Question 52.

Capitalized Terms — Change in Law — Part 2, section 101-3 defining Change in Law states, “The enactment, adoption, modification, repeal, or other change in any Governmental Rule, including any change in the judicial or administrative interpretation of any Governmental Rule, or adoption of any new Governmental Rule, that is materially inconsistent with the Governmental Rules in effect (or deemed in effect) 30 days before the Proposal Date, and which (i) requires a material modification in the Project design or in a Relocation design, (ii) results in imposition of additional mitigation requirements on the Project respecting impacts on Environmental Resources or Cultural Resources, (iii) prevents renewal of any Governmental Approval, (iv) changes the sales and use tax exemption described in DB §102-10, or (v) results in an increase in the Design-Builder’s costs directly attributable to a change in Governmental Rule of at least $500,000."

It is recommended the $500,000 threshold be removed because this threshold could be punitive if the party affected by the Change in Law, for example for a DBE Subcontractor who may only have Subcontract with a value less than $1,000,000.

Answer: The $500,000 threshold will be revised to $100,000. This change will be issued by Addendum.

Question 53.

Payment for Engineering, ECIS, and QC Services — Part 2, section 109-2.2 suggests payment for Design Engineering Services, Professional Engineering Construction Inspection Services, and Independent Quality Control Services will be paid lump sum over the “established duration of the contract”.

The “established duration” of the contract should be clarified to be the actual duration of Services per Proposer’s schedule, noting for example the duration of Design Engineering Services will be significantly less than the duration of the Project. This clarification will avoid Proposer’s burdening their Price Proposal with unnecessary financing costs.

Answer: The payment for Engineering Services will be per the below schedule.

- Year 1 - 60% or 5% per month
- Year 2 - 24% or 2% per month
- Year 3 - 12% or 1% per month
- Year 4 - 3% or .25% per month
- 1% Retainage until all documentation, calculations and As-built drawings and stamped design drawings are provided, as per the requirements of the RFP.

This change will be issued by Addendum.
Question 54.

Self-Insured Retentions - Article 17.A.8 Self-Insured Retentions/Deductibles: “Design-Builder or third-party-administered insurance deductible shall be limited to the amount of the bid deposit or $100,000.00, whichever is less.”

In the current commercial market, there are no insurance carriers underwriting policies with a deductible at this level. The minimum deductible currently available commercially is $1,000,000. We advise increasing the required deductible to no less than this amount.

Answer: Design-Builder or third-party-administered insurance deductible shall be limited to the amount of the bid deposit or $1,000,000.00, whichever is less. This change will be issued by Addendum.

Question 55.

General Liability Insurance - Article 17.B.2. Commercial General Liability Insurance requires a Commercial General Liability limit “of not less than $1,000,000 per occurrence and not less than $2,000,000 aggregate.”

Article 17.B.4 Umbrella or Excess Liability Insurance requires an Umbrella/Excess Liability limit “sufficient to provide a total of not less than $5,000,000 per occurrence/aggregate.” These limits are less than those seen on similar projects of similar size and scope.

We suggest the following requirements:

A. Total General Liability and Umbrella/Excess Liability limits of at least $100,000,000 per occurrence/annual aggregate.

Answer: The minimum required limits for the umbrella/excess coverage shall be sufficient to provide a total of not less than $100,000,000.00 per occurrence/aggregate. This change will be issued by Addendum.

B. Commercial General Liability limits at $1,000,000 per occurrence/$2,000,000 aggregate and the Umbrella/Excess Liability limits at $5,000,000 for subcontractors

Answer: Commercial General Liability Insurance shall be provided in an amount of not less than $25,000,000.00 per occurrence and not less than $50,000,000.00 aggregate. This change will be issued by Addendum.

C. Additional insured endorsement CG 2032 07 04 be required to provide additional insured status to an A&E not engaged by the Contractor
Kosciuszko Bridge Replacement project – Phase 1
Contract D900011
Final RFP Questions and Answers 52 thru 89

Answer: The Department will require endorsement CG 2032 07 04 to provide additional insured status to an engineer, architect, or surveyor not engaged by the insurance holder. This change will be issued in an Addendum.

Question 56.

