Question 1.

“Parent Guaranty.” DB Section 100 defines “Guarantor” as “A parent company or other affiliate of a Principal Participant that is providing performance security for the Contract through a guaranty in the form prescribed in the RFP.” And “Guaranty” is “An instrument executed by a Guarantor in the form prescribed in the RFP, guaranteeing the Design-Builder’s obligations under the Contract Documents. During our initial review of the Final RFP (received August 27, 2013) we did not find a form of Parent Guaranty. Has the Department decided that a Parent Guaranty is not necessary in light of the requirements for 100% Performance and Payment Bonds? If not, can the Department provide additional guidance and the proposed form of Parent Guaranty?

Answer: The Department has not included a specific requirement in the RFP for a Parent Company to serve as Guarantor. This does not waive any of the Surety / Bonding requirements established within the requirements of the RFP.

Question 2.

Differing Site Conditions. In DB Agreement Section 101-4, “Other Definitions,” differing site conditions (DSC) is defined with the typical Type 1 and Type 2 clauses but then notes that “Site conditions shall be indicted in the Contract only to the extent specified in DB 104-5, and claims based on [DSC] are subject to the restrictions and limitations set forth in DB 104-5.” DB 104-5A severally limits the typical definition of DSC for Type 1 by requiring that the condition differ materially “for specific locations where the Department’s tests [borings and tests] were taken and to the degree of accuracy indicated in the Contract”, without extrapolation (except at Design-Builder’s risk). Given that the Design-Builder must price the Work now, and in light of the limited time to prepare the Proposal, it seems unfair to deny reasonable extrapolation of geotechnical borings and/or tests. Will the Department consider changing the language of the DSC provision?

Answer: No, the Department feels the information provided to date minimizes the risk assumed to the Design-Builder. However, the Design-Builder is able to obtain their own
additional borings if they so desire. The Department will expedite the work permit process to accommodate such requests.