Kosciuszko Bridge Replacement Project – Phase 1
Contract D900011
Draft RFP Questions and Answers 20 thru 29

Question 20.
In the Stipulations section of the Memorandum of Agreement (MOA) between NYSDOT, FHWA and the NYS Historic Preservation Officer (NYSHPO), paragraph I.A states that Historic American Engineering Record (HAER) documentation of the existing Kosciuszko Bridge is required. Who is responsible for preparing this report, the Design-Builder or NYSDOT?

Answer: NYSDOT has prepared and obtained NYSHPO approval of the HAER.

Question 21.
In the Stipulations section of the MOA between NYSDOT, FHWA and the NYSHPO, paragraph I.C states that additional mitigation measures will be developed in consultation with NYSDOT and NYSHPO during the final design phase so that any such mitigation can be included in the bid package for construction. (Emphasis supplied.)

The project delivery method for this contract is Design – Build and, therefore, the final design phase will not occur until after the award of this contract.

Please clarify if there are any such mitigations identified by NYSDOT and NYSHPO to date that should be included in the Design-Builder’s proposal?

In addition, please clarify if, and how compensation will be provided to the successful Design-Builder for any such mitigations that NYSDOT and the NYSHPO determine after the award of this contract.

Answer: Since the 2008 MOA, the Department has coordinated with NYSHPO and obtained the approval of the APE, AWP, HAER and CPP. Throughout this coordination, no further mitigation measures have been identified beyond what is included in these approved plans. The Design-Builder’s proposal shall include all costs for mitigation measures that have been identified in the approved plans. The cost of delays, if any, associated with the Archaeological Work Plan, are discussed in the response to Question 24.

Question 22.
In the Stipulations section of the MOA between NYSDOT, FHWA and the NYSHPO, paragraph II.C. states that all conditions of the CPP (Construction Protection Plan) must be carried out by or under the direct supervision of an architectural historian who will work with the Engineer in Charge of the project.

Please clarify who is responsible for providing both the architectural historian and the Engineer in Charge, the Design-Builder or NYSDOT?
However, in the “Objective of Construction Protection Plan” section of the Construction Protection Plan for the Old Calvary Cemetery, it states that there is no reason for an architectural historian as specified under Stipulation II.C of the MOA. This statement appears to contradict the requirements noted above.

Please clarify, is an architectural historian required for this project?

If yes, what are their specific duties, responsibilities and authority?

Answer: The approved Construction Protection Plan (CPP) for Old Calvary Cemetery dated February 2013 (see Project website Contract Documents) reflects further coordination with NYSHPO since the 2008 MOA. The Design-Builder shall carry out the requirements set forth in the approved CPP per the Draft RFP- Part 3 – Section 3.2.3 which states: “The Design-Builder shall carry out the requirements set forth in the approved plans...” As indicated in the approved CPP an architectural historian is not required to be provided by the Design-Builder for the Old Calvary Cemetery.

The Design-Builder’s Resident Engineer shall ensure that all conditions of the CPP are carried out and will be responsible for taking action including stopping work to prevent any damage to Old Calvary Cemetery. This will be clarified by adding a definition to the Final RFP – ITP Appendix F indicating that in the CPP, the term Engineer in Charge (EIC) refers to the Design-Builder’s Resident Engineer.

Question 23.
In the Stipulations section of the MOA between NYSDOT, FHWA and the NYSHPO, paragraph III.E states that a qualified archaeologist will direct the archaeological investigations to identify intact deposits within the APE (Area of Potential Effect) during construction activities.

Please clarify who is responsible for providing archaeologist(s), the Design-Builder or NYSDOT?

Does the archaeologist have the authority to stop work?

Answer: Per the Draft RFP – Part 3 – Section 3.2.3:

“The Design-Builder shall carry out the requirements set forth in the approved plans including requirements for an on-site archaeologist.”

Thus the Design-Builder is responsible for providing an archeologist.

Per the Approved Archaeological Work Plan (AWP) Section D.1.C.1:
“Archaeologists have the authority to halt the construction process at any time if archaeologically sensitive materials are encountered.”

It is anticipated that as part of the Design-Builder’s Environmental Compliance Plan the details of how such a determination would be made and how that determination would be coordinated with the Department will be defined.

**Question 24.**
In Section D.1.b.7 of the Archaeological Work Plan, it states that the contractor should expect delays due to the discovery and documentation of archaeological features and/or deposits during archaeological monitoring.

How can the Design-Builder reasonable plan for delays for unknown and concealed conditions?

How much time should the Design-Builder expect to lose; i.e., what is the magnitude of these delays?

Will a time extension be provided if these delays impact the critical path?