Professional Liability Insurance - Article 17.B.7 Professional Liability/Errors and Omissions requires a Professional Liability limit “of no less than $2,000,000 per claim and $2,000,000 in the aggregate.” and “a deductible or self-insured retention level of no more than $250,000.00 subject to approval by Department.”

These limits and deductible are significantly lower compared to projects of similar size and scope. We suggest revising the Professional Liability/Errors and Omissions limit to at least $10,000,000 per occurrence/aggregate with a deductible/SIR of at least $500,000.

Answer: The Professional Liability Insurance requirements shall be per the below:

“Professional Liability/Errors and Omissions. The Design-Builder’s designer shall maintain at its own expense such insurance as is customary to compensate Department for any claims or losses that occur because of Designer’s errors, omissions, malpractice, or breach of professional obligations. Such policy or policies may be written on a claims-made form, so long as coverage is maintained to cover claims arising from the performance of services under this contract. Said coverage may be subject to a deductible of no more than $500,000.00 subject to approval by Department. It is also agreed that Department may withhold payment for services rendered under this contract in the event and to the extent any deductible in the event that a claim is asserted. Such coverage shall be written on a claims-made basis (or a policy form providing equivalent coverage) in an amount of no less than $10,000,000.00 per claim and $10,000,000.00 in the aggregate.”

This will be issued by Addendum.

Question 57.

Builder’s Risk Insurance – Article 17.B. has no requirement for Builder’s Risk insurance. We suggest that Builder’s Risk insurance in the amount of “full contract value” with a $1,000,000 deductible be a contractual requirement, provided by either the Design Builder or NYSDOT.

Answer: The Builder’s Risk Insurance requirements shall be per the below:

“Builders’ Risks Policy. The Design-Builder shall procure and maintain a Builder’s Risk policy in a form such as ISO form CP 00 20 10 90 or a policy providing equivalent coverage, covering the perils insured under and including the special causes of loss form, including collapse,
water damage, and transit and theft of building materials, with deductible not to exceed the amount of the bid deposit or $100,000, whichever is less, in non reporting form, with limits of coverage of not less than $100,000,000.00, covering the total value of work performed and equipment, supplies and materials at the location of the Work as well as at any off-site storage locations. 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, and 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, and property of Department held in their care, custody and/or control. Such policy shall name as insured, The People of the State of New York.”

This will be issued by Addendum.

Question 58.

_Railroad Protective Liability Insurance_ – Article 17.B. has no requirement for a Railroad Protective Liability policy.

There is contract work adjacent to and above the active MTA/ LIRR Right-of-Way. Based on prior contract experience, the Railroad will require Railroad Protective Liability insurance. We recommend that Railroad Protective Liability Insurance, with limits as required by the Railroad, be included as a contract requirement.

**Answer:** The Railroad Protective Liability Insurance requirements shall be per the below:

_“Railroad Protective Liability Insurance._ The Contractor shall maintain at its own expense railroad protective liability policy of insurance in the name of the affected railroad and with limits of coverage of not less than $2,000,000.00 combined Bodily Injury Liability and/or Property Damage for each occurrence with a $6,000,000.00 Aggregate Limit applying separately to each annual period. Said policy shall be subject to the approval of the railroad and comply with Federal Aid Policy Guide 23 CFR 646 subpart A.”

This will be issued by Addendum.

Question 59.

_Pollution Liability Insurance_ – Article 17.B. has no requirement for Pollution Liability insurance.

Similar projects typically require providing this coverage. We suggest that this insurance be required with minimum limits of $25,000,000 per occurrence/aggregate and a deductible/SIR of at least $100,000 per claim.
Answer: The Pollution Legal Liability Insurance requirements shall be per the below:

Pollution Legal Liability. The Design-Builder shall procure, or otherwise obtain and maintain in full force and effect throughout the term of the contract, and for two years after completion hereof, pollution legal liability insurance with limits of not less than $25,000,000, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against the Department arising from the Design-Builder’s work. Such policy shall contain an extended reporting period of three years following Final Acceptance. In addition to the additional insured requirements of 17.A.4 above, the policy shall also name as additional insured Phelps Dodge Refining Corporation and Sagres LLC.

This will be issued by Addendum.

Question 60.

Subcontractor’s Liability Insurance – Article 17.A.10 Subcontractor’s Liability Insurance has no requirement for Umbrella/Excess Liability.

