I-81 VIADUCT PROJECT - PHASE 1, CONTRACT 1

PIN 3501.90, Contract D900054

REQUEST FOR PROPOSALS

INSTRUCTIONS TO PROPOSERS
GENERAL INSTRUCTIONS

Final June 17, 2022

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TABLE OF CONTENTS

1.0 INTRODUCTION AND GENERAL PROVISIONS 1

1.1 INTRODUCTION 1
1.2 SCOPE OF WORK 1
1.3 PROJECT GOALS 1
1.4 DEFINITIONS 1
1.5 RFP Documents 1
1.5.1 Required Forms 2
1.5.2 Property of the Department 2
1.5.3 Errors 2
1.6 PROCUREMENT SCHEDULE 2
1.7 GENERAL PROVISIONS REGARDING PROPOSALS 2
1.7.1 Proposal Contents 2
1.7.2 Inclusion of Proposal in Contract 3
1.7.3 Commitments in the Proposal 3
1.8 IMPROPER CONDUCT 3
1.8.1 Prohibited Activities 3
1.8.2 Non-Collusion 3
1.8.3 Conflict of Interest 3
1.9 DBE UTILIZATION 4
1.10 LANGUAGE REQUIREMENT 5
1.11 RESOURCE AVAILABILITY 5
1.12 CONFIDENTIALITY 6
1.13 INSURANCE 6
1.14 QUALITY ASSURANCE / QUALITY CONTROL 6
1.15 CHANGES TO THE PROPOSER'S ORGANIZATION 8
1.16 PROJECT LABOR AGREEMENT 9
1.17 PREVAILING WAGE RATES 9

2.0 PROCUREMENT PROCESS 9

2.1 METHOD OF PROCUREMENT 9
2.2 RECEIPT OF THE RFP DOCUMENTS 10
2.2.1 Department's Designated Representative 10
2.2.2 Rules of Contact 10
2.2.3 Proposer's Representative 11
2.3 ADDENDA AND RESPONSES TO QUESTIONS 11
2.3.1 Addenda 11
2.3.2 Correspondence and Information 11
2.3.3 Questions and Responses to Questions 11
2.4 ONE-ON-ONE MEETINGS 12
2.5 FREEDOM OF INFORMATION LEGISLATION 12
2.5.1 Freedom of Information Law (FOIL) 12
2.5.2 Freedom of Information Act (FOIA) 13
2.6 PROPOSAL STIPEND 13
2.7 ESCROWED BID DOCUMENTS 15
2.8 GENERAL SUBMITTAL REQUIREMENTS 15
2.9 WITHDRAWALS AND LATE SUBMITTALS 15
2.9.1 Modification or Withdrawal of a Proposal 15

2.9.2 No Public Opening of Proposals 16
2.10FORFEITURE OF PROPOSAL SECURITY 16
2.11EXAMINATION OF RFP DOCUMENTS AND WORK SITE....16

3.0 ALTERNATIVE TECHNICAL CONCEPTS (ATCS)....16

4.0 PROPOSAL REQUIREMENTS 16

4.1 COMPLIANT PROPOSAL....16
4.2 LEGAL AUTHORITY 17
4.2.1 Licensing Requirements 17
4.3 CURRENCY....17
4.4 BID BOND 17
4.4.1 Bid Deposit....17
4.4.2 Rights Reserved....17
4.5 SIGNATURES REQUIRED 18
4.6 NUMBER OF COPIES 18
4.6.1 Hard Copy of Proposal 18
4.6.2 Electronic Copy of Proposal 18

5.0 PRE-PROPOSAL MEETINGS....18

5.1 INFORMATIONAL MEETINGS....18
5.2 ATTENDEES....19
5.3 QUESTIONS AND RESPONSES....19

6.0 CONTRACT AWARD AND EXECUTION....19

6.1 CONTRACT AWARD 19
6.2 EXECUTION OF CONTRACT 20
6.3 OBLIGATION TO AWARD 20

7.0 PROPOSAL EVALUATIONS 20

7.1 EVALUATION FACTORS AND CRITERIA....21
7.1.1 “Pass/Fail” Evaluation Factors....21
7.1.2 Quality Evaluation Factors....23
7.1.3 Price....23
7.1.4 Buy America Provision....23
7.1.5 Iran Divestment Act of 2012 24
7.2 EVALUATION GUIDELINES 24
7.2.1 Quality Evaluation Factors....24
7.2.2 Communications....24
7.3 BEST VALUE DETERMINATION....25
7.4 POST SELECTION MEETINGS....25

8.0 PROTESTS 25

8.1 WRITTEN PROTESTS ONLY 25
8.2 PROTEST CONTENTS....26
8.3 TIME FOR FILING....26
8.4 PROTEST DISCUSSIONS....27
8.5 IRREVOCABILITY OF PROPOSALS PENDING RESOLUTION OF PROTEST....27

9.0 THE DEPARTMENT’S RIGHTS AND DISCLAIMERS 27

9.1 THE DEPARTMENT'S RIGHTS 27
9.2 BEST AND FINAL OFFERS 29
9.3 THE DEPARTMENT DISCLAIMERS.....29

APPENDICES

APPENDIX A PROJECT INFORMATION
APPENDIX B VOLUME 1: ADMINISTRATIVE SUBMITTAL REQUIREMENTS
APPENDIX C VOLUME 2: TECHNICAL PROPOSAL SUBMITTAL REQUIREMENTS
APPENDIX D VOLUME 3: PRICE PROPOSAL SUBMITTAL REQUIREMENTS
APPENDIX E FORMS
APPENDIX F CONFLICT OF INTERESTS POLICY

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1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 INTRODUCTION

This Request for Proposals ("RFP") is issued by the New York State Department of Transportation (the "Department") to seek competitive Proposals ("Proposals") for the design, construction and other identified activities for the Project.

The Project involves Design-Build services for the Project as described in Appendix A.

This solicitation is the second step of a two-step procurement process authorized by the Infrastructure Investment Act, 2011 N.Y. Laws ch. 56 (the "Act") (see Instructions to Proposers (ITP) Section 2.1). Proposals are requested from and will be considered only from those entities ("Proposers") who have been notified of their inclusion on the Shortlist based on their Statements of Qualifications ("SOQs") submitted in response to the Request for Qualifications ("RFQ") for this Project as amended.

This document provides instructions to be followed by Proposers in their responses to the RFP. Proposals must comply with these Instructions to Proposers ("ITP") and shall address and/or consider the Project goals and objectives identified in ITP Appendix A.

1.2 SCOPE OF WORK

Refer to Contract Documents Part 3, Project Requirements, for the Project Scope of Work.

1.3 PROJECT GOALS

The Department's goals and objectives for the Project are described in ITP Appendix A.

1.4 DEFINITIONS

Refer to Part 2, DB Section 100 – General Provisions for the meaning of various abbreviations, acronyms and capitalized terms used herein.

1.5 RFP Documents

The RFP includes the following documents (the "RFP Documents"), which will form part of the Contract Documents:

A) Instructions to Proposers, including Appendices;

B) DB Agreement (Part 1);

C) DB Section 100 (Part 2);

D) Project Requirements (Part 3);

E) Utility Requirements (Part 4);

F) Special Provisions (Part 5);

G) RFP Plans (Part 6);

H) Engineering Data (Part 7);

I) Special Specifications (Part 8);

J) Additional documents issued by Addenda to this RFP (Part 10).

The Contract Documents will also include the Design-Builders Proposal which will become Part 9 of the Contract in accordance with ITP Section 1.7.2.

Reference Documents are available on the Department's web site, but will not form a part of the Contract. The Department makes no representation or guarantee as to, and shall not be responsible for, their accuracy, completeness or pertinence, and, in addition, shall not be responsible for the conclusions to be drawn from the Reference Documents. The Reference Documents are made available to the Proposers and selected Design-Builder for the purpose of providing such information as is in the possession of the Department, whether or not such information may be accurate, complete or pertinent, or of any value.

Current Reference Documents for the Project are listed in ITP, Appendix A.

1.5.1 Required Forms

Any failure to provide all the information and all completed forms (see ITP Appendix E) in the format specified in Appendices C and D may result in the Department's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as noted, and no change shall be made in the phraseology of the RFP or in the items mentioned therein. No changes to the forms shall be made by the Proposers except as indicated on a specific form. Changes to forms may be made by the Department and submitted to Proposers by addenda.

1.5.2 Property of the Department

All documents submitted by the Proposer in response to this RFP shall become the property of the Department and will not be returned to the Proposer except for the deniable records. (See ITP Section 2.5). The concepts and ideas in the information contained in the Proposal submitted by the Proposer shall also become the property of the Department contingent upon the Proposer signing the Stipend Agreement (see ITP Appendix E).

1.5.3 Errors

If any mistake, error or ambiguity is recognized by the Proposer at any time during the Proposal process in any of the documents supplied by the Department, the Proposer shall notify the Department of the recommended correction in writing in accordance with ITP Section 2.3. Notification shall be made to the Department as soon as possible.

1.6 PROCUREMENT SCHEDULE

The anticipated procurement schedule for the Project is described in ITP, Appendix A.

1.7 GENERAL PROVISIONS REGARDING PROPOSALS

1.7.1 Proposal Contents

Each Proposal shall include:

(i) an Administrative Submittal (Volume 1);
(ii) a Technical Proposal (Volume 2); and
(iii) a Price Proposal (Volume 3).

Instructions for Volumes 1, 2 and 3 are provided in ITP Appendices B, C and D, respectively, and required forms are set forth in ITP Appendix E. The forms presented in ITP Appendix E are supplied additionally as Microsoft Word® and Microsoft Excel® format files, for use by Proposers

in preparing submissions. Any failure to provide all the information and all completed forms in the format specified may result in the Department's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as noted. No change shall be made by a Proposer to the forms except as expressly permitted in the forms. Proposers may add rows to certain forms as indicated on the relevant form.

1.7.2 Inclusion of Proposal in Contract

The selected Proposer's Proposal will become Part 9 of the Contract Documents, as specified in ITP Appendices B, C and D. Prior to incorporation into Part 9 of the Contract Documents, the Proposal or parts thereof will be adjusted to reflect clarifications or negotiations, if any, that occur after its submission that are accepted by the Department.

1.7.3 Commitments in the Proposal

The language used in each Proposal will be interpreted and evaluated based on the level of commitment provided by the Proposer. Tentative commitments will be given no consideration. For example, phrases such as "we may" or "we are considering" will be given no consideration in the evaluation process since they do not indicate a firm commitment.

1.8 IMPROPER CONDUCT

1.8.1 Prohibited Activities

If the Proposer, or anyone representing the Proposer, offers or gives any advantage, gratuity, bonus, discount, bribe or loan of any sort to employees of the Department, including agents or anyone representing the Department at any time during this procurement process, the Department shall immediately disqualify the Proposer, the Proposer shall forfeit its Bid Bond, the Proposer shall not be entitled to any payment of a stipend and the Department may sue the Proposer for damages.

1.8.2 Non-Collusion

The Proposer shall not undertake any of the prohibited activities identified in the Itemized Proposal / Jurat (Form IP, ITP Appendix E).

1.8.3 Conflict of Interest

The Proposer is responsible for complying with the requirements of 23 CFR 636.116 and including a full disclosure of all potential Conflicts of Interest in their Proposal. In addition, any firm that is rendered ineligible through any State or federal action is ineligible to participate on any Design-Build team.

Federal regulations prohibit the hiring of any person or organization that has a "conflict of interest." Proposers are required to disclose known or potential conflicts of interest in their Statement of Qualifications. See ITP Appendix A for a listing of firms that have been identified as having conflicts of interest that prevent their consideration for the pending Project.

By submitting its Proposal, each Proposer agrees that, if a Conflict of Interest is thereafter discovered, the Proposer shall make an immediate and full written disclosure to the Department that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If a Conflict of Interest is determined to exist, the Department may, at its sole discretion, cancel the Contract. If the Proposer was aware of a Conflict of Interest prior to

the award of the Contract and did not disclose the conflict to the Department after award of the Contract, the Department may terminate the Contract for default.

1.9 DBE UTILIZATION

For this solicitation, Disabled Business Enterprise (DBE) requirements are for Federally funded projects and Minority-owned Business Enterprise (MBE), Women-owned Business Enterprise (WBE) and Service Disabled Veteran Owned Businesses (SDVOB) program requirements are for State funded projects. This solicitation is subject to federal provisions concerning the utilization of Disadvantaged Business Enterprises (DBEs). All federal DBE requirements are applicable to this solicitation.

The overall DBE participation goal for the Contract is described in ITP, Appendix A.

The Proposer must be responsive in submitting required documentation and forms and ensure that all information is timely, complete, accurate and truthful. The Proposal must provide participation information to the fullest extent possible; but may establish participation milestones and develop reasonably-close participation estimates with supporting justification as appropriate where participation information cannot be fully-finalized at time of award.

The Proposer must demonstrate a proactive good faith effort to recruit DBEs and achieve commitments for work items prior to submission of the Proposal. While making commitments to firms for all DBE opportunities (Form LDB Table 1) may not be practical prior to submission of the proposal, commitments of specific work items (Form LDB Table 2) must be completed.

Failure to provide commitments to meet the established goal for the contract **and** failure to meet the good faith efforts will be grounds for rejection of the Proposal as non-responsive.

Only those DBE firms that are certified under the New York State Unified Certification Program are eligible to be used for goal attainment. Firms certified in states other than New York, or going through the certification process in New York are not eligible to be used for goal attainment unless they obtain certification under the New York State Unified Certification Program prior to starting work on this Project. DBE certification is not an endorsement of the quality or performance of the business but simply an acknowledgment of the firm's status as a DBE.

The list of DBE firms certified by the New York State Unified Certification Program (NYSCUP) can be access via the following link to the NYSUCP's DBE Directory:

https://nysucp.newnycontracts.com/

While only such DBE-certified firms will count toward attaining the DBE goal, the utilization of certified small businesses and M/WBE firms is also encouraged.

If at the time of proposal the Proposer has committed towards the DBE goal through the combined use of commitments to DBE firms (Form LDB Table 1) and commitments to work items to be performed by DBE during the time of the contract (Form LDB Table 2), the Proposer shall submit the Solicitation Log (Form AAP-10), together with other documentation that provides evidence of good faith efforts. If at the time of proposal the Proposer has met the DBE goal solely by commitments to DBE firms (Form LDB Table 1 only), then submission of evidence of good faith efforts is <u>not</u> required.

Documentation of DBE utilization to be included with the proposal shall include the following, of which the referenced forms can be found in the ITP Appendix E.

a) Completed Form LDB – List of Proposed DBEs (Tables 1 & 2)

b) Completed Form AAP-10, DBE/MBE/WBE/SDVOB Solicitation Log of all DBEs contacted to date on this contract.

c) Completed Form SDU – Schedule of DBE Utilization

d) Documentation of good faith efforts (if required).

See Part 2, DB §102-12, of the Contract Documents for further details regarding DBE compliance requirements for the Contract, including good faith efforts.

Pursuant to 49 CFR 26, prior to, and as a condition of the Award of the Contract, the successful Proposer must affirm the DBE commitments identified in Form LDB Table 1, using the Department's Civil Rights Reporting software, Equitable Business Opportunities (EBO), by associating those DBE firms with the lump sum items of work, within Five (5) calendar days after Best Value determination (defined in Section 7.3 of this ITP).

Subsequent to Notice to Proceed, DBE commitments identified in Form LDB Table 2, and any additional DBE commitments, shall be entered in EBO.

The successful Design-Builder shall submit DBE Utilization information on a monthly basis with the monthly progress report submitted with payment request, as required under DB Section 108-01(E).

If the Design-Builder fails to update the DBE Utilization as required by the contract, the Department may suspend Contract payments in accordance with Design Build Contract Agreement ARTICLE 10.

In determining whether a DB Proposer for a contract has met the DBE requirements, the Department will consider the Work the DB has committed to performing with its own forces, the Work that it has committed to be performed by DBE Subcontractors, DBE Suppliers and/or DBE financial institutions and Proposer's good faith efforts.

1.10 LANGUAGE REQUIREMENT

All correspondence regarding the RFP, Proposal and Contract are to be in the English language. If any original documents required for the Proposal are in any other language, the Proposer shall provide an English translation, which shall take precedence in the event of conflict with the original language.

1.11 RESOURCE AVAILABILITY

The Department is concerned that the resources planned to be used on the Contract (if Awarded to the Proposer), in terms of people, equipment, material and supplies, be available and not also be committed to other projects. Accordingly, the Proposal must include an affirmative commitment to provide all Key Personnel for the periods necessary to fulfill their responsibilities, and to provide all personnel, equipment, materials and supplies necessary to fulfill the Proposal and the requirements of the Contract Documents (Form CR, ITP Appendix E).

1.12 CONFIDENTIALITY

The issuance by the Department of any RFP Documents, or drafts thereof, to a Proposer shall be subject to such Proposer executing and delivering a confidentiality and non-disclosure agreement in prescribed form to the Department.

1.13 INSURANCE

Refer to Part 2, DB §107-06 for information regarding insurance requirements. Insurance certificates shall be submitted prior to Contract execution.

1.14 QUALITY ASSURANCE / QUALITY CONTROL

The Contract Documents place a significant responsibility on the Design-Builder for the quality of the Project. The Design-Builder will be performing quality management activities under a definition of QC that encompasses traditional quality control and certain activities traditionally performed as quality assurance by the Department, and the Department's QA role may therefore exclude such activities. The Design-Builder will have responsibility for the quality of the Work conducted and materials utilized under the Contract. Proposers are to be thoroughly knowledgeable with the quality requirements of the Contract and the role and responsibility of the Design-Builder prior to preparing their Technical Proposals and Price Proposals, and if selected, execution of their responsibilities within the Project's Quality Control Program.

The Design-Builder will be required to plan, implement, and provide a Quality Control Plan for both design and construction.

The Design-Builder's Quality Control Plan must follow the requirements of 23 CFR Part 637 and the Contract Documents. In addition, the Design-Builder's Quality Control Plan shall follow the Design and Construction Quality Control Plan Format provided in the RFP. The Department will review and approve the Design-Builder's Quality Control Plan to assure that it meets the guidelines and minimum requirements established by the Department. The Design-Builder shall maintain ownership of the Plan, shall be fully responsible for its execution, and shall maintain sole responsibility for the quality of the Work. As part of the acceptance procedure, the Department will conduct Quality Assurance sampling and testing of material testing as well as conduct audits, in-depth inspections, and reviews of Work to ensure workmanship, and that in-process and completed Work, meets contract requirements.

The Design-Builder will be required to have, as part of the Design-Build Team, a Quality Manager who will be responsible for the oversight of the preparation of the Quality Control Plan, and direct supervision of the implementation of the Quality Control Plan, and for ensuring its compliance for both design and construction. This individual shall be a direct report to senior management of the Design-Builder, and will not directly report to the Design-Builder's Project Manager.

For design the Quality Manager shall ensure that the design firm on the Design-Build Team implements the quality control procedures specified in the Design-Builder's Quality Control Plan for design activities.

For construction, the Design-Builder will be required to have, as part of the Design-Build Team, a Professional Engineering Firm to perform Construction Inspection, and a Materials Testing Firm or Laboratory to sample and test materials as specified in the Quality Control Plan and/or as required by the Project specifications. The Professional Engineering Firm performing

Construction Inspection and the Materials Testing Firm or Laboratory may be the same company or separate companies, but in either case, the Professional Engineering Firm performing Construction Inspection and the Materials Testing Firm or Laboratory must be independent of the Designer(s), Constructor(s) and any of the Principal Participants or any party with an equity interest, that are included in the Proposer's proposed team. In addition, the Professional Engineering Firm performing Construction Inspection and the Materials Testing Firm or Laboratory shall not be an equity participant on the Design-Build Team.

The Professional Engineering Firm performing Construction Inspection will be required to inspect all construction operations and perform construction quality control of the Design-Builder for conformance to the Design-Build plans, specifications, the Quality Control Plan and the Contract requirements. They will also act as a field review component during construction as plans are being developed to ensure that the plans and specifications the Designer is providing are constructible for the conditions found in the field. The Professional Engineering Firm's inspection, measurement, and testing activities must adhere to, and be in accordance with, all of the requirements set forth in NYSDOT Policies, manuals, engineering bulletins, engineering instructions, the Contract documents, and the Quality Control Plan.

Unless otherwise modified in the RFP, the Department will furnish at its own expense, off-site Quality Assurance, including, inspections and testing of steel, cement, asphalt, concrete and asphalt aggregates, concrete sewer and drainage pipe, and such other materials as are customarily tested by Department forces or by separate contracts. Those items that will be tested by the Department will be described in the RFP.

The Materials Testing Firm or Laboratory shall report to and support the Construction Inspection Professional Engineering Firm.

The Construction Inspection Professional Engineering Firm shall report to the Design-Build Quality Manager and shall coordinate with the Department's Quality Assurance Engineer.

The Professional Engineering Firm providing construction inspection will enforce the specifications and identify in a timely manner local conditions, methods of construction, errors on the plans, or defects in the work or materials which would conflict with the quality of work required, or compromise the successful completion of the Project.

All records must be kept in accordance with the Manual of Uniform Record Keeping (MURK) and the Contract requirements. The Construction Inspection Professional Engineering Firm must take all measurements and collect all other pertinent information necessary to prepare a project diary describing the progress of the work, specific problems encountered, daily inspection reports, survey notes, photographic and video records of various phases of construction, and other pertinent data, records and reports which may be required by MURK or the Contract. The Construction Inspection Professional Engineering Firm will be required to prepare the above mentioned project diary and daily inspection reports using the NYSDOT Site Manager Program. Access to the Site Manager Program will be provided by the Department.

The Department will establish and maintain its own Quality Assurance organization and/or utilize an independent Quality Assurance organization to conduct Quality Assurance sampling and testing on material testing, oversee and/or perform quality audits, in-depth inspections of the Design-Builder's management, design, construction and any other Project activities, the Design-Builder's Quality Control procedures and verify the quality of the final product. The

Department may utilize independent Consultants to perform design and/or construction Quality Assurance of the Design-Builder's Work.

If the Department should process solicitations for design and/or construction Quality Assurance contracts, a Firm may be included in proposals for the Design-Build contract and submit proposals for the Quality Assurance contracts. However, any Firm that is on the selected Design-Build Team will automatically be removed from consideration for the Quality Assurance contracts.

No Construction shall begin nor shall payments be made before the Design-Builder's Quality Control Plan is approved by the Department.

See Part 3, Sections 4, 5 and 6 for terms and conditions regarding the requirements, responsibilities and roles relating to QA/QC.

1.15 CHANGES TO THE PROPOSER'S ORGANIZATION

Proposers are encouraged to propose the most experienced and qualified teams.

In order for a Proposer to remain qualified to submit a Proposal, unless otherwise approved in writing by the Department, the Proposer's organization, including Principal Participants and Key Personnel identified in the Proposer's SOQ, must remain intact for the duration of the procurement process and the subsequent Contract.

During the Proposal period, substitutions for a Principal Participant or a Key Person cannot be made without NYSDOT approval. Should it become necessary to replace a Principal Participant or a Key Person during the Proposal period, the Design-Builder must provide a replacement for the Organization with equal or better skills and qualifications. In addition, during the Proposal period, requests for changes to the Proposer's organization must be made using Form RFC. For changes of Key Personnel, Proposers shall also submit a completed Form R – Summary of Individual's Experience and the information specified in the RFQ for that Key Personnel position, including a narrative (max one page) justifying why the proposed Key Personnel change is being requested. The request for Principal Participant or Key Personnel change shall be submitted to the Department's Designated Representative no later than the date shown in ITP Appendix A. Requests by Proposers for changes in any Principal Participant will be particularly scrutinized. In any event, the Proposer shall promptly notify the Department's Designated Representative if any Key Personnel leaves the Proposer's team.

To request the Department's approval for a change to the organization, the Proposer shall submit with its request that information specified for a Principal Participant in the RFQ, including legal and financial data as well as the information for quality evaluation. If a request is made to allow deletion or replacement of a Principal Participant, the Proposer shall submit such information as may be required by the Department to demonstrate that the changed team meets the criteria stated in the RFQ (pass/fail criteria and quality criteria). The Department shall have sole discretion to grant or withhold approval of any requested change. If the requested change is approved by the Department, then a copy of the approved Form RFC must be included in the proposal, Volume 1, Section 3.

During the term of the Contract, substitutions for Principal Participants or Key Personnel cannot be made without NYSDOT approval. Should it become necessary to replace a Principal Participant or Key Person during the term of the Contract, the Design-Builder must provide a

replacement for the Organization with equal or better skills and qualifications. In addition, during the term of the Contract, requests for Key Personnel changes must be made using Form RFC, and shall be submitted along with a completed Form R – Summary of Individual's Experience and the information specified in the RFQ and/or RFP for that Key Personnel position, including a narrative (max one page) justifying why the proposed Key Personnel change is being requested. Substitute Key Personnel cannot start work on the Project until approved by NYSDOT. In any event, the Design-Builder shall promptly notify the Department's Project Manager if any Key Personnel leaves the Design-Build Team.

Proposers should be aware that the Key Personnel positions identified in the RFQ are also included in the RFP. The scores of those Key Personnel that were included in the Proposer's Statement of Qualifications (SOQ) will be retained and used in the evaluation of the Proposer's Proposal. If a Proposer changes any of the Key Personnel that were submitted as part of their SOQ, the score given to those Key Personnel positions in the Proposer's Proposal will be the same as the score given to those same Key Personnel positions in the SOQ.

It is imperative that the Key Personnel identified during the Procurement period remain intact for the duration of the Project until Project Completion. Failure to do so shall result in a Key Personnel Change Assessment Fee in the amount of $50,000 for each Key Personnel position substitution, regardless of whether the Department accepts the alternate personnel as equal or better.

1.16 PROJECT LABOR AGREEMENT

See ITP Appendix A for the Department's conclusion regarding a Project Labor Agreement due diligence study for this Project.

1.17 PREVAILING WAGE RATES

Federal prevailing wages rates applicable to the Contract are set forth in Appendix B of Part . The State prevailing wage rate schedule for the Contract is set forth in Appendix C of Part 1. The Design-Builder will be required to pay the higher of the two wages and supplemental (fringe) benefits The Design-Builder will be required to obtain periodic wage rate schedule updates from the NYSDOL, and the cost of changes in wage rate schedules and supplements (fringes) over the Contract duration will be included in the Contract Price.

2.0 PROCUREMENT PROCESS

2.1 METHOD OF PROCUREMENT

This RFP is issued pursuant to the Department's authority under the Act and in compliance with requirements applicable to federal-aid design-build contracts under 23 CFR Part 636. The Act authorizes the Department and other specified authorized state entities to use design-build contracts for capital projects related to the State's physical infrastructure, subject to the requirements set forth in the Act.

The Department intends to award the Contract to the Proposer that submits the Proposal that is determined to offer the best value to the State and the Department, considering the evaluation factors set forth in this RFP.

The procurement process includes two steps:

- Step One: RFQ - determination of Short-List; and

- Step Two: RFP - selection of Design-Builder from Proposers on Short-List that submitted Proposals.

Evaluation of Proposals will be based on information submitted in the Proposals or otherwise available to the Department, and will involve both pass/fail factors and an evaluation of quality and price factors, as further detailed below and in the ITP Appendices B, C and D.

2.2 RECEIPT OF THE RFP DOCUMENTS

The RFP and other information may be obtained by Proposers who have been notified of their inclusion on the Short-List from the person identified as the Department's Designated Representative in the ITP Appendix A.

2.2.1 Department's Designated Representative

The Department's Designated Representative for this Procurement is described in ITP, Appendix A.

2.2.2 Rules of Contact

The following rules of contact shall apply during the Contract procurement process, which began upon issuance of the RFQ for the Project and will be completed with the execution of the Contract. Contact includes face-to-face, telephone, e-mail or formal written communication.

The specific rules are as follows:

A) Proposers are advised that under New York State Finance Law, Section 139-j, communication on procurements can be made only with designated contact persons. The Department's Designated Representative for this procurement is specified in the ITP Appendix A. The Department's Designated Representative shall be the Department's single contact and source of information for this procurement.

B) After the Shortlist is announced, neither a Proposer nor any of its team members may communicate with another Proposer or members of another Proposer's team with regard to the Project or the Proposals. However, subject to the limitations in the ITP Section 1.8.3, a Proposer may communicate with a subcontractor that is on both its team and another Proposer's team, provided that each Proposer has obtained a written certification from the proposed subcontractor that it will not act as a conduit of information between the teams. Proposers shall provide the Department's Designated Representative with all written certifications received from its subcontractors

C) Contact between each Proposer and the Department shall be through only the Department's Designated Representative and that Proposer's Representative (see ITP Section 2.2.3).

D) The Department's Designated Representative will contact a Proposer through the Proposer's Representative (see ITP Section 2.2.3), normally in writing.

E) Communications between a Proposer and the Department's team of staff and consultants is allowed during any joint Proposer-Department meetings organized by the Department.

F) Neither a Proposer nor its agents may contact employees of the Department or consultants under contract with the Department for this Project, including staff members,

members of any Proposal evaluation committee and any other person who will evaluate Proposals, regarding the Project, except through the process identified above.

G) Any contact by a Proposer determined to be improper may result in disqualification of the Proposer and result in any other remedy under the Procurement Lobbying Law.

H) The Department will not be responsible for or bound by: (1) any oral communication, or (2) any other information or contact that occurs outside the official communication process specified herein, unless confirmed in writing by the Department's Designated Representative.

