Question 138.

Shall mainline and ramp lighting design comply with NY City DOT or NY State DOT standards/requirements?

Answer: Mainline and ramp lighting illumination levels shall comply with the AASHTO criteria cited in the RFP. All other mainline and ramp lighting elements shall comply with standards/requirements of both NYCDOT and NYSDOT. The contractor shall notify the Department of any conflicts among the standards/requirements, and the more stringent standards/requirements shall apply as determined by the Department.

Question 139.

Is there any information available regarding roadway and bridge lighting other than what is in the written material in the RFP?

Answer: Part 3 of the RFP - Section 14 – Lighting has been revised to provide further information. The revised section will be issued in Addendum #4.

Question 140.

With respect to underwater resources, a survey of Newtown Creek identified two archaeologically sensitive areas in the APE. According to the archaeological work plan (see page 8), these resources represent possible shipwrecks. The underwater survey post-dates the 2007 Phase IA survey for the Kosciuszko Bridge project. The work plan mentions that these sensitive areas for underwater archaeological resources may be impacted by marine operations such as anchors or spuds, sheeting due to the removal of the existing pier or by the placement of rip rap. In addition, one location is near a proposed temporary pier. How are potential underwater resources in Newtown Creek being handled? Has SHPO Consultation been initiated?

Answer: The Design-Builders shall confirm the location of the underwater resources at the start of their activities and shall conduct their operations so as to avoid any direct impacts to these resources. For example the Design-Builders shall not drive piles through nor excavate the underwater resources. The Design-Builders shall submit their plan for avoiding impacting these underwater resources as part of their work plan.
With regard to SHPO consultation, the AWP was submitted to and approved by SHPO, however there has not been any discussion with SHPO regarding these underwater resources.

Question 141.
Can curation be confined to the cultural material retained from significant (i.e. NR eligible) sites and State Land?

Answer: The selected Design-Builder would have to coordinate with the review agencies regarding this issue. Often full curation is not required for non-NR eligible sites but NYC Landmarks Preservation Commission may be revising their requirements.

Question 142.
ITP Appendix B Section B4.6 on page B-12 states “The Initial Quality Control Plan should be in the format shown in DB Section113, Appendix 113A”. We assume this means we need to structure our narrative outline the same as the outline shown in DB Appendix 113A Design & Construction Quality Control Plan Template. The outline alone in Appendix 113A is 25 pages, but the page limit for our Initial Quality Control Plan is also 25 pages. Do we need to address all subsections in Appendix 113A or can we just address the major section headers in Appendix 113A?

Answer: The Proposer shall prepare an Initial Quality Control Plan that meets the requirements of ITP Appendix B Section B4.6 and provides sufficient information for the Proposal Evaluators to understand and evaluate the Proposer’s approach to all aspects of Quality Control. It is not necessary to address all subsections. In addition, the page limit for the Initial Quality Control Plan will be modified to 40 pages. This change will be issued by Addendum.

Question 143.
Final RFP Question 55.B suggest requirements of Commercial General Limits at $1,000,000 per occurrence/$2,000,000 aggregate and the Umbrella/Excess Liability limits at $5,000,000 for subcontractors. The answer given was that Commercial General Liability Insurance shall be
provided in an amount of not less than $25,000,000 per occurrence and not less than $50,000,000 aggregate. This answer is inconsistent with answer for Final RFP Question 60 which states that the Subcontractor insurance limits are left to those entities. Please clarify.

**Answer:** The answer to Final RFP Question 55.B does not pertain to subcontractors. The Commercial General Liability Insurance requirements in the Answer to 55.B pertain to the Design-Builder’s requirements. 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 144.**
What are loading requirements for shielding / protection over the Railroad?

**Answer:** The loading requirements for shielding / protection over the Railroad will be issued by Addendum.

**Question 145.**
What are the physical limits for shielding / protection over the Railroad?

**Answer:** The physical limits for shielding / protection over the Railroad will be issued by Addendum.

**Question 146.**
In the event of conflict between NY State and NY City roadway lighting design standards/requirements, which will take precedence?

**Answer:** Roadway lighting illumination levels shall comply with the AASHTO criteria cited in the RFP. All other roadway lighting design elements shall comply with standards/requirements of both NY City DOT and NY State DOT. The contractor shall notify the Department of any conflicts among the standards/requirements, and the more stringent standards/requirements shall apply as determined by the Department.
Kosciuszko Bridge Replacement project – Phase 1
Contract D900011
Final RFP Questions and Answers 138 thru 158

Question 147.
ITP Appendix B Section B4.6 on page B-12 states:
“The Initial Quality Control Plan should be in the format shown in DB Section113, Appendix 113A”. We assume this means we need to structure our narrative outline the same as the outline shown in DB Appendix 113A Design & Construction Quality Control Plan Template. By itself, the outline in Appendix 113A is 25 pages, but the page limit for our entire Initial Quality Control Plan is also 25 pages. Do we need to address all subsections in Appendix 113A or can we just address the major section headers in Appendix 113A?

