

Q&A Matrix

North Houston Highway Improvement Project - Segment 3 Design-Build Project

RFQ Q&A Matrix No. 1

April 24, 2020

TxDOT Question Number	Document	Reference	Sub Reference	Question	TxDOT Response
1	RFQ	CMA Term Sheet	DBE	What are the DBE requirements for the CMC phase?	The CMC will not include any DBE requirements. The DBE goals are for the DBC only.
2	RFQ	DBA Term Sheet	Design Liability	TxDOT choosing a depressed section configuration to the two main hurricane evacuation routes will present design liability with regards to drainage that the DB Contractor cannot mitigate, obtain insurance, and provide contingency. Recommend TxDOT carve out drainage design liability and retain or break the project into separately procured components as described in Question/ Comment #1.	Short listed Proposers will have an opportunity to raise this issue as well as other risk allocation issues during the draft RFP industry review period.
3	RFQ	DBA Term Sheet	Force Majeure	FM events are too restrictive. The limitation to "damage to the Project". Hurricane Harvey would not necessarily have caused physical damage to the Project but the site would not have been accessible due to wide spread flooding. Recommend changing the definition to allow for events such as Hurricane Harvey.	Short listed Proposers will have an opportunity to raise this issue as well as other risk allocation issues during the draft RFP industry review period.
4	RFQ	DBA Term Sheet	New Environmental Approvals	What "new" project environmental approvals are being considered such that TxDOT feels the need to shift this risk?	New Environmental Approvals include any necessary approvals that are not listed as TxDOT-Provided Approvals, as well as changes to the TxDOT-Provided Approvals that are necessitated due to the DB Contractor's design.
5	RFQ	DBA Term Sheet	Oversight	Is TxDOT Team performing validation testing OVT during construction?	TxDOT will hire a consulting firm to perform OVT.
6	RFQ	DBA Term Sheet	Performance & Payment Bonds	\$1.6B bond for 8 years or longer has been indicated by the surety industry as unacceptable. In addition, The AGC has previously transmitted a policy statement to TxDOT that bonds should not exceed \$1.5 B nor more than 5 years in duration. Apply separate and independent bonds for each Component with a Security Bond ("bid bond") of sufficient amount that would remain in place until the last Component is fully bonded. Revise surety letter to reflect same as above. "... in the amount of \$1.5 Billion which represents the estimated construction value of Component A. Two additional Separate and independent bonds will be required for Component B and Component C."	Separate Payment and Performance bonds will be required for each component. A separate "security bond" is not necessary in addition to the required bonds. Refer to RFQ Addendum No. 1 and DBC Term Sheet for further details.
7	RFQ	DBA Term Sheet	Utilities	The capital costs for utility adjustments whether known or unknown utilities should be borne by TxDOT directly as in the same manner as ROW acquisition. Utilities will not meet with the DB Contractors to provide accurate costs. Couple this with insufficient SUE and the risks are unmanageable. Risk sharing regime is possible that puts management of the utility process and schedule are on the DB Contractor.	Short listed Proposers will have an opportunity to raise this issue as well as other risk allocation issues during the draft RFP industry review period.
8	RFQ	Exhibit A, Section 1	Section 1.1, Definitions of Required Proposer Team Members	The Definition of Major Participant is too restrictive for a project this size. Recommend changing to "5% or \$75 million".	No change is necessary. Pursuant to Section 1.1 of Exhibit A of the RFQ, the definition for "Major Participant" includes "(b) any other subcontractor identified as of the date of the QS that will have a subcontract in an amount of at least 5% of the estimated price for the DBC or \$20 million, whichever is greater." 5% of the estimated price for the DBC is \$180 million, which is greater than either \$20 million or \$75 million.
9	RFQ	Exhibit A, Section 1	Section 1.2, Other Defined Terms and Acronyms	Recommend deleting all references in the document to bidding capacity and tangible net worth. If the proposer can supply a bond(s) with a reputable surety, all the other calculations mean nothing.	TxDOT has determined that reviewing both tangible net worth and bidding capacity is an important part of the determination of financial capacity. There are ongoing tangible net worth requirements that must be met during the term of the DBC and CMC. Bidding capacity is reviewed by TxDOT with respect to its traditional projects, where surety bonds are also required in accordance with applicable law.
10	RFQ	Exhibit B, Volume 1	Section H, Table 4	Project Manager "must have recent experience managing the design and construction of comparable major projects and experience in project management in design-build projects". Recommend revising to "must have experience in the management and delivery of complex projects or programs of projects including managing multiple personnel of different disciplines, including design, utilities, RR, right of way, public information and construction. Design Build project experience is not necessary but beneficial." "comparable major project(s)" is also a requirement for Construction Manager, Design Manager, Lead MOT Design Engineer, and Professional Services Quality Assurance Manager. Recommend deleting the requirement or changing the definition for all key personnel.	RFQ Addendum No. 1 has been revised to, "...must have recent experience managing the design and construction of comparable major projects regardless of delivery type and experience in project management of design-build projects."
11	RFQ	Exhibit B, Volume 1	Section E	This entire section is project-centric. By the definitions provided, the evaluation is biased against Texas contractors, Texas project managers and Texas consultants. Recommend changing the definitions of major comparable projects to "complex projects in major urban areas." (see question/ comment # 4 above)	TxDOT does not view the requirement as biased against Texas contractors. Proposers experience will be evaluated based on comparable projects per 5.3.1 of the RFQ, and Proposers should provide the experience they feel is most comparable.
12	RFQ	Exhibit B, Volume 1	Section E, Table 2 and Table 3	The exclusion of TxDOT personnel for references is biased against firms and persons who primarily work for TxDOT. It is as if TxDOT does not trust its own employees to provide unbiased evaluations. Recommend deleting this table.	No change will be made. The policy is to prevent the appearance of bias by personnel who are working on the Project. All other TxDOT personnel (including Houston District personnel not identified in Table 2 and Table 3) may be contacted for the purpose of completing Form H.