I) Neither a Proposer nor its agents may contact any Federal or State official, or stakeholder staff regarding the Project. Stakeholder staff includes employees of:

i. FHWA; and
ii. State and Federal agencies engaged in the Project or otherwise having jurisdiction over the Project.

2.2.3 Proposer's Representative

The Proposer's Representative shall be the Proposer's point of contact for communication between the Department's Designated Representative and the Proposer. Unless notified otherwise by a Proposer, the Department shall assume that the Proposer's Representative is the person so identified in the Proposer's SOQ. Using Form C, a Proposer shall promptly notify the Department of any changes in the Proposer's Representative or in the contact details for the Proposer's Representative, including the contact address for any notices or communications to be sent to the Proposer by the Department. Failure by a Proposer to provide such information in writing in a timely manner may result in the Proposer failing to receive important communications from the Department, for which the Department shall not be responsible.

2.3 ADDENDA AND RESPONSES TO QUESTIONS

2.3.1 Addenda

The Department may at any time modify conditions or requirements of this RFP by issuance of an Addendum. The Department will post Addenda on the Department's Project Web Site. Addenda will not be e-mailed or sent directly to the Proposers. Proposers must check the Project web site regularly for updates to the RFP. The Proposal shall include written acknowledgement of receipt of all RFP addenda (Form AR; ITP Appendix E). The Department will not be bound by, and the Proposer shall not rely on, any oral communication or representation regarding the RFP Documents, or any written communication except to the extent that it is an Addendum to this RFP and is not superseded by a later Addendum to this RFP.

2.3.2 Correspondence and Information

No correspondence or information from the Department or anyone representing the Department regarding the RFP, or the Proposal process in general shall be applicable unless it is in compliance with the ITP Section 2.2.

2.3.3 Questions and Responses to Questions

The Department will consider questions regarding the RFP, including requests for clarification and requests to correct errors, only if submitted in writing via e-mail by a Proposer. All questions and requests must be e-mailed to the Department's Designated Representative.

All questions and requests must be received at the e-mail address of the Department's Designated Representative no later than 12:00 p.m. Eastern Time on the date specified in the ITP Appendix A. No questions and requests will be considered unless delivered as specified. The text of questions shall not include any information identifying the Proposer or any of its team members.

All responses will be in writing and will be disseminated by posting on the Department's Website. Responses will not indicate which Proposer raised particular questions. The Department may rephrase questions as they deem appropriate and may consolidate similar questions. In limited instances, the Department may choose not to post an answer to every question. It is anticipated that multiple sets of responses will be issued. The last response will be issued no later than the date specified in the ITP Appendix A.

Proposers may submit questions marked "Confidential". Before providing a response, the Department will determine whether or not the question contains proprietary information. Should the Department determine that the question does not contain proprietary information, the Proposer who submitted the question will be notified that the question is not considered "Confidential". The Proposer will then have the opportunity to withdraw the question or request that the Department provide a response to the question in which case the question and response will be provided to all Proposers. If the Department determines that the question does contain proprietary information, then the Department will provide a response only to the Proposer who submitted the question. The Department may choose to provide this response verbally during a one-on-one meeting with that Proposer.

The Department will not consider any correspondence delivered in any way except as specified above, except when the Department may engage in one-on-one meetings with Proposers, as the Department deems necessary.

Each Proposer is responsible for reviewing the RFP prior to the dates specified for submission of inquiries in the ITP Appendix A and for requesting clarification or interpretation of any discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision that the Proposer otherwise fails to understand. The responses will not be considered part of the Contract but may be relevant in resolving any ambiguities in the Contract. Inquiries resulting in any modifications to the RFP will be documented in Addenda.

2.4 ONE-ON-ONE MEETINGS

Refer to ITP Appendix A for details on any One-on-One meetings the Department may convene during the Project's Proposal period.

2.5 FREEDOM OF INFORMATION LEGISLATION

2.5.1 Freedom of Information Law (FOIL)

The Department will maintain a non-public process for the duration of this DB procurement. Pursuant to Section 87(2)(c) of the Freedom of Information Law (FOIL), all records related to this procurement, including, but not limited to, SOQs, evaluation and Short-List procedures, proposals, evaluation and selection procedures, and, if applicable, any records created during the evaluation and selection process, will remain deniable records until the Contract has been fully executed and delivered.

All records pertaining to this procurement will become public information after execution of the Contract, unless such records are determined to be deniable under FOIL. Unless otherwise provided by law, records marked as “Exempt from Disclosure under FOIL” in a SOQ or Proposal submitted by an unsuccessful Proposer, which meet the requirements of FOIL, are not subject to inspection at any time by third parties under FOIL, and the records so marked by the successful Proposer in its SOQ and Proposal will remain confidential. Labeling all pages as “confidential” or “proprietary” or “Exempt from Disclosure under FOIL” is unacceptable – such proposals will not be accepted,

If a Proposer submits information in its Proposal that it believes to be deniable records under FOIL and that it wishes to protect from disclosure, the Proposer must do the following:

A) Clearly mark all financial information, trade secrets, or other information “Exempt from Disclosure under FOIL” in its Proposal at the time the Proposal is submitted and include a cover sheet identifying each section and page which has been so marked;

B) with respect to each such section and page, include a statement with its Proposal justifying the Proposer’s determination that the identified information constitutes deniable records under FOIL; and

C) provide an additional version of the Proposal submission in which confidential information has been redacted such that the redacted Proposal could without any further modification be inspected at any time by third parties under FOIL. The content of the redacted Proposal shall be identical to that of the original Proposal in all respects other than the redaction of deniable records.

Unless otherwise provided by law, confidential business information provided to the Department is not subject to inspection at any time by third persons under Article Six of the New York State Public Officers Law.

2.5.2 Freedom of Information Act (FOIA)

FOIA applies to agencies and departments of the Executive Branch of the US Government, including FHWA. FOIA establishes a presumption that records in the possession of such agencies and departments are available to the public, subject to certain exemptions. FHWA has adopted a policy of clear presumption of disclosure on all FOIA requests. Therefore, all records in the possession of FHWA pertaining to this procurement may be disclosed under FOIA, except to the extent specifically exempted from disclosure under the act, which exemptions include trade secrets and commercial or financial information obtained from a person that is privileged or confidential. To the extent such information of the Design-Builder is included in the executed Contract or otherwise provided to FHWA or other federal agency or department pursuant to this procurement, and the Design-Builder wishes to protect it from disclosure, the Design-Builder shall clearly mark such records “*Exempt from Disclosure under FOIA.*”

2.6 PROPOSAL STIPEND

The Department has decided that the payment of Stipends, under certain conditions, is proper as a part of this Design-Build Project.

Only Proposers that submit Proposals that (1) achieve a “pass” rating on all Pass/Fail Evaluation Factors; (2) meet or exceed the minimum qualifying quality based evaluation threshold of 60 points as required in the RFP; and (3) are not selected by the Department

("Stipend-Eligible Proposer") shall be eligible to be paid a Stipend within approximately 120 days after the execution of the Contract or the rejection of all Proposals. Proposers that do not meet the above criteria shall have no claim to a Stipend or compensation in any form based upon any legal or equitable theory. The Proposer awarded the Contract will not be eligible to receive a Stipend.

Stipend-Eligible Proposers must execute the Stipend Agreement and provide the Department with the licenses required by Article 3 of the Stipend Agreement no later than 20 calendar days after the Proposal Due Date. Extensions may be granted at the sole discretion of the Department. Any Stipend-Eligible Proposer that fails to execute the Stipend Agreement and provide the Department with the licenses required by Article 3 of the Stipend Agreement no later than 20 calendar days after the Proposal Due Date, will forfeit all rights to receipt of a Stipend.

No Proposer will be eligible for payment of any Stipend Amount if the Proposer has filed an unsuccessful protest of the procurement process, award, or cancellation of the procurement. In addition, as a condition of accepting payment of any Stipend Amount, the Proposer shall agree to not file any protest of the procurement process, award, or cancellation of the procurement after accepting payment of the Stipend.

In consideration for paying the Stipend and executing the Stipend Agreement (see Appendix E), the Department may use any ideas or information contained in the Proposal, including ATCs, in connection with the Project or in connection with a subsequent project without any obligation to pay any additional compensation to any Proposer that accepts the Stipend.

If the Department does not award a Contract in connection to any of the Proposals, the Department may award the Stipend to each Stipend-Eligible Proposer that agrees to the terms of the Stipend Agreement.

The Proposal Stipend amount for the Project is described in ITP Appendix A.

If, for any reason, the Department suspends or cancels the procurement process for this Project prior to the due date for proposals, the Department, in its sole discretion, may elect to pay Stipends that the Department deems, in its sole discretion, appropriate under the circumstances. Proposer must comply with the terms and conditions of the Stipend Agreement. In the interest of clarity, this provision does not contemplate or establish the basis for quantum meruit payments to Proposer.

All of the Proposer's team members and subcontractors shall be bound by the same provisions of the Stipend Agreement as the Proposer. All agreements between the Proposer, Proposer's team members, and/or subcontractors shall include provisions effectuating this term, and all such agreements shall be subject to review by NYSDOT.

This Section 2.6 is not a part of the Stipend Agreement, and has no effect on the terms therein. The terms of the final Stipend Agreement executed by the Stipend-Eligible Proposer and the Department may be modified via Addenda from the Stipend Agreement included in ITP Appendix E. Note that Form SA is NOT to be submitted with the Proposer's Proposal. It is included in Appendix E for informational purpose only.

2.7 ESCROWED BID DOCUMENTS

As a condition of the award of the Contract, the successful Proposer must agree to submit all Bid Documents to the Department, which shall be held by the Department in escrow. The Bid Document Escrow Agreement (Form BDEA) and Form BDEA, Appendix A, are included in Appendix E of this Instructions to Proposers. Note that form BDEA and form BDEA, Appendix A, are NOT to be submitted with the Proposer's Proposal. They are included in Appendix E for informational purpose only. The final versions of Form BDEA and Form BDEA, Appendix A will be transmitted to the successful Proposer after selection of best value.

2.8 GENERAL SUBMITTAL REQUIREMENTS

The Proposal shall be submitted in accordance with the ITP and the following requirements:

A) The Department Project Number, Contract ID, and the fact that this is a Proposal for the Project shall be clearly shown on the cover of the containers. The name and address of the Proposer shall be clearly marked on the outside of the containers;

B) Volume 1 of the Proposal (the Administrative Submittal) shall be enclosed in one or more sealed containers that shall be clearly marked as detailed in the ITP Appendix B. Volume 2 of the Proposal (the Technical Proposal) shall be enclosed in one or more sealed containers and shall be clearly marked as detailed in the ITP Appendix C. Volume 3 of the Proposal (the Price Proposal) shall be sealed within one or more separate containers and shall be clearly marked as detailed in the ITP Appendix D.

C) When sent by United States Postal Service or private carrier (such as Federal Express or United Parcel Service or similar), the sealed containers shall be sent in accordance with this ITP to the Department's Designated Representative, and shall be received by such representative no later than the time specified in the ITP Appendix A. In the alternative, a Proposal may be hand-delivered by the Proposer to the Department's Designated Representative no later than the time specified in the ITP Appendix A on the Proposal Due Date.

D) Where certified copies are required, the Proposer shall stamp the document or cover with the words "Certified True Copy" and have the stamp oversigned by the Proposer's Representative.

E) The Itemized Proposal / Jurat (Form IP, ITP Appendix E) and Form PP (ITP Appendix E) shall be signed by the Proposer and by all joint venture members or general partners of the Proposer, if it is a joint venture or partnership. If any signatures are provided by an attorney-in-fact, the original or a certified copy of the power of attorney shall be provided, together with evidence of authorization by the governing body of the organization granting the power of attorney.

2.9 WITHDRAWALS AND LATE SUBMITTALS

2.9.1 Modification or Withdrawal of a Proposal

Refer to Part 2, Section DB 102-07 for requirements related to the Modification or Withdrawal of a Proposal.

2.9.2 No Public Opening of Proposals

There will be no public opening of Proposals. After the Proposal Due Date, all Proposals will be opened in the presence of two or more Department designated individuals and reviewed for completeness.

2.10 FORFEITURE OF PROPOSAL SECURITY

Each Proposer further understands and agrees that if it should refuse or be unable to enter into the Contract as provided herein; should refuse or be unable to furnish adequate and acceptable Faithful Performance and Labor and Material Bonds as provided herein; should refuse or be unable to furnish adequate and acceptable insurance, as provided herein; or should refuse or be unable to furnish any commitments made in its Proposal, it may forfeit its Bid Bond and will not be entitled to payment of the proposal stipend.

2.11 EXAMINATION OF RFP DOCUMENTS AND WORK SITE

The Proposer is expected to examine carefully the Site(s) of the proposed Work, the Department's Project web site, all reference documents and the RFP Documents before submitting a Proposal.

The fact that the Department has furnished information does not abrogate the Proposer's responsibility for further verifications and inquiries as are necessary.

The submission of a Proposal shall be considered prima facie evidence that the Proposer has made such examination and is satisfied (i) as to the conditions to be encountered in performing the Work, as observable from a Site inspection prior to the Proposal Due Date or if not satisfied, proceeding without further investigation (if none has been performed by the Design-Builder) or as specified in the Contract Documents, and (ii) as to the requirements of the Contract. The Proposer must so certify in the Itemized Proposal / Jurat (ITP Appendix E) in order for the Proposal to be considered valid.

3.0 ALTERNATIVE TECHNICAL CONCEPTS (ATCs)

Refer to ITP Appendix A for details on the submission of any Alternative Technical Concepts, if applicable, for this Project.

4.0 PROPOSAL REQUIREMENTS

4.1 COMPLIANT PROPOSAL

The Proposer shall submit a Proposal that provides all the information required by this ITP and in accordance with the minimum requirements contained in the RFP, including the ITP Appendices. If the Proposal does not fully comply with the instructions and rules contained in the ITP, including the ITP Appendices, it may be deemed non-responsive and therefore unacceptable.

Each Proposal must be submitted in the official format specified by the Department as detailed in this ITP and its Appendices. Multiple or alternate proposals shall not be submitted.

Proposals may be considered unacceptable for any of the following reasons:

A) If the Proposal is submitted on a paper form other than that furnished or specified by the Department; if it is not properly signed; if the Itemized Proposal / Jurat (ITP Appendix E) is altered except as expressly permitted hereby; or if any part thereof is deleted from the

Proposal package;

B) If the Proposal is illegible or contains any omission, erasures, alterations, or items not called for in the RFP or contains unauthorized additions, conditional or alternate Proposals, or other irregularities of any kind; if the Department determines that such irregularities make the Proposal incomplete, indefinite, or ambiguous as to its meaning;

C) If the Proposer adds any provisions reserving the right to accept or reject an award or to enter into a Contract following award;

D) If the Proposer attempts to limit or modify the bonds, if the Bid Bond (ITP Appendix E) is not provided, and/or requested information deemed material by the Department is not provided;

E) If the Proposer is in arrears in the payment of any obligation due and owing the State, including payment of taxes and employee benefits; and

F) Any other reason the Department determines the Proposal to be non-compliant.

4.2 LEGAL AUTHORITY

4.2.1 Licensing Requirements

Proposers shall be licensed as required by applicable Federal and State laws, rules and regulations including, but not limited to, the New York State Education Law. Evidence of proper licensing shall be provided.

4.3 CURRENCY

The Pricing Information shall be priced in U.S. dollars ($) currency only.

4.4 BID BOND

4.4.1 Bid Deposit

Refer to RFP, Part 2, Section DB 102-06 for requirements related to the Bid Deposit.

4.4.2 Rights Reserved

Each Proposer understands and agrees, by submitting its Proposal, that the Department reserves the right to reject any or all Proposals, or part of any Proposal, and that the Proposal may not be withdrawn for a period of 120 days subsequent to the Proposal Due Date, without written consent of the Department.

Each Proposer further understands and agrees that if it should withdraw any part or all of its Proposal within 120 days after the Proposal Due Date without the consent of the Department, should refuse or be unable to enter into the Contract, as provided under the ITP Section 4.4, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided herein, or refuse or be unable to furnish the Proposal Information (ITP Appendices B and C), all Pricing Information specified (ITP Appendix D), it shall forfeit its Bid Bond and will not be entitled to payment of the proposal stipend.

The Proposer understands that any material alteration of documents specified in this ITP Section 4.4 or any of the material contained on the Bid Bond (ITP Appendix E), other than that requested, will render the Proposal non-responsive and non-compliant.

4.5 SIGNATURES REQUIRED

The Itemized Proposal / Jurat (Form IP, ITP Appendix E) and the Price Proposal Cover Sheet (Form PP, ITP Appendix E) shall be signed by all parties making up the Proposer, (i.e., all joint venture members or general partners, if the Proposer is a joint venture or partnership). If any signatures are provided pursuant to a power of attorney, the original or a certified copy of the power of attorney shall be provided, together with evidence of authorization.

4.6 NUMBER OF COPIES

4.6.1 Hard Copy of Proposal

A) One (1) original and five (5) copies of Volume 1 (see ITP Appendix B) shall be provided;

B) One (1) original and ten (10) copies of Volume 2 (see ITP Appendix C) shall be provided; and

C) One (1) original and three (3) copies of Volume 3 (see ITP Appendix D) shall be provided.

4.6.2 Electronic Copy of Proposal

In addition to the submission of copies of the Proposal printed on paper (see ITP Section 4.6.1), Proposers shall submit one copy of the full Proposal in electronic format on non-copy-protected thumbdrives. A separate thumbdrive shall be used for the submission of each volume of the Proposal (see ITP Appendices B, C and D).

Submitted electronic files shall be, as appropriate, either: (i) in searchable portable document format (pdf); or (ii) in spreadsheet format as specified herein. No file protection or password protection shall be applied to file contents.

For each file and for each folder/sub-folder (if used) submitted by the Proposer on the thumbdrives, the relevant volume, section, part and/or appendix of the Proposal shall be clearly communicated via the filenames and (if used) the folder/sub-folder names adopted by the Proposer.

A tag shall be affixed to each thumbdrive indicating the name of the Project DB Project Proposal – Volume…" followed by the relevant Proposal volume number, plus the date of issue of the Proposal and the Proposer's name. If it is necessary to use more than one thumbdrive to submit a volume of the Proposal, each thumbdrive shall additionally be labeled "X of Y", where X is the thumbdrive number and Y is the total number of thumbdrive submitted by the Proposer for that volume.

The thumbdrives for each volume shall be securely submitted bound inside the original copy of the relevant volume of the Proposal.

If there is any discrepancy between the content of the thumbdrive and the content of the paper-based submission, the content of the signed original Proposal submitted on paper shall take precedence.

5.0 PRE-PROPOSAL MEETINGS

5.1 INFORMATIONAL MEETINGS

A) The Department may hold joint informational meetings with all Proposers at any time prior

to the Proposal Due Date; and

B) The Department may hold informational meetings with individual Proposers at any time prior to the specified Proposal Due Date. If individual informational meetings are offered to one or more Proposers, they will be offered to all Proposers.

5.2 ATTENDEES

If any informational meeting is held, the Proposer will be expected to attend with appropriate members of its proposed Key Personnel, and if required by the Department, senior representatives of the proposed Contractor, the proposed Designer, the proposed Construction Inspection Firm and the proposed Materials and Testing Firm or Laboratory.

5.3 QUESTIONS AND RESPONSES

If any individual informational meeting is held, a question asked by any Proposer where a response is expected, will be recorded and the question and response will be provided in writing to all Proposers via the Project web site.

6.0 CONTRACT AWARD AND EXECUTION

6.1 CONTRACT AWARD

Unless all Proposals are rejected or this procurement is cancelled, the Contract shall be Awarded to the responsive Proposer offering a fully compliant Proposal that provides the “best value” to the State taking into consideration the quality and price factors discussed in this ITP.

Within five (5) business days after the selected Proposer is notified it has been selected as best value Proposal, the selected Proposer shall:

A) Notify the Department in writing of the name and address of its agent for service of legal process for this Project. The Proposer shall not change that authorized agent without prior written notice to the Department; and

B) Provide the Department, in writing, the Proposer’s Federal Internal Revenue Service Employer Identification Number.

Following selection of the Best Value Proposal, the Department will deliver, for execution, sets of the Contract Documents to the selected Proposer. Within five (5) business days of receipt of said execution documents, the selected Proposer shall deliver to the Department the following:

A) The executed Design Build Contract Agreement together with evidence (if not previously provided) as to the authority, power, and capacity of said individuals to bind the proposer to the Contract. If the selected Proposer is a joint venture, the Design Build Contract Agreement must be executed by all joint venture members;

B) Required Payment and Performance Bonds (samples referenced in DB 103-08 and DB 103-07);

C) Insurance certificates (see Insurance Requirements, Workers Compensation, and Disability Benefits at https://www.dot.ny.gov/bids-and-lettings/construction-contractors/bid-letting-and-award-forms); and

D) Any other documents or requirements reasonably requested by the Department in connection with the finalization of the Contract.

Failure to comply with the above requirements is a default and may result in forfeiture of the Bid Bond.

6.2 EXECUTION OF CONTRACT

In case of failure or refusal on the part of the successful Proposer to deliver the duly executed Contract to the Department within the five (5) business day period herein mentioned, the amount of the Bid Bond may be forfeited and paid to the Department.

The selected Proposer shall have the right to withdraw the Proposal without penalty if the Department fails to return a fully executed Contract to the Proposer on or before the later of: (i) 45 days following receipt of the signed Contract from the successful Proposer, Payment and Performance Bonds and other required documents; or (ii) 120 days following the Proposal Due Date.

If for any reason the selected Proposer fails to execute and deliver the Design Build Contract Agreement, or the selected Proposer withdraws its acceptance of the Design Build Contract Agreement, award of the Contract may be made to the Proposer whose Proposal was previously scored as the next best value to the Department, taking into consideration the quality and price factors identified below, or the Work may be re-advertised and completed under a different contract or otherwise, as the Department may decide.

The Contract will not be effective until the Design Build Contract Agreement has been fully executed and delivered by all of the parties thereto.

6.3 OBLIGATION TO AWARD

The Department shall be under no obligation to Award the Contract to:

A) the Proposer submitting the lowest priced Proposal; or

B) any Proposer, which has been included on the Short-List, or

C) to award the Contract at all.

7.0 PROPOSAL EVALUATIONS

The Department has determined that award of the Contract based on a determination of the Proposal that offers the best value to the Department, taking into consideration the quality and price factors discussed herein, provides the best opportunity to obtain the right Design-Builder to assure a successful Project.

Each Proposal will be evaluated on the pass/fail and quality evaluation factors identified herein. In order to be considered for award of the Contract, the Proposal must receive a “pass” rating on all pass/fail factors.

An Evaluation Team appointed by the Department will determine the pass/fail status and overall quality rating of each Proposal before the Price Proposals are opened and evaluated by the Contract Management Bureau staff. The Evaluation Team’s quality factor scoring will be submitted to the Department’s Selection Committee and/or official for review and validation. The Contract Management Bureau will combine the quality ratings and pricing information contained in the Price Proposals and will prepare a Recommendation to the Selection Official indicating which Proposal represents the “best value” to the Department. The Selection Official will then

assess the Recommendation and make a final determination as to which Proposal offers the "best value" to the Department, considering the quality and price factors set forth in the ITP.

The "best value" determination shall be based on the following:

- Proposal Price, which shall be 50% of the overall score; and
- Quality Evaluation, which shall be 50% of the overall score.

The Department reserves the right to reject any or all Proposals, to waive technicalities, or to advertise for new Proposals, if in the judgment of the Department the best interests of the State of New York will be promoted thereby.

7.1 EVALUATION FACTORS AND CRITERIA

The factors identified in the ITP Section 7.1.1.1 through 7.1.1.5 will be evaluated on a "pass/fail" basis. The factors identified in the ITP Appendix A will be rated on how well the Proposer has met or exceeded the requirements. Price will be evaluated as specified in the ITP Section 7.1.3.

A Proposal must receive a "Pass" on all "Pass/Fail" evaluation factors listed in the ITP Section 7.1.1.1 through 7.1.1.5 for the Proposal to be further evaluated and rated based on the quality evaluation factors identified in the ITP Appendix A and the price factors identified in the ITP Section 7.1.3.

7.1.1 "Pass/Fail" Evaluation Factors

Each Proposal must achieve a rating of "Pass" on any "Pass/Fail" evaluation factor listed in ITP Sections 7.1.1.1 through 7.1.1.5 in order for the Proposal to be eligible for award.

Failure to achieve a "Pass" rating on any "Pass/Fail" factor will result in the Proposal being declared unacceptable and the Proposer being disqualified.

7.1.1.1 Legal Pass/Fail Factors

The Legal pass/fail requirements are as follows:

A) Provision of a properly completed and executed Itemized Proposal / Jurat (Form IP, ITP Appendix E);

B) Provision of evidence that the Persons proposed to carry out engineering, design and surveying within the State hold appropriate licenses or that they have the capability to obtain licensure prior to execution of Contract;

C) Provision of all other specified forms and documents, properly completed and signed (if required) (see ITP Appendix B) that do not identify any material adverse information;

D) The organizational documents shall show that the Proposer has legal capacity to undertake design and construction of the Project, shall include appropriate provisions for management and decision-making and a statement affirming that, if selected for contract award, in the event of bankruptcy or withdrawal by any member of the Design-Build Team, the Proposer will substitute a firm with equivalent or better qualifications to complete the project. Any such substitution must first be approved by the Department before the substitute firm commences work on the project; and

E) Compliance with any other legal requirements as identified in the ITP Appendix B.

7.1.1.2 Financial Pass/Fail Factors

The financial pass/fail requirements are as follows:

A) Provision of all other specified forms and documents, properly completed and signed (if required), and compliance with any other financial requirements, as identified in ITP Appendix B.

7.1.1.3 Administrative Pass/Fail Factors

The administrative pass/fail requirements are the following:

A) Provision of all required forms included in ITP Appendix E, properly completed and signed (if required);

B) Confirmation that the Principal Participants and Key Personnel listed in the Proposer's SOQ have either not changed since submission of the SOQ, or that the Proposer has previously advised the Department of a change and received the Department's written consent (an approved Form RFC) thereto;

C) Provision of all information specified in ITP Appendices B and C in the manner, format, and detail specified, without alteration of the forms except as expressly permitted by the instructions; and

D) No member of the Proposer's Team appears on the list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" as described in ITP Section 7.1.5.

7.1.1.4 DBE Compliance Pass/Fail Factors

The DBE pass/fail requirements are the following:

A) The Proposer has demonstrated due diligence towards good faith efforts to maximize DBE utilization for this contract;

B) The completed Form LDB Tables 1 & 2;

C) The completed Form AAP-10 D/M/WBE Solicitation Log;

D) The completed Form SDU – Schedule of DBE Utilization; and.

E) Documentation of Good Faith Efforts, if the information provided on LDB Tables 1 & 2 does not meet the DBE goal.

Failure to achieve a "Pass" rating on this DBE Compliance factor will result in the Proposal being declared unacceptable and the Proposer being disqualified.

7.1.1.5 Price Proposal Pass/Fail Factors

The pass/fail requirements relating to the Price Proposal are as follows:

A) Provision of the Bid Bond (see ITP Appendix E); and

B) The Price Proposal is complete, fully conforms to the requirements of the RFP; is not significantly unbalanced relative to the scope of the Work; and does not contain inaccurate, incomplete, and/or unreasonable prices on Form SP (Schedule of Prices; see ITP Appendix E). A Price Proposal will be considered to be significantly unbalanced if it is unreasonably front-loaded and/or the amounts shown in Form SP do

not reflect reasonable actual costs plus a reasonable proportionate share of the Proposer's anticipated profit, overhead costs, and other indirect costs which are anticipated for the performance of the items in question.

7.1.2 Quality Evaluation Factors

The quality evaluation factors are listed in ITP Appendix A.

The quality evaluation factors and subfactors listed in ITP Appendix A will be evaluated and rated using the evaluation guidelines specified in the ITP Appendix A with special attention given to the desired quality expressed in the statement of each factor and/or subfactor.

The Quality Evaluation Factor and Subfactor weighting is described in ITP, Appendix A.

Proposals that receive a total combined quality points score less than 60 will not be selected for award.

The ITP Appendix A describes the expectations of the Department with regard to quality of Work to be performed and the related information to be submitted in the Technical Proposals. Along with the Project goals and objectives (see ITP Section 1.3), these goals and objectives will guide the Department's evaluation of the factors and subfactors.

7.1.3 Price

The Proposer shall submit its Pricing Information in accordance with the ITP Appendix D. The total price shown in the Pricing Information for the Project shall be the Contract Price, as agreed to by the Department, less the unused portion of the lump sum price for the Design-Build – Extra Work (Item No. 800.0400NN15), if the Contract is Awarded.

Specific information to be submitted is identified in the ITP Appendix D.

Each Proposal shall specify the sum for which the Work will be performed according to the RFP. The Department, reserves the right to reject any Proposal in which any of the prices are significantly unbalanced to the potential detriment of the Department.

The Department may determine that the Price Proposal is non-responsive if the Department determines, in its sole discretion, that the Price Proposal does not provide all information in conformance with the RFP.

The Price Score shall be determined by dividing the Low Price Proposal by each Proposal's Price using a 50 point scale (Low Price Proposal/ Proposer's Price Proposal) multiplied by 50.