Will additional compensation be provided if these delays impact the critical path and the Design-Builder’s time related costs increase?

Will additional compensation be provided should an archaeological discovery increase the Design-Builder’s direct cost to perform the work?

**Answer:** If delays occur due to discoveries that could not be reasonably anticipated based on the available information and if the Design-Builder can demonstrate that they have taken action to minimize the cost and schedule impacts, the Department is prepared to reimburse the Design-Builder for the additional direct costs and consider an appropriate extension to the schedule. Given that the work extends for over a mile, it is anticipated that it will be possible to stage the work so that schedule impacts can be minimized if such a discovery occurs. The Proposer’s plan to minimize such impacts should be included in the Environmental Compliance Plan per the Draft RFP – ITP Appendix B3.6

**Question 25.**
In Section D.3.c.3 of the Archaeological Work Plan, it states that the contractor is required to have the EIC (Engineer in Charge) or his designated representative onsite at all times.
Who is responsible for hiring the Engineer in Charge, the Design-Builder or NYSDOT?

Please clarify “at all times” – is the Design-Builder required to have the EIC present after the substructure work in areas with moderate to high archaeological potential is complete?

Answer: The intent of Section D.3.c.3 is that the Design Builder is required to have his Resident Engineer or the Resident Engineer’s designated representative on site when work that may involve impacts to archeological resources is underway so that if any archaeological resources are encountered the Resident Engineer or his designated representative can be available to take action including stopping work at the location of the impact. This will be clarified by adding a definition to the Final RFP – ITP Appendix F indicating that in the AWP, the term Engineer in Charge (EIC) refers to the Design-Builder’s Resident Engineer.

“At all times” is intended to mean at all times that work that could impact archeological resources is underway.

Question 26.
In Section F of the Archaeological Work Plan, it states that a Section 233 permit from the New York State Museum for excavations on state lands, including right-of-way, will also be obtained. This section continues in that a proposal will be submitted as part of the permit application.

Please clarify, is the Design-Builder responsible for obtaining the Section 233 permit including the proposal that will be submitted along with the permit application?

Answer:
Yes, the Design-Builder is responsible for obtaining the Section 233 permit per the Draft RFP – Part 3 – Section 3.2.3 which states, “The Design-Builder shall carry out the requirements set forth in the approved plans...”

Question 27.
Part 5 of the Special Provisions (SP 18) stipulates the Liquidated Damages for this project as follows:

60,000 $/Day for the Interim Completion Date
150,000 $/Day for the Project Completion

Are these Liquidated Damages additive; thereby exposing each team to a potential total liability of 210,000 $/Day (6.3 M/month) for unexcused delays to the project?

Given this excessive liability, would the Department consider capping the total amount of Liquidated Damages, similar to the cap stipulated for the Early Completion Bonus(s)?
Answer: Liquidated Damages will be assessed per the Draft RFP – Part 5 – Section 18. The Liquidated Damages will not necessarily be additive. If the Design-Builder is able to accelerate their schedule to make up for any previous delay in meeting the Interim Completion Date and therefore meets the established Project Completion Date the Design-Builder may avoid the assessment of additional Liquidated Damages.

Note that the Interim Completion Milestone Date and Project Completion Date will be established based on the proposed durations provided by the successful Proposer in Form SCD of their proposal. It is also noted that Proposers will be evaluated on the information provided in Form SCD.

The Department will not issue a cap to the Liquidated Damages.

Question 28.
In Section 2.2.3 Proposer’s Representative of the Information for Proposers – General Instructions. The RFP allows for one Security Representative for Security Information.

Please consider allowing Alternate Security Representative for this project. In working with other projects that entailed sensitive information the Authority and/or Department allowed an Alternate to be named in case of vacation, sickness etc. It also provides for a more secure cohesive process.

Answer: The Department will allow an Alternate Security Representative for each Proposer. The Alternate Security Representative must also pass a background screening through Secure Worker Access Consortium (SWAC) and submit an executed confidentiality form before being accepted by the Department.

Security sensitive information will not be released to any proposer until all proposers have submitted the confidentiality forms for both their Security Representative and Alternate Security Representative.

Question 29.
In Part 4 – Utility Requirements of the Draft RFP, Section 4.1, the 6th paragraph on p.1, states that a quality level A & B SUE program has been completed for selected utilities and goes on to say that these reports are reflected in the quality level A & B survey included in Part 7 – Engineering Data.

However, Part 7 is only two pages one being a cover sheet. Please provide missing details for the selected utilities.
Answer: The Subsurface Utility Engineering (SUE) plans are posted on the Project website as a Reference Document. The reference in the Final RFP will be revised accordingly.