

**SH 99 Grand Parkway Toll Road Project
Q & A Matrix #3**

(December 14, 2011)

<u>No.</u>	<u>RFQ Section/ Page No.</u>	<u>Question/Comment</u>	<u>Response</u>
1.	Part B, Volume 3, Section B Surety Letter/p. B-16	<p>Please clarify, under the toll concession model, whether a Proposer that provides separate surety letters from each member of its design-build joint venture (DBJV) (as the “team member responsible for construction”), the cumulative amount of which equal \$500 million, will be considered to have satisfied the requirements of Part B, Volume 3, Section B.</p> <p>“... If a Proposer or team member responsible for construction, as applicable, is a joint venture, partnership, limited liability company or other association, separate letters for one or more of the individual equity participants of the Proposer or team responsible for construction, as applicable, are acceptable, as is a single letter covering all equity participants <u>[or the team member with the primary responsibility for construction, as applicable.-?]....</u>”</p>	<p>Separate letters will be allowed indicating a total amount of \$500 million in bonding capacity. Please be aware if awarded the P3 Agreement, the selected proposer’s sureties will be jointly and severally liable for the full \$500 million bonding amount.</p>
2.	RFQ Part B, Volume 2, Section A Financial Statements and Credit Ratings/pp. B- 12 – B-13; RFQ Part B,	<p>As required by Part B, Volume 2, Section A, Proposers are required to provide financial statements for the Proposer and its equity members, but not Major Non-Equity Members.</p> <p>Additionally, as required by Part B, Volume 3, Section B, a Proposer is given the choice of providing (i) a letter from a surety or insurance company indicating that the Proposer team is capable of obtaining a Performance Bond and Payment Bond in an amount of at least \$500 million, or (ii) a letter from a bank stating that (a) the Proposer or (b) the team member of Proposer</p>	<p>Under the circumstances described in the question, the bank would not be required to include a certification statement for any entity other than the Major Non-Equity Member for which it is willing to write such letter.</p>

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	Volume 3, Section B Surety Letter/pp. B- 16 – B-17	<p>with primary responsibility for construction is capable of obtaining a standby letter of credit in the amount of \$500 million. Part B, Volume 3, Section B goes on to state that any such letters from a surety, insurance company, or bank must include, among other things, a statement certifying (“certification statement”) that the surety, insurance company, or bank has reviewed any proposed or anticipated changes to the Proposer’s, equity members’, and Guarantors’ financial condition pursuant to Part B, Volume 2, Section B and such changes are incorporated into the surety’s, insurance company’s, or bank’s analysis and any special conditions to the issuance of the letter of credit are indentified therein.</p> <p>In the circumstance that a Proposer under the toll concession model is submitting a letter from a bank stating that the team member of Proposer with primary responsibility for construction, who happens to be one or more Major Non-Equity Members, is capable of obtaining a standby letter of credit in the amount of \$500 million, please clarify if such bank is required to include in its letter (or in a follow up letter) a certification statement (as defined above) concerning any proposed or anticipated changes to the Proposer, equity members, and Guarantors, when such changes, if any, do not relate to or impact the Major Non-Equity Member for which it is writing such letter.</p>	
3.	RFQ Part A, Section 2.9, ROW Acquisition/ pp. A-12 –	The RFQ states that “TxDOT is currently preparing ROW maps for Segments F-1, F-2, and G. ROW maps for Segments F-1, F-2, and G are expected to be available in the fourth quarter of 2011.” Please clarify when these maps will be available to be downloaded from the project website.	The ROW maps will be available on the Project Website by the end of the year.