7.1.4 Buy America Provision

The Project is subject to Buy America policies, which require a domestic manufacturing process for all steel or iron products that are permanently incorporated into a federal-aid highway construction project. The FHWA regulations permit a minimal use of foreign steel and iron in the amount of one-tenth of one percent of the Contract Price or $2,500, whichever is greater, to be used in a federal aid project.

7.1.5 Iran Divestment Act of 2012

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. This act may be viewed in its entirety at

http://www.ogs.ny.gov/about/regs/docs/ida2012.pdf.

Pursuant to SFL § 165-a(3)(b), the Commissioner of the Office of General Services (OGS) has developed and maintains a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). The list may be found on the OGS website at:

http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, the Proposer (or any assignee) certifies that, it will not utilize, on such Contract, any subcontractor that is identified on the prohibited entities list.

Additionally, any Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation, must certify at the time the Contract is renewed, extended or assigned that it is not included on the prohibited entities list.

During the term of the Contract, should the Department receive information that a Bidder/Contractor (or any assignee) is in violation of the above-referenced certification, the Department will offer the Bidder/Contractor (or any assignee) an opportunity to respond. If the Bidder/Contractor (or any assignee) fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the Department shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The Department reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

7.2 EVALUATION GUIDELINES

7.2.1 Quality Evaluation Factors

The quality evaluation factors and the overall Technical Proposal will be rated by a numerical method.

7.2.2 Communications

The Department, through its Designated Representative, may engage in communications with the Proposers, through their Designated Representatives, after receipt of Proposals, allowing Proposers to provide clarifications to their Proposals if the Department elects to proceed with discussions and a request for revised Proposals. This process will be initiated by an e-mail request from the Department to the Proposer identifying the information needed and a date and time by which the information must be provided. The Proposer shall provide the requested information in writing by the date and time indicated. If the requested information is not received

timely, the Proposer's ratings may be adversely affected and/or the Proposal may be declared unacceptable.

7.3 BEST VALUE DETERMINATION

The Department has determined that Award of the Project, based on a best value determination, provides the best opportunity to obtain the right Design-Builder to assure a successful Project. The time frame to complete the Project and the importance of quality in the completed Project resulted in the necessity to place the maximum possible flexibility in the hands of the Design-Builder to plan, design, construct and control the Project. Although price is an important factor, time and quality are also major factors in determining the Project's success. The Department's Procedures for the evaluation and selection of Proposals were designed to provide a comprehensive evaluation of quality, that when combined with price, will result in the selection of the appropriate Design-Builder.

The Department will rate the Proposals for pass/fail and quality. The Department will perform an evaluation of factors (including subfactors) and price with the overall quality rating and price having the relative importance specified in the ITP Section 7.0. Based on the professional judgment of the Selection Official, the Department will select the responsive Proposer providing a fully compliant Proposal that represents the best value to the Department.

In determining the Best Value, the Department will evaluate the factors and subfactors and assign an overall quality rating for each Proposer using the guidelines in the ITP Appendix A. The Department will also determine whether the Price Proposals are responsive.

The Department will not Award the Contract to any Proposer that receives a "fail" rating on any pass/fail factor or subfactor (ITP Sections 7.1.1.1 through 7.1.1.5). The Department will not Award the Contract to any Proposer that the Department determines has submitted a Non-responsive Price Proposal or who has not complied with DBE requirements (see ITP Section 1.9). The Department will not Award the Contract to any Proposer that receives a total combined quality points score less than 60.

7.4 POST SELECTION MEETINGS

The Department may meet with the selected Proposer prior to Award at any time after selection.

8.0 PROTESTS

This ITP Section 8.0 sets forth the exclusive protest remedies available with respect to this RFP. Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies and agrees that the decision rendered on any protest, as provided herein, shall be final and conclusive. These provisions are included in this RFP expressly in consideration for such waiver and agreement by the Proposers. If a Proposer disregards, disputes or does not follow the exclusive protest remedies set forth in this RFP, it shall indemnify, defend and hold the Department and its directors, officers, officials, employees, agents, representatives and consultants, harmless from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees and damages incurred or suffered as a result of such actions. The submission of a Proposal shall be deemed the Proposer's irrevocable and unconditional agreement with such indemnification obligation.

8.1 WRITTEN PROTESTS ONLY

All protests must be in writing. Protests shall be submitted to the Protest Official designated below:

Director of the Office of Legal Services
Attention: I-81 VIADUCT PROJECT – PHASE 1, Design-Build Project
Legal Affairs Division
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232, USA

with an email copy also sent to the Department's Designated Representative at the address identified in ITP Appendix A.

Any protest not set forth in writing within the time limits specified in these procedures is null and void and shall not be considered. Protests regarding this RFP shall be filed only after the Proposer has informally discussed the nature and basis of the protest with the Department, through the Department's Designated Representative, in an effort to reach resolution.

8.2 PROTEST CONTENTS

A) All Protests must include the following:

1) The name and address of the Proposer;
2) The Contract number;
3) A detailed statement of the nature of the protest and the grounds on which the protest is made;
4) All factual and legal documentation in sufficient detail to establish the merits of the protest. Evidentiary statements must be provided under penalty of perjury; and
5) A summary of the remedy being requested.

B) The protestor must demonstrate or establish a clear violation of a specific law, regulation, or procedure.

C) The Department will not be obligated to suspend or postpone the procurement process in any manner during the protest.

D) If the protest is denied, the protestor may be liable for the Department's costs reasonably incurred in any action to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by the Department as a consequence of the protest. If the protest is granted, the Department shall not be liable for payment of the protestor's costs, including, but not limited to, legal and consultant fees and costs.

8.3 TIME FOR FILING

A) Protests filed before the Proposal Due Date:

A protest based on alleged improprieties in the solicitation shall be filed before said Proposal Due Date. A protest based on alleged improprieties arising from modifications to the original solicitation shall be filed not later than the next closing date for receipt of proposals following the modification.

B) Protests filed after selection of Best Value Proposal:

A debriefing will be made available to any Proposer that submitted a Proposal in response to this RFP. Any Proposer wishing to have a debriefing, must make a request in writing to the Department's Designated Representative indicated in ITP Appendix A, within four (4) business days of notification of Best Value selection designation. The Department shall make every effort to schedule the debriefing within seven (7) business days of the Department's receipt of the Proposer's debriefing request. A Proposer may not file a protest until after the debriefing. The protest shall be filed no later than four (4) business days after the debriefing.

8.4 PROTEST DISCUSSIONS

The Protest Official may, in his/her discretion, discuss the protest with the protestor prior to issuance of the Protest Official's written decision. The protestor shall have the burden of proving its protest by clear and convincing evidence. No hearing will be held on the protest, but it shall be decided, on the basis of the written submissions, by the Protest Official or his/her designee, whose decision shall be final and conclusive. The Protest Official or his/her designee shall issue a written decision regarding any protest.

8.5 IRREVOCABILITY OF PROPOSALS PENDING RESOLUTION OF PROTEST

All Proposals shall be irrevocable until final administrative and judicial disposition of a protest.

9.0 THE DEPARTMENT'S RIGHTS AND DISCLAIMERS

9.1 THE DEPARTMENT'S RIGHTS

The Department may investigate the qualifications of any Proposer under consideration, may require confirmation of information furnished by a Proposer, and may require additional evidence of qualifications to perform the Work described in this RFP. Without limiting any other right expressly reserved by the Department, the Department reserves the right, in its sole and absolute discretion, to:

A) Reject any or all Proposals;

B) Issue a new RFP;

C) Cancel, modify or withdraw the entire RFP;

D) Issue addenda to this RFP;

E) Modify the RFP process (with appropriate notice to Proposers);

F) Appoint the Selection Official, Selection Committee and evaluation teams to review Proposals;

G) Seek the assistance of outside technical experts and consultants in Proposal evaluation;

H) Use proposal information provided through site visits, management interviews, and the State's investigation of a Proposer's qualifications, experience, ability or financial standing, and any material or information submitted by the Proposer in response to the Department's request for clarifying information in the course of evaluation and/or selection under the Request For Proposals;

I) Approve or disapprove the use of particular subcontractors and/or substitutions and/or changes in a Proposer's organization;

J) Revise and modify, at any time before the Proposal Due Date, the factors it will consider in evaluating Proposals and to otherwise revise or expand its evaluation methodology.

The Department will post any such revisions or modifications on the Department's Web site. The Department may extend the Proposal Due Date if such changes are deemed by the Department, in its sole discretion, to be material and substantive;

K) Prior to the Proposal Due Date, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available, or to direct bidders to submit proposal modifications addressing subsequent RFP addenda;

L) Hold meetings and communicate with the Proposers responding to this RFP to seek an improved understanding and evaluation of the Proposals. If meetings are held, all Proposers that submitted a responsive Proposal shall be afforded an opportunity to participate in a meeting;

M) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Proposals;

N) Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Proposer's proposal and/or to determine a Proposer's compliance with the requirements of the solicitation;

O) Offer a Proposer the opportunity to clarify its Proposal, including the opportunity to identify a guarantor and provide financial information for such entity;

P) Waive Weaknesses, informalities and minor irregularities in Proposals, and seek and receive clarifications to a Proposal;

Q) Waive any requirements that are not material;

R) Hold discussions and/or request revisions to Proposals;

S) Disqualify any Proposer that changes its organization (as represented in its SOQ) without Department written Approval;

T) Disqualify any Proposer whose conduct and/or proposal fails to conform to the requirements of the Request For Proposals;

U) Make an award under the Request For Proposals in whole or in part;

V) Hold the Proposals under consideration for a maximum of 120 days after the specified Proposal Due Date until the final Award is made; and/or

W) Refuse to consider a Proposal, once submitted, or reject a Proposal if such refusal or rejection is based upon, but not limited to, the following:

1) Failure on the part of a Principal Participant to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing contracts with the Department or other State agency;

2) Default on the part of a Principal Participant or Designer under previous contracts with the Department or other State agency;

3) Documented unsatisfactory performance of previous work by the Proposer, a Principal Participant and/or Designer under previous contracts with the Department or other State agency;

4) Issuance of a notice of debarment or suspension to the Proposer, a Principal Participant and/or Designer;

5) Submittal by the Proposer of more than one Proposal in response to this RFP under the Proposer's own name or under a different name;
6) Existence of an organizational Conflict of Interest, or evidence of collusion between a Proposer (or any Principal Participant or Designer) and other Proposer(s) (or Principal Participants or Designer) in the preparation of a, proposal or bid for any Department design or construction project;
7) Uncompleted work or default on a contract in another jurisdiction for which the prospective Proposer or a Principal Participant is responsible, which in the judgment of the Department might reasonably be expected to hinder or prevent the prompt completion of additional work if awarded;
8) Failure to have a current Vendor Responsibility Questionnaire on file with the Department;
9) Any other reason affecting the Proposer's ability to perform, or record of business integrity; and/or
10) The Proposer is not otherwise qualified and eligible to receive an award of the Contract under applicable laws and regulations.

9.2 BEST AND FINAL OFFERS

The Department reserves the right, at its discretion, to request Best and Final Offers (BAFOs) from all Proposers that are determined to be susceptible for Contract Award. Proposers should not assume that the Department will in fact request Best and Final Offers.

9.3 THE DEPARTMENT DISCLAIMERS

This RFP does not commit the Department to enter into a Contract, nor does it obligate the Department to pay for any costs incurred in preparation and submission of Proposal(s) or in anticipation of a Contract. By submitting a Proposal, a Proposer disclaims any right to be paid for such costs.

The execution and performance of a Contract pursuant to this RFP is contingent upon sufficient appropriations and authorizations being made by the Legislature of New York, or the Congress of the United States if federal funds are involved, for performance of a Contract between the successful Proposer and the Department.

In no event shall the Department be bound by, or liable for, any obligations with respect to the Work or the Project until such time (if at all) as the Contract, in form and substance satisfactory to the Department, has been executed and authorized by the Department and, then, only to the extent set forth therein.

In submitting a Proposal in response to this RFP, the Proposer is specifically acknowledging these disclaimers.

I-81 VIADUCT PROJECT - PHASE 1, CONTRACT 1

PIN 3501.90, Contract D900054

REQUEST FOR PROPOSALS

INSTRUCTIONS TO PROPOSERS

APPENDIX A
PROJECT INFORMATION

Final June 17, 2022

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TABLE OF CONTENTS

A1.0 DESCRIPTION OF THE PROJECT 1
A2.0 PROJECT GOALS 3
A3.0 PROJECT LABOR AGREEMENT 3
A4.0 REFERENCE DOCUMENTS 3
A5.0 PROCUREMENT SCHEDULE 4
A5.1 ANTICIPATED PROCUREMENT SCHEDULE 4
A5.2 PROPOSAL DUE DATE 5
A6.0 CONFLICT OF INTEREST 5
A7.0 PARTICIPATION GOALS 5
A8.0 DEPARTMENT'S DESIGNATED REPRESENTATIVE 5
A9.0 ONE-ON-ONE MEETINGS 6
A9.1 MEETINGS DURING PROPOSAL PERIOD 6
A9.2 POST-PROPOSAL MEETINGS 6
A9.3 STATEMENTS AT MEETINGS 7
A10.0 PROPOSAL STIPEND 7
A11.0 ALTERNATIVE TECHNICAL CONCEPTS (ATCS) 7
A11.1 SUBMITTAL AND REVIEW OF ATCS 7
A11.2 CONTENT OF ATC SUBMITTALS 8
A11.3 SUBMISSION OF ATC SUBMITTALS 9
A11.4 DETERMINATION BY THE DEPARTMENT 9
A11.5 INCORPORATION INTO PROPOSAL 10
A11.6 CONFIDENTIALITY 10
A12.0 QUALITY EVALUATION FACTORS, SUBFACTORS AND WEIGHTING 10
A12.1 QUALITY EVALUATION FACTORS AND SUBFACTORS 10
A12.1.1 Design-Build Organization and Process 11
A12.1.2 Design-Build Approach to the Project (Technical Solutions) 13
A12.1.3 Schedule 14
A12.2 QUALITY EVALUATION WEIGHTING 14

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A1.0 DESCRIPTION OF THE PROJECT

The Project involves Design-Build services for the I-81 VIADUCT PROJECT - PHASE 1, CONTRACT 1 (the "Project"). The Project is located in Cicero and Dewitt, Onondaga County, New York.

The Project will consist of the conversion of the section of I-81 between the southern I-81/I-481 interchange (Interchange 16A) and the northern I-81/I-481 interchange (Interchange 29) to Business Loop 81 (BL 81), and re-designation of the existing I-481 as I-81.

It is anticipated the Project will include the work outlined below:

A) I-481 Northbound between Kirkville Road (Interchange 5 northbound on-ramp) and I-90 (Interchange 6 northbound on-ramp) (To be redesignated as I-81)

a. Construction of third northbound (auxiliary) lane beginning at Kirkville Road to I-481 NB on ramp ending at I-481 NB ramp to NYS Thruway
b. Mill & pave existing highway section
c. Drainage improvements

B) BIN 1093682 – I-481NB over I-90 (NYS Thruway)

a. Widen bridge to accommodate three travel lanes and standard shoulder widths, including extension of abutments, foundations, and superstructure to accommodate needed width
b. Replacement of concrete bridge deck, including jointless details with sleeper slabs at the abutments
c. Concrete and steel repairs
d. Replacement of concrete bridge barrier
e. Replacement of bearings and pedestals
f. Structural Steel Painting

C) NEW I-81 (former I-481) between Northern Boulevard (Interchange 8) through existing I81/I481/NY Route 481 (Interchange 9)

a. Construction of a third northbound (auxiliary) lane beginning at I-481 over Totman road to I-81/I-481 Interchange
b. Mill and pave existing highway section
c. Demolition of the existing ramp that connects northbound I-481 to northbound I-81
d. Demolition of the existing ramp that connects southbound I-81 to southbound I-481
e. Widen BL 81 (former I-81) northbound and southbound within the interchange area
f. Reconstruction of the existing loop ramp from BL 81 (former I-81) northbound to NY Route 481 northbound
g. Construction of a new two-lane mainline roadway from existing I-81 southbound to new I-81 (former I-481) southbound to approximately the exit ramp for Northern Blvd
h. Construction of a new two-lane mainline roadway from new I-81 (former I-481) northbound to I-81 northbound
i. Drainage Improvements
j. Installation of noise walls
k. Replacement of camera, VMS and Acoustic Detection Unit

D) BIN 1072792 former I-481NB over Thompson Rd

a. Widen bridge to accommodate three travel lanes and standard shoulder widths, including extension of abutments, foundations, and superstructure to accommodate needed width
b. Replacement of concrete bridge deck, including jointless details with sleeper slabs at the abutments
c. Concrete and steel repairs
d. Replacement of concrete bridge barrier
e. Replacement of bearings and pedestals
f. Structural steel painting

E) BIN 1072791 former I-481SB over Thompson Rd

a. Widen bridge to accommodate all travel lanes for both mainline I-81 and existing state route 481, standard shoulder widths, including extension of abutments, foundations, and superstructure to accommodate needed width
b. Replacement of concrete bridge deck, including jointless details with sleeper slabs at the abutments
c. Concrete and steel repairs
d. Replacement of concrete bridge barrier
e. Replacement of bearings and pedestals
f. Structural steel painting

F) BIN 1072781 former I481SB over Totman Rd

a. Widen bridge to accommodate three travel lanes and standard shoulder widths, including extension of abutments, foundations, and superstructure to accommodate needed width
b. Replacement of concrete bridge deck, including jointless details with sleeper slabs at the abutments
c. Concrete and steel repairs
d. Replacement of concrete bridge barrier
e. Replacement of bearings and pedestals
f. Structural steel painting

G) BIN 1031720– South Bay Rd over I-81

Bridge to be replaced, construct both a new superstructure and substructure

H) New Structure – I-81 SB over BL81 NB

Construct new superstructure and substructure to accommodate new mainline I-81 SB

I) New Structure – I-81 SB over I-481 WB

Construct new superstructure and substructure to accommodate new mainline I-81 SB

J) New Structure – I-81 SB over FEMA Floodplain

Construct new superstructure and substructure to accommodate new mainline I-81 SB

K) New Structure – I-81 NB over FEMA Floodplain

Construct new superstructure and substructure to accommodate new mainline I-81 NB

L) Installation of noise walls along BL81 (former I-81) between NYS Thruway (Thruway exit 36 or existing I-81 exit 25A) and I-81/I-481 interchange

A2.0 PROJECT GOALS

The Department's goals and objectives for the Project are to:

1) Ensure a long-service life for all Project elements to satisfy long term preservation goals.
2) Ensure the safety of the traveling public.
3) Maximize the impact of the public investment in the Project by:
    a. Providing cost-effective solutions;
    b. Sequencing construction to minimize effects on vehicular traffic operations;
    c. Minimizing effects on residential neighborhoods and business communities;
    d. Reducing future maintenance requirements; and
    e. Minimizing impacts on the environment.
4) Deliver the Project safely, on schedule and within budget.
5) Ensure coordination with all utility owners, third parties, and Project stakeholders and any adjacent construction projects.
6) Provide improvements that enhance the livability and visual quality in and around the project area.
7) Provide improved operational efficiencies in and around the project area.
8) Ensure the project is compliant with the Department's environmental commitments.
9) Provide best value to the Department.

A3.0 PROJECT LABOR AGREEMENT

The Department has undertaken a due diligence study to determine whether there will be a public benefit to implementation of a Project Labor Agreement (PLA) for the Project and has concluded that a PLA is warranted. The agreement to be entered into between the Design-Builder and appropriate trade unions will be prepared and provided to the Proposers by Addendum. Any provision in the RFP inconsistent with the provisions of an approved PLA shall be superseded by the PLA to the greatest extent permitted by federal or state law.

A4.0 REFERENCE DOCUMENTS

Reference Documents include but are not limited to the following Documents:

A. Record Plans for the project area

B. Geotechnical Data Report

C. CADD Files

D. Final Design Report/Final Environmental Impact Statement

E. Bridge Inspection Reports

F. Draft Wetland Delineation and Surface Waters Survey Report

Reference Documents are located at the following Web site address:

https://www.dot.ny.gov/main/business-center/designbuildproject54

A5.0 PROCUREMENT SCHEDULE

A5.1 ANTICIPATED PROCUREMENT SCHEDULE

The Department anticipates the following procurement schedule for the Contract:

Activity	Date
Draft RFP Informational Meeting	May 26, 2022
Final RFP to Shortlisted Firms	June 17, 2022
Date Proposers may start submitting ATCs for review	June 17, 2022
Proposal period one-on-one meetings with all Proposers.	June 21 – August 19, 2022
Final date for Proposers to submit new ATC's for review	August 12, 2022
Final date for requests for changes to Proposer's organization and personnel	August 5, 2022
Final date for Proposers to submit revised ATCs for final review	August 26, 2022
Final date for Department's responses to new ATCs submitted for review	August 19, 2022
Final date for Department's responses to revised ATCs submitted for review	September 2, 2022
Final date for receipt of Proposer questions	September 2, 2022
Final date for Proposers to respond to conditional approval of ATC's	September 9, 2022
Issue Date for Final Addendum and/or answers to Proposer questions	September 9, 2022
Proposal Due	September 16, 2022
Post Proposal meetings (if required)	Week of September 26, 2022
Selection of Best Value	October 14, 2022

Limited Negotiations (if required)	TBD
Contract Award	December 15, 2022
Notice to Proceed	December 15, 2022

This is a tentative schedule. All dates set forth in the preceding table and in this RFP are subject to change, in the Department's' sole discretion. To the extent that dates are changed, the Department shall notify the Proposers by Addendum.

A5.2 PROPOSAL DUE DATE

The completed Proposal shall be delivered to the Department's Designated Representative at the address specified in Section A8.0, no later than 12:00 P.M. (midday) (Eastern Time), on the date specified in Section A5.1 (the "Proposal Due Date").

A6.0 CONFLICT OF INTEREST

Federal regulations prohibit the hiring of any person or organization that has a "conflict of interest". Because of their prior work, the following firms have been identified as having conflicts of interest that prevent their consideration for the pending Project. Due to a conflict of interest based on services currently being provided that are related to this Project, Proposers may not include the services of the following firm(s):

- Parsons Transportation Group of New York, Inc.
- AKRF, Inc.
- C&S Engineers Inc.
- Popli Design Group
- Trowbridge Wolf Michaels Landscape Architects (TRM)
- Environmental Design and Research (EDR)
- Watts Architecture and Engineering
- T2 Engineering (formerly ES NY)
- KCI Engineering of New York, P.C.

Proposers utilizing firm(s) identified above will be disqualified from participating in this Project.

A7.0 PARTICIPATION GOALS

Refer to Part 1.

A8.0 DEPARTMENT'S DESIGNATED REPRESENTATIVE

The Department's Designated Representative for this Procurement is:

Patricia Kappeller
Attention: I-81 VIADUCT PROJECT - PHASE 1, CONTRACT 1 Design-Build Project
Office of Contracts Management
New York State Department of Transportation
50 Wolf Road, 6th Floor

Albany, New York 12232, USA

email: Patricia.Kappeller@dot.ny.gov

The above named person, as the Department's Designated Representative for this procurement, shall be the Department's single point of contact and source of information for this procurement.

A9.0 ONE-ON-ONE MEETINGS

Prior to and/or after submission of Proposals, the Department may conduct One-on-One meetings with Proposers as described below. If One-on-One meetings are held, they will be offered to each Proposer. The Department reserves the right to disclose to all Proposers any issues raised during One-on-One meetings. However, the Department will not disclose to other Proposers any information pertaining to an individual Proposer's technical concepts, Proposal or ATCs. The Department will hold One-on-One meetings on matters it deems appropriate.

A9.1 MEETINGS DURING PROPOSAL PERIOD

If the Department decides that One-on-One meetings should be held, they will be held between the Department and each Proposer. The period indicated in this ITP Appendix A for these meetings is subject to change. Specific meeting dates will be confirmed in advance of each meeting by the Department to each Proposer's Representative.

At least two (2) business days prior to the first scheduled meeting each Proposer shall submit suggested agenda items for each One-on-One meeting to the Department's Designated Representative. The Department will advise the Proposer of the location, final agenda, and the protocol for the meeting at least two (2) business days before the meeting. ATCs may be discussed at One-on-One meetings.

Each Proposer may request One-on-One meeting(s) with the Department to discuss general concepts for potential ATCs or obtain preliminary feedback from the Department, to be held prior to the ATC submittal deadline (see ITP Appendix A). Should a One-on-One meeting be scheduled with a Proposer, the Department will offer the opportunity for a One-on-One meeting with the other Proposers. The Department may also schedule One-on-One meetings with any Proposer that has submitted ATC(s), to allow the Department to fully understand the ATC(s) and to request clarifications. At any meeting, the Department may seek clarifications regarding previously submitted ATCs.

If a Proposer requests additional meetings, or if the Department considers it desirable or necessary to schedule additional meetings, the Department may, in their discretion, schedule any such additional meetings.

The Department may, in its sole discretion, issue one or more Addenda to address any issues raised in the One-on-One meetings.

A9.2 POST-PROPOSAL MEETINGS

The Department does not currently anticipate the need for post-Proposal discussions, but reserves the right to enter into discussions and request revised Proposals. If interviews or presentations occur, Proposers shall not modify their Proposals or make additional commitments regarding Proposals at such meetings. The Department reserves the right to enter into

discussions and request revised proposals. The Department anticipates engaging in limited negotiations with the selected Proposer prior to Contract award regarding such matters as are deemed advisable for negotiations by the Department, as permitted by 23 CFR Section 636.513. The selected Proposer shall have no right to open negotiations on any matter that has not been raised by the Department. See ITP Section 5.3.

A9.3 STATEMENTS AT MEETINGS

Nothing stated at any meeting will modify the ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to ITP Section 2.3.1 or, in the case of an ATC, approved in writing in accordance with ITP Section A11.1.

A10.0 PROPOSAL STIPEND

Subject to the requirements and limitations set forth in the Stipend Agreement, the Department shall pay to the Stipend-Eligible Proposer, and the Stipend-Eligible Proposer agrees to accept as full compensation for its Work Product, an amount (the “Stipend Amount”) equal to 50% of the Proposer’s total Qualified Costs, as substantiated in accordance with Article 4 (D) & (E) of the Stipend Agreement, not to exceed the amount listed in Article 4 (H) of the Stipend Agreement.

A11.0 ALTERNATIVE TECHNICAL CONCEPTS (ATCS)

The Department has chosen to use the confidential ATC process set forth in this ITP Appendix A, Section A11.0 to allow innovation and flexibility to be incorporated into the Proposals and considered in making the selection decision, to avoid delays and potential conflicts in the design associated with deferring of technical concept reviews to the post-award period and, ultimately, to obtain the best value for the public.

The ATC process allows a Proposer to submit for pre-approval, on a confidential basis, proposed alternatives to the requirements of Contract Documents, Part 3 – Project Requirements, and design solutions included in the Contract Documents. The Department will not approve any ATC that entails a deviation from the requirements of the as-issued Contract Documents unless the Department determines, in its sole discretion, that the proposed end product based on the deviation is equal to or better than the end product absent the deviation.

Any ATC that has been approved may be included in the Proposal. If an ATC is conditionally approved, the Proposer must respond, accept, and meet the conditions set forth by the Department by the date indicated in the ITP Appendix A, if the Proposer intends to use the ATC in their Proposal.

A11.1 SUBMITTAL AND REVIEW OF ATCS

A Proposer may submit ATCs for review to the Department until the date identified in ITP Appendix A. All ATCs shall be submitted in writing, using Form ATC included in ITP Appendix E – Forms, to the Department’s Designated Representative at the e-mail address identified in ITP Appendix A, with a cover letter clearly identifying the submittal as a request for review of an ATC under this ITP. If the Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by the Department.

The Department will review each ATC submitted and will use best efforts to provide a response within two weeks. Proposers submitting multiple ATCs shall indicate an order of priority to assist the Department in determining which ATCs should be reviewed first.

If an ATC is summarily approved, the Department's comments will inform the Proposer that its ATC appears to be generally acceptable. If the Department needs more information to determine whether or not the ATC will be approved, conditionally approved, or not approved, the Department will submit written questions to the Proposer and/or request a One-on-One meeting as described in ITP Section 2.4.1.

If an ATC is not approved or conditionally approved and the Proposer is of the view that the non-approval or the conditions for approval were due to an incorrect conclusion on the part of the Department, the Proposer may re-submit the ATC for one additional review to the Department's Designated Representative at the e-mail address identified in ITP Appendix A until the final date for revised ATC submittals set forth in ITP Appendix A. If a re-submittal is made, it shall be accompanied by a cover letter clearly identifying such submission as a revised ATC submitted for an additional review. Upon receipt of a request for additional review in accordance with this Section, the Department will conduct its additional review of the ATC and provide a response to the Proposer by e-mail not later than the date for such responses set forth in ITP Appendix A.

The Proposer shall advise the Department in its ATC submittal if it believes a One-on-One meeting is appropriate. Since a One-on-One meeting may not be needed for the Department to determine if a particular ATC will be approved, the Department will determine, at its sole discretion, whether a One-on-One meeting will be held.

The Department will attempt to return its approval, non-approval, conditional approval, or additional questions pertaining to any specific ATC no later than two weeks after receipt of that ATC, up to the final response date as shown in the schedule in ITP Appendix A5.1. Proposers shall comply with the submission deadlines specified in Appendix A5.1 for all new and/or revised ATCs. The Department will not accept any new or revised ATCs, or responses to conditional approvals, received after their respective submission deadlines.