Answer: See Answer to Question 142.

Question 148.
How many Phase II archaeological surveys should be included in the scope and budget for monitoring and what type of documentation (i.e. letter report, full report, field consultation) is necessary for submission to the agencies following Phase II fieldwork?

Answer: See Answer to Question 129.

Question 149.
Can curation be confined to the cultural material retained from significant (i.e. NR eligible) sites and State Land?

Answer: See Answer to Question 141.

Question 150.
Please refer to the response to Final RFP Questions and Answers #87.

Please confirm that Proposers are to use April 3, 2014 as NTP. Please note that this contradicts the information in the table provided in the Final RFP Section 1.6.1 Anticipated Schedule which indicates NTP to be “Early March 2014”.

If April 3, 2014 is the date Proposers are to use in preparing the schedule, then please provide an addendum revising the above noted table as required. In addition, with moving the NTP date back one month NYSDOT has reduced the overall Contract duration by one month. Will the completion dates for the Base Project and the Base +Option Project also be moved back one month via addendum?
Answer: The anticipated Notice to Proceed date is revised in Addendum #4 to April 3, 2014, however the completion dates will not be modified. The Department will make every attempt to grant NTP prior to this date.

Question 151.

*Waive Right of Action – Part 1, Article 17.A.9* – This article generally states that Design-Builder and its carrier waive any right of action against NYSDOT for any loss whether or not insured. This would seem to be a rather broad statement that probably was meant to refer to some sort of waiver of subrogation concept but literally could be read to be a general waiver of any claim by design builder under the contract. Rather, we propose the following waiver of subrogation clause: *All policies of insurance provided by Design-Builder (other than workers compensation and professional liability) shall include a waiver of subrogation in favor of the Department (including its employees, officers, commissioners or agents). Such waiver of subrogation shall preclude Design-Builder’s applicable carriers from any right to assert a claim against the Department or its employees, officers, commissioners or agents.*

Answer: The language of the section is intended to be read in the context of its title, “Waiver of Indemnities.” Waiver of subrogation is addressed in Part 1, Article 17.A.6, in the section bearing that title.

Part 1, Article 17.A.9 will be amended to read:

“9. Waiver of Indemnities. The Design-Builder waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners or agents) for any loss that is covered by a policy of insurance that is required by this contract, where that right of action is based upon an indemnification from the Department or any third party. The Design-Builder waives any right of action it and/or its insurance carrier might have against the Department (including its employees, officers, commissioners or agents) for any loss, whether or not such loss is insured, where that right of action is based upon an indemnification from the Department or any third party.
Kosciuszko Bridge Replacement project – Phase 1
Contract D900011
Final RFP Questions and Answers 138 thru 158

Question 152.

No Misunderstanding – Part 2, Section 102-2 – This section imposes an obligation on the Design‐Builder to examine the site and fully inform itself of the site conditions (on, over, and under the Site) from such examination and include all costs therefore. This section also includes a rather broad and onerous statement in regard to any omission or mistaken depiction of details of Work by NYSDOT that are needed to carry out the intent of the Contract Documents and imposes the responsibility for such omissions or mistakes by the Department upon the Design‐Builder, regardless of the nature or extent of the Department’s omission or mistake. This risk cannot adequately be priced by the Design‐Builder and is unquantifiable. However, the Design‐Builder is amenable to assuming responsibility for Department omissions or mistakes to the extent Design‐Builder is aware of same or reasonably should have been aware of same as a competent design‐builder performing work of this nature should be and it proceeds with the work without first notifying the Department.

As a specific example, we note Proposers are relying heavily on Contract Documents such as the Draft Contaminant Management Plan by which Proposers are quantifying and pricing the removal, handling, storage and disposal of non‐hazardous contaminated and hazardous material on the site. While it is the Proposer’s responsibility to review and understand the document, the omission of a sampling location or mistake/mix‐up of samples/borings could adversely impact the schedule and scope of work of Design‐Builder and the responsibility for this type of omission or mistake should properly be borne by the Department. Design‐Builder should be entitled to relief from such events except to the extent it was aware of or reasonably should have been aware of the omission or mistake at issue at time of bid or to the extent it becomes aware of such issue after award but proceeds with the work without first notifying the Department.