This is not a typical contract requirement. We recommend striking this Article and leaving the requirement of having Subcontractors provide Umbrella/Excess Liability up to the Design-Builder.

Answer: Article 17 does not dictate whether (or not) the Design-Builder requires Subcontractors to carry Umbrella/Excess Liability coverage. That issue is left to those entities.

Question 61.

Insurance ISO Form – Article 17.B.3 References using ISO Form CA 00 01 07 87.

Please note that this form is no longer in use. It has been superseded by ISO Form CA 00 01 03 10. We advise revising the requirement accordingly.

Answer: The reference should be ISO Form CA 00 01 03 10. This change will be issued by Addendum.
Kosciuszko Bridge Replacement project – Phase 1
Contract D900011
Final RFP Questions and Answers 52 thru 89

Question 62.

_Cherry Street Wall Easements_ – ROW Plan DP-06, 07; Local St Plan Nos GNP-L06-L12 - CADD files indicate that the finished location of walls along Cherry Street will generally be just inside of established FEE lines, but without the temporary easements needed to construct these walls, nor the Permanent Easement needed to support footings for the walls shown.

Please confirm the Department is acquiring the Temporary Easements (for construction) and Permanent Easements (for footings) in the referenced areas.

**Answer:** The Department believes there is adequate available ROW for construction of the retaining wall and footing.

Question 63.

_ITP Conflict Questionnaire Form U_ – Please confirm Form U is only required by Principal Participants, Designer, Construction Inspection, and Materials Testing firms.

**Answer:** Form U shall be completed for Principal Participants, Constructors, Designers, Construction Inspection Professional Engineering Firms, and the Materials Testing Firms or Laboratories.

Question 64.

_Con Edison Utility Scope_ – Part 4, Utility Requirements. The “Preliminary Utility Agreement” between the NYSDOT and Con Edison Co. of New York indicates work that is to be performed by the design build contractor on Meeker Ave, Vandervoort Ave, Cherry Street and possibly 56th Road. There is no scope of work indicating the type and size of duct or conduit, new manhole locations, the length of run or the number of duct/conduits required. Historically, material for this type of work would be provided by Con Edison at no cost to the contractor. Please provide a complete scope of Con Edison work to be performed by the design build contractor and specify whether or not Con Edison will be supplying the material (concrete ducts, steel conduit, manholes, castings etc.).

**Answer:** It is the Design-Builder’s responsibility to coordinate with Con Edison to identify specific impacts the Design-Builder’s work will have on Con Edison facilities and the associated relocations required.

Question 65.

RFP Part 3 Section 10.3.10.2 requires a design geotechnical engineer as noted below:
“A Design Geotechnical Engineer is required to design drilled shafts. The design engineer shall be a licensed Professional Engineer in the State of New York and shall have at least 10 years of experience in designing drilled shafts and deep foundations with capacities and in subsurface conditions similar to those of this project”.

RFP Part 3 Section 2.2 K. requires a Foundations Lead Designer position (Key Personnel) as noted below:

**Foundations Lead Designer:** Shall be licensed as a Professional Engineer in the State of New York and should have demonstrated at least 15 years of experience in foundation design, including deep foundations, high capacity foundations, seismic design of drilled shafts and piles, and bridge foundations.

Are these two positions separate positions or are they referring to the same position with different titles?

**Answer:** These are the same positions. Part 3 – Section 10.3.10.2 will be revised by Addendum.

**Question 66:**

The 1999 easement may not be sufficient for the northern side of the bridge if 15-foot clearance is required to be maintained between the easement and the fascia of the bridge. Please confirm the permanent easement that may be assumed over Newtown Creek for the Base plus Option.

**Answer:** A 10′-6” easement from the north fascia of the Westbound bridge to the easement over Newtown Creek is acceptable.