A11.2 CONTENT OF ATC SUBMITTALS

Each ATC submittal shall include the following:

A) Description: A detailed description and schematic drawings/details (Sketched on 8½" x 11" paper) of the configuration of the ATC;

B) Usage: Where and how the ATC would be used on the Project;

C) Deviations: References to any requirements of the RFP Documents or to any elements of the Contract Documents that are inconsistent with the proposed ATC, an explanation of the nature of the proposed deviation and a request for: (a) approval of such deviations; or (b) a determination that the ATC is consistent with applicable requirements;

D) Analysis: A technical analysis justifying use of the ATC and why the deviations from the requirements of the RFP Documents should be allowed;

E) Impacts: Discussion of potential impacts of the ATCs on the community due to the construction, environmental impacts (favorable and unfavorable) identified in appropriate environmental documents, safety and project life-cycle;

F) Environmental Approvals: A discussion of what, if any, changes in the compliance terms, best management practices and avoidance measures identified in any EIS or any Environmental Approval would be required as a result of the ATC. A discussion of whether the ATC would require any deviation from the terms and conditions of any permit or of any anticipated or existing Environmental Approval or new Environmental Approval and, if so, an analysis of the steps required, costs involved and time that would be required to obtain, and the likelihood of success in obtaining, the required approval from the appropriate Governmental Agencies, as well as an analysis of all potential impacts on the Project;

G) History: A detailed description of other projects where the ATC has been used under comparable circumstances, if any; the success of such usage; and names, email addresses and contact telephone numbers of project owners that can confirm such statements;

H) Risks: A description of any added or reduced risks to the Department and other Persons associated with implementing the ATC;

I) Schedule: An estimate of the impact of the ATC upon the Contract duration and schedule, including the Proposer's estimate of the likely durations for any permits and consents necessary for the ATC;

J) Price: An estimate of the impact (savings) of the ATC on the Proposal Price;

K) ROW Requirements: Confirm that the proposed ATC has no impacts on the existing and proposed ROW requirements; and

L) One-on-One Meeting: A statement as to whether, in the Proposer's view, a one-on-one meeting with the Department would be appropriate to discuss the ATC.

All revised ATCs shall be labeled as follows in the ATC No. box on Form ATC: ATC #, REV #. A revision date shall also be added to the Date box on Form ATC. The proposer shall highlight all revisions in the submittal form and any attached supporting drawings/sketches to facilitate a more efficient review.

A11.3 SUBMISSION OF ATC SUBMITTALS

Each ATC submittal shall be submitted to the Department's Designated Representative (via e-mail) on Form ATC in searchable portable document format (pdf).

Any subsequent communications about an ATC should quote the relevant sequential ATC submission number.

A11.4 DETERMINATION BY THE DEPARTMENT

The Department will make one of the following determinations with respect to each properly submitted ATC:

A) The ATC is approved;

B) The ATC is not approved;

C) The ATC is conditionally approved subject to specified conditions;

D) The submittal does not qualify as an ATC but it may be included in the Proposal without an ATC (i.e. the concept complies with the RFP requirements); or

E) The submittal does not qualify as an ATC and it does not comply with the RFP.

Any approval of an ATC will constitute a change in the specific requirements of the Contract Documents to the extent: (i) specified in such approval; and (ii) the Proposer is awarded the Contract. Should the Design-Builder be unable to obtain required approvals for any ATC incorporated into the Contract Documents, or if the concept otherwise proves to be infeasible, the Design-Builder will be required to conform to the original requirements of the Contract Documents. See Contract Documents Part 2, DB §104-11. Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers, and waives any right to object to the Department's determinations regarding the acceptability of ATCs.

A11.5 INCORPORATION INTO PROPOSAL

A Proposer may incorporate none or one or more pre-approved ATCs into its Proposal, including conditionally approved ATCs, provided that all conditions to approval have been satisfied by the date indicated in ITP Appendix A. Copies of the Department's ATC approval letters for each incorporated ATC shall be included in the Proposal as specified in Appendix C, along with the approved ATC. Proposals with or without ATCs will be evaluated against the same technical evaluation factors, and the inclusion of an ATC, including an ATC that provides technical enhancements, may or may not receive a higher technical rating.

The Proposal Price, schedule, approach and proposal details should reflect any incorporated ATCs. Except for incorporating approved ATCs, the Proposal may not otherwise contain exceptions to or deviations from the requirements of the RFP Documents.

A11.6 CONFIDENTIALITY

Subject to Section 6.3 of the ITP, ATCs properly submitted by a Proposer and all subsequent communications regarding its ATCs will be considered confidential during the proposal period. If a Proposer wishes to make any announcement or disclosure to third parties concerning any ATC, it shall first notify the Department in writing of its intent to take such action, including details as to date and participants, and obtain the Department's prior approval to do so.

The forgoing shall not preclude the Department from modifying the RFP Documents as necessary to comply with applicable law or to account for information obtained by the Department outside of the ATC.

A12.0 QUALITY EVALUATION FACTORS, SUBFACTORS AND WEIGHTING

A12.1 QUALITY EVALUATION FACTORS AND SUBFACTORS

The quality evaluation factors and subfactors are as follows:

A) Design-Build Organization and Process

1. Key Personnel:
    a. Project Manager;
    b. Design Manager;
    c. Quality Manager;
    d. Resident Engineer;

e. Lead Structural Engineer;

f. Lead Civil Engineer;

g. Lead Geotechnical Engineer;

h. Project Superintendent.

2. Overall Design-Build Team Organization

a. Design-Build Team Organization Chart

b. Design-Build Team Communication Protocol

c. Design-Build Quality Control Plan

B) Design-Build Approach to the Project (Technical Solutions)

1. Project Understanding
2. Design Approach
3. Construction Approach (Means and Methods)

C) Schedule;

1. Initial Baseline Progress Schedule
2. Project Completion / Interim Milestones (Form SCD)

A12.1.1 Design-Build Organization and Process

The evaluation of this section is focused on the formation of a team of key individuals that function within the Proposer's proposed organization structure, with the same understanding of the function and need for consistency; focus on the actual structure of the organization, which is to be displayed in an organization chart format; focus on the communication and processes to be adopted for the Proposer's proposed organization, which has to be illustrated in a communication protocol graphic and described in a narrative format, and focus on the initial quality control plan, which will be further developed and updated as described in Part 3, Section 2 and throughout the Project as a living document.

The narrative will be evaluated on how the Proposer is organized for quality, safety, design and construction to achieve the Project's goals and how the Proposer will communicate with the Department's Project Manager, Construction Quality Assurance Engineer, the Design Quality Assurance Engineer and their staff; also evaluation of the description of the integration of the design and construction efforts to achieve efficient progression of the work; and evaluation of the means of reporting on and controlling progress of the work to the Department and for Project control. Evaluation of how the work will be progressed in coordination with other agencies should be included as well.

See ITP Appendix C for additional and more specific details regarding this factor and the specific information to be submitted for the evaluation of this factor.

A12.1.1.2 Key Personnel

This evaluation factor evaluates the qualifications and experience of the Proposer's proposed Key Personnel identified in the Proposer's Proposal. The factor also evaluates whether the designated roles of the Key Personnel as specified in the Proposer's Proposal are appropriate for the Project.

Objective: The scope of the Project demands a highly qualified and integrated team of personnel with expertise in projects of a similar nature to this Project and a record of producing quality work, including project management delivery. The scope of the Project also demands a Team having experience in delivering quality projects, preferably Design-Build projects, on or ahead of schedule and on or under budget. Therefore, the Objective of this evaluation factor is to identify Proposers that have assigned personnel that can complete the Contract to the highest degree of quality, in a timely and effective manner, and have successfully integrated this philosophy into the various parts of its organization, and can coordinate with the Department in a cooperative and functional manner; and to identify a Team with demonstrated experience and expertise, and a record of producing quality work on projects of a similar nature to this Project.

Key Personnel are preferred to have experience on projects of a similar size, type of work, and complexity as this Project, and should meet the qualifications described in Part 3, Project Requirements, Section 3. Proposed staff with qualifications less than those described Part 3, Project Requirements, Section 3 will receive a reduced score compared to staff that meet or exceed the described qualifications. Any requirements described as “shall have...” or “shall be…” are determined to be minimum response requirements. Failure to provide the minimum requirements shall result in Key Personnel rating of ‘0’ for that subfactor. Should the Proposer’s Proposal still be determined to be the Best Value Proposal, that Key Personnel position rated ‘0’ shall be replaced with a candidate meeting the minimum requirements, as described in Part 3 – Project Requirements, or the offer of Best Value shall be withdrawn.

See ITP Appendix C for additional detail regarding this factor and the specific information to be submitted as part of the Proposal.

A12.1.1.3 Overall Design-Build Team Organization

Design-Build Team Organization Chart - The Proposer’s Design-Build Team Organization Chart shall include all Key Personnel required to be identified under the Key Personnel Section A12.1. The Organizational Chart shall show the Design/Construction/Inspection/Quality Control and Materials Testing components of the Proposer’s proposed Design-Build Team and how they are integrated into the Design-Build Team Structure. The Design-Builder may include an additional narrative piece as specified in ITP Appendix C and Table C.

Design-Build Team Communication Protocol – The Proposer’s proposed Design-Build Team communication protocol shall be presented utilizing the same Design-Build Team Organization Chart described above with the incorporation of additional communication arrows depicting the lines of communication amongst the Design-Build Team Organization. This Communication Protocol Graphic shall also illustrate the communication between the Design-Build Team and the owner (NYSDOT) and its representatives such as the Project Manager, the Design Quality Assurance Engineer, the Construction Quality Assurance Engineer, etc. To supplement and provide clarification to this communication protocol, the Design-Builder may include an additional narrative piece as specified in ITP Appendix C and Table C.

Quality Control Plan – The Proposer’s approach to Quality Control for design and construction shall be described in an Initial Quality Control Plan, which will be further developed as part of the Project. The Quality Control Plan should describe how the design and construction activities will be coordinated to ensure consistency and quality throughout the Project.

A12.1.2 Design-Build Approach to the Project (Technical Solutions)

The purpose of this set of evaluation factors is to determine first how well the Proposer understands the Project, why the Proposer's proposed design and construction solutions were chosen, and how all the proposed solutions benefit the Department in the overall technical solutions and approach to this Project in meeting all the Project objectives.

See ITP Appendix C for additional details regarding this factor and the specific information to be submitted for the evaluation of this factor.

A12.1.2.1 Project Understanding

For the Department to better identify those Proposers demonstrating an understanding of the management, technical, design, construction, documentation, reporting, environmental and maintenance of traffic issues and risks associated with the Project; and

To identify those Proposers demonstrating an understanding of how the Design-Build process and the Proposer's organization will contribute to the success of the Project. To identify Proposers that have the ability to meet the Department's Project goals and that have an understanding of the risk sharing and the teaming relationship between the eventual Design-Builder and the Department.

A12.1.2.2 Design Solution

The Design Solution should address how well the Proposer understands the design challenges associated with this Project; how the Proposer intends to comply with the design requirements, how the design solution meets or exceeds the Project objectives and how the design solution benefits the tax payers of New York State and provides a long term solution in addressing the Department's infrastructure needs including but not limited to the following:

A) Future maintenance requirements of the newly designed and constructed structure. What does the Proposer's Proposal provide beyond the basic standard specifications and criteria to ensure an increased service life for this structure/Project? If only the minimum standard design and standard specifications were used the Proposer shall state such.

B) Proposed drainage on the structure through scuppers, or over the fascias of the structures can greatly affect the life cycle costs of the structure(s). Deck joint systems result in significantly higher life cycle costs. How do the State taxpayers and the Department benefit from the proposed design put forth in the Proposer's Proposal that addresses these concerns? What efforts were undertaken to minimize, eliminate or protect against possible premature deterioration?

C) Future traffic growth and the need to maintain traffic in future years should this structure prematurely fail or require earlier than anticipated maintenance actions such as deck overlay, deck replacement, superstructure replacement or entire bridge replacement is an important consideration. How will traffic be maintained while this type of work is being undertaken without impacting or by minimizing impacts to the traveling public?

D) Bearings –Superstructure to substructure connections that do not use bearings result in lower life cycle costs. If the use of bearings is unavoidable, they should be strategically located at substructures that are easily accessible to facilitate future maintenance and/or replacement. Bearing ease of access, maintenance, jacking, removal and replacement,

are important considerations in the design and construction of bridges. How does the Design solution address these concerns?

E) Inspectibility of Structure: New York State has one of the most aggressive bridge inspection programs in the country. Cost of bridge inspections can be sizeable, so facilitating easy access of all elements to perform full depth inspections is desirable. Controlling the costs are equally as important as controlling/minimizing future maintenance actions. How does the Proposer's design result in limiting costs of bridge inspections, reducing the use of costly inspection equipment, and allowing for quicker inspection process? Provide specifics on how the Proposer would conduct such inspections.

F) Superstructure Types Requiring Approval – Proposers should describe the type(s) of superstructure(s) proposed and acknowledge that all limitations given in the NYSDOT Bridge Manual, Section 3 Table 3-4 Superstructure Types Requiring Approval have been adhered to. For superstructure types requiring approval, make reference to and provide the NYSDOT Approved Alternate Technical Concept.

A12.1.2.3 Construction Approach (Means and Methods)

This section is devoted to evaluating the means and methods the Proposer intends on using for the demolition and construction and staging of the Project, while protecting existing facilities and minimizing to the greatest extent possible impacts to the traveling public, businesses, and the communities.

A) How does the means and methods and construction approach provide less impact to the travelling public, the local businesses, and the community as a whole?

B) Environmentally, how do the means and methods meet the Project Requirements, and how do they minimize the impacts to the environment? Do the methods eliminate the need for permits, and if so, what permits? What effects have been taken to minimize noise intrusion into the surrounding community?

C) Transportation of materials to and from the Project site shall be accomplished when and how and how does this benefit the Department and the surrounding communities?

A12.1.3 Schedule

Schedule — evaluates the integrated logic and scheduling of design and construction; the start and end dates of work zone traffic protection activities and start and end dates of the construction stages and Project Completion. Schedule should show start and completion dates of design and construction phases, and the date(s) all traffic will be permanently transferred back onto the new structure(s) without further impact to motorists. The design and construction activities shall be detailed sufficiently to show the start and completion of all major construction activities. The Proposer shall submit the following items in connection with this evaluation criteria:

- Initial Baseline Progress Schedule;
- Form SCD

See ITP Appendix C for additional details regarding this factor and the specific information to be submitted for the evaluation of this factor.

A12.2 QUALITY EVALUATION WEIGHTING

A) Design-Build Organization and Process (22 points)

1. Key Personnel (16 points):
    a. Project Manager;
    b. Design Manager;
    c. Quality Manager;
    d. Resident Engineer;
    e. Lead Structural Engineer;
    f. Lead Civil Engineer;
    g. Lead Geotechnical Engineer;
    h. Project Superintendent
2. Overall Design-Build Team Organization (6 points)
    a. Design-Build Team Organization Chart
    b. Design-Build Team Communication Protocol
    c. Design-Build Quality Control Plan

B) Design-Build Approach to the Project (Technical Solutions; 53 points)

1. Project Understanding (8 points)
2. Design Solutions (30 points)
3. Construction Approach (Means and Methods) (15 points)

C) Schedule (25 points);

1. Initial Baseline Progress Schedule (5 points);
2. Project Completion / Interim Milestones (Form SCD; 20 points)

Note Regarding Quality Evaluations and Proposal Format Compliance:

Proposers shall comply with all formatting requirements stated in the ITP in Appendices A, B, C, and D, including page size, section length, and font size. In addition, all Proposers shall comply with the following format requirements:

A) The inside and outside surfaces of all binders, and both sides of all dividers, shall be solid and shall contain only text; no pictures, renderings or graphics shall be included;

B) All narrative pages, resumes, Initial Management Plan components and forms shall contain text only and shall contain no pictures, renderings or graphics;

C) Photographs, visualizations, and/or renderings, if requested in the ITP, shall not contain any text;

D) All drawings submitted as part of the Proposal shall include no narratives or text other than notes or call-outs which would typically be included on design drawings.

E) External web links are not to included anywhere in the Proposal.

Failure by a Proposer to follow the formatting requirements stated in the ITP will result in the particular page(s) being deleted from the Proposal before technical evaluation. Two possible examples of this are:

1. Appendix C, Table C states the Initial Baseline Progress Schedule is limited to a maximum of five pages. If a Proposer submitted an Initial Baseline Progress Schedule six pages in length, the sixth page will be removed from the Proposal.

2. This Section states that external web links are not to be included in the Proposal. If a Proposer were to refer to a web link in their Initial Quality Control Plan, then the specific page with the web link reference will be removed from the Proposal.

Proposers are advised that a Proposal may receive a lower score as a result of any pages removed.

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I-81 VIADUCT PROJECT – PHASE 1, CONTRACT 1

PIN 3501.90, Contract D900054

REQUEST FOR PROPOSALS

INSTRUCTIONS TO PROPOSERS

APPENDIX B
ADMINISTRATIVE SUBMITTAL REQUIREMENTS

Final June 17, 2022

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TABLE OF CONTENTS

B1.0 GENERAL INSTRUCTIONS 1
B2.0 CONTENTS OF VOLUME 1 1
B2.1 PROPOSER'S OFFER 1
B2.2 PROPOSER INFORMATION, CERTIFICATIONS AND DOCUMENTS 1
B2.2.1 Proposer Information 1
B2.2.2 Changes in Proposer's Organization 1
B2.2.3 Forms and Certificates 2
B2.2.4 Conflict of Interest Disclosure 2
B2.2.5 Letter of Commitment from Surety 2
B2.2.6 Licensing Requirements 3
B2.3 INFORMATION TO BE INCLUDED IN APPENDICES TO VOLUME 1 3
B2.3.1 Evidence of Authorization 3
B2.3.2 Joint and Several Liability Statement 4
B2.3.3 Organizational Documents 4
B2.3.4 Financial Information 4
B3.0 FORMAT OF VOLUME 1 5

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B1.0 GENERAL INSTRUCTIONS

This ITP Appendix B provides the general instructions and establishes the content and formatting requirements for the Administrative Submittal, Volume 1, of each Proposal.

Each Proposer shall submit the Administrative Submittal required pursuant to this ITP Appendix B, organized, separated and labeled in accordance with the checklist in Table B.

The administrative submittals shall be limited to the page limitations (if any) specified for that submittal in this ITP Appendix B. All the forms referenced in this ITP Appendix B are provided in ITP Appendix E unless otherwise noted. Each sheet shall be 8.5" by 11" and printed double sided, unless otherwise stated below. Text shall be in a standard font, a minimum of ten points in height, single-spaced.

Volume 1 shall consist of the following major elements:

A) Proposer's offer, and

B) Information, certifications and documents (including required forms).

Unless indicated on a specific Form, the supplied Forms are not to be altered. Any Form found to be altered may, at the discretion of the Department's Office of Contract Management, be removed from the Proposal before evaluation. In addition:

- Photographs or external web links are not to be included in the Forms.
- All required information must be contained in the Forms.
- Additional lines or pages only allowed when indicated on the Form

B2.0 CONTENTS OF VOLUME 1

B2.1 Proposer's Offer

Provide a firm offer to the Department valid for the period stated in ITP Section 2.9.1, using the Itemized Proposal / Jurat (Form IP, Appendix E). The offer shall be executed by the Proposer or by its legally authorized representative. If the Proposer is a joint venture or a partnership, the offer shall be executed by all joint venture members or all general partners, as applicable.

Upon award, the selected Proposer's offer (Form IP), will be incorporated into the Contract as Part 9.

B2.2 Proposer Information, Certifications and Documents

B2.2.1 Proposer Information

Provide a detailed description of the legal structure of the entity submitting the Proposal (i.e. the Proposer).

B2.2.2 Changes in Proposer's Organization

Provide Form RFC approved by the Department for any change to the Proposer's organization as represented in the Proposer's SOQ. Attached to each approved Form, the Proposer shall provide a written description (two pages maximum) of the change(s) approved in the Form.

B2.2.3 Forms and Certificates

Proposers shall submit the Forms in the format as they are provided in the ITP, and shall not alter them. This includes:

- not embedding links to external web pages or photographs,
- not increasing the page length of the Form, unless explicitly allowed on the Form,
- including all Footers and Headers shown on the Forms,
- not inserting company logo's.

Any Form found to be altered may, at the discretion of the Department's Contract Management Bureau, be removed from the Proposal before evaluation.

In addition to Form IP, Itemized Proposal / Jurat, described in Section B2.1, provide the following:

a) Form AAP-10 DBE/MBE/WBE/SDVOB Solicitation Log;

b) Form AR, Acknowledgement of Receipt of RFP, Addenda and Responses to Questions;

c) Form C, Proposer's Representative;

d) Form CR, Commitment to Assign Identified Resources to Project, providing a written commitment, signed by the designated Project Principal, that the resources identified in the Proposal, including Key Personnel and identified design staff, will be available and assigned to the Project if the Proposer is awarded the Contract, to the extent such assignment remains within the control of the Proposer;

e) Form EEO, Equal Employment Opportunity Certification;

f) Form KP, Key Personnel Information

g) Form L-3, Authorization to Provide Professional Services in New York State;

h) Form LLL, Disclosure of Lobbying Activities

i) Form LDB, List of Proposed DBEs;

j) Form LSI, Letter of Subcontract Intent;

k) Form RFC, Request for Change (Changes in Participants or Key Personnel (if approved by NYSDOT)); and

l) Form SDU, Schedule of Proposed DBE Utilization.

B2.2.4 Conflict of Interest Disclosure

Refer to Form IP and ITP Appendix F, for identifying and describing any potential Organizational Conflicts of Interest and any relevant facts concerning past, present or currently planned interests that may present an Organizational Conflict of Interest.

B2.2.5 Letter of Commitment from Surety

Provide a letter from a surety licensed to issue bonds in the State indicating that the surety has reviewed the Contract, and is prepared to issue a Labor and Material Bond and a Faithfull Performance Bond in the forms and amounts set forth in DB 103-08 and DB 103-07.

The surety providing such letter must be rated at least AA-/Aa3 by two nationally recognized rating agencies or at least A-VIII by A.M. Best and Company and be listed on Treasury Department Circular 570.

The letter must specifically state that the surety has read the RFP (including the ITP) in determining its willingness to issue the Labor and Material Bond and the Faithful Performance Bond. Separate letters for one or more of the Major Participants are acceptable, as is a single letter covering all Proposer team members.

B2.2.6 Licensing Requirements

Requirements and information to be provided in Section 2, Volume 1 of the proposal (Response to RFP):

- Use Form L-3 (Appendix E) to submit a copy of the Certificate of Authorization to provide Engineering Services issued by the New York State Education Department for the appropriate team members, or submit documentation on Form L-3 (Appendix E) demonstrating the ability to obtain said Certificates and licenses, in accordance with the New York State Education Law, Title VIII, Articles 130, 145, 147 and 148.

- Key personnel positions that require the possession of a New York State professional engineering license ("shall have") must be supported with proof of current license. The Design-Builder shall provide a copy of the current professional license of the individuals submitted to fill those key personnel positions. Copies shall be supplied in Sections 2, Volume 1 of the proposal.
- Key personnel positions that do not require a New York State professional engineering license do not need any proof of license. However, for those key personnel positions where qualifications state "should have" or "preferably should have" a New York State professional engineering license, the Design-Builder may submit proof of current license possession to receive higher scoring consideration, but it is not required. However, without such proof no higher scoring consideration will be exercised.

In all instances where licenses are submitted, they must be current.

B2.3 Information To Be Included in Appendices to Volume 1

B2.3.1 Evidence of Authorization

Provide appropriate evidence that the Itemized Proposal / Jurat (Form IP) has been properly executed or that the representative has bound the Proposer, so that there is a valid Proposal that the Department can accept and constitute a binding Contract:

1. ***Corporation.*** If the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation.
2. ***Partnership.*** If the Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner.
3. ***Joint Venture.*** If the Proposer is a joint venture, submit notarized powers of attorney executed by each joint venture or partnership member appointing and designating one

or more individuals of the joint venture or partnership to execute the Proposal on behalf of the Proposer, and to act for and bind the Proposer in all matters relating to the Proposal. Submit evidence of Authorization of the power of attorney with respect to each joint venture member, certified by an appropriate officer of such joint venture member.

4. ***Limited Liability Company.*** If the Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information.

If a Proposer has not yet been legally formed at the time of Designation of Best Value by the Department, the Proposer must be legally formed before the Department will Award or execute a Contract with the Proposer. If there is a delay, for any reason whatsoever, in the forming of the legal entity, the Award, contract execution and the notice to proceed will be postponed until the legal entity is fully formed. The resulting delay shall not change any of the contractual intermediate or Project completion dates, and liquidated damages will be assessed for each day the intermediate or Project completion dates are not met. If the Proposer has not yet been legally formed within 7 calendar days of designation of Best Value, the Department may, at its discretion, reject the Proposal and proceed to award the Contract to the Proposer having the apparent next best value Proposal.

B2.3.2 Joint and Several Liability Statement

If the Proposer is a joint venture, submit evidence that each member of the joint venture shall be jointly and severally liable for any and all of the duties and obligations of the Proposer assumed under the Proposal and under any Contract arising therefrom, should its Proposal be accepted by the Department. Submit evidence of authorization of the joint and several liability statement with respect to each joint venture member, certified by an appropriate officer of such joint venture member.

B2.3.3 Organizational Documents

Submit organizational documents in the form of copies of incorporation and bylaws, the joint venture agreement*, partnership agreement, limited liability company operating agreement or equivalent organizational documents for the Proposer and each Principal Participant, which documents shall be consistent with the responsibilities to be undertaken by the Proposer and Principal Participants under the Contract.

*If a joint venture has not been established with a valid Federal Employer Identification Number and NYS Vendor ID Number, the Joint Venture agreement should contain language naming a “Designated Member” who shall receive payment of any potential stipend on behalf of the joint venture and that the Designated Member’s right to receive the stipend survives termination of the Joint Venture agreement should it be terminated prior to the payment of the stipend.

B2.3.4 Financial Information

Submit financial statements, reports and other information updating the financial statements and information including financial information for any guarantors as well as the Proposer and Principal Participants. Notwithstanding the direction in ITP: Section A12.2 Quality Evaluation Weighting regarding links, this information may be submitted by providing a link to financial records filed with an administrative or regulatory entity that reside on that administrative or

regulatory entity's website, i.e., SEC/EDGAR filings. If the Department cannot access the information at the provided links, the information will need to be otherwise submitted.

Provide information regarding any applicable changes relative to the Proposer's SOQ submission in the financial condition of the Proposer.

If the financial situation has not changed since the SOQ's were submitted by the Design-Build Proposer, than a declarative statement to that affect shall be submitted. Specifically, the Principal Participants shall provide letters from their chief financial officers or treasurers so certifying that the financial condition of the Proposer has not changed. However, if the equity participants have incurred additional liabilities, and/or taken on new responsibilities/contracts a reaffirmation from the Surety or Insurance Company is necessary.

Requirements and information to be submitted – Surety Letter(s):

1) Provide a letter from a surety or insurance company indicating that the Proposer is capable of obtaining a Bid Bond, and Performance and Payment Bonds covering the Design-Build Contract;

2) The bonding/security capacity levels in the table below represent minimum levels necessary to pass the Pass/Fail criteria for this Contract;

Bid Bond/ Security	**Payment Bond/ Security**	**Performance Bond/ Security**
5% of Proposal Amount	100% of Contract Amount	100% of Contract Amount

3) The letter must state that the surety or insurance company is rated AA-/Aa3 by two nationally recognized rating agencies or at least A-VII by A.M. Best and Company, be listed on Treasury Department Circular 570 and be on the list of companies approved by the State of New York;

4) The letter must specifically state that the surety/insurance company has evaluated the team's backlog and work-in-progress in determining its bonding capacity and the letter must expressly identify the team's amount of current backlog and utilized bonding capacity; and

5) Letters indicating "unlimited" bonding/security capability are not acceptable.

Information shall be packaged separately for each separate equity entity with a cover sheet identifying the name of the organization, its role in the Proposer's organization.

B3.0 FORMAT OF VOLUME 1

Organize Volume 1 in the format shown in Table B, with the cover of the volume labeled as follows, plus the name of the Proposer:

I-81 VIADUCT PROJECT – PHASE 1, CONTRACT 1
DESIGN-BUILDER'S PROPOSAL

VOLUME 1

ADMINISTRATIVE SUBMITTAL

PROPOSER: _____

Provide the Administrative Submittal in Volume 1 in the order set forth in Table B. Sections 1 through 3 of Volume 1, plus the Appendices A and B, shall be submitted in a package together.