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	A-13		
4.	Q & A Matrix #1, dated November 29, 2011	<p>Question #5 addressed Form F and the fact that the RFQ contained on the website shows the headings blacked out. You responded by referring to the response to Question #3, which states, "The forms will be provided in Word format after the Q&A period is over (final questions are due December 15, 2011.)"</p> <p>We respectfully request that Form F with legible headers be made available on the TxDOT website as soon as possible so that Proposers may address any questions regarding this form with TxDOT before the December 15, 2011 deadline for questions regarding the RFQ.</p>	<p>Please see Addendum #1 to the RFQ and the Forms in Word format expected to be issued after the December 15, 2011 deadline for Proposer questions regarding the RFQ. Please note the headings for the columns in the table on Form F are: Project Name and Size; Dates of Conditional Award and Financial Close; Capital Structure (\$debt & \$equity); Contact Name; Company/Agency; Current Address; Phone Number; and E-Mail.</p>
5.	RFQ Part B, Volume 3, Section C Personnel Qualifications/ pp. B-17 – B-18	<p>The list of Technical Key Personnel currently required to be named under Part B, Volume 3, Section C of the RFQ appear to be more applicable to the design-build model. For Proposer submitting a QS for the toll concession model, is a CEO for the concessionaire required to be named in a Proposer's QS? If so, should this person be included in any of the Technical Key Personnel listed under Part B, Volume 3, Section C of the RFQ. (i.e. as the Project Manager or Superintendent)?</p>	<p>Proposers should identify the persons filling the roles and performing the functions described in the chart in Section C regardless of what title they are given in the Proposer's organization.</p> <p>The descriptions for Program Manager and O&M Manager will be revised in Addendum #1 to the RFQ as follows:</p> <p><u>Project Manager</u> Responsible for overall design, construction, operation, maintenance and contract administration on behalf of the Developer, including safety and environmental compliance for the project, assigned to the Project full time and co-located/on site until</p>

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			<p>substantial completion.</p> <p><u>O&M Manager</u> Responsible for <u>overall design, construction, operational, and maintenance and contract administration</u> on behalf of the Developer, including safety and environmental compliance following service commencement and interfacing with TxDOT in compliance with the O&M protocols arrangement.</p>
6.	RFQ Part B, Volume 3, Section E Project Descriptions/ p. B-19	Part B, Volume 1, Section D (a) states that Form F shall be included in Volume 3, Section E, however, there is no mention of Form F in Volume 3, Section E. Please confirm that Form F should be included in Volume 3, Section E.	Form F is to be included in Volume 1, Section D of the Proposal. Project descriptions for each of the projects listed on Form F shall be included in Volume 3, Section E. See QS organization summary chart on P. B-4, as clarified in RFQ Addendum #1.
7.	RFQ Part B, Volume 1, Section E(3)/ p. B-11	Please clarify what is meant by “describe your understanding of the credit implications and mitigation factors of various risk allocation models in greenfield toll road projects.” The intent of the question is unclear.	The intent of this question is to gauge Proposers’ understanding of the current Greenfield toll road credit markets and how you propose to address the specific Greenfield toll road risk factors to execute a successful plan of finance for the Project.