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13	RFQ	Exhibit C, Volume 2	Section D, RFQ Section 5.2 Pass/Fail Review (b), (e) Pre-Qualification	<p>The sections read as if the Proposer must furnish a prequalification letter.</p> <p>A formed entity or existing LLC for procurements would not be able to be pre-certified by TxDOT and would fail this requirement. A newly formed or existing LLC for procurements would fail if this remains.</p> <p>Change the citations in 5.2 to read: (b) "The Proposer or Lead Contractor or Guarantor..." (e) The QS includes a valid prequalification letter from TxDOT indicating the Adjusted Bidding Capacity for each of the Proposer Entities or Guarantors required to be pre-qualified,..."</p> <p>Please change Exhibit C Section D Item 1 to read: 1. "A prequalification letter from TxDOT, valid as of the QS Due Date, indicating the Adjusted Bidding Capacity, based on the confidential questionnaire, for each of Proposer, any Equity Member(s), or any Guarantor(s)."</p> <p>The intent seems to be that the aggregate sum of the proposer, any equity member and any guarantor equal the needed amount. This could be \$0 for the Proposer if formed for the project or exists as a construction LLC and 100% for the Guarantor.</p>	The RFQ has been revised in Addendum No. 1 to clarify that prequalification letters are not required to be submitted for (a) Newly Formed or yet to be formed Proposer entities, or (b) any Guarantor that the Proposer does not elect to include in the calculation of the Aggregate Available Bidding Capacity.
14	RFQ	Forms	Form E	Allow the use of retired Owner employees as references.	The requested change will not be made. However, the RFQ has been revised in Addendum No. 1 to permit references from retired owner employees if there are no existing owner employees with knowledge of the referenced project.
15	RFQ	Forms	Forms Ds, E, G-2, H, I	Due to size and complexity of this project, change the forms to allow projects up to 25 years ago to be used. Change the definition of comparable major projects (see Question/Comment # 4 and #15) for scoring of the forms. Change the reference requirements for Forms (see Question/Comments # 16 and 17)	No change will be made.
16	RFQ	Forms	Form J-2	<p>Form J requires a DBE to attest to prompt payment. All active design-build projects are required to use DMS for prompt payment reporting. It is well-documented that DMS is not designed to accurately record payment on design-build projects. Affirmations by subcontractors for prompt payment reporting are based on data that is not tied to their payments in any given month. This presents an inherent uncertainty on receiving accurate feedback from DBEs who are currently performing work on design-build projects.</p> <p>TxDOT PFD and CIV recognizes the challenge in using DMS for prompt pay reporting on design build projects. This needs to be taken into consideration when evaluating Form J-2.</p>	Comment noted. TxDOT reserves the right to verify the information provided on Forms J through available resources, including DMS.
17	RFQ	Forms	Forms H, I, J-1, & J-2	Extend due date of the QS by another month to allow adequate time to revise the RFQ and issue a second version; and to complete forms as multiple third parties are involved in submitting deliverable.	The requested change will be made. The QS Due Date will be extended to July 2, 2020 in RFQ Addendum No. 1.