Table B

Format of Volume 1

Proposal Component	Reference
Section 1	
Form IP, Itemized Proposal / Jurat	B2.1
Written Certification from the Subcontractor(s)	B2.2.2
Section 2 – Proposer Information	
Summary of Organization (2 single sided pages)	B2.2
Changes in Organization (Form RFC)(If applicable)	B2.2
Licensing Information	B2.2
Form L-3, Authorization to Provide Professional Services in New York State	B2.2
Section 3 – Forms and Certificates	
Form AAP-10 D/M/WBE/SDVOB Solicitation Log	B2.2
Form AR, Acknowledgement of Receipt of RFP, Addenda and Responses to Questions	B2.2
Form C, Proposer's Representative	B2.2
Form CR, Commitment to Assign Identified Resources to Project	B2.2
Form EEO, Equal Employment Opportunity Certification	B2.2
Form KP, Key Personnel Information	B2.2
Form LLL, Disclosure of Lobbying Activities	B2.2
Form LDB, List of Proposed DBEs	B2.2
Form LSI, Letter of Subcontract Intent	B2.2
Form SDU, Schedule of Proposed DBE Utilization	B2.2
Surety Commitment Letters	B2.2
Appendix A	
Evidence of Authorization	B2.3
Joint and Several Liability Statement (If Applicable)	B2.3
Organizational Documents	B2.3
Appendix B	
Updated Financial Information	B2.3.4

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I-81 VIADUCT PROJECT - PHASE 1, CONTRACT 1

PIN 3501.90, Contract D900054

REQUEST FOR PROPOSALS

INSTRUCTIONS TO PROPOSERS

APPENDIX C
TECHNICAL PROPOSAL SUBMITTAL REQUIREMENTS

Final June 17, 2022

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TABLE OF CONTENTS

C1.0 GENERAL INSTRUCTIONS 1

C2.0 DESIGN-BUILDER'S ORGANIZATION AND PROCESS 1

C2.1 KEY PERSONNEL 1
C2.2 OVERALL DESIGN-BUILD TEAM ORGANIZATION 2
C2.2.1 Design-Build Organization Chart 2
C2.2.2 Design-Build Team Communication Protocol 2
C2.2.3 Design-Build Quality Control Plan 2
C3.0 DESIGN-BUILD APPROACH TO THE PROJECT (TECHNICAL SOLUTIONS) 3

C3.1 PROJECT UNDERSTANDING 3
C3.2 DESIGN-BUILD APPROACH TO DESIGN 4
C3.2.1 Design Narrative 4
C3.2.2 Design Drawings 4
C3.3 CONSTRUCTION APPROACH (MEANS AND METHODS) 5
C3.3.1 Overall Construction Sequence of the Work 5
C3.3.2 Work Zone Traffic Control (WZTC) 5
C3.3.3 Protection of Existing Facilities 5
C3.3.4 Utility Work 5
C3.3.5 Drainage Modifications 6
C4.0 PROJECT SCHEDULE 6

C4.1 INITIAL BASELINE PROGRESS SCHEDULE 6
C4.2 SCHEDULE OF CONTRACT DURATIONS 7
C4.3 GANTT CHART 7
C5.0 FORMAT OF VOLUME 2 7

TABLE C FORMAT OF VOLUME 2 ..... C-9

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C1.0 GENERAL INSTRUCTIONS

This ITP Appendix C provides the general instructions and establishes the content and formatting requirements for the Technical Proposal, Volume 2. Additional criteria is outlined in ITP Appendix A.

Each Proposer shall submit the Technical Proposal required pursuant to this ITP Appendix C, organized, separated and labeled in accordance with the checklist in Table C.

The submittals should be limited to the page limitations (if any) specified in this ITP Appendix C. Each sheet shall be 8.5” by 11” and printed double sided, unless otherwise stated below. Text shall be in a standard font, a minimum of ten points in height, single-spaced. All design drawings submitted with Proposals shall be printed single-sided on 11" by 17" sheets, and all as-printed text font sizes on plans shall be at least 8 points or per NYSDOT HDM Standards.

C2.0 DESIGN-BUILDER’S ORGANIZATION AND PROCESS

C2.1 KEY PERSONNEL

The Proposer shall include Form R – Summary Individual’s Experience for each of the Key Personnel identified in the ITP Appendix A, outlining his/her experience and qualifications.

The content of each Form R that should be filled in includes:

A) Proposed role on Project;

B) Relevant licenses, registrations and certifications;

C) Total years of professional experience and years of experience performing the work the individual would perform on this Project; Form R for Quality Manager should include an attached sheet that provides a description of experience in quality systems based on ISO 9001 if applicable;

D) Relevant past project experience including project names, locations and total construction costs; the applicant’s start and end dates on each project; the applicant’s role on each project; the duties performed on each project; and the owner’s current contact information (see Form R for detailed guidance);

E) Employment time with participant;

F) Percent time (percentage of working time) allocated/committed to this Project for each 12 month period of the Project from its NTP through completion, recognizing the final year may not be a full 12 month period. Percentage of time shall reflect a percent of the date range identified;

G) If more than one key position is to be filled by the same individual, so indicate; and

The Proposer should include Form KP in Volume 1 to communicate any approved changes in the Proposer’s proposed roster of Key Personnel, relative to the Proposer’s SOQ submission. For each change in Key Personnel since the SOQ, the Proposer should include in the Proposal with Form KP a copy the written approval received from the Department for such change (see ITP Section 1.15), details of such Key Personnel’s role and a completely filled in Form R of the substitute personnel. If no changes in Key Personnel have been requested since the SOQ, Proposers should use Form KP to state that there is no change relative to the SOQ.

C2.2 OVERALL DESIGN-BUILD TEAM ORGANIZATION

C2.2.1 Design-Build Organization Chart

The Proposer should include a narrative describing the organizational arrangements it intends to implement for quality, safety, design and construction to achieve the Project's goals. The organizational arrangements described should clearly identify responsibilities and reporting lines of staff, particularly relating to Key Personnel. The narrative should include a review of the Proposer's assessment of the roles that the Key Personnel shall take in the Proposer's organization.

The Proposer should provide an organization chart (on an 11"x17" sheet of paper), illustrating the Proposer's Key Personnel and their prospective roles and responsibilities, as well as other principal participants and any known Subcontractors having a material role in the Project's design Work, design check Work and construction Work and construction inspection work and any other personnel the Design-Builder considers critical to the successful completion of the Project. The Proposer should describe the interrelationships and interfaces between each member of the Design-Builder's Team (e.g., design, design checks, shop drawing preparation and review, construction, construction Inspection, Materials Testing, quality management, etc.). (The information in the Organizational Chart shall indicate: name, title on Project, firm associated with (employed by), and the Key Personnel boxes shall be shaded in yellow. The Organization Chart should include a legend that identifies the different text colors, representing the different firms depicted in the Chart)

The Proposer should describe the interrelationships and interfaces between the Proposer's organization, third parties (including other agencies), utility owners, businesses, the public and other contractors working in the vicinity and impacted by the construction of the Project.

C2.2.2 Design-Build Team Communication Protocol

The Proposer shall provide a Design-Build Team Communication Protocol Graphic, that addresses communication internal to the Design-Build Team structure, by superimposing the proposed lines of communication over the Proposer's Design-Build Team Organization Chart. Communication arrows (one arrow or two arrows) should be used to show the lines of communication. All the requirements associated with the Design-Build Team Organization Chart should apply and the communication protocol arrows shall be pink color. In addition, communication with the Department's Project Manager, the Design Quality Assurance Engineer, the Construction Quality Assurance Engineer shall be indicated on the Communication Protocol Graphic using Orange arrows. Finally, the Proposer may include, as a supplement to the Communication Protocol Graphic, a narrative clarifying and/or supplementing the Proposer's proposed communication protocol.

The Proposer should describe how the Proposer will communicate with the Department's Project Manager, Construction Quality Assurance Engineer, the Design Quality Assurance Engineer and their staff and describe the integration of the design and construction efforts to achieve efficient progression of the work. The Proposer should also describe the means of reporting on and controlling progress of the work to the Department and for Project control.

C2.2.3 Design-Build Quality Control Plan

The Proposer should include an Initial Quality Control Plan. The Initial Quality Control Plan should follow the format shown in Part 3, Section 4, Part 3 - Appendix C, and describe the Proposer's proposed quality control program for the design Work, the QC program for the construction Work, and how the design and construction activities performed by different entities will be coordinated to ensure consistency of quality. The Initial Quality Control Plan shall be considered an initial

document for the purpose of conveying the overall approach of the Proposer regarding QC, and shall be expanded and/or amended prior to implementation on the Project. See Contract Document Part 3, Section 4. The Quality Control Plan serves as a "living document" throughout the project and should/may require updating as the project progresses.

The Initial Quality Control Plan should include two, separate QC organization charts (on 11"x17" sheets) for the design Work and the construction Work, clearly defining to whom the QC staff shall report within the Proposer's organization.

The Initial Quality Control Plan **shall** describe the approximate number, roles and responsibilities of key QC personnel during each phase of the Project to ensure quality design and construction, and describe the inter-relationship and relative authority within the Proposer's organization of QC staff and design and construction staff and the interaction with Design and Construction QA Engineers. The Proposer **shall** also describe the proposed Construction Inspection staffing to be provided throughout construction.

C3.0 DESIGN-BUILD APPROACH TO THE PROJECT (TECHNICAL SOLUTIONS)

The Proposer should include a Technical Solutions submittal, as described in ITP Appendix A, which should include a Project Understanding, Design Approach, and a Construction Approach in accordance with ITP Appendix A, Section A12.1.2 and ITP Appendix C Sections C3.1, C3.2 and C3.3. The narratives and drawings described in C3.2.1 and C3.2.2 should (i) provide an overview of the proposed design and construction concepts, (ii) describe the key features and any innovative aspects of the Proposer's design concepts.

The Technical Solutions submittal should represent a level of design sufficient to enable a thorough evaluation of Proposer's design concepts, should address all elements of the proposed design and construction and should be consistent with the requirements of the Contract Documents.

C3.1 PROJECT UNDERSTANDING

The Proposer should provide the following as part of their Understanding of the Project:

A) Identify and discuss three (3) critical risks for this Project, focusing on what the Proposer's team considers the most relevant and critical to the success of this Project in order to achieve the Project goals. Provide a narrative for each risk that:

   i. describes why the risk is critical;

   ii. indicates the impact the risk could have on the Project; and

   iii. discusses the mitigation strategies the Proposer's team shall implement to address the risk.

   iv. describe the role that the Proposer expects the Department or other agencies may have in addressing these Project risks;

B) Briefly describe how the Proposer will use its organization and the Design-Build process to ensure the Project will meet the objectives as stated in the RFP, while considering the Department's Project goals listed in Section 1.2. The Proposals should describe as a minimum how the Proposer will manage the logistics of the design and construction of the Project and describe how the firms and personnel will communicate and collaborate to deliver a quality Project.

C3.2 DESIGN-BUILD APPROACH TO DESIGN

C3.2.1 Design Narrative

Provide a narrative describing how the Proposer will apply the requirements of Contract Documents Part 3 - Project Requirements to the roadways and structures, while complying with any environmental and permitting requirements and other Contract requirements during the performance of the design and construction Work. The Proposer should provide a description of why particular aspects of the design were selected and the benefits of these design decisions, including the Proposer's selection of structure types, span lengths, foundation types, and materials and other items as specified in ITP, Appendix A, Section A12.1.2. A summary of any ATCs approved or conditionally approved by the Department should be included.

A) Describe the proposed general arrangements and materials of the bridge superstructures, bearings, joints, substructure, and other elements of the Proposer's designs; why the Proposer is proposing the chosen general arrangements and materials; and how the Department benefits from the Proposer's proposal; and

   i. Provide as part of the narrative the requirements described in ITP, Appendix A, Section A12.1.2.2

   ii. Provide copies of the Department's approval letters for each ATC that is incorporated into the Proposer's Proposal along with a copy of each submitted ATC that was approved.

B) Describe the design method that will be used to determine foundation capacities;

C) Describe any Design Non-Conformances or aspects of the Design that do not conform to the Department's Standards or do not conform, but have received approval for use as an ATC. Any Design Non-Conformances or designs that do not conform to the Department's Standards or Contract Requirements, and have not been approved by the Department, via an approved ATC, are not permitted for use after Award of the Contract. The Proposer shall remain responsible for the construction of the Project in full conformance with all standards that apply regardless of their inclusion in the Proposal submitted.

C3.2.2 Design Drawings

Provide design drawings showing the plan view, typical cross section and elevation view as required to appropriately convey the scope of Work and relevant information, with elements appropriately labeled and/or dimensioned.

The Drawings should include the following information as applicable:

A) Project limits, horizontal and vertical roadway alignment, existing ROW lines, beginning and end of the existing bridge and adjacent roadway modifications;

B) Plans, elevations and cross sections showing proposed configurations and dimensions of the primary structural elements of the structure including the deck, floorbeams, girders, stringers, bearings, piers, abutments, and foundations as applicable. Indicate movements and restraints of bearings and joints;

C) Plans, elevations and cross sections showing propose locations and dimensions of lanes, shoulders, curbs, shared use paths, landscaping, barriers, railings, fences, drainage elements, lighting, signage, signals, ITS and utility locations;

D) Cross Sections showing existing conditions, each construction phase, and the final conditions. The cross sections should show as a minimum: lanes, shoulders, sidewalks, railings, barriers, fencing and utilities;

E) Earth retaining walls and abutments. Include elevation and plan views showing the extent of the Work and conceptual details for surface treatments;

F) Limits of existing element removals that will be required to complete the Project;

G) Table of minimum vertical clearances to be provided at each span that lists the dimension, location on bridge, and location on crossing road. Drawings may be used in combination with or in place of the table.

C3.3 CONSTRUCTION APPROACH (MEANS AND METHODS)

C3.3.1 Overall Construction Sequence of the Work

Provide a narrative describing the overall construction sequence of the Work in the Contract, including all staging areas, as well as the final permanent footprint of the constructed improvements. The narrative **shall** discuss the logistics and challenges of constructing the project elements while meeting the Work Zone Traffic Control requirements, and shall discuss why the sequence was chosen, how the sequence benefits the Department, and why it is the best solution for constructing the project elements. The Narrative **shall** also discuss the requirements as stated under ITP, Appendix A, Section A12.1.2.3.

C3.3.2 Work Zone Traffic Control (WZTC)

Provide a narrative describing the proposed WZTC including a description of the Proposer's plan to maintain the safety and use of traffic corridors and minimize disruption on existing roads as a result of the construction Work. At a minimum, the Work Zone Traffic Control narrative should:

A) Describe the major phases of the Work;

B) Include complete typical sections by phase, including information regarding maintenance of access and egress. It should provide phase notes and details regarding sequence of work activities (e.g., specialized equipment needs and falsework);

C) Identify each affected road and access way within the vicinity of the Project site, and describe the potential impacts, mitigation measures, limitations of use, and the number and duration of time that each road and access way may be impacted in performing the Work, including information regarding detours;

D) Describe the Proposer's approach to accommodate local events, emergency service providers and commercial vehicles; and

E) Describe how the WZTC will be coordinated with adjacent projects to provide safe passage of traffic.

C3.3.3 Protection of Existing Facilities

Provide a narrative describing the proposed methods of protecting existing facilities, including a description of the specific means the Proposer intends to use to minimize impacts to existing utilities, private residences and properties adjacent to or within the Project Limits. This description should identify how the Proposer intends to mitigate impacts due to vibrations and other effects of the Proposer's construction operations.

C3.3.4 Utility Work

Provide a narrative describing the proposed approach to the required Utility Work, including a description of how utility work will be approached with minimal disruptions to utility operations and other activities on the Project. Identify specific and/or unique design and/or construction methods

that will be implemented to minimize the impacts on existing utilities and facilities as a result of construction activities.

C3.3.5 Drainage Modifications

Provide a narrative describing the proposed approach to any Drainage Modifications that will be required, including concepts for stormwater management and connections to existing facilities and pipes.

C4.0 PROJECT SCHEDULE

C4.1 INITIAL BASELINE PROGRESS SCHEDULE

The Proposer shall submit an Initial Baseline Progress Schedule to indicate a complete understanding of the project through a detailed breakdown of each phase of the proposed work. The Contractor shall provide a logic-based, critical path (CPM) project schedule for the work to be performed from the execution of the Contract up to and including Final Acceptance. The Initial Baseline Progress Schedule shall be provided as a Gantt chart using Primavera P6. The Initial Baseline Progress Schedule shall include a start date and the durations in days for all major Design and Construction activities, as well as a detailed work plan with a hierarchical breakdown of work scope by location, type and major work task. All constraints and provisions included in the contract documents shall be considered. Indicate a clear methodology and approach to designing and constructing the project while minimizing the impact to the traveling public. The Initial Baseline Progress Schedule should be developed using the appropriate Calendars within the scheduling software program to accommodate different/multiple work shifts.

The Gantt chart shall show all activities grouped by work breakdown structure (WBS), activity ID, activity name, activity start date, activity finish date, activity duration (days), logic (predecessors and successors), and float. The Gantt chart should also show the activities that are in the critical path.

The successful Proposer will be required to develop and complete a project schedule using Primavera P6 Enterprise software in conformance with Part 2, DB §100 – General Provisions and Part 5, Special Provision SP-3 – Critical Path Method Schedule, after award of the contract. The successful Proposer will be required to maintain the dates, durations and other milestones shown on the Initial Baseline Schedule when preparing the Primavera P6 Enterprise based schedule. See Contract Document Part 2 - DB §108 and Special Provision SP-3.

The Initial Baseline Progress Schedule should include the following information, at a minimum for the overall project:

A) Notice to Proceed;

B) Design and design reviews;

C) Start of work at the project site;

D) Duration and dates of start and end for roadway closures, staging phases, and detours;

E) Dates for start and end of major design and construction activities;

F) Date that all traffic will be permanently transferred to the new and/or rehabilitated bridge structure(s) and/or roadway(s);

G) Substantial Completion date; and

H) Final Completion date.

With the Initial Baseline Progress Schedule, the Proposer should provide a narrative that lists and describes the assumptions and logic used in preparing the schedule, which should include the timing, duration and subject matter for the review and processing of all required submittals. The narrative should also include an explanation of the sequencing and phasing of construction activities and how the construction activities are planned to be performed based on different/multiple work shifts.

The Initial Baseline Progress Schedule should be provided in hard copy and electronically on thumbdrive. The schedule shall be presented in hard copy printed on 11” by 17” paper with a font size equivalent to a size 8 font. The electronic copy shall be in portable document format (pdf). The thumbdrive shall be labeled “I-81 VIADUCT PROJECT – PHASE 1, CONTRACT 1, Project INITIAL BASELINE PROGRESS SCHEDULE and include the Proposer’s name. In addition, submit the electronic file in P6V15.1 XER format or newer.

C4.2 SCHEDULE OF CONTRACT DURATIONS

The Proposer should submit Form SCD.

C4.3 GANTT CHART

This section not used.

C5.0 FORMAT OF VOLUME 2

Organize Volume 2 in the format shown in Table C, with the cover of the volume labeled as follows, including the name of the Proposer:

I-81 VIADUCT PROJECT – PHASE 1, CONTRACT 1

DESIGN-BUILDER’S PROPOSAL

VOLUME 2

TECHNICAL PROPOSAL

PROPOSER: _____

Provide the Technical Proposal submittals in Volume 2 in the order set forth in Table C. Each individual section in Volume 2 shall be separated with tabs labeled as outlined in Table C (e.g., “Volume 2, Section A1 – Key Personnel”). Use a copy of the Table C checklist as the basis for the table of contents for Volume 2 (which shall be the first page of Volume 2).

Table C
Format of Volume 2

Proposal Component	Reference
Volume 2, Section 1 – Design-Build Organization and Process	
Volume 2, Section 1A – Key Personnel	
Key Personnel Form R	C2.1
Volume 2, Section 1B – Overall Design-Build Team Organization	
Design-Build Team Organization Chart (Narrative, Max 5 pages plus 11x17 org chart)	C2.2.1
Design-Build Team Communication Protocol (Narrative, Max 5 pages plus 11x17 communication graphic)	C2.2.2
Design-Build Quality Control Plan (max 15 pages plus org charts)	C2.2.3
Volume 2, Section 2 – Design Build Approach to the Project (Technical Solutions)	
Volume 2, Section 2A – Project Understanding	
Project Understanding (Narrative, max 6 pages)	C3.1
Volume 2, Section 2B – Design Solutions	
Design Approach (Narrative, max 10 pages)	C3.2.1
Copies of Department's approval letters for each ATC that is incorporated into the Proposer's Proposal along with each submitted ATC that was approved and used.	C3.2.1
Volume 2, Section 2C – Construction Approach (Means and Methods)	
Overall Project Construction Sequence (maximum 6 pages)	C3.3.1
Work Zone Traffic Control (maximum 3 pages)	C3.3.2
Protection of Existing Facilities (maximum 1 pages)	C3.3.3
Utility Work (maximum 2 pages)	C3.3.4
Drainage Modifications (maximum 1 page)	C3.3.5
Volume 2, Attachment A – Design Drawings	
Project Limits	C3.2.2
General Configurations	C3.2.2
Construction Phasing	C3.2.2
Demolition Limits	C3.2.2
Work Zone Traffic Control	C3.3.2
Volume 2, Attachment B – Project Schedules	
Initial Baseline Progress Schedule (maximum 20 pages)	C4.1
Initial Baseline Progress Schedule Narrative (maximum 8 pages)	C4.1
Form SCD – Schedule of Contract Durations	C4.2

Note: Volume 2, Attachment A – Design Drawings, shall be submitted in a separate 11"x17" binder.

I-81 VIADUCT PROJECT - PHASE 1, CONTRACT 1

PIN 3501.90, Contract D900054

REQUEST FOR PROPOSALS

INSTRUCTIONS TO PROPOSERS

APPENDIX D

PRICE PROPOSAL SUBMITTAL REQUIREMENTS

Final June 17, 2022

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TABLE OF CONTENTS

D1.0 INTRODUCTION 1
D2.0 PRICE PROPOSAL 1
D2.1 PROPOSAL PRICE SUBMITTAL 1
D2.2 SCHEDULE OF PRICES (FORM SP) 1
D2.3 WORK PAYMENT SCHEDULE 2
D2.4 BID BOND 2
D3.0 FORMAT FOR VOLUME 3 2

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D1.0 INTRODUCTION

This ITP Appendix D provides the general instructions and establishes the content and formatting requirements for the Price Proposal, Volume 3.

Each Proposer shall submit the Price Proposal required pursuant to this ITP Appendix D, organized, separated and labeled in accordance with the checklist in Table D.

All forms named herein are found in ITP Appendix E unless otherwise noted.

Submit all information as specified herein, using the forms and formats specified. Alterations to the forms will only be permitted where specifically allowed.

D2.0 PRICE PROPOSAL

Provide a Price Proposal using the forms listed herein and provided in ITP Appendix E. Failure to provide the requested information on the forms and in the format specified may result in the Department declaring the Price Proposal non-responsive.

Upon Award, the agreed Price Proposal of the selected Proposer will be incorporated into the Contract Documents Parts 1 and 9.

The Price Proposal shall consist of:

- Form PP, Price Proposal Cover Sheet;
- Form SP, Schedule of Prices;
- Form WPS, Work Payment Schedule; and
- Form BB, Bid Bond.

Unless indicated on a specific Form, <u>the supplied Forms are not to be altered</u>.

- Photographs or external web links are not to be included in the Forms;
- All required information must be contained in the Forms;
- Additional lines or pages only allowed when indicated on the Form.

Any Form found to be altered may, at the discretion of the Department's Contract Management Bureau, be removed from the Proposal before evaluation.

D2.1 Proposal price submittal

The Items listed in Section D2.0 shall be submitted in a separate, sealed envelope.

Mark the envelope "I-81 VIADUCT PROJECT – PHASE 1, CONTRACT 1 VOLUME 3" plus the Proposer's name. Securely attach a duplicate copy of Form PP to the outside of the envelope. Have all persons signing the Proposal Form (Form FP) also sign Form PP.

D2.2 Schedule of Prices (Form SP)

Complete Form SP, Schedule of Prices (see ITP Appendix E).

Form SP shall be in compliance with the following instructions:

A) Price in US dollars ($);

B) Provide a lump sum price for each Price Item on Form SP;

C) The Lump Sum Price for each Price Item shall be the total price to complete all Work for that Price Item, including such planning, management, overhead, design, materials, labor, use of tools and equipment, hazardous material and environmental inspections and remediation, utility work, and other Work as required to complete such Work and such costs necessary to integrate the Work with the Work of other Price Items except those costs included in other Price Items;

D) The sum of the Lump Sum Price for each Price Item shall be the Proposal Price. The Proposal Price will become the Contract Price, as agreed to by the Department, less the unused portion of the lump sum price for the Design-Build – Extra Work (Item No. 800.0400NN15), if the Contract is Awarded.

D2.3 Work Payment Schedule

Using Form WPS, provide the proposed percent of the Lump Sum Price for Design-Build Construction Work (Item Nos. 800.06000115 through 800.06001015) for each Work Item listed on the Form. The total percent for all Work Items on each Form WPS shall equal 100%.

D2.4 Bid Bond

Using Form BB, submit a Bid Bond in the sum indicated in the Itemized Proposal / Jurat (Form IP). See also ITP Section 2.10.

D3.0 FORMAT FOR VOLUME 3

Organize and submit the Price Proposal in the format shown in Table D by the Proposal Due Date.

Table D
Format of Volume 3

Section	Description	Appendix Reference
Section 1	• Form PP, Price Proposal Cover Sheet	D2.1
Section 2	• Form SP, Schedule of Prices • Form WPS, Work Payment Schedule	D2.2 D2.3
Section 3	• Form BB, Bid Bond	D2.4

I-81 VIADUCT PROJECT - PHASE 1, CONTRACT 1

PIN 3501.90, Contract D900054

REQUEST FOR PROPOSALS

INSTRUCTIONS TO PROPOSERS

APPENDIX E

FORMS

Final June 17, 2022

APPENDIX E

Form Designator	Form Title
Proposal Form	
IP	Itemized Proposal / Jurat
General Forms	
AAP-10	DBE/MBE/WBE/SDVOB Solicitation Log
AR	Acknowledgement of Receipt of RFP, Addenda and Responses to Questions
ATC	Alternative Technical Concept Submittal Form
BDEA**	Bid Document Escrow Agreement
C	Proposer's Representative
CR	Commitment to Assign Identified Resources to Project
EEO	Equal Employment Opportunity Certification
KP	Key Personnel Information
L-3	Authorization to Provide Professional Services in New York State
LLL	Disclosure of Lobbying Activities
LDB	List of Proposed DBEs
LSI	Letter of Subcontract Intent
R	Summary of Individual's Experience
RFC	Request for Change
SA*	Stipend Agreement
SCD	Schedule of Contract Durations
SDU	Schedule of Proposed DBE Utilization
Price Proposal Forms	
PP	Price Proposal Cover Sheet
SP	Schedule of Prices
WPS	Work Payment Schedule
BB	Bid Bond

* Included for reference only. Form or Agreement to be submitted after Proposal Due Date

** Included for reference only. Form or Agreement to be submitted after Proposal Due Date by the selected best value Proposer

FORM IP

ITEMIZED PROPOSAL / JURAT

1. Itemized Proposal

In submitting this Proposal, the undersigned declares that it is made without any connection with any person making another Proposal for the same contract; that the Proposal is in all respects fair and without collusion, fraud or mental reservation; and that no official of the State, or any person in the employ of the State is directly or indirectly interested in said Proposal or in the supplies or work to which it relates, or in any portion of the profits thereof.

The undersigned also hereby declares to have carefully examined the plans, specifications and form of contract, and to have personally inspected the actual location of the work together with the local sources of supply, to be satisfied as to all the quantities and conditions, and understands that in signing this proposal waives all right to plead any misunderstanding regarding the same.

The undersigned further understands and agrees to furnish and provide for the respective item price Proposal all the necessary material, machinery, implements, tools, labor services and other items of whatever nature, and to do and perform all the work necessary under the aforesaid conditions, to complete the improvement of the aforementioned project in accordance with the plans and specifications for said improvement, which plans and specifications it is agreed are a part of this proposal, and to accept in full compensation therefore the amount of the summation of the Lump Sum Price Items.. This summation will hereinafter be referred to as the gross sum proposed.

The undersigned further agrees that should the Proposer challenge any administrative action of the Department regarding the award of the Contract, such special proceeding shall be brought in Supreme Court, Albany County, and in no other location.

The undersigned further agrees that at any time during the progress of work the State adds, alters or omits portions of the work it shall so perform such work and accept compensation in accordance with the Standard Specifications.

The undersigned further understands and agrees not to start any work until the Design Build Contract Agreement is signed by the Commissioner or the Commissioner's duly authorized representative. In no event shall the undersigned start any contract work which involves a disturbance within the State right of way prior to award of the contract by the Comptroller.

2. Bid Deposit

Accompanying this proposal is a bid bond, certified check or bank cashier's check for the specified amount of deposit required. In the event this proposal is accepted by the Department of Transportation and the undersigned shall fail to execute the contract and in all respects comply with the provisions of Section 38 of the Highway Law, as amended, the moneys represented by such bid bond, certified check or bank cashier's check shall be regarded as liquidated damages and shall be forfeited and become the property of the State of New York; otherwise to be returned to the depositor in accordance with the provisions of said Section 38 of the Highway Law, as amended.

On acceptance of this proposal for said work the undersigned does or do hereby bind herself/himself or itself/themselves to enter into written contract, within ten days of date of notice of award, with the said Department of Transportation, and to comply in all respects with §38(6) of the Highway Law, as amended, in relation to security for the faithful performance of the terms of said contract.

3. Non-Collusive Bidding Certifications

A. Non-Collusive Bidding Certifications (NYS Finance Law §139-D)

1. Every bid hereafter made to the state or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury:

a. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

(*1*) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(*2*) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(*3*) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

b. A bid shall not be considered for award nor shall any award be made where (*a*)(*1*)(*2*) and (*3*) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (*a*)(*1*)(*2*) and (*3*) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (*a*) has published price lists, rates, or tariffs covering items being procured, (*b*) has informed prospective customers of proposed or pending publication of new or revised price lists for such items or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph 1. (*a*).