8.	Part B, Vol. 1, §B(e)(2) (Proposal Information; Legal Qualification; Legal Liabilities)/ p. B-8	<p>Our consortium includes large multinational companies with vast numbers of international affiliates in a number of industries and jurisdictions, and the efforts necessary to diligence such activities would be difficult given the time frame for the prequalification submission. As such, these proposed revisions (see below) are intended to provide information to TxDOT that will be necessary for it to perform a fully informed evaluation, while also making it feasible for us to provide the requested information.</p> <p>Proposed revisions (<u>underlined</u>):</p> <p>Provide a list and a brief description of all instances during the last five years involving transportation <u>projects in North America or those projects included in the response to Part B, Volume 1, Section B(c)</u> in which the Proposer (or any other organization that is under common ownership <u>and control</u> with the Proposer), any equity member or any Major Non-Equity Member was (i) determined, pursuant to a <u>final</u> determination in a court of law, arbitration proceeding or other dispute resolution proceeding <u>between the public owner and such entity, to be liable for a material breach of contract</u>, or (ii) terminated for cause. For each instance, identify an owner's representative with a current phone and e-mail address.</p>	No change will be made.
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9.	Part B, Vol. 1, § B(e)(3) (Proposal Information; Legal Qualifications; Legal Proceedings)/ pp. B-8 – B-9	<p>Our consortium includes large multinational companies with vast numbers of international affiliates in a number of industries and jurisdictions, and the efforts necessary to diligence such activities would be difficult given the time frame for the prequalification submission. As such, these proposed revisions are intended to provide information to TxDOT that will be necessary for it to perform a fully informed evaluation, while also making it feasible for us to provide the requested information.</p> <p>Proposed revisions (<u>underlined</u>):</p> <p>Provide a list and a brief description (including the resolution) of each arbitration, litigation, dispute review board and other formal dispute resolution proceeding occurring during the last five years between <u>the public owner and</u> Proposer (or any other organization that is under common ownership <u>and control</u> with the Proposer), any Equity Member or any Major Non-Equity Member and involving an amount in excess of \$500,000 related to performance in transportation projects <u>in North America or those projects included in the response to Part B, Volume 1, Section B(c)</u> with a contract value in excess of \$25 million.</p> <p>Include a similar list and description for all projects included in the response to Part B, Volume 1, Section B(c) regardless of whether the dispute occurred during the past five years or involved the same organization that is on the Proposer's team. For each instance, identify an owner's representative</p>	No change will be made.
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10.	Part B, Vol. 2, § A (Financial Statements and Credit Ratings)/ p. B-12	<p>We anticipate that certain . . . entities . . . may assume a role on the Proposer’s team that would require the presentation of their financial statements. In order to streamline the submission process and to provide financial information that is more complete and meaningful than a letter from a certified public accountant discussing the areas of the financial statements that would be affected by conversion to U.S. GAAP, we request that the submission of financial statements prepared in accordance with IFRS be permitted.</p> <p>Proposed revisions (<u>underlined</u>):</p> <p>GAAP/<u>IFRS</u> – Financial Statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles (“U.S. GAAP”) <u>or International Financial Reporting Standards (IFRS)</u>. If financial statements are prepared in accordance with principles other than U.S. GAAP <u>or IFRS</u>, a letter must be provided from a certified public accountant discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP <u>or IFRS. A restatement of the financial information in accordance with U.S. GAAP or IFRS is not required.</u></p>	No change will be made. See response to Q. 7 on RFQ Q&A Matrix #2 dated December 9, 2011.
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11.	Part B, Vol. 2, § B (Material Changes in Financial Condition) B-13 – B-15	<p>Regarding the information production required in Section B – Material Changes in Financial Condition, we would suggest including a materiality threshold or limit the disclosure requirements only to those Material Changes in Financial Condition which could have a materially adverse effect on the disclosing party, as the current drafting is very broad and will require disclosure of nominal changes in existing projects that are not material to the disclosing party’s operations.</p> <p>For example, the list of Representative Material Changes includes broadly worded disclosure requirements regarding debt covenants, and without a materiality qualification every technical waiver or nominal modification to debt-financing covenants would need to be disclosed. Given the Proposer’s members’ global operations and extensive number of projects this will create an onerous reporting requirement for the Proposer and potentially overwhelm TxDOT with immaterial information, thereby obscuring the disclosure of (any) changes that are actually material.</p>	No change will be made.
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12.	Part B, Vol. 2, § C (Off-balance Sheet Liabilities)/ p. B-15	<p>The disclosure requirement for off-balance sheet liabilities as previously drafted was overly broad and would require disclosure of nominal liabilities that would not have a practical impact on the applicable entity. As such, we propose to limit the disclosure requirement for off-balance sheet liabilities to only those liabilities exceeding a \$25 million threshold.</p> <p>Proposed revisions (underlined):</p> <p>A letter from the CFO or treasurer of the entity or the certified public accountant for each entity for which financial information is submitted, identifying all off balance sheet liabilities <u>in excess of \$25 million in the aggregate</u>.</p>	<p>Volume 2, Section C will be revised in Addendum #1 as follows:</p> <p>A letter from the CFO or treasurer of the entity or the certified public accountant for each entity for which financial information is submitted, identifying <u>(1) the number of all-off balance sheet liabilities and (2) the aggregate dollar amount thereof</u>.</p> <p>Package the information separately for each separate entity with a cover sheet identifying the name of the organization and its role in the Proposer’s organization (i.e., equity member, lead design firm, subcontractor, etc.).</p>
13.	Form C/ C-13 – C-15	<p>As previously drafted, the requested disclosure was overly broad and unpractical, as the members of the Proposer providing Form C are often engaged in many joint ventures with otherwise unrelated third parties and the efforts necessary to diligence such third parties would be difficult given the time frame for the prequalification submission. Further, it is unclear what the term “financially liable parties” encompasses.</p> <p>Proposed revisions (underlined):</p> <p>The term “Affiliates” includes parent companies, and subsidiary companies, joint venture members and partners, and other financially liable parties for that entity.</p>	<p>Form C will be revised in Addendum #1 to the RFQ as follows:</p> <p>The term “Affiliates” includes parent companies, subsidiary companies, joint venture members and partners <u>in which the entity has more than a 15% financial interest, and other financially liable parties for that entity.</u></p>