18	RFQ	Section 2	Section 2.1, Description of Project Opportunity	<p>Component B risks limit competition. TxDOT is better positioned to coordinate with drainage districts, utilities, RR and transit entities on this high-risk section with potential long-term liabilities.</p> <p>Recommend redefining the scope to procure Component A as a single project and then let Component B and C using traditional design-bid-build method or DB with a refined risk profile.</p>	TxDOT's intent is to procure as a single project with separate bonds for each component. The scope of the DB Contractor's obligations and terms of the DBC and CMC will be defined in the RFP.
19	RFQ	Section 3	Section 3.3, Procurement Schedule	<p>Per Section 3.3 Procurement Schedule of the RFQ for the subject project on pages 5 and 6, the Deadline for questions regarding the RFQ is January 22, 2020 at 12 noon.</p> <p>It is hereby requested that TxDOT consider revising this date to be March 6, 2020 since the QS Due Date is not until April 29, 2020 at 12 noon. This will allow firms more time to consider forming additional teams and then still be able to have time ask TxDOT questions on the RFQ.</p>	Proposers will have the opportunity to submit additional questions and comments after Addendum No. 1 is issued. The new deadline for submittal of questions and comments is set forth in Addendum No. 1.
20	RFQ	Section 3	Section 3.8, DBE Requirements	<p>DBE Goal is 13.5% of construction costs (Section 3.8); .</p> <p>Verify that utilities are included in the construction cost.</p> <p>If utility adjustments scope is included in construction cost, they do not present a subcontracting opportunity. Typically, utility companies self-perform the design and adjustments or utilize its own approved list of contractors.</p> <p>Recommend that DBE goal be calculated against construction cost not to include utility adjustments.</p>	Section 3.8 in RFQ Addendum No. 1 has been revised to clarify that the DBE goal will not apply to work performed by Utility Owners, and the cost of work performed by Utility Owners will not count toward the cost of construction work or professional services for purposes of the DBE goal.
21	RFQ	Section 5	Section 5.3.1, Project Qualifications and Experience	<p>"...TxDOT considers a comparable major project to be any road project of similar scope and complexity, whether or not the project was delivered through a design-build contract or otherwise".</p> <p>Recommend changing to "TxDOT considers a comparable major project to be a road project or program of road projects on a major corridor with complex traffic control and aggressive construction schedules which include roadway, drainage and bridge construction in a major urban area, such as Houston."</p>	No change will be made.

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22	RFQ	Section 6	Section 6.3, Organizational Conflicts of Interest	The listing of firms who have worked on this project in a minor role should be refined. A large firm who may have performed \$50,000 of work as a sub for another firm and issued a report 3 years ago should not be prohibited. Too many Houston and Texas-based firms are precluded. TxDOT is requiring needless extra work by not self-sifting this list in the RFQ. Recommend: TxDOT edit this list to only those currently active on the procurement.	Firms wishing to participate on a Proposer team that are listed in RFQ Section 6.3(a) or 6.3(b) or that otherwise have a potential conflict of interest are encouraged to follow the process described in RFQ Section 6.3 and in the conflict of interest rules set forth in 43 T.A.C. § 9.155(c)(9) in order to get a letter of determination or exception from TxDOT permitting them to participate in the procurement.
23	RFQ		RID, Schematics	NHHIP Website: Does TxDOT have a digital 3-D model to allow for MOT, phasing, and potential design alternatives?	Additional RID data will be provided with the draft RFP.