Design Review for the affected Design Unit(s).” This change will be included in a future addendum.