**Question 67:**

Instructions to Proposers, Section B5.2 Initial Baseline Schedule, Para. 5.2.1 refers Proposers to Contract Documents Part 2- DB–108. It further goes on to state in Paragraph B.1 that the CPM schedule shall be in “general conformance” with SP-15. SP–15 defines the various requirements for the CPM throughout the project from the Pre-Start Schedule through the Final Schedule. However it is silent when it comes to a clear definition on the Initial Baseline Schedule. Is it the intent to have Proposers cost and resource load the Initial Baseline Schedule since the New York State DOT P6 site is not a secure site. Also, it is our understanding that during the Technical Evaluation process the team of reviewers will have access to our CPM such that they can evaluate a Proposers understanding of the project. With that said than the technical team would see a proposer’s price which it is our understanding that the technical team was not to have access to. Therefore, we ask that the Initial Baseline Schedule during the Proposal stage not be cost/recourse loaded.
Answer: The Proposers shall not include Cost or Resources in their Proposal or “Initial” CPM. ITP – Appendix B5.1 requires 3D Animation and 4D Schedule only. Also, please note that the NYSDOT P6 site has been secured.

Question 68.
The water main design is basically complete however there are no valves or service connections shown. Please provide some guidance for Design/Builders to include in their proposals.

Answer: Preliminary valve locations will be provided in a revised NYCDEP Preliminary Agreement issued by Addendum.

Question 69.
Queens local roadway reconstruction is not addressed in 40% plans however the staging plans call for reconstruction of the following roads:

- 56th Road, 55th Avenue, 54th Avenue, 54th Road and Laurel Hill Blvd.

All utility work is defined for these roads, but there are no restoration plans or typical sections. Please provide some guidance and typical sections such that Design/Builders have some parameters to formulate their proposals.

Answer: All impacted local streets shall be repaved and/or reconstructed per the RFP Part 3 – Section 19 - Pavement Design and Construction.

Question 70.
The 40% plans do not include any details on sidewalk restoration, streetscaping, street lighting, and traffic signal systems. Please provide some guidance on what is required on these aspects of the project such that Design/Builders have some parameters to formulate their proposals.

Answer: The Design-Builders shall be responsible for the design and construction of streetscaping improvements for the areas of new or disturbed sidewalks per the New York City Street Design Manual.
Kosciuszko Bridge Replacement project – Phase 1
Contract D900011
Final RFP Questions and Answers 52 thru 89

Question 71.
Please clarify the limits or reconstruction on the Meeker Avenue Viaduct. There appears to be a conflict in the description of the number of spans to be replaced under the Base contract:

a. Drawing ST-26 shows framing from Pier 76 to Pier 0 and associated spans being 76 and 77 (total of 2-spans)

b. Drawing ST-8 shows Pier 76 to Pier 0 shows three (3) spans (76, 77 and 78) that are to be replaced

Answer: The Indicative Plans are not Contract Requirements, however, it is noted that ST-8 shows “existing to remain” as well as new spans. The limits of the Meeker Avenue Viaduct to be replaced shall be determined by the Design-Builder’s design to tie-in to the existing structure while meeting the Project Requirements.

Question 72.
There are twelve catch basins and associated storm drainage piping shown on the 40% plans that are adjacent to footings that will be constructed by others as part of the Westbound Approach Contract. This drainage should be installed after these foundations and related pile driving are complete. It is our understanding that the design of these future drainage elements will be performed and included in our Base contract scope of work, however, the costs for installation of these items will not be included. The cost for installation of these items will be included in the future Approach Span Contract. Please confirm this a valid assumption otherwise please clarify.

Answer: The Design-Builder shall not be responsible for the construction of the Westbound Approach Span drainage structures.

Question 73.
Reference Contract Documents Part 3 – Project Requirements; Clause 11.3.1.4 N) 2). A minimum offset is required from the back face of the roadway barrier to the stay cable. Shall this be interpreted as being the offset to the centerline of the cable or a clear space to the stay cable (inclusive of associated hardware such as corrosion protection, damping etc.) Furthermore, the minimum offset is specified at a height of 18 feet above the bridge deck. Please confirm that the offset shall be maintained between the top of the barrier and 18 feet above the bridge deck or otherwise clarify if we may allow parts of the stay cable hardware such as dampers to encroach inside this offset below the 18 feet level.
Answer: A 1’-6” clear horizontal distance shall be provided from the outside face of barrier to the nearest obstruction. This distance shall be maintained from the top of barrier to 18 feet above the roadway deck.

Question 74.
Please provide the existing grades under both the existing and proposed Brooklyn connectors.

Answer: All existing grade information has been provided to Proposers. The Department does not have existing grades within the closure walls at the Brooklyn Connector.

