

TxDOT SH 288 Toll Lanes Project in Harris County
Proposer RFQ QA Matrix #4
July 23, 2013

No	Doc	Doc Section / Page No.	Proposer Comment	TxDOT Response
53		Part A, Section 5.1 (<i>Responsiveness</i>), Page A-17	<p>Section 5.3.1.(a)(iii)(1) as amended in Addendum # 1 allows the demonstration of relevant experience on projects where the Lead Operations and Maintenance Firm held a minimum of thirty percent (30%) of the responsibility for the the listed operation and maintenance experience.</p> <p>In order to enable Proposers to present relevant project experience where the Lead O&M Firm (or a member thereof) holds a minimum of 30% of the responsibility for the operations and maintenance, we are kindly requesting a modification of Section 5.1 for the reasons set forth below.</p> <p>In the commonly used corporate structure, the operation and maintenance is performed through a project-specific O&M entity (the "O&M Entity") or self-performed by the project company (the "Developer"). The Lead O&M Firm (or a member thereof) holding 30% (or more) interest in either the O&M Entity or the Developer will not be considered a "controlling" entity (in other words, the O&M entity or the Developer will not be considered a "controlled subsidiary" of the Lead O&M Firm as currently required according to Section 5.1); therefore we kindly request Section 5.1 be amended as follows:</p> <p>"In order for project experience provided in any QS to be considered responsive:</p>	See Addendum #3, which clarifies how Technical Qualifications obtained from work through joint ventures may be presented.

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			<ul style="list-style-type: none"> • Technical Qualifications: Forms D-1, D-2, D-3, and D-4 shall list only projects for which the corporate entity (company, joint venture, partnership or consortium) providing th engineering, construction, operations and maintenance or toll operation experience is, respectively: (i) the Lead Engineering Firm, Lead Contractor, Lead Operations and Maintenance Firm or Tolling Operator itself, (ii) a controlled subsidiary of such Lead Engineering Firm, Lead Contractor, Lead Operations or Maintenance Firm or Tolling Operator, <u>or (iii) a subsidiary of the Lead Operations and Maintenance Firm or a member of the Lead Operations and Maintenance Firm (if the Lead Operations and Maintenance Firm is a joint venture) in which the Lead Operations and Maintenance Firm or the member of the Lead Operations and Maintenance Firm (if the Lead Operations and Maintenance Firm is a joint venture), as applicable, held a minimum of thirty percent (30%).</u> [...] • Except as otherwise provided, Key Personnel may be employed by: (a) the Equity Member, Lead Engineering Firm, Lead Contractor, Lead Operations and Maintenance Firm or Tolling Operator itself; (b) a controlled subsidiary of such Equity Member, Lead Engineering Firm, Lead Contractor, Lead Operations and Maintenance Firm or Tolling Operator, <u>or (c) a subsidiary of the Lead Operations and Maintenance Firm or a member of the Lead Operations and Maintenance Firm (if the Lead Operations and Maintenance Firm is a joint venture) in which the Lead Operations and Maintenance Firm or the member of the Lead Operations and Maintenance Firm (if the Lead Operations and Maintenance Firm is a joint venture), as applicable held a minimum of thirty percent (30%);</u> [...]" 	
54		Part A / Section 5.3.1 (a)(iv) (<i>Technical Qualifications and Capability - Lead Operations and Maintenance Firm</i>), Page A-22	It is common in toll concession P3 projects that the responsibility for the toll operations remains with the equity partners (project sponsors), acting through either the project entity or a special purpose toll operations vehicle established by the project sponsors for a specific project. Accordingly, the participation interests of the project sponsors at the toll operations-level usually correspond to their participation interests at the equity-level.	See Addendum #3, which revises the minimum participation percentage for projects that may be cited by the Tolling Operator, consistent with requirements applicable to the Lead Operations and Maintenance Firm.