2. Any bid hereafter made to the state or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule or regulation, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

B. Non-Collusive Bidding Certification (49 CFR 29)

The Design-Builder to whom the above identified contract is to be awarded does hereby tender to the New York State Department of Transportation this sworn statement pursuant to Section 112(c) of Title 23 U.S. Code *Highways* and does hereby certify, in conformance with said 23 USC 112(c) that the said Design-Builder has not, either directly or indirectly, entered into any agreement, participated in any collusion in connection with the above identified contract.

The signatory to this proposal, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):

1. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

2. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
3. does not have a proposed debarment pending; and
4. has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent Jurisdiction in any matter involving fraud or official misconduct within the past three years.

EXCEPTIONS - List any relevant information, attaching additional sheets if necessary. (Exceptions will not necessarily result in disapproval, but will be considered in determining responsibility. For any exception noted, indicate below to whom it applies, the initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.)

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. (FHWA Section 1273 X.) [For Federal-Aid Contracts Only]

A. The Proposer certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

B. Where the Proposer is unable to certify to any of the statements in this certification, such Proposer shall attach an explanation to this proposal.

5. Certification Regarding Use of Contract Funds for Lobbying (FHWA 1273 Section XI.) [For Federal-Aid Contracts Only]

A. The Proposer certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S. Code §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

C. The Proposer also agrees by submitting its bid or proposal that the Proposer shall require that the language of this certification be included in all lower tier subcontracts which exceed $100,000, and that all such subrecipients shall certify and disclose accordingly.

6. Proposer Assurance of No Conflict of Interest or Detrimental Effect. The firm offering to provide services pursuant to this Contract, as a contractor or joint venture contractor, attests that its performance of the services outlined in this proposal does not and will not create a conflict of interest with nor position the firm to breach any other contract currently in force with the State of New York.

Furthermore, the firm attests that it will not act in any manner that is detrimental to any State project on which the firm is rendering services. Specifically, the firm attests that:

a. The fulfillment of obligations by the firm, as proposed in the response, does not violate any existing contracts or agreements between the firm and the State;

b. The fulfillment of obligations by the firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the firm has with regard to any existing contracts or agreements between the firm and the State;

c. The fulfillment of obligations by the firm, as proposed in the response, does not and will not compromise the firm's ability to carry out its obligations under any existing contracts between the firm and the State;

d. The fulfillment of any other contractual obligations that the firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this proposal;

e. During the negotiation and execution of any contract resulting from this proposal, the firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;

f. In fulfilling obligations under each of its State contracts, including any contract which results from this proposal, the firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;

g. No former officer or employee of the State who is now employed by the firm, nor any former officer or employee of the firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and

h. The firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms responding to this proposal should note that the State recognizes that conflicts may occur in the future because a firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

7. False Claims Certification (31 USC §3729, NYS Finance Law Article 13)

Under the Federal False Claims Act, 31 U.S. Code §3729, any person or entity who knowingly presents, or causes to be presented to the Federal Government, a false or fraudulent claim for payment or approval is liable to the United State Government for a civil penalty of not less than $5,000 and not more than $10,000, plus three times the amount of damages the Government sustains.

Under the New York State False Claims Act, NYS Finance Law Article 13, any person or entity who knowingly presents or causes to be presented to the State of New York or Local Governments within the State of New York, a false or fraudulent claim for payment or approval is liable to the Government for a civil penalty of not less than $6,000 and not more than $12,000, plus three times the amount of damages the Government sustains.

"Knowingly" is defined as: (1) actual knowledge; (2) acting in deliberate ignorance of the truth or falsity of information; or (3) acting in reckless disregard of the truth or falsity of information; no proof of specific intent to defraud is required.

The Design-Builder to whom the above-identified contract is to be awarded does hereby certify to New York State Department of Transportation that it understands the prohibitions under the Federal and New York State False Claims Acts, and that it has not and will not submit or cause to be submitted any fraudulent claims in the submission of this Proposal or in connection with the above identified contract. The Design-Builder further certifies that it understands retaliatory actions, against employees and officers who initiate a *Qui Tam* (public) action on behalf of the government or cooperate in the investigation of a false claim, are prohibited and are subject to an assessment of damages and penalties, under the provisions of the Federal and New York State False Claims Acts.

US DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL - FRAUD, WASTE & ABUSE HOTLINE

The U.S. Department of Transportation (USDOT) Office of Inspector General (OIG) maintains a Hotline for receiving allegations of fraud, waste, abuse, or mismanagement in USDOT programs or operations. Persons with knowledge of bid collusion (i.e., contractors, suppliers, work persons, etc.), or other questionable contract related practices (inadequate materials, poor workmanship, theft of materials, etc.), are encouraged to report such activities by calling the Hotline at 1-800-424-9071 at *hotline@oig.dot.gov*, or in writing to the USDOT Inspector General, 1200 New Jersey Ave SE, West Bldg. 7th Floor, Washington, DC 20590. Allegations may be reported 24 hours a day, seven days a week by DOT employees, contractors, or the general public.

NEW YORK STATE OFFICE OF THE INSPECTOR GENERAL HOTLINE

The New York State Office of the Inspector General maintains a Hotline for receiving allegations of governmental misconduct. Reports of New York State governmental misconduct may be made in strict confidence to the Toll Free 24-hour Statewide HOTLINE at 1-800-DO RIGHT (1-800-367-4448), the on-line complaint form at *www.ig.ny.gov* or in writing to the New York State Office of the Inspector General; Empire State Plaza, Agency Building 2 - 16th Floor, Albany, New York 12223.

DESIGN-BUILDER MUST COMPLETE THE FORM BELOW
OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer questions 2-4. If no, skip to question 5.

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j
(Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____
Basis of Finding of Non-Responsibility: _____
_____
_____
(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the individual or entity seeking to enter into the Procurement Contract due to the intentional provision of false or incomplete information? (Please circle):

No Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____
_____

(Add additional pages as necessary)

BY EXECUTING THIS PROPOSAL, THE DESIGN-BUILDER AGREES TO:

1. Perform all work listed in accordance with the Contract Documents including all amendments, (found at https://www.dot.ny.gov/main/business-center/designbuild, at the proposed price; subject to the Changed Conditions provisions if applicable;
2. Accompany this proposal with a bid bond, certified check or bank cashier's check for the specified amount of deposit required;

3. All the terms and conditions of the non-collusive bidding certifications required by §139-d of the State Finance Law and 49 CFR Part 29;
4. For Federal-Aid contracts only, certify, under penalty of perjury, as to the current history regarding suspensions, debarments, voluntary exclusions, determinations of ineligibility, indictments, convictions or civil judgments required by *FHWA Form 1273 Required Contract Provisions Federal-Aid Construction Contracts- Section X "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion"*;
5. For Federal-Aid contracts only, certify that no Federal appropriated funds have been paid or will be paid, to any person for lobbying a Federal official or employee, or disclosure was made in accordance with 31 USC 1352 required by *FHWA Form 1273 Required Contract Provisions Federal-Aid Construction Contracts- Section XI "Certification Regarding Use of Contract Funds for Lobbying"*;
6. Attest that its performance of the services outlined in this proposal does not and will not create a conflict of interest with nor position the firm to breach any other contract currently in force with the State of New York;
7. Certify that it understands the prohibitions under the Federal False Claims Act (31 USC §3729) and the New York State False Claims Act (NYS Finance Law Article 13);
8. Certify that all information provided to the Department with respect to the requirements contained in the Procurement Lobbying Law (State Finance Laws §139j and §139k) is complete, true and accurate;
9. Affirm, under penalty of perjury, that all the responses provided to the Department with respect to its submitted Form CCA-2 *New York State Vendor Responsibility Questionnaire For-Profit Construction*, are complete, true, and accurate, and further affirms and acknowledges that it must remain a responsible Design-Builder throughout the duration of the contract, in accordance with §105-05 *Vendor Responsibility*;
10. Provide commitments to meet the established D/M/WBE goal(s) prior to award or demonstrate good faith efforts to do so;
11. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the New York State Labor Law.
12. Certify to all other clauses required by this proposal and contained herein.

Dated_____, 20_____

_____
Legal Name of person, firm or corporation

By _____
Signature (Title)

(Acknowledgment of individual Design-Builder)
STATE OF NEW YORK
County of_____ ss.:
On this_____ day of _____ 20____, before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged that she/he executed the same.

_____
Notary Public

(Acknowledgment of Design-Builder, if a Joint Venture)
A bidder that is a Joint Venture shall include a separate, signed and notarized copy of the acknowledgment page for each party in the joint venture.

(Acknowledgment of co-partnership Design-Builder)
STATE OF NEW YORK
County of _____ ss.:
On this ____ day of _____ 20___, before me personally came _____ to me known and known to me to be the person who executed the foregoing instrument, who being by me duly sworn, did for himself/herself depose and say that he/she is a member of the partnership of _____ , consisting of himself/herself and _____ , and that he/she executed the foregoing instrument in the firm name of _____, and that he/she had authority to sign same, and did duly acknowledge to me that she/he executed the same as the act and deed of said firm for the uses and purposes mentioned therein.

_____
Notary Public

(Acknowledgment of Design-Builder, if a corporation)
STATE OF NEW YORK
County of _____ ss.:
On this ____ day of _____ 20____, before me personally came _____ to me known and known to me to be the person, who being duly sworn, did depose and say that she/he resides in _____ , that she/he is the _____ , of the _____ , the corporation described in and which executed the foregoing instrument; and that she/he signed her/his name thereto by order of the Board of Directors of said Corporation.

_____
Notary Public

Please Complete Information Requested Below:

The P.O. address of the bidder is:

_____ (Street)

_____

_____

_____
City, State and Zip Code

Federal Identification No _____

Contact Person _____

Phone No. ( )

If a Partnership

Name	Address
_____	_____
_____	_____

If a Corporation

Name	Address
_____, President	_____
_____, Secretary	_____
_____, Treasurer	_____

FORM AAP-10

AAP 10 (12/2019)

DBE/MBE/WBE/SDVOB Solicitation Log

Contract No: Contract Type: County: Region: Letting Date: Date 1st Submitted: Date Resubmitted: Page of Total

Contractor Name and Address:

Contact Name: E-mail: Phone: Pre-Award Post Award GFE Attached: Yes No Funding Source: Federal State

	Firm Name and Address	Program	Contact Person	Contract Pay Item(s)	NYSDOT Code NACIS/NIGP	Date(s) of Contact	Method(s) of Contact	Contact Phone/Fax and/or E-mail Addresses	DBE/MBE/WBE/SDVOB Response/Status	Bidder Action	Notes
1											
2											
3											
4											
5											
6											
7											
8											

Do not click the "Make Form Read-Only" button until data entry is complete. Read-Only locks the data entered and cannot be undone. Recommend saving one copy that is not locked for editing after first submission. Save a second copy to lock and submit to NYSDOT.

Make Form Read-Only (Cannot be undone)

Add a Page

AAP 10 Form Instructions

Please complete the DBE/MBE/WBE/SDVOB Solicitation Log with the following information detailing the solicitation of DBE/MBE/WBE/SDVOB's for utilization on said contract. All required information is in compliance with Standard Specifications102-12 DBE/MBE/WBE/SDVOB Participation and Federal Regulations 49 CFR 21 & 49 CFR 26, 17 NYCRR 35, 5 NYCRR 140-145.

Heading Instructions

Data Entry Instructions

Note: Each numbered group of three rows represents a separate DBE/MBE/WBE/SDVOB that was solicited and allows for the documenting of the types and results of consecutive contact.

*Drop down includes a selection of "Blank" to **ONLY** be selected for selections made in error.

AAP10 Notes

Add a Page

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FORM AR - ACKNOWLEDGMENT OF RECEIPT OF RFP, ADDENDA AND RESPONSES TO QUESTIONS

(to be attached to Volume 1 of Proposal)

NAME OF PROPOSER

We hereby acknowledge receipt of the I-81 VIADUCT PROJECT - PHASE 1, CONTRACT 1, Design-Build Project RFP, dated Final June 17, 2022 and subsequent responses to questions and Addenda issued by the Department, as listed below.

Add additional lines in tables below, if needed.

Addendum number:	Date issued by Department:

Responses to questions number:	Date issued by Department:

SIGNED	
DATE	
NAME (printed or typed)	
TITLE	

ALTERNATIVE TECHNICAL CONCEPT (ATC)

SUBMITTAL FORM

FORM ATC

Proposer:			
Project Title, Contract #:			
ATC Title:			
ATC No.:		**Date:**	

A	**Description: Provide a detailed description of the configuration of the ATC or other appropriate descriptive information.**
B	**Usage: Describe where and how the ATC would be used on the Project.**
C1	**Deviations: Provide references to any requirements of the RFP Documents or to any elements of the Contract Documents that are inconsistent with the proposed ATC.**
C2	**Provide an explanation of the nature of the proposed deviation and a request for: (a) approval of such deviations or (b) a determination that the ATC is consistent with applicable requirements.**

D	**Analysis: Provide an analysis justifying use of the ATC and why the deviations from the requirements of the RFP Documents should be allowed.**
E1	**Impacts: Provide an explanation of potential impacts of the ATCs on vehicular traffic with an emphasis on truck traffic in the community due to the construction.**
E2	**Provide an explanation of potential impacts of the ATCs on the environment (favorable and unfavorable) identified in appropriate environmental documents (especially with regard to the impacts and commitments of the EIS).**
E3	**Provide an explanation of potential impacts of the ATCs on the surrounding community.**
E4	**Provide an explanation of potential impacts of the ATCs on the safety and life-cycle, Project and infrastructure costs (including impacts on the cost of repair and maintenance).**

F1	**Environmental Approvals: Provide an explanation of any changes in any Environmental Approval which would be required as a result of the ATC.**
F2	**Provide an explanation of whether the ATC would require any deviation from the terms and conditions of any permit or of any anticipated or existing Environmental Approval or new Environmental Approval and, if so, an analysis of the steps required, costs involved and time that would be required to obtain, and the likelihood of success in obtaining, the required approval from the appropriate Governmental Agencies, as well as an analysis of all potential impacts on the Project.**
G	**History: Provide a detailed description of other projects where the ATC has been used under comparable circumstances, if any, the success of such usage, and names, email addresses and contact telephone numbers of project owners that can confirm such statements.**
H	**Risks: Provide a description of any added or reduced risks to the Department and other Persons associated with implementing the ATC.**
I	**Schedule: Provide an estimate of the impact of the ATC upon the Contract duration and schedule, including the Proposer's estimate of the likely durations for any permits and consents necessary for the ATC.**

J	**Price: Provide an estimate of the impact (Savings) of the ATC on the Proposal Price.**
K	**ROW Requirements: Confirm that the proposed ATC has no impacts on the existing and proposed ROW requirements.**
L	**One-on-One Meeting: Provide a statement as to whether, in the Proposer's view, a one-on-one meeting with the Department would be appropriate to discuss the ATC.**
M	**Attach supporting drawings/sketches (Required).**

FORM BDEA

BID DOCUMENT ESCROW AGREEMENT

COMPTROLLER'S CONTRACT NO. _____

PIN: _____

PROJECT: _____

This Agreement made this ___ day of _____ , 20___, by and between NEW YORK STATE DEPARTMENT OF TRANSPORTATION (hereinafter "NYSDOT"), whose principal office is located at 50 Wolf Rd., Albany, New York 12232, and _____ _____, duly organized and existing under the laws of the State of _____, having its principal office at_____ (hereinafter referred to as "Proposer").

WITNESSETH:

WHEREAS, NYSDOT is currently procuring a design-build contract (the "Contract") for the _____ Project (the "Project");

WHEREAS, the Proposer submitted a proposal ("the Proposal") in response to the Request for Proposals issued by NYSDOT on _____, as amended by any addenda (as amended, the "RFP"); and

WHEREAS, NYSDOT has decided to award the Contract to the Proposer.

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1. ESCROWING OF BID DOCUMENTS. The Proposer must agree, as a condition of the award of the Contract, to submit all Bid Documents to NYSDOT, to be held by NYSDOT in escrow. Failure to submit the Bid Documents to NYSDOT within 15 days of the execution of this Agreement may result in the Proposer's bid being deemed non-responsive, which would end the contracting process between NYSDOT and Proposer on the Project.

The Bid Documents must clearly itemize the estimated costs of performing the work of each bid item contained in the RFP. The bid items should be separated into sub-items as required to present a complete and detailed cost estimate and allow a detailed cost review.

Estimated cost should be broken into the Proposer's usual estimate categories such as direct labor, equipment operations, expendable materials, permanent materials, and subcontractor costs. Plant and equipment and indirect costs should be detailed. The Proposer's allocation of plant and equipment, indirect costs, contingencies, markup, and other items allocated to each bid item must also be included.

"Bid Documents" include all documents and data used by the Proposer to determine the bid on the project, include all writings, charts, data compilation, working papers, computer printouts and other documents, in any media, including hard copy and electronic, including but

not limited to materials relating to the determination and application of design costs, construction inspection services costs, Material and lab testing services costs, equipment rates, overhead rates and related time schedules, labor rates, equipment rates, efficiency or productivity factors, arithmetic extensions, and subcontractor and material supplier quotations. Electronic copes of bid estimating software must have the audit trail option enabled.

"Bid Documents" also includes any manuals standard to the industry and used by the Proposer in determining its bid. Such manuals may be included in the Bid Documents by reference. The reference shall include the name and date of the manual, as well as its publisher.

The Bid Documents must constitute all of the information used in preparation of the bid, and the Proposer may not rely on any other documents it generated in the bid process in resolving disputes or claims, or in the course of litigation. This term does not limit NYSDOT's right to use other information in resolving disputes or claims, or in the course of litigation, nor does this term limit NYSDOT's right to discovery from Proposer.

If Proposer's bid is based on subcontracting any part of the work, Proposer shall provide documentation sufficient to determine the basis for Proposer's assignment of the portion of the bid designated to cover the subcontracted work. This documentation includes any Bid Documents submitted by the subcontractor to the extent they have been considered as part of the Proposer's bid.

ARTICLE 2. ESCROWED BID DOCUMENTS TO BE HELD BY NYSDOT. The Bid Documents will be held by the NYSDOT in a locked container, to be provided by the Proposer. The Bid Documents will be maintained in either NYSDOT's main office (50 Wolf Road, Albany, New York, 12232), or in the NYSDOT Regional Office of the Region supervising the Project.

The Bid Documents must be delivered to NYSDOT in a sealed envelope or other container clearly labeled as to its contents and the name of the Project. A description of the Bid Documents, which makes their organization clear, must accompany the delivery of the Bid Documents. Each page of the Bid Documents must be marked with consecutive Bates Numbers. Each page of electronically-stored Bid Documents must also be Bates Numbered. Electronic Bid Documents that do not have pages, i.e. copies of bid estimating software, must be identified by a unique Bates Number. The Proposer will not be allowed to submit any additional Bid Documents.

The Proposer agrees to indemnify and hold NYSDOT harmless against any loss, claim, damage, liability or expense incurred in connection with any action, suit, proceeding, claim or alleged liability arising from this Agreement; provided, however, that the NYSDOT shall not be so indemnified or held harmless for its negligence or acts of bad faith by it or any of its agents or employees. This indemnification does not cover any action, suit, proceeding, claim or alleged liability asserted by the Proposer against NYSDOT relating to the Contract.

ARTICLE 3. CERTIFICATION OF BID DOCUMENTS. The Bid Documents must be accompanied with a notarized certification signed by a chief officer of the Proposer. The certification must state that the material in the escrowed Bid Documents constitutes all the documentary information used to prepare the bid and that the certifying individual has personally examined the contents of the Bid Documents container and has found that the collection of documents in the container is complete. The certification shall also attest that the enclosed documentation is an exact copy of the original documentation. Further, the certification must also authenticate the Bid Documents, and state that the Bid Documents or copies thereof are admissible as evidence.

The certification must set forth the name and title of the certifying chief officer, and must contain the language below:

> The undersigned hereby certifies that the Bid Documentation contained herein constitutes all of the information used in preparation of the bid. I have personally examined the collected documents and have found that this Bid Documentation is complete. The enclosed documentation is an exact copy of the original documentation, and is admissible as evidence.

ARTICLE 4. TERMS FOR ACCESSING BID DOCUMENTS. The Bid Documents shall be examined by both the Proposer and NYSDOT at any time deemed necessary by either the Proposer or NYSDOT to assist in the negotiation of price adjustments and change orders, or in the settlement of disputes and claims arising under the Contract.

Access to the Bid Documents shall be given to the Proposer's and NYSDOT's designated representatives, and then only when and for the duration that both designated representatives are physically present. The Bid Documents shall be available during normal business hours. NYSDOT will be entitled to review all or any part of the Bid Documents in order to satisfy itself regarding the applicability of the individual documents to the matter at issue. NYSDOT will be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters, provided that NYSDOT has executed and delivered to Proposer a confidentiality agreement specifying that all proprietary information contained in such documents will be kept confidential; that copies of such documents will not be distributed to any third parties other than NYSDOT's agents, attorneys, and experts; and that all copies of such documents (other than those delivered to a court) will be either destroyed, returned to the Bid Document collection, or returned to the Proposer upon final resolution of the negotiations or dispute.

Notwithstanding any other provisions herein, notification that the Proposer has initiated litigation or any other type of proceeding against NYSDOT will be construed as permission for the NYSDOT to review, copy, and otherwise make use of the Bid Documents, either with or without the presence of Proposer's designated representative. However, under these circumstances NYSDOT must still execute and deliver a confidentiality agreement, as described above.

ARTICLE 5. NYSDOT'S DESIGNATED REPRESENTATIVE. The following person, or his/her successor, is NYSDOT's Designated Representative:

Name: _____
Title: _____
Address: _____
Phone: _____
Email : _____

ARTICLE 6. PROPOSER'S DESIGNATED REPRESENTATIVE. The following person, or his/her successor, is the Proposer's Designated Representative:

Name: _____
Address: _____
Phone: _____
Email: _____

ARTICLE 7. STATUS OF ESCROWED BID DOCUMENTS. The Bid Documents are and shall remain the property of the Proposer, subject to joint review by the Proposer and NYSDOT as provided herein. NYSDOT has not reviewed or considered the Bid Documents at the time of this Agreement. However, NYSDOT understands that the Bid Documents may contain information: (1) known only to a limited extent and only by a limited number of employees of the Proposer; (2) that is safeguarded while in the Proposer's possession; (3) that would be extremely valuable to the Proposer's competitors by virtue of it reflecting the Proposer's contemplated techniques of construction; (4) that could not be otherwise obtained or determined by Proposer's competitors; and (5) that would cause a great deal of competitive harm to the Proposer if the information were to become public. Accordingly, pursuant to New York Public Officers Law § 89(5)(a)(1), Proposer may designate the Bid Documents, in all or in part, as exempt from disclosure under Public Officers Law § 87(2)(d).

NYSDOT will have no interest in or right to the Bid Documents unless the Contractor gives written notice of intent to file a dispute or claim, files a written claim, files a written and verified claim, or initiates litigation against NYSDOT. Under these conditions, or upon written authorization from the Proposer releasing the Bid Documents, NYSDOT may review the bid documentation for the limited purpose of evaluating a dispute or claim or conducting litigation.

ARTICLE 8. END OF ESCROW. The Bid Documents will remain in escrow during the duration of the Contract and until such time as the following conditions have been satisfied: (1) the Contract has been completed; (2) Final payment has been issued by NYSDOT and accepted by the Proposer; and (3) All litigation has been completed, and a written agreement has been executed between the Proposer and NYSDOT that no further litigation or claims will be made.

ARTICLE 9. MISCELLANEOUS TERMS.

A) Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties that executed and approved this Agreement, or their successors.

B) Nothing in the Bid Documents shall change or modify the terms or conditions of the Contract.

C) If NYSDOT fails to enforce any provision of this Agreement, that failure does not waive the provision or NYSDOT's right to subsequently enforce it.

D) New York law, without regard to its choice-of-law provisions, governs the validity, interpretation, and enforcement of this Agreement.

E) This Agreement contains all prior negotiations and agreements between the parties. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

F) All costs associated with preparation and submission of the Bid Documents must be included in the Contract bid price.

ARTICLE 10. POWER TO EXECUTE AGREEMENT

The undersigned representative of the Proposer certifies that he or she has full and complete authority to bind the Proposer to all terms and conditions of this Agreement, and that by executing the Agreement does so bind the Proposer.

IN WITNESS WHEREOF, this agreement has been executed by NYSDOT and the Proposer, who have executed this Agreement on the day and year first written above.

Recommended by (NYSDOT) Contract No. _____

_____
(Signature)

In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of the contract.

_____ _____
New York State Department of Transportation (Signature) Date

[Proposer]
Name of Proposer

Print: _____

Sign: _____

BID DOCUMENT ESCROW AGREEMENT
APPENDIX A

COMPTROLLER'S CONTRACT NO. _____

PIN: _____

PROJECT: _____

The successful Proposer must agree to an escrow of all Bid Documents as a condition of the award of the Contract.

Escrowing of Bid Documents is intended to further the spirit of cooperation and atmosphere of honesty and candor between the Department and the Proposer. Escrowed Bid Documents are used to assist in the negotiation of price adjustments and change orders, and in settling disputes and claims.

The successful Proposer must agree, as a condition of the award of the Contract, to submit all Bid Documents to the Department, to be held by the Department in escrow and to be accessed only under the conditions set forth in the Bid Document Escrow Agreement. The Bid Documents must constitute all of the information used in preparation of the bid, and the Proposer may not relay on any other documents it generated during the bid process in resolving disputes or claims, or in the course of litigation.

The escrowed Bid Documents must clearly itemize the estimated costs of performing the work of each bid item contained in the RFP. The bid items should be separated into sub-items as required to present a complete and detailed cost estimate and allow a detailed cost review.

“Bid Documents” includes all documents and data used by the Proposer to determine the bid on the project, including all writings, charts, data compilation, working papers, computer printouts and other documents, in any media, including hard copy and electronic documentation, including but not limited to materials relating to the determination and application of design costs, construction inspection costs, equipment costs and/or rates, overhead costs and/or rates and related time schedules, labor costs and/or rates, equipment costs and/or rates, efficiency or productivity factors, arithmetic extensions, subcontractor, fabricator, and material supplier quotations.

Escrowed Bid Documents must be accompanied with a notarized certification signed by a chief officer of the Proposer. The certification will state that the material in the escrowed Bid Documents constitutes all the documentary information used to prepare the bid and that the certifying individual has personally examined the contents of the Bid Documents and found that they are complete.

It is understood that the Bid Documents, or any portion thereof, are designated by the Proposer as trade secret material, and that the documents shall be protected from disclosure through FOIL.

FORM C

PROPOSER'S REPRESENTATIVE

In accordance with ITP Section 2.2.3, the following person is named as the Proposer's Representative:

Proposer	
Name of Proposer's Representative	
Company Affiliation	
Address	
Office phone (direct dial)	
Cell phone	
Email	

FORM CR

COMMITMENT TO ASSIGN IDENTIFIED RESOURCES TO PROJECT

Understanding the Department's concern that the personnel resources, materials, equipment and supplies specifically represented and listed in this Proposal actually be assigned to the Contract (if awarded to this Proposer) and not also be committed to other Projects.

_____
(Name of Proposer)

commits that the personnel resources shown in the Proposal, including identified design staff, and materials, equipment and supplies specifically listed in this Proposal will be available to the extent within this Proposer's control. If awarded the Contract, this Proposer will undertake all reasonable efforts to provide all the Key Personnel identified in its Proposal on a full time basis for the periods necessary to fulfill their responsibilities.

In making this commitment, we include the following reservations:

(If made without reservation, enter "NONE" above.)

Signed: _____

Printed name: _____

Title: _____

Date: _____

(To be executed by the Proposer's designated Lead Principal Participant)

FORM EEO - EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by the Proposer, Principal Participants and proposed known Subcontractors.

The undersigned certifies on behalf of _____ that:
(Name of entity making certification)

(check one of the following boxes)

☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).

☐ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.

☐ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: _____

Date: _____

If not Proposer, relationship to Proposer: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of $10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Principal Participants, and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

FORM KP - KEY PERSONNEL INFORMATION

In accordance with ITP Appendix C , complete either (A) or (B) below

PROPOSER:	
Either (A), the Proposer hereby confirms that there is no change in the Proposer's Key Personnel relative to the Proposer's SOQ submission:	
Signed	
Name	
Title	
Date	

Or (B), the Proposer has proposed changes to the Proposer's Key Personnel relative to the Proposer's SOQ submission. The Proposer summarizes below all the Key Personnel proposed in the SOQ; states which Key Personnel differ from those named in the SOQ; and, for the substitute Key Personnel, attaches copies of the Department's written consent (Form RFC) for the personnel change.

Key Personnel Role	**Changed relative to SOQ? (Yes/No)**	**Name**	**Years of experience**	**Parent Firm name**	**% of time dedicated to Project**	**Resume attached (Yes/No)**	**Department's consent attached (Yes/No)**
Project Manager							
Design Manager							
Resident Engineer							
Quality Manager							

FORM L-3

AUTHORIZATION TO PROVIDE PROFESSIONAL SERVICES IN NEW YORK STATE

NAME OF PROPOSER		
NAME OF FIRM PROVIDING DESIGN AND/OR ENGINEERING SERVICES		
EITHER (1) Copy of current Certificate of Authorization to provide Engineering Services issued by the New York State Education Department is attached.	**Yes** (copy attached)	**No** (Item (2) applies)
OR (2) Documentation is attached to this Form L-3 demonstrating the ability to obtain Certificate of Authorization to provide Engineering Services from the New York State Education Department in accordance with the New York State Education Law, Title VIII, Articles 130, 145, 147 and 148.	**Yes, documentation attached and further details are given below**	
If (2) applies, give details of attached documentation demonstrating ability to obtain the relevant certification / license: (Add additional lines if required.)		