Question 75.
There appears to be a contradiction in the Final RFP documents regarding the requirement for a NYSDOT field office: In accordance with Part 3 – Contract Requirements, Section 4, Paragraph 4.3.2, the Design-Builder shall provide a field office, field laboratory and equipment for the exclusive use of the Department as described in Section 637 of the Standard Specifications. But Part 5 – Special Provisions, SP-2, Paragraph T, states to delete Section 637 – Engineer’s Field Office, Laboratory and Equipment in the NYSDOT Standard Specifications Construction and Material. Please clarify whether the Design-Builder is required to provide a Field Office for the NYSDOT as described in Part 3.

Answer: The Design-Builder shall provide a Field Office for the Department as described in Part 3 – Section 4.3.2 of the RFP. Part 5 – Special Provision SP-2 will be revised and issued by Addendum.

Question 76.
NYSDOT has provided the proposers with the Microstation DGN files for the directive and indicative plans. However, the DGN files for the Capping plans were not included in the Directive Plans folder. Could NYSDOT provide the proposers with the DGN files for the Capping plans?

Answer: The Microstation files for the capping plans will be provided to all Proposers on a CD at the October 1st and 2nd One-on-One Meetings.
Question 77.

Part 3, Section 15, Article 15.1, page 111: Paragraph 2 states that the Design-Builder (DB) is to integrate the devices into the NYSDOT system that connects to the Region 11 Joint Transportation Management Center (JTMC). Does the Design-Builder need to do any work within the existing Region 11 JTMC Central SW systems in order to integrate new field devices, or will this be handled by others? If this work is to be performed by the DB, please provide sufficient details of the work.

Answer: The Design-Builder shall integrate the ITS devices from the field to the JTMC rack room at the basement and the equipment/system shall work continuously for 30 days testing period. The Design-Builder shall work with JTMC consultant support staff for the rack room integration. The access to the rack room will be provided to the DB team. The State JTMC Consultant Staff will integrate the tested system into the Operation floor.

Question 78.

Part 3, Section 15, Article 15.2.5, page 115: This article states that the DB shall submit the design plans and supporting documents for the installation of one traffic monitoring TRANSMIT site. Does the DB need to contract with TRANSCOM to install the new TRANSMIT Reader or will this be handled by others?

Answer: The TRANSMIT design plans and supporting documents shall be submitted to NYSDOT, R-11 ITS unit and NYSDOT will coordinate the system integration with TRANSCOM under NYSDOT and TRANSCOM agreement. The DB shall fully install the TRANSMIT site and test it locally and NYSDOT and TRANSCOM will integrate the TRANSMIT site based on successful local test results provided.

Question 79.

Part 3, Section 15, Article 15.2.5, page 115: This article calls for one TRANSMIT Reader to identify travel time over the bridge. Is a second new reader required or will an existing site be used?

Answer: There are existing upstream and downstream TRANSMIT sites for the project limits and second new reader is not required.
Question 80.

Part 3, Section 15, Article 15.5, page 120: If temporary fiber cable is required for the temporary ITS, is an aerial installation acceptable?

Answer: The type 316 stainless steel pull box shall be used for its increased residence to corrosion.

Question 81.

Part 3, Section 15: In reference to the Fiber Optic Cable System, Article 15.2.2, page 114, specifies stainless steel pull boxes, Article 15.6, page 121, specifies type 316 stainless steel pull boxes. Are type 304 stainless steel pull boxes acceptable?

Answer: The type 316 stainless steel pull box shall be used for its increased residence to corrosion.

Question 82.

Part 3, Section 17, Article 17.4.2, page 129: The last sentence states that “A temporary standpipe is not required on the temporary bridge in Brooklyn”. The Indicative Plans, Drawing No. UTN-01, General Utility Note 12, states that Fire Department standpipes are required on the temporary bridges in Brooklyn and Queens. Please clarify if a standpipe system will be required on the temporary bridge in Brooklyn.

Answer: The Indicative Plans are not Contract Requirements. A standpipe system is not required on the temporary bridge in Brooklyn due to its limited height above grade.

Question 83.

Part 3, Section 14, Article 14.1 mentions under-deck lighting, but the intent of under-deck lighting is not defined. Is under-deck lighting limited to lighting of local streets that pass under one of the proposed bridges? Or does under-deck lighting mean full lighting of all areas beneath all of the proposed bridges, including the non-public areas under the approach spans? If lighting of the non-public areas under the approach spans is required, to what standard (illumination level) should such lighting be designed?