Answer: The question correctly identifies that the Design‐Builder has an affirmative obligation to examine the Site and fully inform itself of the Site conditions. For instance, Part 2, Section 102-2 notes that the Design‐Builder “acknowledges that its responsibilities under this Contract include conducting such additional geotechnical exploratory work and site investigations as may be necessary or appropriate for design and construction of the project.” The Section also notes that information made available by the Department or found in Contract Documents should not “act as a substitute for personal investigation, interpretation, and judgment by the Design‐Builder.”

However, the premise in the question that Work omitted or misdescribed in the Contract Documents is wholly the responsibility of the Design‐Builder overlooks the allowance for Orders on Contract set forth in the Section. As noted, the Design‐Builder is not relieved from performing such omitted or misdescribed Work, and that the Design‐Builder is “without entitlement to an Order on Contract hereunder except as specifically allowed.” (Emphasis
Part 2, Section 104 is replete with instances where an Order on Contract is appropriate.

Question 153.
The answer to Final RFP Question 55.B states Commercial General Liability Insurance shall be provided in an amount of not less than $25,000,000 per occurrence and not less than $50,000,000 aggregate. The insurance marketplace does not underwrite general liability policies with $25,000,000 per occurrence /$50,000,000 aggregate limits. Will the limits of Commercial General Liability be changed? We suggest Commercial General Liability limits at $2,000,000 per occurrence and $4,000,000 aggregate for the Design-Builder and the Subcontractors.

Answer: The Commercial General Liability Insurance requirements will remain at a minimum of $25,000,000 per occurrence and $50,000,000 in the aggregate.

Question 154.
Reference is made to Final RFP Question 55.A and 55.B. Is it the intent that total insurance limits of $125,000,000 be required from the Design-Builder? We suggest the answer to Final RFP Question 55.A should be Total General Liability and Umbrella/Excess Liability limits of at least $125,000,000 per occurrence and $125,000,000 aggregate are required. Any combination of General Liability and Umbrella/Excess Liability policies may be used as long as the minimum limits are met. Please confirm.

Answer: The requirements are as set forth in Addendum #3, dated October 2, 2013. Commercial General Liability Insurance requirements are a minimum of $25,000,000 per occurrence and $50,000,000 in the aggregate. The minimum required limits for umbrella/excess coverage are $100,000,000 per occurrence/aggregate.

Question 155.
Final RFP Question 56 addresses Professional Liability Insurance. What is the extended reporting period for this policy? We suggest that this requirement be made consistent with Question 59 - Pollution Liability Insurance, which requires an extended reporting period of three years. We suggest that the Professional Liability Insurance policy shall contain an extended reporting period of three years following Final Acceptance.

Answer: The following language will be added to Article 17(B)(7) by addendum:
“The policy shall have a retroactive date no later than the date on which the RFP was issued. The policy shall have an extended reporting period of five years after Final Acceptance.”

Note the Final RFP was issued on August 27, 2013.

Question 156.

Final RFP Question 57 addresses Builders Risk Insurance with a deductible of $100,000. The insurance marketplace will not support a Builder’s Risk deductible of $100,000 on a project of this size. Will the Builders Risk Insurance deductible limits be changed? We suggest that the requirement be changed to a $500,000 deductible.

Answer: The minimum required amount of Builder’s Risk Insurance will be $50,000,000. The deductible for Builders Risk Insurance will be amended to a limit of $1,000,000. Both of these matters will be the subject of a future amendment.

Question 157.

According to the Directive Plan DP-02, the end of the closure walls for the Brooklyn connector can be located anywhere in between Varick Avenue and Stewart Avenue.

Does the end of the EB closure wall have to align with the end of the WB closure wall or can they be offset (i.e., located at different stations)?

If they can be offset, is there a maximum offset limit that the NYSDOT will accept?

Answer: The Brooklyn Connector EB and WB fascia closure walls are not required to terminate at the same station however; both walls shall terminate between Varick Avenue and Stewart Avenue per the Directive Plans.

Question 158.

Section 22 of the Project Requirements entitled “Demolition of Bridge” states that the existing main span piers shall be removed to two feet below the Newtown Creek bed, (refer to Paragraph 22.2.2).

The elevation of the Newtown Creek bed varies from the shoreline to centerline of the creek by several feet. Please clarify. Is the 2’ distance measured at the shoreline where the foundations are located or is it measured at the centerline of the creek?
Answer: The 2’ dimension is measured from the finished grade and thus will vary. Please refer to the figure in the NYSDEC permit application.