Form LLL - Disclosure Of Lobbying Activities

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

FORM LLL APPLICABLE? (Check applicable box) YES ☐ NO ☐

If no, complete only box #4 below.

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** Year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity ☐ Prime ☐ Subawardee Tier ____, if known **Congressional District**, if known	**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District**, if known
6. Federal Department/Agency:	**7. Federal Program Name/Description:** **CFDA Number,** if applicable _____
8. Federal Action Number, if known**:**	**9. Award Amount,** if known**:**
10. a. Name and Address of Lobby Entity	**b. Individuals Performing** Services (including address if different from No 10a) (last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

11. Amount of Payment (check all that apply) $ _____ ☐ actual ☐ planned	**13. Type of Payment (check all that apply)** ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other, specify _____
12. Form of Payment (check all that apply): ☐ a. cash ☐ b. in-kind; specify: nature _____	

value _____	

14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) if necessary)

15. Continuation Sheet(s) attached: **Yes** ☐ **No** ☐

16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature:

Print Name:

Title:

Telephone No.:

Date:

Federal Use Only:

Authorized for Local Reproduction

Standard Form – LLL

Standard Form LLL Rev. 09-12-97

Instructions for Completion of Standard Form LLL
Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to Title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee (e.g., the first subawardee of the prime is the first tier). Subawards include, but are not limited to, subcontracts, subgrants, and contract awards under grants.

5. If the organization filing the report in Item 4 checks "Subawardee," then enter the full name, address, city, state, and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identification in Item 1 (e.g., Request for Proposal [RFP] number, Invitation for Bid [IFB] number, grant announcement number, the contract grant or loan

award number, the application/proposal control number assigned by the Federal agency). Include prefixes (e.g., "RFP-DE-90-001)."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in Item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (Ml).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.

15. Check whether or not a continuation sheet(s) is attached.

16. The certifying official shall sign and date the form and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

FORM LDB - LIST OF PROPOSED DBE/MBE/WBE/SDVOB FIRMS

Complete Form LDB Table 1 to list all proposed DBE/MBE/WBE/SDVOBs in the Proposer's team and total commitments. Within 5 calendar days of notification as Designee, you shall enter (exactly as shown) all of the DBE commitments identified here, into the NYSDOT's civil rights reporting software, Equitable Business Opportunity Solution (EBO). No substitutions or reductions in commitments will be allowed without prior approval by the Department, in accordance with DB §105-21.

Complete Form LDB Table 2 to list proposed work items of DBE/MBE/WBE/SDVOB participation for which DBE/MBE/WBE/SDVOB firms have not yet been assigned by the Proposer, excluding DBE/MBE/WBE/SDVOB activity covered in Form LDB Table 1. Refer to the contract goal page to determine which goals apply to this contract. The DBE program applies to Federal-Aid contracts; the MBE/WBE/SDVOB programs applies to Non-Federal-Aid contracts.

Use additional rows / sheets as necessary.

Form LDB Table 1 - LIST OF PROPOSED DBE/MBE/WBE/SDVOB PARTICIPANTS							
CONTRACT #				**PROPOSER**			
Firm Name	**DBE/MBE/ WBE/ SDVOB Certified** (Select 1)	**1st or 2nd Tier**	**DBE/MBE/WBE/ SDVOB NYSDOT/NAICS Codes** (See Note 1)	**Description of Work**	**% Credit Claimed** (see Note 2)	**Work Category** (Design, Inspection, Materials, Construction, Trucking, etc) (See Note 3)	**Commitment** (In Dollars Committed) (See Note 4)

Form LDB Table 1 - LIST OF PROPOSED DBE/MBE/WBE/SDVOB PARTICIPANTS							
CONTRACT #				PROPOSER			
Firm Name	**DBE/MBE/ WBE/ SDVOB Certified** (Select 1)	**1st or 2nd Tier**	**DBE/MBE/WBE/ SDVOB NYSDOT/NAICS Codes** (See Note 1)	**Description of Work**	**% Credit Claimed** (see Note 2)	**Work Category** (Design, Inspection, Materials, Construction, Trucking, etc) (See Note 3)	**Commitment** (In Dollars Committed) (See Note 4)

Form LDB Table 1 - LIST OF PROPOSED DBE/MBE/WBE/SDVOB PARTICIPANTS							
CONTRACT #				PROPOSER			
Firm Name	**DBE/MBE/ WBE/ SDVOB Certified** (Select 1)	**1st or 2nd Tier**	**DBE/MBE/WBE/ SDVOB NYSDOT/NAICS Codes** (See Note 1)	**Description of Work**	**% Credit Claimed** (see Note 2)	**Work Category** (Design, Inspection, Materials, Construction, Trucking, etc) (See Note 3)	**Commitment** (In Dollars Committed) (See Note 4)
						Total Commitment =	$

Note 1: For cross reference between NYSDOT work codes and NAICS work codes, go to:
https://www.dot.ny.gov/main/business-center/contractors/construction-division/construction-repository/NAICS_NIGP_Codes_Crosswalk.xls

Note 2: This is: 100% for subcontracting, trucking, professional services, manufacturing, and fabricating; 60% of the value of materials for materials supply and equipment rental; and for brokering, the percentage is calculated based on the fee or commission (standard is 10-15%).

Note 3: List only 1 Work Category per row, even if it is the same DBE/MBE/WBE/SDVOB. The Description of Work shall correspond to the Work Category in the same row.

Note 4: The value of the Commitment reflects the net amount to be credited toward the goal based upon the % Credit Claimed. Example 1: Subcontracting clearing and grubbing $50,000 @100% = $50,000 Commitment. Example 2: Supply geotextile fabric $10,000 @ 60% = $6,000 Commitment.

Form LDB Table 2 - PROPOSED WORK FOR DBE/MBE/WBE/SDVOB FIRMS (excluding DBE/MBE/WBE/SDVOB commitments listed in Table 1)			
CONTRACT #		**PROPOSER**	
Work Category (Design, Inspection, Materials, Construction, Trucking, etc) (See Note 3)	**DBE/MBE/WBE/SDVOB NYSDOT/NAICS Codes** (See Note 1)	**Description of Work**	**Net Minimum Proposed Participation** (in Dollars) (See Note 4)

Form LDB Table 2 - PROPOSED WORK FOR DBE/MBE/WBE/SDVOB FIRMS (excluding DBE/MBE/WBE/SDVOB commitments listed in Table 1)			
CONTRACT #		**PROPOSER**	
Work Category (Design, Inspection, Materials, Construction, Trucking, etc) (See Note 3)	**DBE/MBE/WBE/SDVOB NYSDOT/NAICS Codes** (See Note 1)	**Description of Work**	**Net Minimum Proposed Participation** (in Dollars) (See Note 4)
		Total Commitment =	$

Note 1: For cross reference between NYSDOT work codes and NAICS work codes, go to:
https://www.dot.ny.gov/main/business-center/contractors/construction-division/construction-repository/NAICS_NIGP_Codes_Crosswalk.xls

Note 2: This is: 100% for subcontracting, trucking, professional services, manufacturing, and fabricating; 60% of the value of materials for materials supply and equipment rental; and for brokering, the percentage is calculated based on the fee or commission (standard is 10-15%).
Note 3: List only 1 Work Category per row, even if it is the same DBE/MBE/WBE/SDVOB. The Description of Work shall correspond to the Work Category in the same row.
Note 4: The value of the Commitment reflects the net amount to be credited toward the goal based upon the % Credit Claimed. Example 1: Subcontracting clearing and grubbing $50,000 @ 100% = $50,000 Commitment. Example 2: Supply geotextile fabric $10,000 @ 60% = $6,000 Commitment.

FORM LSI - LETTER OF SUBCONTRACT INTENT

_____ intends to subcontract Work for the Project to
(Proposer's Name)

_____ to perform the following types of Work:
(Name of Subcontractor/Consultant)

(Details of Work. Proposer to identify any changes if Non-HARS Alternative is used)

The minimum value of the Subcontract is:				
The Subcontractor/Consultant is a certified DBE/MBE/WBE/SDVOB firm:	Yes	(see below)	No	
If Subcontractor/Consultant is a certified DBE/MBE/WBE/SDVOB firm:				
Certifying entity:				
Telephone number for certifying entity:				

For the Proposer:

_____
Signature

_____
(Printed or typed name)

_____
Title

_____
Date

For the Subcontractor/Consultant(1)(2):

_____
Confirmed by: (Signature)

_____
(Printed or typed name)

_____
Title

_____
Date

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

(1) The prospective lower tier participant (Subcontractor/consultant) certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the I-81 VIADUCT PROJECT - PHASE 1, CONTRACT 1, Design-Build Project, PIN 3501.90, Contract D900054, by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its proposal.

FORM R
SUMMARY OF INDIVIDUAL'S EXPERIENCE

Form R shall be completed by the Proposer for the Key Personnel indicated in ITP Appendix A, Quality Evaluation Factors section as well as any key personnel that have been changed since submission of the SOQ. Add lines/pages as necessary. Under "Contact Information" of the Applicant's past experience, provide the contact name, phone number, and e-mail address for the Project Owner. NYSDOT reserves the right to contact any Project Owner to verify the information provided. "Project Owner" is not a Prime Consultant or Prime Contractor for which the Firm served as a subconsultant or subcontractor. "Project Name" should include the relevant contract number if available. Relevant experience shall be listed in chronological order, starting with the most recent project. Use N/A where an answer is not necessary or applicable.

Applicant's Information					
Name of Proposer:					
Name of Firm:					
Individual's Name:					
Is Applicant Licensed as a Professional Engineer in the State of New York?	**Yes:**		**No**:		
NYS Professional Engineering License Number					
Education:					
Years with this Firm					
Total Years of Experience					
Title for Proposed Project:					
Provide Time Committed to Proposed DB Project in next row:					
12 Month period (beg MM/YY-end MM/YY)	Percentage	12 Month period (beg MM/YY-end MM/YY)	Percentage	12 Month period (beg MM/YY-end MM/YY)	Percentage

Applicant's Past Experience	
Total number of years of experience meeting the requirements stated in RFP, Appendix A, and Part 3, Section 2 for the title above:	
The information provided below should confirm the total years stated in the above row.	
Project Name:	
Project Description:	
Project Owner:	
Contact Information:	
Project Cost Value	
Title on Project:	
Individual's Duties & Responsibilities:	

Individual's Start Date on Project: MM/YY		**Individual's End Date on Project: MM/YY**			
Individual's Total Time on Project (in months):		**% of time spent on qualifying activities**		**Qualifying time (in months):**	
Project Name:					
Project Description:					
Project Owner:					
Contact Information:					
Project Cost Value					
Title on Project:					
Individual's Duties & Responsibilities:					
Individual's Start Date on Project: MM/YY		**Individual's End Date on Project: MM/YY**			
Individual's Total Time on Project:		**% of time spent on qualifying activities**		**Qualifying time (in months):**	
Project Name:					
Project Description:					
Project Owner:					
Contact Information:					
Project Cost Value					
Title on Project:					
Individual's Duties & Responsibilities:					
Individual's Start Date on Project: MM/YY		**Individual's End Date on Project: MM/YY**			
Individual's Total Time on Project:		**% of time spent on qualifying activities**		**Qualifying time (in months):**	
Explain gaps in chronology for qualifying experience:					

Total Time: Identify the total time the Applicant spent on the project (start date to end date, in months)

% of time on Qualifying Activities: Identify the percentage of time spent performing qualifying activities during the total time.

Qualifying Time: Calculate the percentage of time spent performing qualifying activities by the total time to determine the number of qualifying months meeting the experience required for the title on the proposed Design Build project as described in RFP Appendix A, and Part 3 Section 2.

Example: Total Time on project is 12 months (1st box) with 50% of time spent on qualifying activities (2nd box) equals 6 months of qualifying time (3rd box).

FORM RFC

REQUEST FOR CHANGE

In accordance with ITP Section 1.15, complete the following if requesting a change for either a member of the Design-Build Team or the Key Personnel identified in the submitted Statement of Qualifications. Also, attach the required justification information as specified in ITP Section 1.15. Use a single Form RFC for each change requested. All requests must be approved by the Department. If approved, include a copy of the approved Form RFC, and accompanying information described in ITP Section 1.15 with the Proposal, Volume 1, Section 3.

Proposer: _____

Contract No:_____

A: Requesting a change in a member of the Design-Build team

Name of firm submitted in the SOQ: _____

Role in Design-Build team: _____

Name of substitute firm: _____

B: Requesting a change in Key Personnel

Name of Key Personnel submitted in the SOQ: _____

Title of individual for this project: _____

Name of substitute individual: _____

C: For NYSDOT use

Date Received: _____

Name of NYSDOT Reviewer: _____

Title: _____

___ Request Approved ___ Request Rejected

Signature of NYSDOT Reviewer: _____

Date of Review: _____

FORM SA

STIPEND AGREEMENT

COMPTROLLER'S CONTRACT NO.:

PIN: 3501.90

PROJECT: Stipend Agreement for the Preparation & Submission of the Design Build Proposal for I-81 VIADUCT PROJECT - PHASE 1, CONTRACT 1

This Agreement made this ___ day of _____ , 20___, by and between NEW YORK STATE DEPARTMENT OF TRANSPORTATION (hereinafter "NYSDOT"), whose principal office is located at 50 Wolf Rd., Albany, New York 12232, and _____, duly organized and existing under the laws of the State of New York, having its principal office at _____ (hereinafter referred to as "Proposer").

WITNESSETH:

WHEREAS, NYSDOT is currently procuring a design-build contract (the "Contract") for the _____ Project (the "Project");

WHEREAS, the Proposer submitted a proposal ("the Proposal") in response to the Request for Proposals issued by NYSDOT on _____, as amended by any addenda (as amended, the "RFP");

WHEREAS, the Proposal met the criteria set forth in Article 4(A) of this Stipend Agreement; and

WHEREAS, the Department has not awarded the Contract to the Proposer.

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1. DOCUMENTS FORMING THIS AGREEMENT. The Agreement consists of the following in the following descending order of precedence:

1. Appendix A – New York State Required Contract Provisions
2. Appendix A-1 – Supplemental Title VI Provisions and Appendix B – Requirements for Federally-Aided Transportation Projects
3. Agreement Form – this document titled "Stipend Agreement"
4. Attachment 1 to Stipend Agreement

ARTICLE 2. WORK PRODUCT AND INTELLECTUAL PROPERTY RIGHTS. The term "Work Product" shall mean ideas or information, and the expression of ideas or information, included in the Proposal or otherwise submitted or communicated in any manner by or on behalf of the Proposer to NYSDOT during the Project's procurement process at any time prior to the awarding of the Contract. Work Product does not include any sensitive and confidential financial information regarding the Proposer that was included in the Proposal.

ARTICLE 3. NYSDOT'S RIGHTS TO WORK PRODUCT. Under the terms of this Agreement, NYSDOT may use the Work Product for the purposes of the Project or any future project pursued by NYSDOT without any obligation to pay any additional compensation to the Proposer.

With respect to any Work Product that incorporates intellectual property owned or developed by the Proposer, the Proposer's team members or other third parties, the Proposer represents and warrants that it has the right to grant NYSDOT irrevocable, non-exclusive, perpetual, royalty-free licenses to use such intellectual property for the purposes specified herein. As of the date of this Agreement, the Proposer hereby assigns such licenses to NYSDOT, and agrees to indemnify, defend, and hold harmless NYSDOT and the State of New York from any and all claims, costs, expenses, and damages of every kind resulting from infringement allegations related to NYSDOT's exercise of the intellectual property rights granted herein.

The foregoing shall not be deemed a requirement for the Proposer to provide off-the-shelf software to NYSDOT.

ARTICLE 4. PROVISION FOR PAYMENT.

A) The Stipend will be paid by NYSDOT to the Proposer only under the circumstances specified in this Article 4. The Proposer will not be entitled to payment of any Stipend Amount if the Proposal fails to:

1) Achieve a rating of "pass" on all Pass/Fail Evaluation Factors found in the RFP for the Project; or

2) Meet or exceed the minimum qualifying quality based evaluation threshold as required in the RFP.

B) The Proposer will not be entitled to payment of any Stipend Amount if the Proposer has filed an unsuccessful protest of the procurement process, award or cancellation of the procurement. In addition, as a condition of accepting payment of any Stipend Amount, the Proposer agrees to not file any protest of the procurement process, award, or cancellation of the procurement after accepting payment of the Stipend.

C) The Proposer will not be entitled to payment of any Stipend Amount if the Proposer fails to submit an invoice in accordance with 4(D), below, or fails to provide satisfactory evidence substantiating its Qualified Costs (as defined in 4(E), below) in accordance with (D), below.

D) In order to receive payment of the Stipend Amount, the Proposer shall submit to NYSDOT: two signed originals of Attachment 1 of this Stipend Agreement, two copies of a single invoice for its proposed Stipend Amount, and two copies of all documentation required under (E), below, not later than 20 calendar days after the Proposal Due Date. If NYSDOT disagrees with the proposed Stipend Amount set forth in the Proposer's initial invoice, NYSDOT will notify the Proposer in writing of its determination of the appropriate Stipend Amount based on its review of the Proposer's substantiated costs, and the Proposer shall submit a revised invoice to NYSDOT within 14 days following receipt of any such notice.

E) The Proposer shall maintain written records substantiating all Qualified Costs in sufficient detail to permit a proper audit thereof. Such records shall be made available for audit

or verification of Qualified Costs upon request of NYSDOT at the time of this Agreement and for three years after final payment of the Stipend Amount is made. "Qualified Costs" shall comprise the direct costs and overhead costs that are allowable and reasonable, and incurred by the Proposer, the Proposer's team, or third-parties acting at the direction of the Proposer in the production of the Work Product. Examples of qualified costs (subject to limitations of any other contract stipulations such as limits on hourly rates or not to exceed Government travel rates) can include the following:

- Compensation of employee's time charges related to preparation of the Proposal;
- Cost of materials acquired, consumed, or expended related to preparation of the Proposal;
- Cost of equipment utilized related to preparation of the Proposal; and
- Travel expenses incurred related to preparation of the Proposal.

The overhead rate applied to the Stipend calculation shall be equal to the Proposer's current audited rate on file with the NYSDOT. An overhead rate of 115% will be applied for firms with no current rate on file. Unallowable Proposer costs are described in CFR-2011 - title 48 – volume 1 - part 31 – subpart 31.6. The Proposer shall submit to NYSDOT copies of all substantiating documentation of Qualified Costs concurrently with the submission of its invoice for the Stipend Amount, and at any other time upon NYSDOT's request. Failure of the Proposer, the Proposer's team, or third-parties acting at the direction of the Proposer to maintain and retain sufficient records to allow audit or verification of Qualified Costs, or failure to allow NYSDOT or its agents access to the same, shall constitute a waiver of the right to any payment of a Stipend, and any Stipend Amount paid to the Proposer under this Agreement shall be immediately returned to the NYSDOT.

F) The Proposer must execute this Stipend Agreement and provide NYSDOT with the licenses required by Article 3 no later than 20 calendar days after the Proposal Due Date. Extensions may be granted at the sole discretion of NYSDOT.

G) A failure by any Proposer to comply with Article 4(F) constitutes a waiver to the right to any payment of a Stipend

H) Subject to the requirements and limitations set forth herein, NYSDOT shall pay to the Proposer, and the Proposer agrees to accept as full compensation for its Work Product, an amount (the "Stipend Amount") equal to 50% of the Proposer's total Qualified Costs, as substantiated in accordance with (D) & (E), above, not to exceed $350,000.

ARTICLE 5. PAYMENT OF STIPEND AND WAIVER OF CLAIMS.

A) The Proposer is required, if it is a foreign or out of state corporation or entity, to obtain and submit the required tax clearance certificate to NYSDOT to enable the processing of the payment of the Stipend Amount. It should be noted that any time taken to satisfy or furnish this tax clearance certificate shall extend any required payment date by an equal period of time.

B) Acceptance by the Proposer of payment of the Stipend Amount from NYSDOT shall constitute a waiver by the Proposer of any and all rights, equitable or otherwise, to bring any claim or protest against either of NYSDOT or the State of New York, or any of their officers, directors, agents, employees, representatives or advisers and their successors and assigns, in connection with the procurement of the Project, including, without limitation, the procurement process, any award of the Contract or any cancellation of the procurement.

ARTICLE 6. NYSDOT'S PROJECT MANAGER. The following person, or his/her successor, is NYSDOT's Project Manager:

Name: Jeff Moryl
Title: Project Manager
Address: 50 Wolf Road, 6th Floor, Albany, NY 12232
Phone: 518-457-4722
Email: Jeff.Moryl@dot.ny.gov

ARTICLE 7. PROPOSER'S PERSONNEL. The following person, or his/her successor, is the Proposer's Authorized Representative:

Name:
Address:
Phone:
Email:

ARTICLE 8. NEW YORK STATE FINANCE LAW §§ 139-J AND 139-K CERTIFICATION. By execution of this Agreement, the Proposer certifies that all information the Proposer has provided to NYSDOT with respect to New York State Finance Law §§ 139-j and 139-k is complete, true and accurate. NYSDOT shall have the right to terminate this Agreement if NYSDOT finds that the certification made by Proposer in accordance with New York State Finance Law §§ 139-j and 139-k was intentionally false or intentionally incomplete.

ARTICLE 9. MISCELLANEOUS TERMS.

A) All of the Proposer's team members and subcontractors shall be bound by the same provisions of this Agreement as the Proposer. All agreements between the Proposer, Proposer's team members, and/or subcontractors shall include provisions effectuating this term, and all such agreements shall be subject to review by NYSDOT.

B) Proposer may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of NYSDOT.

C) Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties that executed and approved this Agreement, or their successors.

D) If NYSDOT fails to enforce any provision of this Agreement, that failure does not waive the provision or NYSDOT's right to subsequently enforce it.

E) New York law, without regard to its choice-of-law provisions, governs the validity, interpretation, and enforcement of this Agreement.

F) This Agreement contains all prior negotiations and agreements between the parties. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

G) All confidentiality provisions of the RFP shall continue to apply to the Proposer.

ARTICLE 10. POWER TO EXECUTE AGREEMENT

The undersigned representative of the Proposer certifies that he or she has full and complete authority to bind the Proposer, the Proposer's team members, and subcontractors to all terms and conditions of this Agreement, and that by executing the Agreement does so bind such entities.

IN WITNESS WHEREOF, this Contract No. D900054 has been executed by the STATE, acting by and through the Commissioner of Transportation, and the PROPOSER has duly executed this Agreement effective the day and year first above written.

In addition to the acceptance of this Agreement, the Department certifies that original copies of this signature page will be attached to all other exact copies of this Agreement.

RECOMMENDED BY

_____

NYSDOT CONTRACT MANAGEMENT

DATE: _____

FOR THE PEOPLE OF THE STATE OF NEW YORK

By _____

DEPARTMENT OF TRANSPORTATION

DATE: _____

I certify that all information provided to the STATE with respect to the requirements contained in State Finance Laws 139j & 139k is complete, true and accurate.

By: _____ Date: _____

(ENTER FIRM NAME BELOW LINE,
AUTHORIZED SIGNATURE ABOVE)

_____

APPROVALS

ATTORNEY GENERAL

By: _____

Date: _____

THOMAS P. DiNAPOLI
STATE COMPTROLLER

By: _____

Date: _____

Acknowledgement for Contract # _____

For contracts signed in New York State

State of New York)

County of) ss.:

On the_____ day of _____ in the year 201_, before me the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
NOTARY PUBLIC

My Commission Expires: _____

For contracts signed **outside** New York State

State of)

County of) ss.:

On the _____ day of _____ in the year 201____ before me, the undersigned, personally appeared _____ , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in _____ (insert the city or other political subdivision and the state or country or other place the acknowledgement was taken).

_____
NOTARY PUBLIC

_____
(Signature and office of individual taking acknowledgement.)

Commission Expires:

ATTACHMENT 1 TO STIPEND AGREEMENT D

CERTIFICATION BY PROPOSER

I, _____, do hereby certify that I am the _____ of _____, for the work referred to in the forgoing payment request, that I am the person in whose name the foregoing account against the State of New York is rendered, that the labor, materials, expenses or services charged for were actually delivered, incurred or rendered, as named heretofore, and that the prices charged are just and reasonable; that no percentage or compensation has been paid or promised to be paid to any manager, trustee, officer or employee of said institution, department, board or commission, by reason of the claimant having been allowed to sell to, incur expense for, or render services to, said institution; and also, that to the best of my knowledge and belief, no manager, trustee, officer or employee of said institution, department, board or commission has, or has had, any interest directly or indirectly in said articles, materials, expenses or services; and that no part of the foregoing account has been paid, and that the above statement is true and correct.

_____ _____
(Date) (Signature)

CERTIFICATION BY DEPARTMENT

I, _____ (name), do hereby certify that I am the _____ (title) employed in the supervision of the work described in the attached Payment Request; that the materials, labor and services have been furnished and the work properly performed in accordance with the contract; and that payment in the sum of $_____ can be made on this contract without detriment to the interests of the State, to the best of my knowledge and belief.

_____ _____
(Date) (Signature)

FORM SCD

SCHEDULE OF CONTRACT DURATIONS

Table SCD - 1

OVERALL PROJECT COMPLETION			
ACTIVITY	**DURATION (Calendar Days past NTP)**	**PROJECTED COMPLETION DATE (MM/DD/YYYY)**	**LIQUIDATED DAMAGES AMOUNT (PER DAY)** (See Note 3)
PROJECT COMPLETION (See Notes 1, 3)			

Table SCD - 2

INTERIM COMPLETION MILESTONE			
MILESTONE (See Notes 2, 4)	**DURATION (Calendar Days past NTP)**	**PROJECTED COMPLETION DATE (MM/DD/YYYY)**	**LIQUIDATED DAMAGES AMOUNT (PER DAY)** (See Note 4)
ALL TRAFFIC PERMANENTLY TRANSFERRED ONTO THE NEW (BRIDGE STRUCTURE / ROADWAY / OTHER) (See Note 8)			

Table SCD-3

IMPACTS TO TRAFFIC				
PROJECT COMPONENT	**NUMBER OF ACTUAL TRAFFIC IMPACT DAYS** (See Note 6)	**TRAFFIC IMPACT DURATION (CONSECUTIVE CALENDAR DAYS)** (See Note 6)		**LIQUIDATED DAMAGES AMOUNT (PER DAY)** (See Note 5)
		START DATE / **END DATE**	**# OF DAYS**	
SUM TOTAL		-		-

Notes:

1.) The Project Completion Date, to be included in the Design Build Contract Agreement, Article 4.2, shall be defined by the number of calendar days past NTP as proposed by the successful Proposer and agreed to by the Department. Project Completion for the purposes of this Form SCD is defined as all construction activities completed, no additional impacts to traffic, and complete demobilization from the work site(s). Remaining paperwork (i.e. As-Builts, close-out documentation, payments) may occur after the Project Completion date for the purposes of this Form SCD.

2.) The Interim Completion Milestone Dates, to be included in the Design Build Contract Agreement, Article 2.2, shall be defined by the number of calendar days past NTP as proposed by the successful Proposer and agreed to by the Department.

3.) Liquidated Damages will be assessed, in the amount indicated, , for failure to achieve Project Completion by the Project Completion Date in accordance with Articles 2.3 and 19 of the DB Agreement.

4.) Liquidated Damages will be assessed, in the amount indicated, for failure to achieve the Interim Completion Milestone Date in accordance with Article 2.2 and 19 of the DB Agreement.

5.) Liquidated Damages will be assessed for each calendar day traffic is impacted, at each site, in excess of the number of Traffic Impact Days indicated in Table SCD-3 and/or for each day that traffic is impacted in excess of the Traffic Impact Duration indicated in Table SCD-3.

6.) Indicate the number of Traffic Impact Days and the Traffic Impact Duration for each site, and sum both columns.

Traffic Impact Day means any day, or part of a day, on which the number and/or width of travel or turning lanes on a given roadway or structure are reduced from the existing number and/or width, or any day on which traffic is detoured (either off-site or on-site with the introduction of additional traffic signals, stop signs, yield signs, and/or turning movement restrictions) from a given roadway or structure. Shoulder or Parking Lane closure(s) only do not constitute a Traffic Impact Day.

Traffic Impact Duration means the number of consecutive Calendar Days between the date of the first Traffic Impact Day for a given roadway or structure and the date of the last Traffic Impact Day for that roadway or structure.

7.) An Early Completion Bonus will be paid for: each calendar day work is completed in advance of the Overall Project Completion date submitted by the Design-Builder; each calendar day work is completed in advance of the Interim Completion Milestone Date(s) submitted by the Design-Builder; and each calendar day work is completed less than the Number of Actual Traffic Impact Days submitted by the Design-Builder. Such Bonuses shall be based on the durations / number of days listed in Tables SCD-1 SCD-2 and SCD-3, , subject to the daily bonus amounts and maximum bonus amounts listed in SP-6.

8.) “All traffic permanently transferred onto the new bridge structure / roadway / other” means no additional lane or shoulder closures in the specified direction of the new structure, including auxiliary lanes.

The Proposer commits to meet the Contract Durations specified above.