Answer: The Design-Builder is responsible for providing under-deck lighting at street crossings per NYCDOT standards.
Question 84.

Part 3, Section 13, Articles 13.1 and 13.3.4.4: What defines the extent of the replacement of the existing street lighting and traffic signals on the local streets? It is clear that new street lights and traffic signals will be required in areas of significant work (along Meeker Ave and the Relocated Cherry Street). However, there are many local streets that will only be minimally impacted by this project. How is the street lighting and traffic signal scope of work to be determined in these areas?

Answer: Replacement of existing street lighting and traffic signals shall be limited to existing at-grade streets to be reconstructed with full depth pavement in order to realign or reestablish that street. It shall not include any existing at-grade streets to be resurfaced or that involve only partial replacement.

Question 85.

As part of the Option, the Design-Builder is to install the bridge lighting system on the Westbound Main Span. Is the Design-Builder required to provide temporary power so that the westbound main span bridge lights will be operational, or will the power for the westbound main span bridge lights be provided in the future westbound approach contract? If the Design-Builder is to provide the temporary power, will full redundant power feeds be required?

Answer: As part of the Option, the Design-Builder shall install the bridge lighting system on the Westbound Main Span and shall provide temporary power. A full redundant power feed is not required for the temporary condition.

Question 86.

Please clarify whether the 3D animation and 4D schedule submissions are to be connected directly to the Initial Project Schedule on the Department’s P6 Enterprise System, or can it be linked to an exported identical copy of the file for the proposal stage? Please note that the Department has limited access to just two individuals.

Answer: The Visualization can be submitted in a compliant digital format, based on the conforming software option selected by the Proposer that accompanies the submission. The Proposers may export the final schedule and combine it with the visualization software in accordance with the requirements of the RFP. The submission must reflect the final version of the “Initial Project Schedule” that resides on the DOT’s server and this will be verified by DOT.
Question 87.
The P6 template provided on the Department’s website includes a Must Finish By date of 31-Dec-17 in the Dates tab. For the Base Project Plus the Option schedule, this date should be 31-Oct-18. The proposer does not have access to this field to modify the date. We suggest the Department remove the date and require the proposers to enter it, or include an additional template for the Base Project Plus the Option schedule. We also request the Department consider providing a projected NTP date for all proposers to include in their schedule submissions which will set the contract duration, a common contract duration for each proposer.

Answer: The Department will eliminate a Must-Finish-By date for the proposal schedules. The current date in this field will be deleted.

The Proposers should make a copy of their existing schedule on NYSDOT’s server and then modify the copy to represent the Base Project Plus the Option schedule and save it as such.

For the purpose of the Proposal schedules, the NTP date shall be April 3, 2014, regardless of the actual date that the NTP occurs.

Question 88.
Several of the existing properties to be demolished in Brooklyn and Queens have billboard structures either on their roofs or directly on their property.

a. Are the billboard structures the property of the building owners and therefore covered in the eminent domain acquisition?

   a. Answer: Any billboard structure within the acquired ROW is the property of the Department. However, the monopole and sign at Map 31 (Karp Associates) may not be removed until the property is vacated.

b. Can the DB teams dispose of the billboards or are they required to turn them over to the billboard owners?

   Answer: The DB team is responsible for removal and disposal of the billboards within the acquired ROW.

c. If said billboards are still owned by the billboard owners, what permission if any is required from the billboard owners to remove the signs?

   Answer: No permission is required once the properties are vacant.

d. Will the billboard owners remove the signs?

   Answer: No. The Design Builder is responsible for removal and disposal of the billboards and signs within the ROW.
Kosciuszko Bridge Replacement project – Phase 1
Contract D900011
Final RFP Questions and Answers 52 thru 89

Question 89.
Consequential Damages – Part 2, Sections 105-7.9 and 105-7.10 make Design-Builder waive consequential damage claims arising from termination (in whole or part). We note there is no other mention of a waiver of consequential damages under this contract by either the Design-Builder or the Department. Considering the Department is protected by delay damages by way of applicable liquidated damages, we propose mutual waiver of consequential damage provisions be added to this portion of the RFP.

Answer: The following language will be added to the RFP by Addendum.

“Claims for Consequential Damages.
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 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.”