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		Part C / Form D-4 (<i>Technical Experience - Toll Operations</i>), Page C-26	<p>Due to the significant size of many toll road projects, which require significant amounts of equity and large equity teams, is it often the case that participation interest of each project sponsor at both equity and toll operations levels is lower than 100%.</p> <p>Therefore, we kindly request that TxDOT will allow relevant experience to be demonstrated on project where the Tolling Operator (or a member thereof) held a minimum of thirty percent (30%) in the entity that was directly responsible for the listed toll operations experience. Furthermore, we kindly request that if the Tolling Operator is a joint venture, the experience may be demonstrated by one or more joint venture member(s) that will perform at least thirty percent (30%) of the Tolling Operator's potential toll operations work for the Project.</p>	

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		Part A, Section 5.1 (<i>Responsiveness</i>), Page A-17	<p>Accordingly, we kindly request that Section 5.1 be amended as follows:</p> <p>"In order for project experience provided in any QS to be considered responsive:</p> <ul style="list-style-type: none"> • Technical Qualifications: Forms D-1, D-2, D-3 and D-4 shall list only projects for which the corporate entity (company, joint venture, partnership or consortium) providing the engineering, construction, operations and maintenance or toll operations experience is, respectively: (i) the Lead Engineering firm, Lead Contractor, Lead Operations and Maintenance Firm or Tolling Operator itself, (ii) a controlled subsidiary of such Lead Engineering Firm, Lead Contractor, or Lead Operations and Maintenance Firm or Tolling Operator, <u>or (iii) a subsidiary of the Tolling Operator or a member of the Tolling Operator (if the Tolling Operator is a joint venture) in which the tolling Operator or the member of the Tolling Operator (if the Tolling Operator is a joint venture), as applicable, held a minimum of thirty percent (30%). [...]</u> • Except as otherwise provided, Key Personnel may be employed by: (a) the Equity Member, Lead Engineering Firm, Lead Contractor, Lead Operations and Maintenance Firm or Tolling Operator itself; (b) a controlled subsidiary of such Equity Member, Lead Engineering Firm, Lead Contractor, or Lead Operations and Maintenance Firm or Tolling Operator, <u>or (c) a subsidiary of the Tolling Operator or a member of the Tolling Operator (if the Tolling Operator is a joint venture) in which the Tolling Operator or the member of the Tolling Operator (if the Tolling Operator is a joint venture), as applicable, held a minimum of thirty percent (30%); [...]"</u> 	

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55		Part A, Section 5.1 (<i>Responsiveness</i>), Page A-17	<p>Current language states: "Project experience provided by a parent or sister copmany of the Lead Engineering Firm, Lead Contractor, Lead Operations and Maintenance firm or Tolling Operator shall not be considered responsive to this RFQ."</p> <p>Corporate structuring has a broad range of organizational heirarchy and a subsidiary with the support of its parent company should be allowed to use that parent company's experience or that of an entity under common ownership, control or management.</p> <p>As such, please consider the inclusion of the following language:</p> <p><u>"The experience of a parent company of the Lead Engineering Firm, Lead Contractor, Lead Operations and Maintenance Firm or Tolling Operator, or an entity under common ownership, control or management as such Lead Engineering Firm, Lead Contractor, Lead Operations and Maintenance Firm or Tolling Operator (excluding any subsidiary of such Lead Engineering Firm, Lead Contractor, Lead Operations and Maintenance Firm or Tolling Operator), may be included only if such parent company provides a letter of support setting forth its intention to support the performance and obligations of such Lead Engineering Firm, Lead Contractor, Lead Operations and Maintenance Firm or Tolling Operator."</u></p>	See Addendum #3, which allows the use of the experience of the parent company, but only so long as the parent company provides a guaranty acceptable to TxDOT.
56		Part B, Section 1 (<i>Definitions</i>), General question, Page A-1 Page B-1	<p>Please clarify the definition of the "Proposer" as used in the RFQ. In particular, does the use of this capitalized term in the RFQ include only Equity Members or both Equity Members and Major Non-Equity Members? Also, please clarify whether the representations made in Form A are being made only with regard to information relating to the Equity Members (the term "Proposer" is used therefore it is not clear to us whether these representations relate only to the Equity Members or both the Equity Members and Major Non-Equity Members).</p> <p>Please consider adding the preferred definition of the term "Proposer" to Part B, Section 1 (Definitions).</p>	See Addendum #3, which defines Proposer as "the consortium, joint venture or entity, whether or not yet formed, which is intended to act as the Developer of the Project" and clarifies the meaning of "team member" in the signature block in Form A.