PROPOSER	

SIGNED	
DATE	
NAME (printed or typed)	
TITLE	

FORM SDU - SCHEDULE OF PROPOSED DBE UTILIZATION

List proposed DBE Utilization by indicating percentages of the contract value that are anticipated for each 3 month interval over the duration of the contract. Total DBE utilization should agree with Forms LDB – Tables 1 & 2.

Use additional rows as necessary.

PROPOSER		
Time Interval (Beginning at Notice to Proceed)	**DBE Work Codes** (To be utilized during interval)	**Anticipated Utilization** (% of Contract Value to nearest 0.1%)
0 – 3 months		
4 – 6 months		
7 – 9 months		
10 – 12 months		
13 – 15 months		
16 – 18 months		
19 – 21 months		
22 – 24 months		
25 – 27 months		
28 – 30 months		
31 – 33 months		
34 – 36 months		
Etc.		

FORM PP
PRICE PROPOSAL COVER SHEET

PROPOSER	

This Price Proposal is submitted in response to the Request for Proposals, dated Final June 17, 2022, as amended by any Addenda, and includes the following:

Section 1: Form PP, Price Proposal Cover Sheet.
Section 2: Form SP, Schedule of Prices;
Form WPS, Work Payment Schedule
Section 3: Bid Bond (Form BB).

Signed by Parties signing Itemized Proposal / Jurat (Form IP):

Add rows as needed

Signature	Representing	Date

FORM SP
SCHEDULE OF PRICES

Proposer: _____

Item #	Item Name	**Price** (1)
800.06000115	Design Build – Construction Work – Southbound I-81 (not including Bridge Work)	
800.06000215	Design Build – Construction Work – Northbound I-81 (not including Bridge Work)	
800.06000315	Design Build – Construction Work – I-81 NB Over I-90 NYS Thruway – Widening/Rehabilitation	
800.06000415	Design Build – Construction Work – I-81 SB Over Totman Road – Widening/Rehabilitation	
800.06000515	Design Build – Construction Work – BIN 1072791 & BIN 1072792 – Widening/Rehabilitation	
800.06000615	Design Build – Construction Work – BIN XXXXXXX - New Structure	
800.06000715	Design Build – Construction Work – BIN XXXXXXX & BIN XXXXXXX - New Structure	
800.06000815	Design Build – Construction Work – BIN XXXXXXX - New Structure	
800.06000915	Design Build – Construction Work – BIN 1031720 - Replacement	
800.06001015	Design Build – Construction Work – Noise Barriers	
800.0400NN15	Design Build – Extra Work	$XXX,000.00
	Subtotal A	
800.05000015	Design Build – Site Mobilization (Maximum 4% of Subtotal A)	
	Subtotal B (Sum of Subtotal A and Site Mobilization)	
800.01000015	Design Build – Design Services	
800.02000015	Design Build – Construction Inspection Services	

800.03000015	Design Build – Quality Control Services	
	TOTAL PROPOSAL PRICE	

Notes:

1.) Proposers shall complete Form SP using the excel spreadsheet located on the Department's Project web site.

2.) Subtotal B will be the value used to *calculate* the 30% Prime/DB self work requirement less any Self Performance Specialty Items included in Part 5 – Special Provisions.

SAMPLE

Instructions:

1.) Enter Lump Sum Price for each Price Item in the white, non-shaded, cells.

FORM WPS
WORK PAYMENT SCHEDULE

WORK PAYMENT SCHEDULE		
WORK PAYMENT SCHEDULE NO. 1 – ITEM 800.06000115 SOUTHBOUND I-81 (not including Bridge Work)	**MAXIMUM PERCENT OF LUMP SUM PRICE**	**PERCENT OF LUMP SUM PRICE (To be completed by D-B)(1)**
Work Zone Traffic Control	10%	
Permanent Ramp, Roadway Removal	10%	
Embankment Construction	25%	
At-Grade Paving Work, including New Construction/Full Depth Reconstruction and Milling/Resurfacing	26%	
Construct New and Maintain Existing Drainage	15%	
Removal and Installation of Striping, Signage, and ITS	15%	
Miscellaneous (Clearing & Grubbing, Landscape, etc.)	10%	
Removal and Replacement of Guiderail	10%	
Punch list work, Site Cleanup and Restoration	2% (fixed)	2% (fixed)
Final Acceptance (Per DB §109-09B)	1% (fixed)	1% (fixed)
Final Agreement (Per DB §109-09D)	1% (fixed)	1% (fixed)

WORK PAYMENT SCHEDULE		
WORK PAYMENT SCHEDULE NO. 2 – ITEM 800.06000215 NORTHBOUND I-81 (not including Bridge Work)	**MAXIMUM PERCENT OF LUMP SUM PRICE**	**PERCENT OF LUMP SUM PRICE (To be completed by D-B)(1)**
Work Zone Traffic Control	10%	
Permanent Ramp, Roadway Removal	10%	
Embankment Construction	25%	
At-Grade Paving Work, including New Construction/Full Depth Reconstruction and Milling/Resurfacing	26%	
Construct New and Maintain Existing Drainage	15%	
Removal and Installation of Striping, Signage, and ITS	15%	
Miscellaneous (Clearing & Grubbing, Landscape, etc.)	10%	
Removal and Replacement of Guiderail	10%	

Punch list work, Site Cleanup and Restoration	2% (fixed)	2% (fixed)
Final Acceptance (Per DB §109-09B)	1% (fixed)	1% (fixed)
Final Agreement (Per DB §109-09D)	1% (fixed)	1% (fixed)

WORK PAYMENT SCHEDULE		
WORK PAYMENT SCHEDULE NO. 3 – ITEM 800.06000315 BIN 1093682 – I-81 NB OVER I-90 NYS THRUWAY - WIDENING/REHABILITATION	**MAXIMUM PERCENT OF LUMP SUM PRICE**	**PERCENT OF LUMP SUM PRICE (To be completed by D-B)1**
Work Zone Traffic Control	10%	
Demolition and Removal of Existing Bridge Elements	15%	
Demolition and Removal of Existing Approach Slabs	4%	
Construct Foundations Related to Bridge Widening	12%	
Construct Substructures and Wing Walls Related to Bridge Widening	12%	
Construct New Pedestals and Bearings	5%	
Construct New Superstructure	15%	
Construct Reinforced Concrete Bridge Deck	14%	
Construct Reinforced Concrete Approach Slabs	5%	
Construct Drainage System	5%	
Clean and Paint Steel	7%	
Modify Existing Abutment, Retro Girder Ends, Construct Semi-Integral Abutment	7%	
Fabricate and Install Approach Guide Railing and Fencing	5%	
Construct Concrete Barriers	5%	
Punch list work, Site Cleanup and Restoration	2% (fixed)	2% (fixed)
Final Acceptance (Per DB §109-09B)	1% (fixed)	1% (fixed)
Final Agreement (Per DB §109-09D)	1% (fixed)	1% (fixed)

WORK PAYMENT SCHEDULE		
WORK PAYMENT SCHEDULE NO. 4 – ITEM 800.06000415 BIN 1072781 – I-81 SB OVER TOTMAN ROAD - WIDENING/REHABILITATION	**MAXIMUM PERCENT OF LUMP SUM PRICE**	**PERCENT OF LUMP SUM PRICE (To be completed by D-B)1**
Work Zone Traffic Control	10%	
Demolition and Removal of Existing Bridge Elements	15%	
Demolition and Removal of Existing Approach Slabs	4%	

Construct Foundations Related to Bridge Widening	12%	
Construct Substructures and Wing Walls Related to Bridge Widening	12%	
Construct New Pedestals and Bearings	5%	
Construct New Superstructure	15%	
Construct Reinforced Concrete Bridge Deck Slab	14%	
Construct Reinforced Concrete Approach Slabs	5%	
Construct Drainage System	5%	
Clean and Paint Steel	7%	
Modify Existing Abutment, Retro Girder Ends, Construct Semi-Integral Abutment	7%	
Fabricate and Install Approach Guide Railing and Fencing	5%	
Construct Concrete Barriers	5%	
Punch list work, Site Cleanup and Restoration	2% (fixed)	2% (fixed)
Final Acceptance (Per DB §109-09B)	1% (fixed)	1% (fixed)
Final Agreement (Per DB §109-09D)	1% (fixed)	1% (fixed)

WORK PAYMENT SCHEDULE		
WORK PAYMENT SCHEDULE NO. 5 – ITEM 800.06000515 **BIN 1072791 – I-81 SB OVER THOMPSON ROAD - WIDENING/REHABILITATION** **BIN 1072792 – I-81 NB OVER THOMPSON ROAD - WIDENING/REHABILITATION**	**MAXIMUM PERCENT OF LUMP SUM PRICE**	**PERCENT OF LUMP SUM PRICE (To be completed by D-B)1**
Work Zone Traffic Control	10%	
Demolition and Removal of Existing Bridge Elements	15%	
Demolition and Removal of Existing Approach Slabs	4%	
Construct Foundations Related to Bridge Widening	12%	
Construct Substructures and Wing Walls Related to Bridge Widening	12%	
Construct New Pedestals and Bearings	5%	
Construct New Superstructure	15%	
Construct Reinforced Concrete Bridge Deck	14%	
Construct Reinforced Concrete Approach Slabs	5%	
Construct Drainage System	5%	
Clean and Paint Steel	7%	
Modify Existing Abutment, Retro Girder Ends, Construct Semi-Integral Abutment	7%	

Fabricate and Install Approach Guide Railing and Fencing	5%	
Construct Concrete Barriers	5%	
Punch list work, Site Cleanup and Restoration	2% (fixed)	2% (fixed)
Final Acceptance (Per DB §109-09B)	1% (fixed)	1% (fixed)
Final Agreement (Per DB §109-09D)	1% (fixed)	1% (fixed)

WORK PAYMENT SCHEDULE		
WORK PAYMENT SCHEDULE NO. 6– ITEM 800.06000615 BIN XXXXXXX – I-81 SB OVER I-481 NB – NEW STRUCTURE	**MAXIMUM PERCENT OF LUMP SUM PRICE**	**PERCENT OF LUMP SUM PRICE (To be completed by D-B)1**
Work Zone Traffic Control	10%	
Construct Foundations	18%	
Construct Substructures and Wing Walls	20%	
Construct Pedestals and Bearings	10%	
Construct Superstructure	22%	
Construct Reinforced Concrete Bridge Deck	20%	
Construct Reinforced Concrete Approach Slabs	5%	
Construct Drainage System	5%	
Fabricate and Install Approach Guide Railing and Fencing	5%	
Construct Concrete Barriers	6%	
Punch list work, Site Cleanup and Restoration	2% (fixed)	2% (fixed)
Final Acceptance (Per DB §109-09B)	1% (fixed)	1% (fixed)
Final Agreement (Per DB §109-09D)	1% (fixed)	1% (fixed)

WORK PAYMENT SCHEDULE		
WORK PAYMENT SCHEDULE NO.7 – ITEM 800.06000715 **BIN XXXXXXX – I-81 SB OVER FEMA FLOOD PLAIN – NEW STRUCTURE** **BIN XXXXXXX – I-81 NB OVER FEMA FLOOD PLAIN – NEW STRUCTURE**	**MAXIMUM PERCENT OF LUMP SUM PRICE**	**PERCENT OF LUMP SUM PRICE (To be completed by D-B)1**
Work Zone Traffic Control	10%	
Construct Foundations	18%	
Construct Substructures and Wing Walls	20%	
Construct Pedestals and Bearings	10%	
Construct Superstructure	22%	
Construct Reinforced Concrete Bridge Deck	20%	
Construct Reinforced Concrete Approach Slabs	5%	
Construct Drainage System	5%	
Fabricate and Install Approach Guide Railing and Fencing	5%	
Construct Concrete Barriers	6%	
Punch list work, Site Cleanup and Restoration	2% (fixed)	2% (fixed)
Final Acceptance (Per DB §109-09B)	1% (fixed)	1% (fixed)
Final Agreement (Per DB §109-09D)	1% (fixed)	1% (fixed)

WORK PAYMENT SCHEDULE		
WORK PAYMENT SCHEDULE NO. 8 – ITEM 800.06000815 **BIN XXXXXXX – I-81 SB OVER BL 81 NB – NEW STRUCTURE**	**MAXIMUM PERCENT OF LUMP SUM PRICE**	**PERCENT OF LUMP SUM PRICE (To be completed by D-B)1**
Work Zone Traffic Control	10%	
Construct Foundations	18%	
Construct Substructures and Wing Walls	20%	
Construct Pedestals and Bearings	10%	
Construct Superstructure	22%	
Construct Reinforced Concrete Bridge Deck	20%	
Construct Reinforced Concrete Approach Slabs	5%	
Construct Drainage System	5%	
Fabricate and Install Approach Guide Railing and Fencing	5%	
Construct Concrete Barriers	6%	
Punch list work, Site Cleanup and Restoration	2% (fixed)	2% (fixed)
Final Acceptance (Per DB §109-09B)	1% (fixed)	1% (fixed)

Final Agreement (Per DB §109-09D)	1% (fixed)	1% (fixed)

WORK PAYMENT SCHEDULE		
WORK PAYMENT SCHEDULE NO. 9 – ITEM 800.06000915 BIN 1031720 – SOUTH BAY ROAD OVER I-81 – REPLACEMENT	**MAXIMUM PERCENT OF LUMP SUM PRICE**	**PERCENT OF LUMP SUM PRICE (To be completed by D-B)1**
Work Zone Traffic Control	10%	
Demolition and Removal of Existing Bridge Elements	15%	
Demolition and Removal of Existing Approach Slabs	5%	
Construct Foundations	16%	
Construct Substructures and Wing Walls	14%	
Construct Pedestals and Bearings	8%	
Construct Superstructure	20%	
Construct Reinforced Concrete Bridge Deck	15%	
Construct Reinforced Concrete Approach Slabs	5%	
Construct Drainage System	4%	
Fabricate and Install Approach Guide Railing and Fencing	4%	
Construct Concrete Barriers or Bridge Rail	5%	
Punch list work, Site Cleanup and Restoration	2% (fixed)	2% (fixed)
Final Acceptance (Per DB §109-09B)	1% (fixed)	1% (fixed)
Final Agreement (Per DB §109-09D)	1% (fixed)	1% (fixed)

WORK PAYMENT SCHEDULE		
WORK PAYMENT SCHEDULE NO. 10 – ITEM 800.06001015 NOISE BARRIERS	**MAXIMUM PERCENT OF LUMP SUM PRICE**	**PERCENT OF LUMP SUM PRICE (To be completed by D-B)(1)**
Perform Site Preparation, including Clearing and Grubbing	6%	
Fabricate Noise Barriers, including Aesthetic Treatments	45%	
Demolish existing Noise Barriers	10%	
Construct and Install Noise Barrier Foundations	20%	
Construct and Install Noise Barriers	35%	
Provide Survey and GIS Data	5%	
Punch list work, Site Cleanup and Restoration	2% (fixed)	2% (fixed)

Final Acceptance (Per DB §109-09B)	1% (fixed)	1% (fixed)
Final Agreement (Per DB §109-09D)	1% (fixed)	1% (fixed)

(1) Percent of Lump Sum Price to be completed by Proposer. Total percent for all Work Items shall equal 100%

(2) Subsequent to Selection of Best Value, the Design-Builder may submit to the Department a more detailed Work Payment Schedule which breaks individual work items into multiple stages, for the Department's review and acceptance. However, the sum of the percentages proposed for each stage shall equal the percentage for that work item submitted by the Design-Builder included on Form WPS, and in no case shall the payment for any individual stage be more than 50% nor less than 10% of the total percentage bid for that work item.

(3) Payment will be verified through the CPM Cost Loaded schedule per SP-8 and SP-3

FORM BB

BID BOND

KNOW ALL PERSONS BY THESE PRESENTS, that _____
(Name of Contractor / Proposer)

_____
(Address)

(hereinafter called the "Principal") and the_____
a corporation created and existing under the laws of the State of _____, having its principal office in the City of _____ and authorized as a surety in the State of New York (such surety or Co-sureties are hereinafter called the "Surety"), are held and firmly bound unto The People of the State of New York (hereinafter called the "State"), in the full just sum of [*Five Percent (5%) of Attached Price Proposal*], good and lawful money of the United States of America, for the payment of which said sum of money, well and truly to be made and done, the said Principal binds themselves (himself/herself, itself), their (his/her, its) heirs, executors and administrators, successors and assigns, and the said Surety binds itself, its successors and assigns jointly and severally, firmly by these presents:

WHEREAS, the said Principal has submitted to the Commissioner of Transportation of the State of New York, a proposal for _____
(Project Description), and

WHEREAS, under the terms of the Laws of the State of New York as above indicated, the said Principal has filed or intends to file this bond to guarantee that the Principal will execute all required contract proposal documents and furnish such faithful performance or other bonds as may be required by law in accordance with the terms of the Principal's said proposal.

NOW, THEREFORE, the condition of the foregoing obligation is such, that if the said Principal shall promptly execute and submit, and the Commissioner of Transportation shall accept, all required contract proposal documents including such faithful performance bond or other bonds as may be required by law in accordance with the terms of the Principal's said proposal, then this obligation shall be null and void, otherwise to remain in full force and virtue.

In case of multiple or co-sureties, the Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Department will have no obligation to deal with multiple sureties hereunder. All correspondence from the Department to the Co-Sureties and all claims under this Bond shall be sent to such designated representative, and all correspondence so sent shall be deemed to have been sent to all Co-Sureties. The Co-Sureties also agree to designate a single agent for service of process with respect to any actions on this Bond, which agent shall either be a natural person or a corporation qualified to act as an agent for service of process under the laws of the State of New York. The designated representative and agent for service of process may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Department designating a single new representative and/or agent, signed by all of the Co-Sureties. The initial representative shall be:

_____
(Name of Representative)

_____
(Address)

_____

(City, State, Zip)

and the initial agent for service of process shall be:

_____
(Name of Initial Agent)

_____
(Address)

_____
(City, State, Zip)

IN TESTIMONY WHEREOF, the said Principal has hereunto set his/her (their, its) hand and the said Surety has caused this instrument to be signed by its authorized officer.

Signed and delivered this ____ day of _____ 20____ in the presence of:

_____)
(Company)
By _____) Principal
(Signature)
_____)
(Title of Authorized Officer)
_____)
(Company)
By _____) Surety (or Co-Surety)
(Signature)
_____)
(Title of Authorized Officer)
_____)
(Company)
By _____) Co-Surety
(Signature)
_____)
(Title of Authorized Officer)
_____)
(Company)
By _____) Co-Surety
(Signature)
_____)
(Title of Authorized Officer)

(The Surety Company shall append a single copy of a statement of its financial condition and a copy of the resolution authorizing the execution of Bonds by officers of the Company to the bond(s).)

(Acknowledgment of principal, unless it be a corporation)
STATE OF NEW YORK ss.:
COUNTY OF_____

On this _____ day of _____ 20 ___, before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same.

_____
Notary Public

(Acknowledgment of principal, if a corporation)
STATE OF NEW YORK ss.:
COUNTY _____

On this _____ day of _____ 20 ___, before me personally came _____ to me known and known to me to be the person, who being by me duly sworn, did depose and say that he/she resides in _____ that he/she is the _____ of _____ the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

_____
Notary Public

(Acknowledgment of contractor, if a limited liability company)
STATE OF NEW YORK ss.:
COUNTY OF _____

On this ____ day of _____ 20 ____, before me personally came _____ to me known, and known to me to be the person who being duly sworn, did depose and say that he/she resides in _____; that he/she is the duly authorized member of the limited liability company described in and which executed the foregoing instrument; and that he/she executed the foregoing instrument on behalf of the limited liability company for the purposes set forth therein as the act and deed of said limited liability company.

_____
Notary Public

(Acknowledgment of Surety Company)
STATE OF NEW YORK ss.:
COUNTY OF _____

On this _____ day of _____ 20 ___, before me personally came _____ to me known and known to me to be the person, who being by me duly sworn, did depose and say that he/she resides in _____. that he/she is the _____ of _____ the corporation described in the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

_____

Notary Public

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I-81 VIADUCT PROJECT - PHASE 1, CONTRACT 1

PIN 3501.90, Contract D900054

REQUEST FOR PROPOSALS

INSTRUCTIONS TO PROPOSERS

APPENDIX F

CONFLICTS OF INTEREST POLICY

Final June 17, 2022

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TABLE OF CONTENTS

F1.0 POLICY STATEMENT....1
F2.0 TYPES OF CONFLICTS....1
F2.1 Definitions....1
F2.2 Individual Conflicts....2
F2.3 Organizational Conflicts....2
F3.0 DESIGN-BUILD CONFLICT OF INTEREST PROCEDURE....2
F4.0 FACTORS FOR EVALUATING CONFLICTS....4

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APPENDIX F

CONFLICTS OF INTEREST POLICY

F1.0 POLICY STATEMENT

The Department's conflict of interest policy is intended to: (1) protect the integrity, transparency, competitiveness, and fairness of the project development, planning, procurement, design, and construction processes; (2) avoid circumstances where a proposer obtains or appears to obtain an unfair competitive advantage; (3) ensure that the Department receives assistance that is free from potential conflict or bias; (4) provide guidance regarding potential conflicts of interest; (5) ensure compliance with applicable legal requirements; and (6) protect the interests of the Department and the People of the State of New York.

All proposers, team members, consultants, contractors, and subcontractors must disclose all potential conflicts as set forth herein and in Conflicts Questionnaires. An undisclosed, later-discovered conflict of interest, even in the absence of verifiable harm, may result in the revocation of a contract.

F2.0 TYPES OF CONFLICTS

There are two primary types of conflict that can arise in the context of a Design-Build procurement. The first, individual conflict of interest, involves instances where a person involved in the decision to award a contract has an interest in the outcome of that procurement, or where a former Department employee is working on behalf of a proposer. The second, organizational conflict of interest, occurs when a proposer has a potential unfair competitive advantage, or is potentially unable to give impartial assistance or advice to the Department.

F2.1 Definitions

For the purposes of the Department's conflict of interest policy and procedures herein, a person shall be deemed to have an interest in the contract of (a) his or her relative, (b) a firm, partnership, or association of which such person is a member or employee, (c) a corporation of which such person is an officer, director, or employee, and (d) a corporation, any stock of which is owned or controlled directly or indirectly by the person or his or her relative.

A "relative" means spouse, parent, grandparent, sibling, child, grandchild, uncle, aunt, cousin, nephew, niece, mother or father-in-law, sister or brother-in-law, daughter or son-in-law, any person with whom the subject person has been making his/her home, or those for whom the subject person or subject person's spouse is legally responsible.

An "affiliate" shall mean any entity that owns all or part of, or is owned in whole or in part by, a proposer, team member, contractor, subcontractor, or consultant. "Affiliate" includes officers, directors, executives, shareholders active in management, employees, and agents of the affiliate, including consultants, contractors, subcontractors, proposed consultants, proposed contractors, proposed subcontractors, or the relatives of any of the foregoing.

As used herein, a "proposer" is the entity seeking award of a contract. "Team member" includes any entity that is a part of the proposer, including joint venture participants, corporate partners, corporate owners, contractors, subcontractors, consultants, employees, or agents.

"Proposer" and "team member" shall include each of the entity's or individual's affiliates. A proposer or team member is deemed to possess the knowledge or access to information that any of its affiliates have or had, even if that affiliate gained the knowledge or potential access to information prior to the time the affiliate began to work for the proposer or team member.

F2.2 Individual Conflicts

There are two types of individual conflicts of interests. The first involves instances where a person involved in the procurement process on behalf of the Department, including the drafting of proposals and decisions about additional costs under contracts, has a financial interest or personal relationship that could impair that person's ability to act impartially and in the Department's best interest. The second involves former Department employees now working on behalf of entities soliciting business, as addressed in Public Officers Law § 73.

F2.3 Organizational Conflicts

There are generally three situations where organizational conflicts of interest arise:

1. The first situation – "unequal access to information" – is one in which a team member has had access to nonpublic information as part of its performance of a public works project, and where that information may provide the proposer with an unfair advantage in competition for the contract at issue.
2. The second situation – "biased ground rules" – is one in which a team member, as part of its performance of a public works project, has helped set the project requirements for the contract at issue. An example of this would be if a team member helped draft the RFP. These situations could also involve team members that have a special knowledge of the agency's future requirements for the contract, and thus those individuals, the entities they work for, and their affiliates also have an unfair advantage in the competition.
3. The third situation – "impaired objectivity" – is one in which a team member's work under a public works project could entail its evaluating its own work or the work of an affiliate through, for example, an assessment of performance under a contract, or an evaluation of proposals.

F3.0 DESIGN-BUILD CONFLICT OF INTEREST PROCEDURE

The Department will endeavor to identify potential conflict of interest issues as early in the project development process as possible. Participants in the developmental stages of a project should carefully consider the possibility that their work on the project's development may preclude them from later work on the same or related projects. In addition to the Department's efforts to identify potential conflicts of interest, proposers and their team members have an affirmative duty to identify potential conflicts of interest and bring them to the attention of the Department.

The Department's Design-Build conflict of interest procedure is as follows:

- Prior to the announcement of the project in the New York State Contract Reporter (the "Reporter"), the Department will review the work done to date on the project by all consultants and subconsultants.

- The information regarding prior work will be reviewed by a three-person panel (the "Panel"), consisting of one person each from the Department's legal, contracting, and engineering groups. No member of the Panel may be tasked with evaluating or recommending proposers for the contract at issue.

- The Panel will draft a written report, to be provided to each potentially conflicted entity among the aforementioned consultants and subconsultants, setting forth its preliminary findings regarding potential conflicts.

- The Panel's written report of its preliminary findings resulting from its initial review of work done on the project prior to its announcement will be provided only to potentially conflicted entities. Absent a written request, no notification will be provided where the Panel's preliminary findings do not indicate the presence of a potential conflict of interest.

- Within seven calendar days of receiving notification of the Panel's preliminary findings, the potentially conflicted entity may submit any and all information or basis for disagreement, in writing, that it wishes the Panel to consider in making its final decision. The submission must be emailed to the contact person identified in the statement of preliminary findings, and must set forth the entirety of the potentially conflicted party's reasoning regarding the conflict, including any proposed mitigation measures. At its discretion, the Panel may decide to meet with the potentially conflicted entity to discuss the conflict.

- Within a reasonable period of time, the Panel will issue a written report setting forth the Department's final determination.

- The Panel will complete its initial review of work done on the project prior to any solicitation of qualifications or proposals.

At any time after the announcement of the project in the Reporter – during the time teams are being assembled, or later in the procurement or contracting process – potential Design-Build team members may proactively seek an opinion from the Department, to be made by the Panel, regarding a potential conflict of interest. Proposers and team members may communicate with the Panel regarding conflicts of issue during the procurement period under State Finance Law § 139-j(3)(a)(7)(a).

At each subsequent stage in the procurement process – RFQ, RFP, etc. – proposers and team members will fill out a Conflicts Questionnaire and, if they self-identify a potential conflict, propose potential mitigation steps. The proposer must provide all details of the potential conflict of interest and the proposed mitigation methods in its submission. Proposers should undertake reasonable due diligence, including conflict searches, to determine whether actual, potential or perceived conflicts of interest exist. Due diligence should extend to investigation of past relationships and to officers, directors, and other employees of the proposer and its team members. The Conflicts Questionnaires, regardless of whether they self-identify a potential conflict, will be forwarded to the Panel for review. If at any time during the procurement or duration of the contract the Panel identifies a potential conflict, it will follow the above procedures.

Each proposer and team member will be required to promptly update the Conflicts Questionnaire as changes occur in subcontractors, key personnel, ownership of team members,

or other circumstances potentially impacting conflicts. The successful proposer will be required to update the Conflicts Questionnaire throughout the duration of the contract.

The Department will award the contract to the apparent successful proposer unless a conflict of interest is determined to exist that cannot be avoided, neutralized, mitigated, or otherwise resolved.

F4.0 FACTORS FOR EVALUATING CONFLICTS

In evaluating conflicts, and particularly when considering possible mitigation measures, the Department must balance conflict concerns with the need to promote competition in the procurement process. Specifically, the factors that affect conflict of interest issues include (1) the type of conflict at issue, (2) the circumstances of the procurement, and (3) the services needed by the Department.

In the context of individual conflicts of interest, in addition to the requirements of the Public Officers Law, the Executive Law, and rules and regulations of the New York State Joint Commission on Public Ethics, former Department employees are prohibited from participating on projects that were under development at the time of the employee's departure.

Guidance with regard to organizational conflicts of interest and mitigation strategies is available in 23 C.F.R. § 636.116. With regard to unequal access to information conflicts, when evaluating an instance where a firm did prior work on the Design-Build project, the prior work and the access to nonpublic information will be reviewed to determine the significance of the involvement. Examples of competitively useful information include source selection information and insights into a solicitation's requirements. The consideration is whether the information is competitively useful and if it provides an unfair advantage.

With regard to biased ground rules organizational conflicts, the primary concern is work on the RFP. A conflict would arise if an entity that helped develop the RFP later interpreted the same document. Similarly, there could be the appearance that a firm drafted the RFP to aid its chances of being awarded the contract. The relevant concern is not just whether the firm drafted specifications that were included in the RFP, but whether the firm was in a position to affect competition, intentionally or not, in its favor.

In the context of impaired objectivity organizational conflicts, the question is not whether the individual or entity involved actually gave biased assessments or otherwise demonstrated a lack of objectivity. The question is whether a reasonable person would find that objectivity could be impaired by a conflict of interests, regardless of what transpires.