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57		Part B, Volume 2, Section B (2)(a) (<i>Technical Key Personnel Qualifications</i>), Page B-9	<p><u>Environmental Compliance Manager</u> It is typical in the P3 management structure for a position matching the description of the Environmental Compliance Manager to exist in parallel at both the Developer and the Lead Cotnracotr levels. In such a structure, the Developer's environmental compliance manager has the position of oversight of the Lead Contractor's environmental compliance manager and both have authority to stop work in their respective positions.</p> <p>However, because the Lead Contactor's environmental compliance manager has the more hands-on position, working directly on the construction site, we feel that this is the more relevant of the two positions for TxDOT to review in the context of this QS.</p> <p>As such, we suggest that TxDOT remove the language that was added in Addendum No. 1 to read, as it originally did:</p> <p>"Responsible for ensuring all compliance of all on-site activities with the requirements of all environmental permits and regulatory requirements. Reports directly to Project Manager. Independent of Lead Contractor's production team and has the authority to stop work. May be an employee of the Developer or of an independent firm working for the Developer, but may not be an employee of the Lead Contractor or of a firm subcontracting to the Lead Contractor."</p>	No change will be made. Parallel structure is ok, but Developer's ECM is the authority and must have experience necessary to fulfill the role of ECM. Experience listed must be from Developer's ECM.
58		Part B, Volume 2, Section B (2)(a), Page B-9 (<i>Technical Key Personnel Qualifications</i>)	<p><u>Safety Manager</u> We strongly believe that the contractor has to be able to control his safety culture internally. As such, we suggest the following revision:</p> <p>"Responsible for carrying out the Developer's safety plan and all safety-related activities, including training and enforcement of safety operations. Must have project safety experience. Reports directly to the Project Manager <u>and the Superintendent</u> and has the authority to stop work. May be an employee of the Developer or of an independent firm working for the Developer, but may not be an employee of the Lead Contractor or of a firm subcontracting to the Lead Contractor."</p>	No change will be made. Agree that Contractor should control his safety culture, however Developer needs to be responsible for overall safety of the Project.

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59		Part B, Volume 1, Section C (3) (<i>Legal Proceedings</i>), Page B-5	<p>Current language states as follows: "Include a similar list [of legal proceedings] for all projects included in the response to Part B, Volume 2, Section B(1), 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 with a current phone and e-mail address."</p> <p>The projects that should be included in the response to Part B, Volume 2, Section B(1) comprise of reference projects for the Lead Contractor (form D-2), reference projects for the Lead Operations and Maintenance Firm (form D-3) and (if applicable) reference projects for the Tolling Operator (Form D-4).</p> <p>It is our understanding that the list of legal proceedings is required by TxDOT in order to evaluate the past performance of the firms comprising the Lead Engineering Firm, the Lead Contractor, the Lead Operations and Maintenance Firm and the Tolling Operator, in performing their respective roles on the projects that are provided as reference in order to demonstrate relative experience.</p> <p>However, as this requirement is currently drafted, if a project is included, as an example, as a reference to demonstrate experience in operation and maintenance on similar roadways, the list of legal proceedings that should be submitted in respect of such a project must also include any legal proceeding that may have been occurred during the construction phase of the project (e.g., between the lead contractor and the public owner or the lead engineering firm and the public owner), even though the operation and maintenance firm was not involved in any way in such proceedings and the project is not included in the response as a reference to the experience of the Lead Engineering Firm or the</p>	No change will be made. If the proposer believes the legal proceeding is not relevant, then the proposer can explain why.

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			<p>We feel that this requirement is broader than what could be possibly needed in order to fulfill its purpose, and furthermore it is not practical for entity that participated in the project in a specific role to provide a complete and accurate list of all the legal proceedings to which such entity was not a party, and which may have occurred during a phase of the project in which such entity did not have any responsibility (i.e. an operator of a highway project will not be able to provide a list and details of legal proceedings that occurred between the lead contractor and the public owner on that project, and vice versa).</p> <p>We therefore kindly request that the list of legal proceedings that should be included in the response with respect to each project included as a reference in response to Part B, Volume 2, Section B(1) be limited to legal proceedings that occurred during and in the context of the role and services that were performed on the reference project by the entity demonstrating its experience through this project (i.e. only O&M-related legal proceedings should be included if the project is included in the response as a reference by the Lead Operations and Maintenance Firm, and so forth).</p>	
60		Part C, Form C (Certification), Page C-19	Please confirm that in relation to the definition of "Affiliates", in "(iii)" with respect to joint ventures and partnerships in which the parent company or subsidiary company of the firm has more than a 15% financial interest, information regarding only those joint ventures and partnerships in which the firm also has an indirect financial interest must be collected.	Confirmed; as defined by the footnote on Form C Certification.

Note 1: Proposer questions 1 through 5 are included in the previously posted QA Matrix No. 1.

Note 2: Proposer questions 6 through 41 are included in the previously posted QA Matrix No. 2.

Note 3: Proposer questions 42 through 52 are included in the previously posted QA Matrix No. 3.